

**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 Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on the sale of children, child prostitution and child pornography; the Special Rapporteur on contemporary forms of slavery; and the Special Rapporteur on violence against women, its causes and consequences.

REFERENCE: AL G/SO 214 (69-19) Slavery (2007-2) Trafficking (2004-5) G/SO 214 (89-15)
IND 2/2012

15 February 2012

Dear Ms. Bhattacharya,

We have the honour to address you in our capacities as Special Rapporteur on trafficking in persons, especially women and children; Special Rapporteur on the sale of children, child prostitution and child pornography; Special Rapporteur on contemporary forms of slavery; and Special Rapporteur on violence against women, its causes and consequences pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 17/1, 16/12, 15/2, and 16/7.

In this connection, we would like to bring to your Government's attention information we have received concerning the **alleged trafficking of girl children from the districts of 24 North Parganas and Murshidabad, West Bengal State in India, for the purpose of sexual exploitation, and the alleged systematic failure of the police to investigate such incidents.**

According to the information received:

Ms. A, aged about 14 years old, was trafficked on 9 October 2011 from her residence at Buruj village, Bangaluru, North 24 Parganas district, West Bengal State, to Karnataka State, for prostitution. She was later rescued.

Ms. B, aged about 14 years, was trafficked from her village Salua, North 24 Parganas district, West Bengal State. According to the information received, on 18 April 2011 the victim was trafficked to a nearby area where she was held in captivity. Following the registering of the complaint by the victims' family, the victim was rescued by local authorities on 29 May 2011 and has returned to live with her family. It is alleged that she was raped before her rescue.

Ms. C, aged about 15 years old, was trafficked from her village Padmapukur, North 24 Parganas district, West Bengal State on 30 May 2011, to Bangalore, where she was allegedly sold into prostitution. The victim to date has not been rescued.

Ms. D, about 15 years old, was trafficked from Chotto Sehana, North 24 Parganas district, West Bengal, into Bangladesh. The victim allegedly married Mr X, and was forced to cross over to Bangladesh. Once inside Bangladesh, the victim was allegedly sold by her husband into sex slavery. The victim to date has not been rescued.

In each of these cases, the victim's family members have had knowledge of the identity of the alleged traffickers, and have each sought to lodge complaints with local Police against the suspects. However, in each of the cases, despite seeking assistance from Police to provide protection for the victim and their families, the police have continually failed to act.

In the case of Ms A, the complaint against the suspect was allegedly only lodged by the Baduria police after much petitioning by the family of the victim. Based on the complaint that was ultimately filed, the victim was eventually rescued. Despite this, however, only one of the five suspects have since been arrested. The rest remain free and are allegedly threatening the victim and her family should they proceed with the complaint. Local police have provided no protection to the family, and failed to formally record the incidents of threats by the suspects upon the victim and her family. The victim allegedly can no longer attend school due to ongoing threats to her and her family.

In the case of Ms. B, the Baduria Police only noted down the complaint as a general diary entry and initially failed to take any action on the matter. Only after the family engaged the assistance of a local NGO, was the complaint formally registered. Once the complaint was registered, the victim was rescued, and allegedly, the suspects in the case were arrested however later released on bail.

In the cases of Ms C, despite her family having gone repeatedly to Baduria Police Station to lodge complaints against alleged traffickers, police initially refused to register a complaint against the alleged traffickers. Only after the family proceeded to higher authorities, including engaging the assistance of a local NGO, was a complaint finally lodged. However, no attempt has been made to rescue the victim or arrest the alleged traffickers.

In the case of Ms. D, despite the fact that the father of the victim filed a complaint at the Gaighata Police Station concerning the trafficking of his daughter, police officers did not register a crime, but merely made an entry in the General Diary concerning receipt of the complaint. The family also reached out to local government (Duma Gram Panchayat). However, there has allegedly been no attempt to investigate the case.

In addition to the above mentioned cases, we have received information which indicates a pattern of trafficking of girl children, particularly for sexual exploitation, from West Bengal to other parts of India, in particular to Uttar Pradesh State. The specific districts of Murshidabad and North 24 Parganas have been identified as key source locations for the trafficked girls.

The susceptibility of victims from these districts to trafficking has been attributed to the endemic poverty in the region. Malnutrition is rife, and the region lacks basic infrastructure including electricity, adequate sanitation, safe drinking water, proper hospitals and schools. Families endure very poor living conditions, and illiteracy is high.

It is alleged that traffickers offer destitute parents jobs for their children in cities, and parents, believing the employments to be genuine, send their children with these agents. Alternatively, due to poverty, parents sometimes are forced to get small loans ranging from Rs. 500 to Rs. 2000, from these same agents. Agents allegedly target families who may be in need of extra money due to extraneous circumstances, such as a marriage, birth, death or hospitalization. Parents are then told that they can pay back these loans through their children getting employed from their new employer. Effectively, this gives parents little choice, but to send their children with the agents after accepting loans. Moreover, some parents, due to such pressing poverty, agree to sell their children to brokers who promise jobs in bigger urban centers for their children.

