

# BI-MONTHLY LEGAL NEWS

## Vol. 4 (V) Sept-Oct 2011



PLD

*Partners for Law in Development*

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## Updates from the UN

### SR on VAW presents first report on violence against women to General Assembly

UN Special Rapporteur on violence against women presented her first report to the General Assembly, describing the activities undertaken, details of her visits and recommendations to Algeria, Zambia and United States of America, the countries she visited in her official capacity. Importantly, her report stresses the need for due diligence obligations of the state in respect of violence against women, highlighting in particular the often neglected, obligation to prevent. The report called on states to uphold their international human rights obligations by preventing acts of violence against women, investigating and punishing all acts of violence against women, protecting women against such violence, and providing remedy and reparation to the victims.

Text of the report: <http://www.un.org/Docs/journal/asp/ws.asp?m=A/66/215>

### SR on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health presents interim report to UN GA

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health presented his interim report to the UN General Assembly. This interim report considers the impact of criminal and other legal restrictions relating to sexual and reproductive health such as restriction on abortion, conduct during pregnancy, contraception and family planning and provision of sexual and reproductive education and information. This report calls on states to realize their obligations and remove barriers on the realization of right to health created by criminal law or other legal restrictions

The text of the report is available at:

[http://www.un.org/ga/search/view\\_doc.asp?symbol=A/66/254](http://www.un.org/ga/search/view_doc.asp?symbol=A/66/254)

### Human Rights Council adopts resolution on preventable maternal mortality and morbidity and human rights

In its eighteenth session, HRC called on States and other relevant stakeholders, including national human rights institutions and non-governmental organizations, to take action at all levels to address the interlinked root causes of maternal mortality and morbidity, such as poverty, malnutrition, harmful practices, lack of accessible and appropriate health-care services, information and education, and gender inequality, and to pay particular attention to eliminating all forms of violence against women and girls. Towards the same HRC requested the OHCHR to convene in cooperation with other relevant entities of the United Nations system, an expert workshop, open also to the participation of Governments, regional organizations, relevant United Nations bodies, and civil society organizations, to prepare concise technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce preventable maternal mortality and morbidity, including the recommendations contained in the report of the Commission on Information and Accountability for Women's and Children's Health.

Text of the resolution:

[http://www.wunrn.com/news/2011/10\\_11/10\\_10/101011\\_un\\_files/HRC%2018%20Resolution%20on%20Maternal%20Mortality%20&%20Human%20Rights.pdf](http://www.wunrn.com/news/2011/10_11/10_10/101011_un_files/HRC%2018%20Resolution%20on%20Maternal%20Mortality%20&%20Human%20Rights.pdf)

## HRC appoints new UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Human Rights Council has appointed Mr. Mutama Ruteere (Kenya) as the new UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. The mandate was created to combat and end impunity for acts of racism, racial discrimination, xenophobia and related intolerance against Africans and people of African descent, Arabs, Asians and people of Asian descent, migrants, refugees, asylum-seekers, persons belonging to minorities and indigenous peoples, as well as other victims included in the Durban Declaration and Programme of Action.

Source:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11530&LangID=E>

## Asia

### Musawah presents thematic report to CEDAW Committee on equality in marriage and family relations- Article 16

Musawah submitted its first thematic report on Article 16 of the CEDAW Convention on equality in marriage and family relations to the CEDAW Committee in October 2011. The report was also prepared in the absence of any shadow or alternate report for Kuwait and Oman. The report looks at the following issues related to marriage and family relations within Muslim contexts: dower, child marriage, forced marriage, and choice in marriage, divorce, property rights within marriage and its dissolution, inheritance, domestic violence, obedience, guardianship, custody, and the ability to pass nationality to foreign spouses and/or children.

