



PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on the issue of discrimination against women in law and in practice; the Special Rapporteur on the independence of judges and lawyers; 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.

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Excellency,

We have the honour to address you in our capacity as Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; Special Rapporteur on the independence of judges and lawyers; 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 Human Rights Council resolutions 23/7, 17/2, 16/23, and 23/25.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning **allegations of gang-rape of a 22 year old pregnant woman, Ms. [REDACTED], by 7 men in [REDACTED] village, [REDACTED] region; acts of violence, threats and intimidation by the alleged perpetrators and members of their families; the failure of the police to respond quickly and effectively after the above incidents were reported; as well as the apparent connivance of the police investigating Ms. [REDACTED]'s case with the alleged perpetrators.**

According to the information received:

On 29 July 2013, Ms. [REDACTED], a resident in the village of [REDACTED], [REDACTED] region, aged 22 years old and four-months pregnant, was reportedly returning home from [REDACTED] and was suddenly approached by a young individual who offered to accompany her to her hometown. Soon after she accepted, it was reported that Ms. [REDACTED] was forced to get in a mini-bus and was taken to a field outside the village of [REDACTED]. Ms. [REDACTED] was allegedly brutally gang-raped by seven men during the whole night. It is reported that after the incident, Ms.

██████ decided not to inform anyone, including her close relatives, about what happened as she feared that the aggressors would try to kill her.

On 22 August 2013, at approximately 11:00 p.m., five persons allegedly broke into her residence, smashing the house's windows and threatening to set fire to the house and kill her. During the break-in, it was reported that a relative of Ms. ██████ who was inside the house managed to make a phone call to the local police but was allegedly told that no police officers were available. The aggressors reportedly left the residence later that night without facing any resistance.

It is alleged that the police officer who answered the phone call that night only arrived at Ms. ██████ residence approximately eight hours after the incident had taken place. As the sequence of the events of the previous night was being described to him, including the earlier gang-rape Ms. ██████ had allegedly suffered by these same men, the police officer reportedly only took a few photographs of the house with his mobile phone, and left the residence.

It is reported that, for a period of five days after the visit of the police officer to Ms. ██████ home, no concrete follow-up action was taken, despite repeated phone calls to the police by Ms. ██████ relative. It is further reported that this same relative of Ms. ██████ then accompanied her to the police station in the ██████ region to complain in writing and allegedly met the same police officer who had visited her at her home the morning after the house break-in. It is further alleged that this police officer was "surprised" to see them at the station.

Reportedly, the alleged perpetrators were only apprehended by the police after Ms. ██████ relative formally reported the incidents at the police station in ██████ region. Subsequently, the alleged perpetrators, who were aged between 17 and 22 years old, were reportedly detained but then released within 72 hours after a decision of the regional Court. Although an investigation into the allegations is ongoing, all the suspects are reportedly free to attend school or walk at liberty in the area.

It is further alleged that, a few days after the complaint was filed, the parents of the alleged perpetrators and the aforementioned police officer allegedly visited Ms. ██████ and her relative at their home and forced Ms. ██████ to sign a written declaration affirming that she had no complaint of rape against the alleged perpetrators. It is alleged that the parents of the suspects and the police officer threatened that if Ms. ██████ did not sign these papers, the parents of the suspects and the police officer would "destroy" Ms. ██████ and her relative. Ms. ██████ allegedly signed the documents and received seven thousand lei in return (circa 540 US \$) which, according to the allegations, were subsequently spent on medicines for Ms. ██████.

Reportedly, one week after this incident, Ms. [REDACTED] went to have a medical check-up so that evidence of her rape could be obtained. However, since the events described had allegedly taken place sometime before, no physical evidence could be obtained to substantiate allegations of rape.

According to the allegations, since the official police investigation was launched, Ms. [REDACTED] has been routinely interrogated in the same interrogation room with the alleged perpetrators. Close relatives have reportedly rarely been allowed to be present with Ms. [REDACTED] during questioning. Moreover, during the latest interrogation, it has been reported that Ms. [REDACTED] suffered a nervous breakdown, overcome by feelings of anguish, humiliation and frustration. She was urgently taken to hospital, where she remained for several days, due to a risk of miscarriage. Ms. [REDACTED] is reportedly still in hospital.

According to the information received, due to Ms. [REDACTED] hospitalization, the first Court hearing scheduled for 5 September 2013, was postponed until further notice. According to reports, Ms. [REDACTED] case is currently being investigated for rape and hooliganism. The relative of Ms. [REDACTED] has further alleged that the relatives of the seven individuals suspected of rape have bribed both the aforementioned police officer and an investigation officer involved in this case with one thousand euro.

Lastly, Ms. [REDACTED] has reportedly not been given access to free legal aid by the State, despite the guarantees provided in Chapter IV of the Law on State Guaranteed Legal Aid. Article 19 (1)(a) which states that, if in the interests of justice, if individuals “do not have sufficient means to pay for this service”, they are entitled to qualified legal assistance in criminal cases. Ms. [REDACTED] belongs to a socio-economically vulnerable family and cannot afford the cost of a lawyer to represent her during the judicial proceedings.

