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PLD

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Updates from the UN

CEDAW Committee Holds Consultation on a General Recommendation on Women in Conflict and Post-Conflict Situations

At its 49th session, on July 18, 2011, the Committee on the Elimination of Discrimination against Women held a general discussion on a General Recommendation (GR) on Women in Conflict and Post-Conflict situations. The GR being discussed will provide authoritative guidance to State Parties on the measures to be adopted to ensure full compliance with their obligations to protect, respect and fulfil women's human rights during times of armed conflict and in all peace-building processes, including the immediate aftermath of conflict and long-term post-conflict reconstruction. In addition, the GR would require States Parties to CEDAW to report on their implementation of UN Security Council Resolutions (UNSCR) 1325 and 1820. Civil society groups are lobbying for the GR to institute complementary mechanism to promote accountability to UNSCR 1325 and 1820.

At the general discussion, thirty five oral statements were presented to the CEDAW, including from Margot Wallström, Special Representative of the Secretary-General on Sexual Violence in Conflict and Radhika Coomaraswamy, Special Representative of the Secretary-General on Children and Armed Conflict.

Source: <http://www2.ohchr.org/english/bodies/cedaw/discussion2011.htm>

CEDAW Committee grants landmark decision in maternal health case against Govt. of Brazil

In a landmark decision the CEDAW Committee held the Government of Brazil guilty for failing to fulfil its state obligations under Article 2 and 12 of CEDAW in a case of maternal mortality and awarded compensation. The case involved an Afro-Brazilian woman, who died of complications resulting from pregnancy after her local health centre misdiagnosed her symptoms and delayed provision of emergency care. Ruling under the communication mechanism of the Optional Protocol, the Committee concluded that the woman was discriminated against, not only on the basis of her sex, but also on the basis of her status as a woman of African descent and that Brazil failed to comply with its obligation to provide effective judicial action and protection. The Committee in its judgement clearly stated that the State has an obligation to guarantee to women, regardless of income or racial background and public or private service providers access to timely, non-discriminatory, and appropriate maternal health services.

Text of the judgement:

<http://reproductiverights.org/sites/crr.civicactions.net/files/documents/Alyne%20v.%20Brazil%20Decision.pdf>

HRC Advisory Committee invites comments of NGO's on report on traditional values

Following a direction by the UN Human Rights Council in the Resolution 16/3 (passed last March 2011) for a study on how a better understanding and appreciation of traditional values of dignity, freedom and responsibility could contribute to the promotion and protection of human rights, the UN Human Rights Council Advisory Committee concluded its preliminary planning for the report and nominated a 10 member drafting group. The resolution, sponsored by the Russian Federation, has been the subject of much concern for many NGOs who have called upon the HRC Advisory Committee to examine both the negative and positive impacts of the complex notion of tradition on human rights in the study relating to improving understandings of traditional values, and for the HRC to affirm that no party's religious, cultural or traditional values may be used as justification for infringing upon the universal and indivisible human rights of others.

NGOs have can contribute suggestions, both for the proposed structure of the report, and to the substance of the report once an outline has been developed. Those who wish give suggestions on the structure of the report based on the general themes of HRC Resolution 16/3, may mail them to tradval@arc-international.net

Source:

Resolution 16/3 available at: <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/G11/119/35/PDF/G1111935.pdf?OpenElement>

International Developments

Asia

Malaysian court holds that CEDAW obligations are binding

In a landmark decision, the Shah Alam High Court ruled that CEDAW is binding upon the state of Malaysia. The decision was given in a case filed by a teacher against the Education Ministry for a declaration that pregnancy cannot be used as an excuse for not employing a person. She sought a position as an untrained relief teacher. The court recognised that the government had to commit to CEDAW, and adopt Article 11 as law. Since Malaysia is a signatory to CEDAW the judge held that CEDAW has the force of the law and is binding upon the Malaysian government.

