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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)
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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 concerning Ms. X¹, a sex worker currently residing in Plattekloof and Kensington, Cape Town, who was allegedly arbitrarily detained and raped by three police officers at Woodstock Police Station in October 2009.

According to information received:

In late October 2009, Ms. X was walking towards a shop in Lower Main Road on the corner of Greatmore Street when a South African Police Service van approached her. There were allegedly two police officers in the van, none of which were wearing name-tags. It is reported that, without any warning, the policemen got out of the van, opened the back door and violently pushed Ms. X into the car, injuring her forehead in the process.

The policemen allegedly then drove her to the Woodstock Police station where they took her property and locked her in a holding cell, along with other women, presumably sex workers. It is reported that despite constantly enquiring about the reasons for her arrest, Ms. X did not receive any information in this regard.

It is reported that the detention conditions at the police station were very inadequate, with one of the cells heavily overcrowded. During her detention, Ms. X was allegedly not given a blanket or offered any food or water. She was

¹The victim has consented to have her case considered by the Special Rapporteur but due to the sensitive nature of the allegations, and the continued threats she allegedly faces, has requested that an alias be used.

reportedly also not informed of any of her rights, including her right to choose and consult a legal counselor, nor allowed to make a phone call.

At approximately 12 p.m., Ms. X was allegedly taken to an empty cell where she was verbally abused by three police-officers who demanded she perform oral sex to the three of them, in order to be released. After complying with this demand, the three police officers then vaginally raped her.

It is reported that subsequently, Ms. X was released through the back door of the station, without any formal proceeding and without being allowed to recover her belongings.

Reportedly, one of the police-officers who raped her continues to harass her, demanding money, cigarettes and drinks from her. Ms. X has allegedly not filed any formal complaint regarding these events, for fear of suffering retaliation from the police-officers who reportedly raped her.

Concern is expressed that this does not constitute an isolated event, but represents a current pattern of abuse against sex workers in South Africa. According to information received, sex workers face constant human rights violations by the South African Police Service and other authorities, which include: unlawful, irregular and arbitrary detentions; harassment, verbal abuse and threats; extortion and theft; inhumane and degrading treatment while in detention; denial of access to medications while in detention; and verbal, physical and sexual abuse. Reportedly, transgendered sex workers are particularly vulnerable to these human rights violations.

Furthermore, it is reported that current legislation, which criminalizes sex work in South Africa, increases the vulnerability of sex workers to violence, as it further enhances their social stigmatization and discrimination. Sex workers are allegedly reluctant to report any instances of abuse, due to fears of being detained by the police and by the lack of response that the authorities have shown in cases that have been reported.

The impunity of these cases enhances social perceptions of violence against sex workers as justified and acceptable. It is also reported that although current legislation criminalizes both sex workers and clients, it is usually the sex workers that are detained, harassed and later released by the police, yet rarely the clients.

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. 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 South Africa on 15 Dec 1995), 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 fulfill 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.”

In that respect, we would also like to make reference to paragraph 96 the Beijing Women's Conference Platform for Action, which reaffirms that equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behaviour and its consequences.

Without in any way implying any conclusion as to the facts of the case, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Ms. J. 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 article 13 of the CAT, which requires that “Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given,” and to paragraph 3 (b) of the Principles on the Effective

Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also known as the Istanbul Protocol, which states that, “alleged victims of torture, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any form of intimidation that may arise pursuant to the investigation.” (General Assembly resolution 55/89 of 4 December 2000, Doc. A/55/89, Annex).

We would like to draw the attention of your Excellency’s Government to the Standard Minimum Rules for the Treatment of Prisoners (adopted by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). I/We would also like to draw your Excellency’s Government’s attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988. (adopted by General Assembly resolution 43/173 of 9 December 1988). The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

We would also like to recall the Special Rapporteur on Torture’s latest report to the Human Rights Council, in which he stressed that “rape and other serious acts of sexual violence by officials in contexts of detention or control not only amount to torture or ill-treatment, but also constitute a particular egregious form of it, due to the stigmatization they carry” (A/HRC/7/3, para. 69). And draw your attention to article 12 of the CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture.

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.”

We urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of Ms. X are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your

Excellency's Government adopts effective measures to prevent the recurrence of these acts.

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:

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 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.
3. 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.

We would appreciate a response within 60 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