The text of the report is available at: <http://bit.ly/tSfShY>

### Sri Lanka opposes Human Rights Commissioner for the Commonwealth

In a meeting with the heads of state of Commonwealth at Perth in Australia held on 31<sup>st</sup> October, under a series of reforms being deliberated to reinvigorate the group, one idea was to appoint a human rights commission for the Commonwealth. The proposal, opposed most vehemently by Sri Lanka, was shelved. Such a commission would have monitored allegations of human rights violations, and would have proposed sanction against offenders. Another human rights issue that came under scrutiny was the Sri Lankan government's treatment of the country's Tamil minority. The Sri Lankan government has been accused of war crimes at the end of the conflict with the Tamil Tiger rebels in 2009. Commonwealth countries have warned that unless Sri Lanka better its human rights record, they would boycott the next Commonwealth Summit scheduled to be held in Sri Lanka in 2013.

Source: <http://allafrica.com/stories/201110310011.html>

## *Beyond Asia*

### Women in Saudi Arabia get right to vote and contest in municipal elections

The King of Saudi Arabia granted women the right to vote and run in future municipal elections for the first time in the country's history. The reason for the change is said to be uprisings sweeping the Arab world for the past nine months — along with sustained domestic pressure for women's rights and a more representative form of government. While many women have hailed the royal decree as a step towards making them equal to men, some have also expressed scepticism. Other women have raised practical issues like how would they campaign when they were not allowed to vote, how many women could take part and (like for all other public activities) they would require the permission of the men in the family. Additionally, there were fears of the royal decree stalling, as weak enactment would collide with traditions ordained by the Wahhabi sect of Islam and its fierce resistance to change. Though welcome, the development is limited and piecemeal, as it does not adequately address rights and equality of women.

Source: [http://www.nytimes.com/2011/09/26/world/middleeast/women-to-vote-in-saudi-arabia-king-says.html?\\_r=1&nl=todaysheadlines&emc=globaleua2](http://www.nytimes.com/2011/09/26/world/middleeast/women-to-vote-in-saudi-arabia-king-says.html?_r=1&nl=todaysheadlines&emc=globaleua2)

### Kansas State passes order to legalises domestic violence citing economic constraints

In a shocking development, the mayor of Topeka the capital city of Kansas passed an order legalising domestic violence. The reason for the change in law was fourfold; to save the police time, to save city exchequer's prosecution costs, to save the city costs from providing services to victims of domestic violence and to relieve space in the jail for 'more serious crimes'. The repeal seems to have been motivated only due to economic constraints of cutting the budget by 10% and handing over the responsibility of prosecuting domestic violence cases from the county to the district. The move resulted in the release of many perpetrators from jail without any charge. Women's rights activists have protested against the decision as the only motive is to reduce costs and no consideration was given to the health and safety of women leaving them without any state protection.

Source: <http://www.dailymail.co.uk/news/article-2048189/Domestic-violence-legal-Kansas-repeals-law--save-police-time.html#>

### Kenya passes law making FGM illegal

Kenya became the most recent African country to ban female genital mutilation, with the passing of a law making it illegal to practice or procure it or take somebody abroad for cutting. The law even prohibits derogatory remarks about women who have not undergone FGM. Offenders may be jailed or fined or both. Women Parliamentarians have considered this a historic win and were hopeful of the law improving school attendance, since many young girls drop out of school because of shame and trauma. Calling for continued efforts, women's rights activists held the move would not end FGM in Kenya; yet criminalizing it was a massive step towards changing attitudes and giving strength to those who oppose the practice.

Source: <http://www.guardian.co.uk/society/sarah-boseley-global-health/2011/sep/08/women-africa>

## Tunisia Lifts Reservations on CEDAW Convention

Marking an important step towards gender inequality, Tunisia became the first country in the African region to withdraw all specific reservations to the CEDAW Convention but retained its declaration. The lifting of reservations has been upheld as a step towards recognising women's equality in the family and in marriage. These include passing on their nationality to their children, rights and responsibilities in marriage and divorce, matters relating to children and guardianship, personal rights for husbands and wives with regard to family name and occupation, and ownership of property. While activists have welcomed the lifting of reservations they have also demanded removal of declaration as it could be used by countries as an excuse for not complying with international standards. The retained declaration stated that Tunisia "shall not take any organizational or legislative decision in conformity with the requirements of this Convention where such a decision would conflict with the provisions of Chapter I of the Tunisian Constitution." There have also been demands to review personal code as women are denied equal share in inheritance and granting custody of children to men who have remarried but denying custody to women in case they chose to remarry.