Source: <http://www.malaysiakini.com/news/169670>

Statement of the Indian Women's Rights Activists in Solidarity with Women in Sri Lanka

Women's rights activists in India have issued a statement strongly condemning the human rights violations by the Sri Lankan Government following the end of the conflict and made six set of demands from the governments of Sri Lanka and India. These demands are; the right to return and speedy, sustained and holistic resettlement of women and their families in their chosen places of return, dismantling of high security zones which have caused a serious loss of land to many families, such as in Sampur in Trincomalee district, Mullikulam and Silawathurai in Mannar district, cancelling of industrial projects in various parts of the country, including those in high security zones, the increased militarization in the country as a whole, particularly in the north and east, should be brought to an end immediately, the specific concerns of women such as problems of title on land in women-headed households and among widows and so on be taken cognizance of and addressed at the earliest, and finally the government should take active measures to find missing persons, and either prosecute or release prisoners who have been kept in prison without any prosecution for many years. The statement has been made in the event of Sri Lanka appearing before the CEDAW Committee.

Full text of the statement: <http://kafila.org/2011/07/26/statement-of-indian-womens-rights-activists-in-solidarity-with-women-in-sri-lanka/>

Women and men march on the streets protesting sexual harassment in Afghanistan

In a first ever of its kind, women and men marched the streets of Kabul protesting against sexual violence. Composed mainly of members of two local youth organizations and including several men, the demonstrators marched from the gates of Kabul University, a notorious hangout for harassers, to the Afghanistan Independent Human Rights Commission.

Source: http://www.wunrn.com/news/2011/08_11/08_01/080111_afghanistan2.htm

Beyond Asia

Inter American court hears first ever LGBT case

The Inter-American Court of Human Rights has ruled in favour of a lesbian mother who was stripped of custody of her two daughters by the Supreme Court of Chile in 2003. The petitioner, who won in lower court decisions, lost custody of her children when the High Court ruled that she was an unfit mother on the basis of her sexual orientation. She sought justice through the Inter-American Human Rights System, which redresses human rights violations committed by states. The Inter-American Commission on Human Rights subsequently reviewed the case and in 2011 issued a decision in her favour.

Source: <http://www.msngf.org/index.cfm/id/11/aid/4458>

Governments have a responsibility to protect families from abuse: Inter American Commission on Human Rights

The Inter American Commission on Human Rights has ruled that the United States of America has violated international obligations by failing to enforce a restraining order against an abusive husband. The couple's daughters were found dead with gunshot wounds in the back of the husband's truck in Colorado in 1999. The wife had called the police several times after her husband abducted her three daughters. Despite the fact that she had a restraining order against her estranged husband, the police took no action.

In reviewing the case, the commission found that the US failed to act with due diligence to protect the woman and her daughters from domestic violence, violating the American Declaration of the Rights and Duties of Man, which provides protections against gender discrimination and equal protection before the law. The government's failures also violated the daughters' right to life and her right to judicial protection. The SR on VAW expressing concern over lack of protective provisions on domestic violence in United States and inadequate implementation of certain policies and programmes, said "The US Government should reassess existing mechanisms for protecting victims and punishing offenders, and establish meaningful standards for enforcement of protection orders and impose consequences for a failure to enforce them."

Source: http://www.wunrn.com/news/2011/08_11/08_15/081511_inter-american.htm

Statement of SR on VAW:

<http://www.un.org/apps/news/story.asp?NewsID=39362&Cr=violence+against+women&Cr1>

Charges against Dominique Strauss Kahn withdrawn

In a move which highlights how the conduct of a victim – survivor continues to obscure rape prosecutions, charges of sexually assaulting a housekeeper in a hotel suite were withdrawn against Dominique Strauss Kahn due to unreliability of the complainant and inconclusive physical evidence. The victim's credibility as a witness began to crumble after prosecutors discovered what they characterized as a series of lies she had told, though none bore directly on her version of the encounter with Strauss-Kahn. The prosecutors in their report wrote "After an extensive investigation, it is clear that proof of two critical elements - force and lack of consent - would rest solely on the testimony of the complaining witness at trial." While there is evidence that Strauss-Kahn engaged "in a hurried, sexual encounter with the complainant..." it "...does not independently establish her claim of a forcible, non-consensual encounter." The decision to withdraw charges has led to mixed reactions amongst feminists particularly as many other women have come forward with stories of abuse by Strauss Kahn.

Source: <http://www.nytimes.com/2011/08/22/nyregion/strauss-kahn-prosecution-said-to-be-ending.html?pagewanted=all>

Apex court in Nicaragua downgrades rape to crime of passion

In another setback to the movement on violence against women where the conduct of the victim-survivor is targeted, the Supreme Court in Nicaragua reduced the sentence of a man convicted of rape from eight to four years, on the grounds that his sexual assault was not violent and was committed "in a fit of passion under the influence of alcohol," and with "permissive cooperation" by the victim, because she had had a few beers with him. The court further ordered the release of the convict who had spent 18 months in jail on remand on the ground that there were no mitigating factors like previous criminal history, bad behaviour etc.

Source: http://www.wunrn.com/news/2011/08_11/08_15/081511_nicaragua.htm

National

Judgements

Supreme Court directs Chhattisgarh government to disband Salwa Judum calling it illegal and unconstitutional

In a landmark decision upholding civil liberties, the Supreme Court has declared the deployment of Salwa Judum as illegal and unconstitutional and ordered the Chhattisgarh government to disband and disarm them. Holding the government was violating constitutional responsibility the Court held that the policy of the State violated the rights under Articles 14 and 21 of the Constitution of those being employed as Special Protection Officers in Chhattisgarh and used in counter-insurgency measures against Naxalites, as well as of citizens living in those areas. Criticising the use of Salwa Judum by the government for anti naxal operations for its violations of human rights, use of child soldiers and poorly trained uneducated youth for counter-insurgency, the Court ordered investigation into the crimes and human rights violation committed by the Salwa Judum.

The order can be read at:

http://www.thehindu.com/multimedia/archive/00679/Supreme_Court_judgm_679794a.pdf

Supreme Court orders rehabilitation scheme for sex workers

The Supreme Court of India ordered the states to make schemes for the relief and rehabilitation of sex workers in judgment of *Bhudadev Karmaskar v State of West Bengal (Criminal Appeal No. 135 of 2010)*. It has constituted a panel which will ensure that the states allocate resources for the relief and rehabilitation of sex workers, and will come out with a report on this issue. In this regard, suggestions by the state governments and sex workers will be taken cognisance of. It has further been held that any rehabilitation of the sex workers should not be coercive in any manner and it should be voluntary on the part of the sex workers.

The judgment can be seen at <http://xa.yimg.com/kq/groups/25274660/1909883979/name/1.pdf>

The new proposed Disabilities Bill provides for right to fertility and prohibits forced abortion

The new proposed Disabilities Bill provides for right to fertility and prohibits forced abortion. Recognizing the legal capacity of all persons with disabilities and making provision for support where required to exercise such legal capacity as under the United Nations Convention on the Rights of Persons with Disabilities, the 'Rights of Persons with Disabilities Bill, 2011' has been drafted. The Bill prohibits

forcible abortions or any medical intervention that could result in a woman losing her fertility. The finalized version of the draft Bill which has been submitted to the Ministry of Social Justice and Empowerment by the Committee constituted by the Ministry wants governments to ensure that persons with disabilities have access to information regarding family and reproductive planning on an equal basis with others, while prohibiting subjecting any person with disability to any medical procedure, which leads to or could lead to infertility without their free and informed consent.

Source: http://www.wunrn.com/news/2011/07_11/07_04/070411_india.htm

The Bill can be accessed at <http://socialjustice.nic.in/pdf/draftbill-pwd.pdf>

Bombay High Court helps fight sex selective abortion

In a significant victory for the state government in its drive against sex selective abortion, the Bombay High Court on 26th August 2011 upheld Kolhapur district collector's decision to make it mandatory for all pathologists using sonography and ultrasound machines to install the 'silent observer', a device which records all sonography images, which are then stored in a centralised server, and can be reviewed later to track instances of sex selection. The system also enables documentation of pregnant women to be stored online.

Source: http://www.dnaindia.com/mumbai/report_bombay-high-court-helps-fight-female-foeticide_1580153, <http://www.hindustantimes.com/Device-helps-check-female-foeticide-improves-sex-ratio/Article1-738355.aspx>

Review petition filed by PLD in *Velusamy vs Patchaiammal* case dismissed

In an order dated 17th August 2011, the Supreme Court dismissed the review petition filed by PLD in the case of *Velusamy vs Patchaiammal*, where the SC narrowed the definition of the phrase 'relationship in the nature of marriage' used in the Protection of Women from Domestic Violence Act – thereby excluding many women from benefits associated with the Act. In the order, the SC clarified that words and expressions used in the judgement were only meant to elucidate certain points, and were never meant to show any disrespect to women or say anything disparaging about them.

A review petition filed by Mahila Dakshata Samiti in the same case was dismissed in March this year. There are no further reviews with the court on this case.

News

Parliament agrees to adopt three key elements of the Jan Lokpal Bill

The Indian Parliament agreed to adopt three key elements of the Jan Lokpal Bill - Citizen's Charter, inclusion of lower bureaucracy and creation of Lokayuktas in the States through the Lokpal Bill - to the Standing Committee for its perusal. The Jan Lokpal (or, 'The Citizen's Ombudsman') Bill is a proposed anti corruption law that seeks to create an independent ombudsman empowered to register and investigate complaints of corruption against state officers without prior government approval. Gandhian activist, Anna Hazare, broke a 12 day fast following this decision by the Parliament.

Source: <http://www.thehindu.com/news/national/article2405862.ece>, <http://timesofindia.indiatimes.com/india/Anna-Hazare-breaks-fast-after-288-hours-nation-relieved/articleshow/9766385.cms>

Married lesbian couple granted police protection by Haryana court

A runaway lesbian couple from Khekada village, Bhagphat were granted police protection by an additional sessions judge in Gurgaon, Haryana. The Gurgaon court invoked a 2009 Punjab and Haryana high court

judgment directing all district and sessions judges to "ensure help and assistance to runaway couples". The judge matter-of-factly recorded that that two women were married to each other. However, a day after the city court provided round-the-clock protection to the married lesbian couple, there were reports of the duo going missing.

Source: http://articles.timesofindia.indiatimes.com/2011-07-29/gurgaon/29828761_1_gurgaon-court-lesbian-marriage-legal-marriage,
http://articles.timesofindia.indiatimes.com/2011-07-27/gurgaon/29820512_1_lesbian-couple-veena-village

Financial assistance and support services to victims of rape: A scheme for restorative justice

The Ministry of Women and Child Development has notified a scheme to compensate victims of rape by providing them with financial assistance of up to Rupees three lakhs. Under the scheme, if a rape case is prima facie made out, the victim will receive an interim financial assistance of Rs. twenty thousand within 15 days. After giving due consideration to the physical injury and emotional trauma faced by the victim, she will be provided with further financial aid up to fifty thousand. The major chunk of the compensation will be handed over to the victim only after she makes the final deposition before the court.

The details of the scheme are available at:

<http://wcd.nic.in/schemes/Financialssistancerapevictimscheme.pdf>

SHRC report: Official acknowledgement of death of civilians in Kashmir during armed conflict

A state human rights commission inquiry has concluded that thousands of bullet-riddled bodies are buried in dozens of unmarked graves across Kashmir. Many of these are likely to be those of civilians who disappeared more than a decade ago at the time of armed struggle. The inquiry, the result of three years of investigative work by senior police officers working for the Jammu and Kashmir State Human Rights Commission, brings the first official acknowledgment that civilians might have been buried in mass graves in Kashmir.