Moreover, once the children are trafficked, they often have no means to communicate with their parents. These children are taken to far away Indian urban centres like Kolkata, Mumbai, Delhi and Varanasi, and given the isolation of the region, compounded by factors including poverty, and illiteracy, often there is no way for children to contact their parents to advise them of their whereabouts.

Compounding this economic vulnerability, the region is physically and geographically isolated, and suffers from environmental problems, which contribute to the vulnerability of persons and creates an environment in which children are susceptible to trafficking. The river floods in both the summer season (due to the melting of ice in the Himalaya) and in the monsoon (due to heavy rains) and many villagers regularly lose their homes and lands, necessary for cultivation of their subsistence crops. Allegedly, there is no proper compensation system for villagers who lose their lands, resulting in the further dispossession of already extremely poor villagers and making them more susceptible to traffickers. Furthermore, traffickers are allegedly more easily able to source victims from the region due the militarization of the region by the Border Security Force (BSF). This has allegedly created a lacuna in law enforcement, where local police are effectively subordinated to the BSF and reportedly only act on their command.

This has been said to contribute to the ease with which trafficking occurs, and the lack of responsiveness of police to complaints.

Without in any way making any determination on the accuracy of these allegations, we would like to recall that as a State Party to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (“the Protocol”), which your Government ratified on 11 May 2011, your Government is obliged to “[t]o prevent and combat trafficking in persons, paying particular attention to women and children”. We further note that article 3 of the Protocol provides that “Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”.

In addition, we would like to refer to the Recommended Principles and Guidelines on Human Rights and Human Trafficking (“Recommended Principles and Guidelines”), issued by the Office of the High Commissioner for Human Rights in July 2002. Principle 2 of the Principles 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 purposes

Principle 13 of the Recommended Principles and Guidelines provides that “States shall effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors”. For the purpose of prevention, guideline 7, paragraph 8 also recommends States to consider “strengthening the capacity of law enforcement agencies to arrest and prosecute those involved in trafficking as a preventative measure. This includes ensuring that law enforcement agencies comply with their legal obligations”.

We would also like to refer to bring to your Excellency’s attention article 1(d) of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, which states that slavery is a practice whereby “a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.” We recall article 6 of the Convention that refers to article (1), which stipulates that “the act of enslaving another person or of inducing another person to give himself or a person dependent upon him into slavery, or of attempting these acts, or being accessory thereto, or being a party to a conspiracy to accomplish any such acts, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to punishment”.

As these cases involve children, we would also like to highlight article 35 of the United Nations Convention on the Rights of the Child (CRC), which was ratified by your Government on 11 December 1992, 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 your Government's attention to the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, which your Government ratified on 16 August 2005.

We would 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.

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. Article 4 (c & d) of the Declaration also note 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 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. 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 would also like to bring to your Government’s attention article 6 of the International Convention on the Elimination of all forms of Discrimination against Women, which provides that States Parties shall take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women. In this context, reference is also made to the United Nations Declaration on the Elimination of Violence against Women clarifying that violence against women shall be understood to encompass trafficking and forced prostitution.

We urge your Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

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 cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary accurate?
2. Please provide details, and where available the results, of any investigation, judicial or other inquiries which may have been carried out in relation to the above mentioned cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.
 - 2a. In the case of Ms. A, what is the status of the case against one of the suspects who has been arrested? Please also provide details, and where available the results, of any investigation against the rest of the alleged traffickers. Further, please provide information on measures undertaken to protect Ms. A and her family against threats by the alleged traffickers.
 - 2b. In the case of Ms. B, please provide details of the results of the investigation against the alleged traffickers. Please also indicate whether the Baduria police have investigated the allegation that Ms. B was raped before the rescue and if so, please provide details of the results of the investigation.
 - 2c. In the case of Ms. C, please indicate whether the police have made any efforts to identify Ms. C’s whereabouts and to rescue her. Please also provide details, and where available the results, of any investigation against the alleged traffickers.

- 2d. In the case of Ms. D, please indicate whether the police have made any efforts to identify Ms. D's whereabouts and to rescue her in cooperation with the Bangladeshi authorities. Please also provide details, and where available the results, of any investigation against the alleged traffickers. Further, please provide information on any measures undertaken by the local government (Duma Gram Panchayat).
3. Please provide details of protection measures and assistance provided to the victims rescued, namely Ms. A and Ms. B.
 4. Please provide information on the current policies and the preventive and awareness raising measures taken to tackle the issue of human trafficking in West Bengal, and in particular in the districts of North 24 Parganas and Murshidabad, particularly in light of the observed susceptibility of these regions to trafficking.
 5. Please indicate whether the victims or the families of the victims have access to adequate procedures of compensation for damages from those legally responsible for the crime of trafficking and other exploitative practices.

We would appreciate a response within sixty days. We undertake to ensure that your 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, Ms. Bhattacharya, the assurances of our highest consideration.

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