

**NATIONS UNIES
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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 the situation of human rights in Myanmar; the Special Rapporteur on violence against women, its causes and consequences; and the Chair-Rapporteur of the Working Group on Arbitrary Detention.

REFERENCE: UA G/SO 218/2 G/SO 214/62-11 G/SO 214 (89-15)
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30 December 2011

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights in Myanmar; Special Rapporteur on violence against women, its causes and consequences, and Chair-Rapporteur of the Working Group on Arbitrary Detention pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 16/24, 16/7 and 15/18.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding concerning the alleged abduction and rape of Ms. X. by military personnel attached to Light Infantry Battalion 321, Mu Bum frontline post in Momouk district, Kachin State. Ms. X. is a resident of B. Village in Momouk district, Kachin State.

According to information received:

On 28 October 2011 at around 03:00 p.m., when Ms. X., aged 28, her husband Mr. A. and her father-in-law Mr. B. were harvesting in their corn farm located at the edge of B. village, near Mu Bum mountain, three military personnel allegedly pointed guns at them and forced them to carry corn to the military post located on top of Mu Bum Mountain. While Mr. A. and Mr. B. managed to escape from the military post, Ms. X. did not.

According to witnesses' accounts, between 29 and 31 October 2011, Ms. X. was gang-raped by dozens of military personnel. On 31 October 2011, her family sighted her in a military uniform at the military post. She was allegedly dragged into a bunker at the camp at 4pm by four military personnel that day and has not been seen since. Villagers from her village who escaped from the same military

post had allegedly testified that there were four women, including Ms. X, cleaning and cooking for the military during the day and gang-raped by military personnel at night.

On 1 November 2011, Ms. X's family reportedly lodged a complaint at the military post in Loije town and begged for her release. Lt. Col. Zaw Myo Htut, a military commander, at the post informed them that Ms. X. would be released the following day on 2 November 2011. However, she was not released.

Villagers from B. have since reportedly fled to more secure places. Recent reports received suggest that there had been other cases of women and girls being gang-raped and some killed by the military in Kachin state in the first two months of the conflict between the military and the Kachin Independence Army, which erupted in June this year.

Serious concern is expressed regarding the alleged abduction of Ms. X., the legality of her detention by the military, and the sexual assaults perpetrated against her by military personnel. Concern is also expressed regarding the circumstances of the three other women reportedly being detained and sexually assaulted in the same military post. In addition, from reports received, we are equally concerned about a worrisome trend of military officials engaging in systematic sexual violence with impunity.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Ms. X. and of the three other women is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR).

Without in any way implying any conclusion as to the facts of the case, we would like to appeal to your Excellency's Government to seek clarification on the circumstances regarding the case of Ms. X. and the cases of the three above mentioned women. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. These rights are set forth inter alia in the UDHR.

We would also like to bring to your Excellency's attention article 1 of the United Nations Declaration on the Elimination of Violence against Women which provides that the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Moreover, we wish to recall 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 would like to bring to your Excellency's attention article 4 (c&d) of the United Nations Declaration on the Elimination of Violence against Women, 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 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 22 July 1997), 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."

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons 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.

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 the above-mentioned persons in compliance with the above international instruments.

Moreover, 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. 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, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide information concerning the legal grounds for the detention of the alleged victims and explain how these measures are compatible with international norms and standards, as stated, inter alia in the Universal Declaration of Human Rights.
5. Please provide full details of the condition of detention of the above mentioned, including where they are currently being held and the measures taken to ensure their safety.

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.

Tomás Ojea Quintana
Special Rapporteur on the situation of human rights in Myanmar

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

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention