

**Mandates of the Special Rapporteur on trafficking in persons, especially women and children and the  
Special Rapporteur on violence against women, its causes and consequences**

REFERENCE: AL  
IND 6/2014:

4 November 2014

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on trafficking in persons, especially women and children and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 26/8 and 23/25.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning two cases of alleged trafficking of two minors: Ms. X and Ms.Y.

According to information received:

- On 19 August 2014 Ms. X, born on 12 March 1998, who is a student of class-IX at Jamia Islamia Girls High Madrasah left her house at approximately 10 am for school, but she did not return home. That same day at approximately 5 pm, Ms. X's father, Mr. [REDACTED], received a telephone call informing him that she had been abducted and trafficked to Mumbai. On 23 August 2014, on the basis of the allegation that he received over the telephone, Mr. [REDACTED] went to Swarupnagar Police Station to lodge a complaint against Mr. [REDACTED], whom he suspected to be involved in the abduction and trafficking, two serious crimes which are classified as cognizable offenses under the Penal Code (refer for example to Sections 365, 367 and related on abduction for wrongful confinement; Section 368 on wrongful confinement of a kidnapped or abducted person/child; and Section 372 on wrongful selling a minor for the purposes of prostitution). It is reported that the Swarupnagar police refused to register a first information report, instead only made a general diary entry (GDE) no.1631, in contravention of Section 154 of the Criminal Procedure Code, which stipulates that the officer in charge of a police station is mandated to register every information oral or written relating to the commission of a cognizable offence. The non-registration of complaints by the police precludes them from investigating the case. Following the refusal of Swarupnagar Police to take the appropriate action, Mr. [REDACTED] filed a written complaint before the Superintendent of Police, North 24 Parganas on 8 September 2014 informing him of his daughters' case and the inaction of the Swarupnagar Police, demanding that the case be investigated and that the

perpetrator be arrested. To date, Mr. [REDACTED] does not know the whereabouts of his daughter.

- On 29 July 2014, Ms. Y, born on 7 November 1997 and student of Balki High School visited her grand-father on the occasion of the EID celebration. It is alleged that Mr. [REDACTED], the brother-in-law of Ms. [REDACTED], a classmate and friend of Ms. Y, invited her to his house. Mr. [REDACTED] had promised to ensure her safe return to her grandfather's house, but Ms. Y did not return home that night. When Ms. Y's family questioned Mr. [REDACTED], he confirmed sending her to Bangladesh. Ms. Y's family proceeded to search for her at the address that he provided, but she could not be found. On 11 September 2014, Ms. Y's mother submitted a written complaint to the then on-duty police officer of the Swarupnagar Police Station. It is alleged that the on duty officer did not duly register the complaint as a General Dairy Entry (GDE) or First Information Report (FIR). Furthermore, he did not allocate any GDE/ FIR number and provided a copy to Ms. Y's mother. She subsequently reported the incident to the Superintendent of Police, North 24 Parganas on 19 September 2014.

Serious concern is expressed that the above allegations contravene the right to physical integrity, freedom from exploitation and violence of Ms. X and Ms. Y. Serious concern is also expressed at the lack of enforcement of the national legislation and guidelines issued by the Supreme Court including the interim direction issued on 17 January 2013 in relation to the case of Bachpan Bachao Andolan Vs. Union of India and Others<sup>1</sup> whereby "in case a complaint with regard to any missing children was made in a police station, the same should be reflected into a FIR and appropriate steps should be taken up immediately thereafter." and judgment AIR2014 SC187 issued on 12 November 2013 which called for the mandatory registration of FIR in the case cognizable offences.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations, including steps taken to redress the violations by the police.
2. Please provide information on the whereabouts of Ms. X and Ms. Y and the actions undertaken by the police to locate them and investigate on these cases.
3. Please provide explanation on what is the legal basis for opting to issue a GDE instead of a FIR in Ms. X's case.

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<sup>1</sup> See Writ Petition (civil) No. 75 of 2012 Bachpan Bachao Andolan versus Union of India and Others, available at: <http://www.bba.org.in/sites/default/files/MissingChildrenJudgement.pdf>

4. Please indicate, in Ms. Y's case, what measures for cooperation with the police and other relevant authorities in Bangladesh have been taken or may be taken in order to locate Ms. Y's whereabouts, ensure her safe return, bring to justice the perpetrators and provide remedies to the victim.

4. Please provide statistics on the number of complaints lodged by or on behalf of women and girls victims of violence and exploitation, including trafficking for the purposes of sexual and labour exploitation, of persons prosecuted and convicted, and the remedies provided to victims.

5. Please kindly indicate what measures have been taken to guarantee victims and survivors of gender-based violence and exploitation access to justice and ensure that victims are able to lodge complaints in a safe and enabling environment without fear of threats, intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Maria Grazia Giammarinaro  
Special Rapporteur on trafficking in persons, especially women and children

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

**Annex**  
**Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to article 4 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.

We would further like to draw the attention of your Excellency's Government to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, ratified by your Excellency's Government on 5 May 2011 and which stipulates that State parties shall combat the crime of trafficking in persons and assist and protect victims (article 2). As a State Party to the Palermo Protocol, your Excellency's Government is obliged to prevent and combat trafficking in persons as well as protect and assist the victims of such trafficking, with full respect for their human rights.

We would like to further refer your Excellency's Government to principle 2 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking, launched by the Office of the United Nations High Commissioner for Human Rights in 2002, which provides that States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.

The Special Rapporteur on violence against women has noted in her mission report to India (A/HRC/26/38 Add.1) that "deeply entrenched patriarchal attitudes of police officers, prosecutors, judicial officers and other relevant civil servants, with regard to the handling of cases, further contribute to victims not reporting, withdrawing complaints and not testifying"(para 66). She recommended that the Government of India ensure that all allegations of violence against women are adequately investigated by the police, and that perpetrators are punished. She further recommended that the Government ensure that women and family members wishing to lodge complaints are free from any act of intimidation, threat or harassment, and that protection is provided free of cost for the victim, if necessary.