Without prejudging the accuracy of these allegations, we would like to express our grave concern for the physical and psychological integrity of Ms. [REDACTED] and her aforementioned relative. Serious concern is further expressed for the allegations of brutal gang rape of Ms. [REDACTED] by seven men; acts of violence, threats and intimidation by the alleged perpetrators and members of their families; the failure of the police to respond quickly and effectively after the above incidents were reported; as well as the apparent connivance of the police investigating Ms. [REDACTED] case with the alleged perpetrators.

We would like to make reference to 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.

Moreover, we wish to bring to the attention of your Excellency's Government attention article 4 (c & d) of the same 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.

We would also like to draw the attention of your Excellency's Government to paragraph 2 of General Comment No. 20 of the Human Rights Committee, which provides that, "The aim of the provisions of article 7 [on the prohibition of torture and other cruel, inhuman and degrading treatment or punishment] of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity." (Adopted at the 44th session of the Human Rights Committee, 1992).

Furthermore, we would like to refer to paragraph 18 of the General Comment No. 2 of the Committee against Torture (CAT/C/GC/2, 24 January 2008), where the Committee has made clear that where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties' failure to prevent and protect victims from

gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.

In this context, we 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 your Excellency's Government on 1 July 1994), 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. The Committee sets out specific punitive, rehabilitative, preventive and protective measures States should introduce to fulfill 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".

In this connection, we wish to draw attention to *Ms AT vs Hungary* (CEDAW Communication No. 2/2003), where a woman complained that the State's failure to provide her with effective protection from her violent former common law husband violated the Convention. The Committee found that the ineffective responses by the authorities to violence she had suffered, constituted violations of articles 2(a), (b), and (e) and 5(a), linked with article 16 of the Convention.

With regard to the alleged failure to conduct a proper investigation into the aforementioned allegations, reference is made to the jurisprudence of the European Court on Human Rights, and in particular, to the case of *I.G. v. Moldova* (Application no. 53519/07). On 15 August 2012, the Court held that the failure of the State of Moldova to conduct a proper investigation constituted "a procedural violation of article 3" of the European Convention on Human Rights concerning the prohibition of torture and inhuman or degrading treatment or punishment, forcing the State to pay the victim for non-pecuniary damage.

With regard to the allegations of lack of access to free legal aid for victims of sexual violence, we would like to refer your Excellency's Government to article 14 (3) (d) of the International Covenant on Civil and Political Rights, which lists, among the procedural guarantees available to persons charged with a criminal offence, the right "to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to

him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.”

In its general comment No. 32 (2007), the Human Rights Committee acknowledged that “the availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way”, and recommended that States provide free legal aid not only in criminal proceedings, but also in other cases where individuals do not have sufficient means to pay for it.

The right to free legal assistance is also recognised in Article 6 (3)(c) of the European Convention on Human Rights, which includes the right of the accused to free legal assistance when that person does not have sufficient means to pay for it and the interests of justice so require. Although article 6 of the European Convention does not expressly require States to provide free legal assistance in civil matters, the European Court of Human Rights found such an obligation in article 6, paragraph 1, which guarantees access to the courts, holding that “indigent applicants are entitled to free counsel when such assistance is indispensable for effective access to the courts and a fair hearing”.

We wish to recall the recommendations of the Working Group on the issue of discrimination against women in law and in practice following their visit to the Republic of Moldova from 20 to 31 May 2012. One of the key recommendations contained in the report of the Working Group is that the State of Moldova should “(c) Enhance the institutional architecture for non-discrimination, equality and human rights by: (iii) Strengthening State legal aid and pro-bono legal counselling services as well as psycho-social support for sex-based discrimination, including gender-based violence, and assistance and shelter for victims (A/HRC/23/50/Add.1).

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of Ms. [REDACTED] in compliance with the above international instruments.

Moreover, as it is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

- 1) Are the facts alleged in the summary accurate?
- 2) Please provide the full details of any protective measures put in place to ensure the life, physical and psychological security and integrity of Ms. [REDACTED] and her afore-mentioned relative.

3) Please provide the details, and if available the results, of the medical examination conducted on Ms. [REDACTED], and any judicial or other inquiries which may have been carried out in relation to this case.

4) Please provide further information on the allegation that the police investigating the case acted in connivance with the alleged perpetrators.

5) Please provide detailed information on the measures that Moldovan authorities have taken, or intend to take, to ensure that Ms. [REDACTED] have access to free legal assistance.

6) Please clarify whether compensation has been made available to Ms. [REDACTED].

Due to the seriousness of these allegations, we are seriously considering expressing our views in public.

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.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Ms. [REDACTED] are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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against women in law and in practice

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