Source: <http://www.hrw.org/news/2011/09/06/tunisia-government-lifts-restrictions-women-s-rights-treaty>

## Girls get equal rights to the British throne

In a landmark development, leaders of 16 Commonwealth countries (where the Queen is the head of state) unanimously approved a change in succession laws to the British throne. Hereon, both sons and daughters of any future UK monarch would have equal right to the throne. Under the old succession laws the heir to the throne was the first-born son of the monarch, which also meant younger brother were preferred over elder sisters. Only when there were no sons, as in the case of the Queen's father George VI, the crown passed to the eldest daughter. In addition, the restriction that the monarch could not marry a Roman Catholic has been lifted. Yet the monarch him/herself would still need to be in communion with the Church of England. To bring these changes into effect would mean amendment of a range of succession laws that could take a minimum of four years. The laws to be amended would include the Bill of Rights 1689, the Act of Settlement 1701, the Coronation Oath Act 1689, the Act of Union with Scotland 1706, Princess Sophia's Precedence Act 1711, the Royal Marriages Act 1772, Union with Ireland Act 1800, the Accession Declaration Act 1910 and the Regency Act 1937.

Source: <http://www.bbc.co.uk/news/uk-15492607>  
<http://www.bbc.co.uk/news/uk-15489544>

## Three women win Nobel Peace prize for promoting peace, democracy and gender equality

The Nobel Peace Prize for 2011 has been awarded to three women from Africa and the Arab world in acknowledgment of their nonviolent role in promoting peace, democracy and gender equality. The winners were Liberian President Ellen Johnson Sirleaf (also Africa's first elected female president), her compatriot, peace activist Leymah Gbowee and Tawakul Karman of Yemen, a civil society campaigner. The Nobel Peace Prize committee called on nations to recognize that "we cannot achieve democracy and lasting peace in the world unless women obtain the same opportunities as men to influence developments at all levels of society." Calling attention to the UNSCR 1325, the Committee said the women were chosen

for their non-violent struggle for the safety of women and for women's rights to full participation in peace-building work.

Source: <http://www.wluml.org/news/international-nobel-peace-prize-awarded-three-women>

## **National**

### **Judgements/Orders**

#### **Hindu daughter has equal rights and the same liabilities as that of a male coparcener**

The Supreme Court has held that a Hindu woman or girl will have equal property rights along with other male relatives for any partition made in intestate succession after September 2005. The court held that the Section 6 of the Hindu Succession Act, 2005 provides for parity of rights in the coparcenary property among male and female members of a joint Hindu family on and from September 9, 2005. Coparceners are persons on whom the lands of inheritance descend from their ancestor. Prior to the Amendment in 2005, women were not coparceners under Indian law. The Legislature has now conferred a substantive right in favour of the daughters. According to the new Section 6, the daughter of a coparcener becomes a coparcener by birth. She consequently acquires her own rights and liabilities in the same manner as the son. The court further held that the declaration in Section 6 that the daughter of the coparcener shall have same rights and liabilities in the coparcenary property as she would have been a son is unambiguous and unequivocal.

With this judgement, the Apex Court has cleared any ambiguities left on the rights of Hindu women during intestate succession and made it clear that she gets the same share as her brother.

Source: <http://dc.asianage.com/india/sc-hindu-woman-has-equal-rights-582>

#### **Special courts set up in Delhi for children who have dealt with violence and crime**

Around 450 cases have been registered in the 11 children's courts in the national capital since July when they became functional. Delhi is the first state to open such facilities in the country. The initiative to open children's courts was taken by the Delhi Commission for Protection of Child Rights (DCPCR), which approached the Delhi High Court citing law that guarantees the setting up of children courts. Children's courts are different from juvenile court. While juvenile court is a tribunal having special authority to try and pass judgments for crimes committed by children or adolescents, children's court deals with cases where a child has suffered due to any form of violence or crime.

