

Mandates of the Special Rapporteur on the sale of children, child prostitution and child pornography; the Special Rapporteur on trafficking in persons, especially women and children; 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 capacities as Special Rapporteur on the sale of children, child prostitution and child pornography; 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, 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 the **trafficking for sexual exploitation of two minors in the State of Assam**.

According to information received:

On 26 May 2015, Ms. [REDACTED] and Ms. [REDACTED], both 15 years of age, from Kunthung Rongphar Village, were reportedly taken to Diphu by Ms. [REDACTED], a distant relative. At around 2 p.m., Ms. [REDACTED] allegedly approached Ms. [REDACTED] and Ms. [REDACTED] and asked them to accompany her to Diphu by train. Once in Diphu, according to information received, they were brought in the evening to Rongsamphri Village by auto rickshaw to the house of Ms. [REDACTED].

On the morning of 27 May at 7:30 a.m., Ms. [REDACTED] reportedly asked Ms. [REDACTED] to accompany her to Diphu market and stopped with her on the way at the Inspector of School Office. Once inside the building, Ms. [REDACTED] allegedly pushed Ms. [REDACTED] into a room where a man was present. According to our sources, Ms. [REDACTED] attempted to escape from the room but it was locked from the outside and she was subsequently raped by the man in the room.

Following this, Ms. [REDACTED] was reportedly brought back to the house of Ms. [REDACTED]. At around 1 p.m., the two girls were allegedly repeatedly raped by three men who had been brought by Ms. [REDACTED] and Ms. [REDACTED].

According to the information received, the volume of the television was kept loud to prevent neighbours from hearing the screams of the girls.

The next day in the afternoon of 28 May, one of the men who had reportedly raped the two girls allegedly returned to abuse them once again in the house of Ms. [REDACTED]. After the rapes, Ms. [REDACTED] and Ms. [REDACTED] apparently threatened the two girls to not return them to their home if they ever spoke of what had happened to them.

According to our sources, Ms. [REDACTED] then brought the two girls to the market in order to purchase for them clothes and mobile phones. She then allegedly returned the two girls to Diphu railway station where they boarded a train to Hojai. From the station they reportedly returned home around 9:30 p.m. after taking a tempo vehicle. Once at home their parents allegedly enquired about their new clothes and mobile phones and after an initial reluctance from Ms. [REDACTED] and Ms. [REDACTED] to give an explanation they finally described what had happened to them.

On Sunday 31 May, the family members of Ms. [REDACTED] and Ms. [REDACTED] reportedly went to Diphu where they reported the case to a local women's organization, Karbi Nimso Chingthur Asong, which consequently launched a search for Ms. [REDACTED] and Ms. [REDACTED]. According to the information received, the two women were found and then beaten. They later allegedly revealed the identity of the male perpetrators. Ms. [REDACTED] and Ms. [REDACTED] were subsequently arrested along with members of their family.

According to our sources, Ms. [REDACTED] and Ms. [REDACTED] named the four alleged rapists in their confession. They are reportedly Mr. [REDACTED], from the [REDACTED], Mr. [REDACTED], the [REDACTED], Mr. [REDACTED] from [REDACTED], and Dr. [REDACTED], from the [REDACTED]. Ms. [REDACTED] and Ms. [REDACTED] were charged by the police of Diphu under Section 3 (1) of the Immoral Traffic (Prevention) Act of 1956 and under the Protection of Children from Sexual Offences Act of 2012. On 6 July, an Investigating Officer reportedly came to the Child Welfare Committee in Guwahati and transmitted pictures of the four alleged perpetrators to the two victims who positively identified them.

The alleged perpetrators were reportedly granted interim bail by the Guwahati High Court. According to the information received, the Court set 15 July as a first hearing date but then postponed it to 3 August 2015. It has allegedly delayed the hearing again to 21 August. The four reported perpetrators are still currently free.

We would like to take this opportunity to express our grave concern to your Excellency's Government regarding the aforementioned alleged trafficking, rape and

sexual exploitation of the minors Ms. [REDACTED] and Ms. [REDACTED]. The extremely traumatic experience which has been reported means that they may also have been exposed to sexually transmitted infections including HIV in addition to other physical harm. Moreover, the alleged victims will have suffered severe psychological damage. Both these aspects require the provision of medical, reproductive and mental health support as well as social and legal services on the short and long term.

We are further seriously concerned by the apparent delay in the inquiry and prosecution of the alleged perpetrators. The absence of due diligence not only places the victims at risk for their personal safety but also violates their right to just and effective remedies. As stated by the Committee on the Rights of the Child, "for rights to have meaning, effective remedies must be available to redress violations".

