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**PERMANENT MISSION OF SOUTH AFRICA TO
THE UNITED NATIONS AND INTERNATIONAL ORGANIZATIONS**

52/2012

The Permanent Mission of the Republic of South Africa to the United Nations Office at Geneva and other International Organisations in Switzerland presents its compliments to the United Nations Office of the High Commissioner for Human Rights – Special Procedures Branch -, and has the honour to refer to its Diplomatic Note ref. 14/2012 pertaining to the Allegation Letter AL G/SO 214- (53-24) G/SO 214 (89-15) ZAF 2/2011 dated 31 January 2012, and in this regard, encloses herewith South Africa's response to the joint letter of allegations by Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Special Rapporteur on Violence against Women of the United Nations Human Rights Council on allegations of torture in South Africa.

The Permanent Mission of the Republic of South Africa to the United Nations Office at Geneva and other International Organisations in Switzerland avails itself of this opportunity to renew to the United Nations Office of the High Commissioner for Human Rights – Special Procedures Branch - the assurances of its highest consideration.

Geneva, 29 February 2012

The Office of the High Commissioner for Human Rights
Special Procedures Branch
Palais des Nations
CH - 1211 GENEVA 10

By Fax : 022 917 80 06



OHCHR REGISTRY

- 1 MAR 2012

Recipients : *SPD*

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 REPUBLIC OF SOUTH AFRICA

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INTERNAL MEMO

DATE:	28 February 2012	FILE NR:	8/8/5/4 [REDACTED]
TO:	Mr J Kgoelerya SA Mission in Geneva	FROM:	N J Makhubele
SUBJECT:	Joint Urgent Communication by the Special Procedures of the United Nations Human Rights Council on Grave Allegations of Torture in South Africa		

1. PURPOSE

- 1.1 To inform you of Joint Urgent Communication by the Special Procedures of the United Nations Human Rights Council on Grave Allegations of Torture in South Africa; and
- 1.2 mandate you to submit the response to the above-mentioned Joint Urgent Communication reflected below.

2. SUMMARY

- 2.1 United Nations Joint Special Procedures on violence against women and torture expressed concern apart from the [REDACTED] complaint that she has been sexually abused and raped by three police officers of the Woodstock Police Station in the Western Cape, there is a pattern of abuse against sex workers. According to information received by the Special Procedures, sex workers face constant human rights violations by the South African Police Service (SAPS) and other authorities, which include a number of specific acts. (see attached UN Urgent Communication).

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2.2 The Government is requested to make observations on the following matters:

- Are the facts alleged in the above summary of the case accurate?
- Please provide the details and where available, the results, of any judicial investigation or any criminal charges and other inquiries carried out in relation to the alleged cases of violence against women sex workers by police officers and other authorities.
- Please indicate which measures the Government has adopted or intends to implement to eliminate all forms of violence against sex workers in South Africa particularly violence perpetrated by police officers and other authorities.

3. DISCUSSION

- 3.1** As to the allegation that [REDACTED] was arrested by the Woodstock Police Station in late October 2009 and that she was verbally abused and raped by three police officers who also took her belongings, the Provincial Commissioner Western Cape reported that "no record of such incident could be found at Woodstock police Station". The Provincial Commissioner Western Cape states that since 2004 the Sex Workers Education and Advocacy Task Force (SWEAT), representing sex workers, has been engaged in discussions with the South African Police Service (SAPS) about complaints relating to treatment of sex workers by members of the SAPS. However, these complaints have always been vague and referred to general conduct of members of the SAPS, and SWEAT could not supply particulars of these complaints upon request to date.
- 3.2** Be that as it may, these complaints of sex workers culminated in court action against SAPS. On 20 April 2009 the court issued an interdict against members of SAPS in the Cape Metropolitan area and Cape Town City, restraining them from arresting sex workers in terms of Section 40 of the Criminal Procedure Act No 51 of 1977, in particular arresting sex workers while knowing with a high degree of probability that

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no prosecution will follow such arrest; and that the Minister of Police and SAPS Authorities in above-mentioned Western Cape areas take all steps reasonably necessary within their respective areas of responsibility and authority to prevent members of SAPS from breaching the order. As a result of the judgment, the Provincial Commissioner Western Cape issued instructions to members to ensure compliance with the court order. As to the international human rights instruments cited in the UN Communication, these are noted, and implementation legislation is in place and the Prevention and Combating of Torture Bill is being discussed with a view to enacting it into law soon as reflected below.

- 3.3 Turning now to specific matters on which Government's observations are sought, the response to the first question is that we cannot say whether the facts alleged in the summary of the case contained in the UN communication are accurate, or not, because sex workers made unsubstantiated complaints and SWEAT did not provide particulars of those complaints upon request to date. [REDACTED] complaint could not be traced as there is no record of such incident which could be found at the Woodstock Police Station. As to the second question, suffice to state that SWEAT should meet with the SAPS and present substantiated cases of sex workers to trigger any judicial investigation, or any criminal charges and other relevant police officers and authorities. Regarding the third question, government has passed the Domestic Violence Act, 1998 (Act No 116 of 1998 and the Protection from Harassment Act, 2011 (Act No 17 of 2011) to fight violence and abuse of women. Rape is dealt with in terms of our Common Law and relates Statutes. As already stated above, The Prevention and Combating of Torture Bill will be enacted into law soon.
- 3.4 In conclusion, it should be stated that [REDACTED] and other affected sex workers and their lawyers are to contact the Independent Complaints Directorate, established in terms of the South African Police Services Act, 1995 (Act No 68 of 1995), to ensure that the responsible police officials are called to account and are charged in a criminal court. It is

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noted that inoperational. Complaints Directorate will be substituted by the Independent Police Investigative Directorate (the Independent Police Investigative Directorate Act, 2011 (Act No 1 of 2011, when it becomes operational, will result in such substitution). The Directorate is headed by an Executive Director (Francois Beukman), he can be contacted at +27 (82) 822 8627.


Mr N J Makhubele 28.02.2012
Deputy Chief State Law Adviser: International Legal Relations