Source: <http://articles.economicstimes.indiatimes.com/2011-1023/news/303131871courts-dcpcr-first-state#>

## Divorcees can retain their surnames

Additional Solicitor General Khambata has given a legal opinion which states that divorced women should not be forced to acquire a passport in their maiden name. He has opined that "the wife has a fundamental right under Article 21 of the Constitution of India (right to life) to use any name including her married name notwithstanding the fact that her marriage has been dissolved." The passport office had earlier this year denied a Pune woman her constitutional right to use her name, even though her former husband had no objection to its use. The RPO had referred the matter to the law ministry. Khambata, to whom the law ministry had referred the matter, said each case would have to be considered on its own facts. "There is no general rule for the passport authority to reject an application by a divorced woman for a passport in her erstwhile married name. A wife could be restrained from using her married name only if she used that name to deceive or mislead any authority or the world at large or if the use of that name led to any misuse."

Source: <http://timesofindia.indiatimes.com/india/Divorcees-can-retain-surnames/articleshow/10211893.cms>

## Medical evidence is not always necessary to prove rape

A single judge bench of the Bombay High Court, Nagpur Bench has held that medical evidence is not always necessary to prove rape. The court said that merely because there was no medical evidence to prove sexual intercourse, it cannot be held that the accused was innocent, adding that this was because there was strong, truthful and reliable evidence of the victim. The court observed that 'in girls aged about 13-14 years, the hymen is tough and without rupture of hymen, the sexual intercourse is possible with slight penetration.' Justice Bakre, while upholding the Gadchiroli sessions court verdict of convicting Sadmake, ruled that victim's testimony 'inspires full confidence, is wholly reliable and has circumstantial support of the testimonies of other witnesses'.

Source: [http://articles.timesofindia.indiatimes.com/2011-09-25/nagpur/30200235\\_1\\_evidence-gadchiroli-komolika](http://articles.timesofindia.indiatimes.com/2011-09-25/nagpur/30200235_1_evidence-gadchiroli-komolika)

## FIR should be registered even if parallel investigations are being conducted

The Allahabad High Court rejected a petition of the SHO of Dankaur police station, ruling that registration of an FIR was a must to find out the truth in a criminal complaint. The petitioner had challenged an order passed by the Chief Judicial Magistrate in Gautam Budh Nagar on filing of FIR against 16 PAC personnel in connection with rape charges during the land agitation in Bhatta-Parsaul in May.

In its order, a single-judge bench of Justice S C Agarwal said that it was apparent from the police report that on the basis of an affidavit submitted by the complainant in respect of the allegations of rape, an inquiry was being held. When specifically asked by the court as to whether the inquiry was based on any FIR, the government counsel admitted that no FIR had been lodged. Since no FIR had been lodged any inquiry being made cannot be termed as investigation. It added that the correctness or falsity of the allegations can be ascertained only after thorough investigation (for which an FIR has to be registered). Earlier, the court of the Chief Judicial Magistrate in Gautam Budh Nagar had on September 15 directed registration of FIR against 16 PAC and police personnel on the basis of a complaint filed by a woman, who was allegedly raped by the PAC personnel.

Source: <http://www.indianexpress.com/news/fir-a-must-to-find-truth-in-criminal-complaints-hc-on-bhattaparsaul-rape/863987/0>