Source: <http://www.nytimes.com/2011/08/23/world/asia/23kashmir.html>,
<http://www.kashmirtimes.com/news.aspx?ndid=14857>

Resources

Intersections between Women's Equality, Culture and Cultural Rights: PLD

With culture being such a contested terrain, particularly as it relates to equality claims of women and minorities, the development of cultural rights offers new understandings on culture and cultural diversity that reinforce the indivisibility of cultural rights with other human rights. This report explores the intersections of the developing field of cultural rights in relation to advancement of women's equality.

To read about the report visit: www.cedawsouthasia.org

For copies of the publication visit www.pldindia.org or contact resources@pldindia.org

Commentary to the Declaration on human rights defenders: UNSR on situation of human rights defenders

UNSR Margaret Sekaggya has launched an essential guide to the right to defend human rights called the 'Commentary to the Declaration on human rights defenders'. The document maps rights provided for in the Declaration, based mostly on information received and reports produced by the two Special Rapporteurs on the situation of human rights defenders, Hina Jilani (2000-2008) and Margaret Sekaggya (since 2008), during the past eleven years. This Commentary also details state obligations in relation to protection of

human rights defenders, and integrates numerous examples of violations based on sexual orientation and gender identity.

A copy of the publication is available at: <http://goo.gl/5jiYJ>

Addressing Gaps in the Defence of Women Human Rights Defenders: CWGL

Centre for Women's Global Leadership (CWGL) has released a new report 'Addressing Gaps in the Defence of Women Human Rights defenders' as part of efforts by the Women Human Rights Defenders International Coalition (WHRD IC) and its allies to address the unique challenges women human rights defenders face in integrating women's concerns into the international human rights agenda. This report entails specific strategies, new system of advocacy, suggestions and solutions that the defender community could use for the protection and support of women human rights defenders.

The report is available at:

<http://cwgl.rutgers.edu/globalcenter/policy/unadvocacy/WHRD%20Report%20June%202009.pdf>

Avoiding some deadly sins: Oxfam learnings and analysis about religion, culture, diversity, and development: Cassandra Balchin

Oxfam GB has released a discussion document on the challenges faced by the development actors in considering the interconnection between religion, culture, diversity and development. It shares several learning points about effective development practice related to religion, culture, diversity, and development based on Oxfam GB's experience in the field illustrated with case studies.

The document is available at:

http://www.oxfam.org.uk/resources/policy/right_heard/downloads/dp-religion-culture-diversity-development-120811-en.pdf

The dialogue of difference: gender perspectives on international humanitarian law: ICRC

International Committee of the Red Cross (ICRC) has released a report which examines broader application of the concept of gender in order to ensure the effectiveness of international humanitarian law as a system of law in this increasingly complex environments and experiences of armed conflict.

Text of the report: <http://www.icrc.org/eng/assets/files/other/irrc-877-durham-obyrne.pdf>

Minority women are deliberately targeted for sexual violence: State of World's Minorities and Indigenous Peoples Report 2011

The Minority Rights Group (MRG) International in its 2011 report states that minority women are deliberately targeted for rape and other forms of sexual violence, torture and killings specifically because of their ethnic or religious identity. MRG documents cases from across the world showing how women from minority and indigenous communities often face disproportionately higher levels of violence and are targeted for attack in situations of conflict and in times of peace.

Source: <http://www.minorityrights.org/10851/press-releases/minority-women-deliberately-targeted-for-rape-and-other-violence-new-global-report.html>

Family Law Volume I: Family Laws and Constitutional Claims: Flavia Agnes

This publication examines family law in the light of social realities, contemporary rights discourse, and the idea of justice. Family Law in India has a complex legal structure where different religious communities are guided by their own personal laws, each of which historically evolved under various social, religious,

political, and legal influences. The book has also interwoven the ground level litigation practices around women's rights with the critical analyses of the statutory provisions.

