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**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and Special Rapporteur on violence against women, its causes and consequences.

REFERENCE: AL G/SO 214 (53-24) G/SO 214 (89-15)
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and Special Rapporteur on violence against women, its causes and consequences pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 16/23 and 16/7.

In this connection, we would like to bring to your Excellency's Government's attention information we have received regarding **Ms. X.** a young woman from the Democratic Republic of the Congo who was allegedly raped while in immigration detention in Botswana, and is currently held in the Francistown Centre for Illegal Immigrants, along with her three month old baby.

According to information received:

Ms. X. is a young woman from the Democratic Republic of the Congo who arrived in Botswana seeking asylum in December 2008. She was reportedly transferred to the Francistown Centre for Illegal Immigrants as a matter of procedure, where she was held and allegedly raped in 2010. As a result of the alleged rape, Ms. X. became pregnant and gave birth to a baby girl three months ago.

It is reported that on 23 August 2011, at approximately 10:00 a.m., an Officer in Charge of the Francistown Centre allowed the transfer of Ms. X. and her newly-born baby to Dukwi Refugee Camp. This decision was allegedly made unilaterally by the officer who reportedly acted out of concern for the wellbeing of Ms. X. and her child. This decision was allegedly later reported to the head of the Ministry of Defence, Justice and Security in Gaborone who subsequently ordered that Ms. X. and her child be moved back to the Francistown Centre.

It is reported that, when Ms. X. was informed that she would be removed back to the Francistown Centre, she became very distressed and refused to board the car in which she would be transferred, demanding a formal explanation from the Ministry of Defence, Justice and Security. As a result, various police officers forcefully and violently tried to board her into the vehicle, yet Ms. X. continued to resist.

The car reportedly took Ms. X.'s belongings back to Francistown Centre for Illegal Immigrants, whilst she was taken to the office of the United Nations High Commissioner for Refugees (UNHCR). UNHCR has allegedly been advocating for Ms. X.'s release from detention, particularly since November 2010 when the agency confirmed her pregnancy.

At approximately 05:30 p.m. on 23 August 2011, Botswana Police officers allegedly entered the UNHCR offices in search of Ms. X.. They reportedly assaulted her and handcuffed her, despite the attempts of a UNHCR Protection officer to intervene on her behalf. Allegedly, five male guards manhandled Ms.X., they handcuffed her wrists behind her back and her ankles. Then four male guards allegedly carried her, spread-eagled, outside the compound to a waiting vehicle. Ms. X. and her daughter were subsequently driven back to the Francistown Centre where they currently remain.

Allegedly, following these incidents, the Ministry of Defence, Justice and Security has begun an investigation of this case.

While we do not wish to prejudge the accuracy of these allegations, we wish to appeal to your Excellency's Government to seek clarification of the circumstances regarding Ms. Marceline X. and her new-born daughter.

We would like to bring to your Excellency's Government attention article 4 (b) of the United Nations Declaration on the Elimination of Violence against Women, which stipulates that States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should refrain from engaging in violence against women.

We welcome information received indicating that the Ministry of Defence, Justice and Security has begun an investigation of this case. In that sense, we would also like to recall article 4 (c & d) of the Declaration, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Women who are subjected to violence should be

provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, also inform women of their rights in seeking redress through such mechanisms. (adopted by General Assembly resolution 48/104 on 20 December 1993).

In this context, we recall that the Committee on the Elimination of Discrimination against Women (CEDAW) in its general recommendation No. 19 (1992), defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women (ratified by your Excellency's Government on 13 August 1996), whether perpetrated by a State official or a private citizen, in public or private life. Thus, the Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes, including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. In general recommendation No. 19, the Committee sets out specific punitive, rehabilitative, preventive and protective measures States should introduce to fulfil this obligation; in paragraph 9, it makes clear that "under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation".

Furthermore, we would like to bring to your Excellency's attention article 4 (g) of the United Nations Declaration on the Elimination of Violence against Women which notes the responsibility of States to work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation.

We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth *inter alia* in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

We would like to draw the attention of your Excellency's Government to principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Furthermore, principle 5 provides that, "Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in

proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.” (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

We would also like to draw your Excellency’s Government’s attention to paragraph 7b of Human Rights Council Resolution 16/23, which urges States “(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture.”

It is our responsibility under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. In the event that the alleged perpetrators of Ms. X.’s rape are identified, please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
4. Please indicate if any measures have been put in place to guarantee the safety and integrity of Ms. X. and her child and whether reparation for the harm and suffering caused has been provided to them.

We would appreciate a response within sixty days. We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading
treatment or punishment

Rashida Manjoo
Special Rapporteur on violence against women, its causes and
consequences