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

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on measures adopted by the relevant authorities to ensure the accountability of the alleged perpetrators including through a prompt prosecution. If these measures have not been adopted or not concluded, please inform why.
3. Please provide any further information on appropriate protection and redress mechanisms available for the victims, such as adequate, effective and prompt reparation for the harm suffered, through compensation, rehabilitation, and counselling as well as medical and psycho-social support.
4. Please provide information on comprehensive strategies adopted by the national authorities to prevent the sexual abuse and exploitation of children, including awareness raising campaigns and education programmes, training of professionals dealing with child victims and potential victims, the establishment of child-friendly reporting and complaint mechanisms, and child-sensitive justice proceedings.
5. Please provide updated disaggregated data on the cases of abuse and sexual exploitation registered in India, as well as the number of prosecutions and convictions, and reparations to victims.

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(s) 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.

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Special Rapporteur on the sale of children, child prostitution and child pornography

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

Dubravka Šimonović
Special Rapporteur on violence against women, its causes and consequences

Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to highlight articles 19 of the United Nations Convention on the Rights of the Child (CRC), which was acceded to by your Excellency's Government on 11 December 1992 and provides that States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Articles 34 and 35 further add that States Parties shall undertake to protect the child from all forms of sexual exploitation and sexual abuse as well as 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 your Excellency's Government's attention to the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, which your Excellency's Government ratified on 16 August 2005. Article 8 provides that each State Party shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process. Article 9 is also essential as it requires States Parties to ensure prevention, awareness raising, appropriate assistance and compensation measures.

In this respect, article 39 of the CRC further insists on the need for States Parties to take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

The Committee on the Rights of the child further emphasizes, in its General comment No.5 (2003) on General measures of implementation of the Convention on the Rights of the Child, that "where rights are found to have been breached, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration, as required by article 39."

The implementation of measures to provide for the physical, psychological and social recovery of victims of trafficking in persons is also envisaged in Article 6, paragraph 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime ("Palermo Protocol"). This includes (b) counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; and (c) medical, psychological and material assistance. Article 6, paragraph 6 further stresses for the domestic legal system to contain

measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

We would like to draw the attention of the Government to the Basic Principles on the right to Effective Remedy for victims of trafficking (2004) developed by the Special Rapporteur on trafficking in persons, especially women and children in response to requests by States for greater clarity on the substantive and procedural obligations of States to provide remedy under international law (A/69/33797). We call on the Government to consider the implementation of the basic principles which are composed of four substantive components of the right to a *remedy* - restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition, and procedural obligations to guarantee access to an effective remedy, which include access to information, legal assistance and regularization of residency status, improvements in identification procedures; the institution of a "reflection and recovery period", during which victims can receive legal and other assistance; and a review of any legal obstacles to access remedy.

We would also like to draw your Excellency's Government attention 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 9 July 1993), 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, 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:

(a) To ensure that the applicable provisions of laws, codes and procedures related to violence against women are consistently enforced in such a way that all criminal acts

of violence against women are recognized and responded to accordingly by the criminal justice system;

(b) To develop investigative techniques that do not degrade women subjected to violence and that minimize intrusion into their lives, while maintaining standards for the collection of the best evidence;

(c) To ensure that police procedures take into account the need for the safety of the victim and others related through family, socially or otherwise, and that these procedures also prevent further acts of violence.

What is more, following her visit to India, the Special Rapporteur on violence against women, its causes and consequences, recommended in her report (A/HRC/26/38/Add.1) "that the Government take effective measures to ensure access to justice and effective redress for all victims of violence against women. In particular, it should [inter alia...] Monitor the implementation of judicial decisions on cases relating to violence against women, and ensure that victims have prompt access to effective remedies; Ensure that all allegations of violence against women are adequately investigated by the police, and that perpetrators are punished; 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; [and] Ensure legal, housing, security and financial assistance measures for victims of violence that enable them to pursue accountability for crimes and also to rebuild their lives".

In addition, in its Concluding Observations (CEDAW/C/IND/CO/4-5), the Committee on the Elimination of Discrimination against Women expressed its preoccupation about the "stark increase in violence crimes against women, especially rape and abduction and the high number of cases of rape reported by the National Crime Records Bureau in 2012 [...] and the continuing impunity for such acts" and urged the Government of India to establish, without delay, one-stop crisis centres providing women and girls victims of violence and rape free and immediate access to medical attention, psychological counseling, legal aid, shelters and other support services.

Furthermore, we would also like to make reference to article 3 of the Palermo Protocol, which your Excellency's Government signed on 5 May 2011. It provides that "[t]he recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons"." The same article also makes clear that the consent of a victim of trafficking in persons is irrelevant and provides no defence to the crime of trafficking.

Finally, we would like to refer 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. Guideline 5, Paragraph 8 further provides efforts should be made to protect victims during the investigation and trial process and any subsequent period when their

safety so requires. Such appropriate protection programmes may include some or all of the following elements: identification of a safe place in the country of destination; access to independent legal counsel; protection of identity during legal proceedings; identification of options for continued stay, resettlement or repatriation.