## News

### Action demanded against state agents in three cases of sexual violence

The recent reports of rape and killing of women with impunity by state agents has prompted several agencies and organisations to demand accountability for these acts. The National Commission for Women (NCW) submitted its final report into the Bhatta Parsaul violence in which held the police officials deployed in the twin villages of Uttar Pradesh responsible for the rape and physical abuse of women during a farmers' agitation earlier this year. In another case, the State Human Rights Commission (SHRC) of Jammu and Kashmir has asked the government to reopen the 20 year old mass rape case where army soldiers had allegedly gang raped over 30 women at Kunan Poshpora village in Kupwara district. Though medical reports and testimonials confirmed the gang-rape, the investigation was closed as "untraced." There were 34 petitioners against the incident - all describing gory details the army brutality on the night of February 23 and 24, 1991. And thirdly, human rights activist have demanded action against the Chattisgarh police for the rape and killing of a 16-year-old tribal girl, Meena Khalko. On July 6, Meena Khalko a resident of Surguja district in Chhattisgarh was killed by police on the pretext of having links with Naxal. As a response to the outrage caused by the post mortem report, the State Home Ministry defended the police by saying that the girl was 'habituated to sexual contact'.

Taking note of the incident where the rape was not investigated rather an attempt was made to slur the deceased minor victim, a widely endorsed petition was sent by women's groups to the three main ministries – the Ministry of Home Affairs, Ministry of Law and Justice, Ministry of Health and Family Planning, to press for the enactment of the long delayed law reform on sexual assault. The phrase 'habitual sexual contact' and two finger tests similarly, continue to mar rape investigations – and need to be eliminated from medico forensic practice as part of the reforms.

Source:[http://articles.timesofindia.indiatimes.com/2011-09-20/india/30179521\\_1\\_ncw-yasmin-abrar-bhatta-parsaul](http://articles.timesofindia.indiatimes.com/2011-09-20/india/30179521_1_ncw-yasmin-abrar-bhatta-parsaul)  
<http://indiatoday.intoday.in/story/shrc-wants-jammu-and-kashmir-army-mass-rape-case-reopened/1/156960.html>  
[www.indianexpress.com/news/naxal-girls-killing-kin...rape.../0](http://www.indianexpress.com/news/naxal-girls-killing-kin...rape.../0)

### Planning Commission of India defends the it's stand on poverty line in the Supreme Court

The Planning Commission filed an affidavit in the Supreme Court claiming that the "poverty line of Rs.25 and Rs.32 (rural and urban areas respectively) ensures the adequacy of private expenditure on food, health and education". This representation of the Planning Commission has attracted a lot of attention and made headlines. Further the statement by the Planning Commission in defence of their representation that poverty line has no relationship with food subsidies has outraged activists. As a response to this, social activists have sent an open letter to Montek Singh Ahluwalia demanding an adequate and satisfactory explanation to the affidavit or in the alternative his resignation from the Planning Commission. The letter criticises the Planning Commission's stand saying that it comes at a time when food inflation was pushing poor households to the wall even as 60 million tonnes of grain are piling in FCI godowns implying that the government itself is hoarding grain to increase food prices.

The open letter has been endorsed and is available with PLD.



Source: <http://www.thehindu.com/news/national/article2529285.ece>  
<http://www.firstpost.com/fwire/planning-commission-may-alter-rs-32-poverty-line-affidavit-96710.html>

## Resources

### Standup Against Violence: A website by Akshara

Akshara has developed a website on violence against women to understand and deal with violence committed against women both in the family and community. The website has sections on different forms of violence such domestic violence, rape, dowry, child sexual abuse, and other forms like honour killing, sex selection and human trafficking. The website has contact details of all the organizations that provide support services to victims of domestic violence.

Source: [www.standupagaistviolence.org](http://www.standupagaistviolence.org)

### Gender, Law and Justice in a Global Market: Ann Stewart

This publication talks about how global economic and social processes influence theories of gender justice in the twenty-first century. It has used the concepts associated with global commodity chains and feminist ethics of care to understand the ways in which 'gender contracts' relating to work and care contribute to gender inequalities worldwide.

Source:

[http://www.cambridge.org/es/knowledge/isbn/item6441740/Gender,%20Law%20and%20Justice%20in%20a%20Global%20Market/?site\\_locale=es\\_ES](http://www.cambridge.org/es/knowledge/isbn/item6441740/Gender,%20Law%20and%20Justice%20in%20a%20Global%20Market/?site_locale=es_ES)

### Muslim Family Law, Secular Courts and Muslim Women of India, Pakistan and Bangladesh: Alamgir Muhammad Serajuddin

This publication talks about the role of judicial activism in bringing about social changes in Muslim society. The book presumes that Muslim family law is incompatible with contemporary notions of gender equality and social justice and explores the extent to which a liberal and pro-active judicial interpretation by South Asian judiciary can enlarge the dimensions of Muslim women's right and contribute to secure gender equality.

