

Mandates of the Special Rapporteur on the sale of children, child prostitution and child pornography; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; 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
NPL 3/2014:

10 September 2014

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the sale of children, child prostitution and child pornography; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; 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 25/6, 24/3, 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 **allegations of abduction, rape and trafficking of Ms. [REDACTED] and Ms. [REDACTED] and the police refusal to register their complaints.**

According to information received:

On 2 December 2013, Ms. [REDACTED] a 16-year-old resident of Rupandehi district, traveled from Asuraina Village Development Committee (VDC) to Hattiban, a town near the Indian Border. It is reported that Ms. [REDACTED] was followed by Mr. [REDACTED] who subsequently abducted her. Ms. [REDACTED] was allegedly trafficked across the border and was kept locked in a house in Siddhartha Nagar in India for 15 days. Mr. [REDACTED] allegedly sexually abused her every day before selling her to an unidentified Indian man who also sexually abused her for two more days, until she managed to escape through the ventilation system and return home in Nepal. On 5 December 2013, Ms. [REDACTED]'s uncle filed an application before the District Police Office (DPO) of Rupandehi, demanding that the case be investigated and that the perpetrator be arrested. Mr. [REDACTED] was summoned to the police station, but was released the same evening. It is reported that within 5-6 days of her return, Ms. [REDACTED] visited the DPO of Rupandehi and gave an oral statement against Mr. [REDACTED], demanding legal action against him on the charge of human trafficking, abduction, and rape. However, the police refused to register the first information report (FIR) indicating they had already called the

perpetrator to discuss the matter. The police further indicated that they would only register the complaint and investigate the case in the absence of a settlement.

In addition, Mr. [REDACTED] filed an application with the DPO Rupandehi stating that Ms. [REDACTED] cannot live in the village until she is divorced from her husband or that she should go live in her husband's home. Based on this application, the police proceeded to arrest Ms. [REDACTED]'s uncle. He was released the same evening after the intervention of a human rights organization. On 20 August 2014, the Superintendent of Police in charge of the DPO Rupandehi told the human rights organization that the police were still trying to settle the case with both parties and that they would register the FIR and investigate the case only if the settlement failed. Ms. [REDACTED] and her family have reportedly paid NRs. 50,000 to a civilian mediator so that the police could finally register the FIR.

On 16 June 2014, Ms. [REDACTED], a 17 year old girl from Rupandehi district was allegedly abducted by Mr. [REDACTED], 44, and his son Mr. [REDACTED], 24, residents of Madhuwani VDC-9 (now Lumbini Sanskritik Municipality Ward no.16) Rupandehi district at around 7.30 PM. The victim's mother who was allegedly a witness to the abduction has identified the aforementioned men as the perpetrators. To date, the whereabouts of Ms. [REDACTED] are still unknown. On 27 June 2014, the victim's elder brother filed an application at DPO, Rupandehi. Police called Mr. [REDACTED] and inquired about the incident.

On 15 July 2014, the alleged perpetrator, Mr. [REDACTED] filed a writ of injunction before the District Court, Rupandehi (writ no 070-wo-0030) against Ms. [REDACTED]'s elder brother, Mr. [REDACTED], with the DPO, Rupandehi and the Area Police Office, Lumbini. In this document, Mr. Bichari claimed that Mr. [REDACTED] was a bad neighbour and that the application filed on 27 June would constitute a violation of several of his (Mr. [REDACTED]) fundamental rights by the police. The writ of injunction is currently under consideration before the District Court and the police have refused to register the FIR and investigate Ms. [REDACTED]'s case saying that the alleged perpetrator has filed a writ of injunction before the court.

Serious concern is expressed that the above allegations contravene the right to physical integrity, freedom from torture, exploitation and violence, and the right to access to justice of Ms. [REDACTED] and Ms. [REDACTED].

Serious concern is also expressed as these cases illustrate that relevant authorities continued failing to exercise due diligence in investigating cases of gender-based violence including registering complaints and favouring mediation over justice recourses for victims even when victims have sought such recourses. In this regard we are also concerned at the 35-day statutory limitation for filing complaints of rape and sexual offense despite several Supreme Court orders requiring the amendment of the limitation clause.

In connection to 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, judicial and other authorities.
2. Please provide information on the whereabouts of Ms. [REDACTED] and the actions undertaken by the police to locate her and investigate her alleged abduction.
3. Please indicate whether remedies have been provided to Ms. [REDACTED] for the violations she was subjected to.
4. Please provide explanation on what the legal basis is for requesting a settlement before registering a FIR
5. Please provide statistics on the number of complaints lodged by women and girls victims of violence and exploitation, including domestic and sexual violence and exploitation, of persons prosecuted and convicted, and the remedies provided to victims.
6. 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 of are able to lodge complaints in a safe and enabling environment without fear of threats, intimidation and harassment of any sort.

We would appreciate 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 of the alleged violations. The Special Rapporteur on violence against women wishes to reiterate her interest to undertake a visit to your Excellency's Government to gather first-hand information on the situation of violence against women and girls.

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.

Maud de Boer-Buquicchio
Special Rapporteur on the sale of children, child prostitution and child pornography

Urmila Bhoola
Special Rapporteur on contemporary forms of slavery, including its causes and consequences

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 highlight article 35 of the United Nations Convention on the Rights of the Child (CRC), which was ratified by your Excellency's Government on 14 September 1990 and provides that States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form. Furthermore, we would like to draw the attention of your Excellency's Government to the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, which your Excellency's Government ratified on 20 January 2006. Article 3 provides that each State Party shall ensure that, in the context of sale of children as defined in article 2 of the Optional Protocol, offering, delivering or accepting, by whatever means, a child for the purpose of sexual exploitation or engagement in forced labour, shall be covered under the State Party's criminal or penal law. We would also like to recall ILO Convention No. 182 on the worst forms of child labour, ratified by Nepal on 3 January 2002, which calls on Member States to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. "The worst forms of child labour" comprise, inter alia, all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour.

We would also like to refer to 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. 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 April 1991), 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. Moreover, Principle 2 of the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking specifically 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 Beijing Platform for Action adopted in 1995, specifies that states have the duty to "create or strengthen institutional mechanisms so that women and girls can report acts of violence against them in a safe and confidential environment, free from the fear of penalties or retaliation, and file charges. In this connection, we deem it appropriate to

refer your Excellency's Government to the UN Model Strategies and Practical Measures on the elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice which similarly urges States to ensure that the provisions of laws, codes and procedures are enforced through the criminal justice system, that the standards for the collection of the best evidence are maintained; and that police procedures take into consideration the need for the safety of the victim and their family.