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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 the Special Rapporteur on violence against women, its causes and consequences

REFERENCE: AL G/SO 214 (53-24) G/SO 214 (89-15)
IND 17/2011

15 September 2011

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 draw the attention of your Excellency's Government to information we have received concerning the case of **Ms. X.**, in the Kulgam district of Kashmir, who was allegedly abducted and allegedly gang raped by two army personnel from 19 to 21 July 2011.

According to information received:

In the evening of 19 July 2011, at around 7 p.m., while on her way back home from a nearby spring, 32-year old Ms. X. was forced by two army personnel to accompany them into the forest. According to information received, both men were carrying rifles and wireless sets and forcibly took Ms. X. keeping her confined in a hut ('dhok') in the nearby Kadalbal forest where she was raped for two days. Before releasing her, the two men allegedly threatened her not to report the incident to anyone.

On 21 July 2011, Ms. X. reported the incident to the Damhal Hanji Pora police station in Kulgam, Kashmir. The statement was reportedly recorded in the presence of village elders and public officials. Ms. X. also reported the incident before the Minister of State for Home, Tourism and Urban Development, Mr. Nasir Aslam Wani, and the Director General of Police, Mr. Kuldeep Khoda, who both came to the village and met with the victim after protests by the villagers on the incident. During this encounter, Ms. X. reportedly stated: "I can identify the soldiers. They

were in uniform and guns and wireless sets with them.” According to information received, protesters alleged that army personnel from 62-Rashtriya Rifles were involved in the rape.

According to further information, a spokesman of the police has informed that a case on the alleged abduction and rape has been registered (as FIR No. 66/2011 under section 366,376-IPC) in Damhal Hanji Pora police station and that a special investigation team has been announced to investigate the matter.

While we do not wish to prejudge the accuracy of these allegations, 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 the announcement that a special team has been established to investigate the matter. 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.

In this context, we also wish to 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 India on 9 July 1993), 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. Paragraph 9 of General Comment No. 19 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”.

We would also like to recall the serious concern of the Committee on the Elimination of Discrimination of Women about the narrow definition of rape in the current Penal Code during the Committee’s consideration of the exceptional report of India on 15 October 2010. The Committee urged India to accelerate its efforts to widen the definition of rape in the Penal Code to reflect the realities of sexual abuse experienced by women and to consult widely with women’s groups in its process of reform of laws and procedures relating to rape and sexual abuse (CEDAW/C/IND/CO/SP.1, para. 27(a), (c)). The Committee further recommended India to expeditiously enact the proposed Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 (CEDAW/C/IND/CO/SP.1, para. 27(b)).

It is our responsibility under the mandate provided to me 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 information on the complaint lodged.
3. 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.
4. In the event that the alleged perpetrators 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?
5. Please indicate if any measures have been put in place to guarantee the safety and integrity of Ms. X. and whether reparation for the harm and suffering caused has been provided.
6. Please indicate any measures taken to implement the recommendation contained in paragraph 27 (a) – (c) of the concluding observations of CEDAW, issued on 15 October 2011, relating to the widening of the definition of rape in the Penal Code and the enactment of the proposed Communal Violence Bill (2005).

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 report 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