### Preventing gender-biased sex selection: an interagency statement: WHO

This joint interagency statement by OHCHR, UNFPA, UNICEF, UN Women and WHO reaffirms the commitment of United Nations agencies to encourage and support efforts by states, international and national organizations, civil society and communities to uphold the rights of girls and women and to address the multiple manifestations of gender discrimination including the problem of imbalanced sex ratios caused by sex selection.

Copy of this statement can be downloaded at:

[http://www.dawnnet.org/uploads/documents/Interagency%20Statement\\_2011-Apr-29.pdf](http://www.dawnnet.org/uploads/documents/Interagency%20Statement_2011-Apr-29.pdf)

### Reproductive health matters hindi edition on "Criminalization": CREA

CREA released fifth edition of the journal Reproductive Health Matters in Hindi, on “Criminalization”. The articles examine several issues, such as the impact of criminalization on sexual and reproductive health and rights; state regulation of sexuality through various tools of criminalization; and, links between sexual violence, HIV/AIDS, and criminalization.

Copies are available to download at [www.creaworld.org](http://www.creaworld.org)

## Events

### PLD holds a training on gender based violence and the law: 27-29 September, 2011

PLD organized a three day residential training programme on laws that can be used to address gender based violence especially for women from marginalized sections. The workshop was for mid to senior level activists and attempted to refresh their understanding of the law in relation to SC/ST women; domestic violence and atrocities committed on women in the name of witch hunting. The training was attended by 39 participants from three states namely, Bihar, Chhattisgarh and Jharkhand and was held at Ranchi.

### National consultation on women’s movement and technology: FAT

Feminism Approach to Technology (FAT) held a two day consultation on feminism and technology and their interaction with each other. The consultation held discussion on how internet governance and social media can be effectively used to raise awareness around social, political and environmental issues and to mobilize and motivate netizens to generate dialogue and debate over the issues of violence against women.

### National Consultation on the Universal Periodic Review Process: 11-12 October 2011

Working Group on Human Rights (WGHR) in India and the UN is coordinating the drafting of a joint “stakeholders’ report” across all thematic areas and all categories of vulnerable groups. Towards the same, WGHR organised regional consultations across India with civil society actors, which culminated in the national consultation held at 11th-12th October 2011. The pooled information collected both at the regional and national consultations will feed into WGHR’s stakeholders’ report that will be submitted to OHCHR by the 28th of November 2011. India was part of the first series of States to be reviewed by the Human Rights Council in April 2008. India will be reviewed again in 2012 for which this stakeholders’ report is being prepared.

Source: [www.wghr.org](http://www.wghr.org)

## **Forthcoming Events**

### APWLD to host Asia Pacific Feminist Forum: 12-14 December, 2011

APWLD will hold the first ever Asia Pacific Feminist Forum (APFF) on 12-14 December 2011 in Thailand to celebrate collective achievements, reflect on challenges and political climates, deepen feminist knowledge and analysis, strengthen sisterhood, solidarity and collaboration to space advance women's rights. The event will bring together 100-150 activists- women lawyers, academics, advocates and youth leaders and will focus on movement and skills building and provide for sharing of issues, struggles and strategies. For who may apply and how to apply, see link below:

Source: <http://www.apwld.org/our-work/asia-pacific-feminist-forum/>

### Nigah Queer Fest 2011: 18-25 Nov, New Delhi

Every year Nigah hosts the Queer Fest (NQF) to celebrate queerness by featuring films, visuals art, performance, talks, parties, picnic and workshops across multiple venues in Delhi. This year, the theme is 'Body Politics' and the events will explore and discover centrality of the body in queer politics.

Click the link for details: <http://thequeerfest.com/>