Family Law Volume II: Marriage, Divorce, and Matrimonial Litigation: Flavia Agnes

This publication discusses cases, acts, and amendments related to marriage and its dissolution, matrimonial obligations, and custody and guardianship of children. The work unravels legal complexities and weaves women's realities into legal theories. It positions women's claims within the Constitution to highlight the lacunae in laws and to analyse their effectiveness at the ground level. It further discusses family courts and the strategies which need to be adopted to make the present laws work effectively.

Defending Women's Right to Maintenance: Majlis

This publication by Majlis is a reference for procedure and case law on Section 125 Crpc. The book details pre-litigation strategies, principle of drafting, court procedure, legal arguments, procedure for enforcing court orders and authoritative rulings of superior courts etc.

For copies, contact: majlislaw@gmail.com

Events

National Consultation on Compensation to Women Victims of Crime: 28th August, Mumbai

National Commission for Women (NCW) along with Majlis organized the 'National Consultation on Compensation to Women Victim of Crime' on 28th August, 2011 in Mumbai. Discussions on the compensation schemes existing in various states and the process of negotiation with courts and states to grant compensation to women victims of crime were held. PLD made a presentation on the repercussions of the *D.Velusamy vs. D.Patchaiammal* CA No 2028-2029/2010 case. The consultation was attended by lawyers, social activist and government functionaries.

South Asia Training of Trainers (ToT) on Strengthening Application of CEDAW in South Asia: 14-21 July 2011, New Delhi

PLD supported by UN Women has organized a residential South Asia Training of Trainers (ToT) on CEDAW "Strengthening Application of CEDAW in South Asia" from 14-21 July 2011, in New Delhi. The ToT aimed to strengthen the capacities of stakeholders in advancing application of CEDAW in local and national contexts. It helped to refresh and deepen understanding of concepts, facilitates implementation in key contexts of gender inequality in South Asia, and familiarized with diverse applications of CEDAW, including the review processes.

Information about the ToT is available at www.cedawsouthasia.org

Planning meeting by PLD for field study on witch hunting: 31st August 2011, New Delhi

PLD organized a state consultation on planning meeting for field study on witch hunting on 31st August, 2011 in New Delhi. The planning meeting was attended by organizations from seven states namely Bihar, Chhattisgarh, Jharkhand, Orissa, Gujarat, Uttar Pradesh and Rajasthan. All the states shared their experiences and concerns about forms violence and gaps in implementation of state laws, response of the state in preventing the range of assaults and killings.

Forthcoming Events

Civil society holds national and regional for India's Universal Periodic Review process: August-October, 2011

Working Group on Human Rights is organizing regional and national consultations for inputs into India's upcoming Universal Periodic Review at the UN in 2012 from August-October 2011. The first consultation for the North Eastern region was held on 28-30 August 2011. The consultation for the Northern region is scheduled for 15-16 Sept, 2011 in New Delhi. The regional consultations will be followed by a National consultation on 10-11 Oct, 2011 in New Delhi.

For further details please contact: www.wghr.org

Amplifying the Voices of Women in Politics: The Second Asia Pacific Conference on Women in Politics and Governance: APWLD

APWLD is organising Amplifying the Voices of Women in Politics: The Second Asia Pacific Conference on Women in Politics and Governance at Dili, Timor Leste from 29 September–1 October 2011. This conference will bring together women who are actively involved in advocacy and action for women's participation in politics and governance (women from marginalised communities, current, former and aspiring parliamentarians, local government officials, members of the judiciary; those who have run in national and city elections; representatives of women's organisations, activists, political parties and other NGOs), regional partners and APWLD members.

For further details, contact

[http://gallery.mailchimp.com/118e22b87fa01f36b66ad923d/files/Call for Participation Announcement.pdf](http://gallery.mailchimp.com/118e22b87fa01f36b66ad923d/files/Call_for_Participation_Announcement.pdf)