

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences and the Special Rapporteur on trafficking in persons, especially women and children**

REFERENCE:  
AL IND 6/2018

10 April 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on contemporary forms of slavery, including its causes and consequences and Special Rapporteur on trafficking in persons, especially women and children, pursuant to Human Rights Council resolutions 35/15, 34/5, 33/1 and 35/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the re-trafficking of rescued victims and consequent threats and harassment suffered by Mr. **Sunil Kumar** and other human rights defenders advocating for trafficked victims' protection in Uttar Pradesh State.

Mr. Sunil Kumar is a human rights defender and member of civil society organisations who are following the case presented below. He is currently appearing as a witness in this case, as well as in the case against other traffickers and brothel owners.

According to the information received:

In 2016, civil society organisations working against trafficking in persons, including forced prostitution, filed a Public Interest Litigation (PIL) case before the Allahabad High Court, requesting guidelines be issued to the police for the immediate rescue and rehabilitation of trafficked girl children, who were forced into prostitution in the red-light area of Meerganj, in Allahabad district. Subsequently, a rescue operation was undertaken by police officials and a number of child and adult victims were rescued from brothels in the area.

Several traffickers and brothel owners were arrested as a result, their trial was accelerated and their bail was rejected by the Supreme Court. Upon instructions from the District Magistrate of Allahabad, civil society organizations were authorized to assist in the counselling, rehabilitation and other supportive activities for the rescued victims.

In May 2016, reports were submitted to the Sub District Magistrate in Allahabad, who allowed for the rehabilitation and vocational training process of 67 victims and 37 children, for one year, at the Government Protection Home in Agra.

In April 2017, civil society organisations received information that the warden of the Home had illegally released 6 victims to the custody of the traffickers and brothel keepers from whom they had been rescued, without any authorization or legal order from the competent authority. This information was immediately reported to the Sub-Divisional Magistrate (SDM) Sadar Allahabad.

In May 2017, the warden of the home illegally released 43 more rescued victims along with 8 other children to the custody of traffickers and brothel keepers. This information was conveyed to the Principal Secretary, Department of Women and Child Development in Uttar Pradesh, the Home Secretary, the Chief Secretary, the Honorable Chief Minister, the District Magistrate in Allahabad and in Agra and the Sub-Divisional Magistrate (SDM) in Sadar Allahabad on 29th May 2017. An investigation was conducted into the matter, based on orders from the Department of Women and Child Development in Uttar Pradesh. On the basis of the information uncovered by the investigation, an individual was arrested on 1st June 2017 for illegally releasing victims into the custody of traffickers.

Reportedly no efforts have been made so far to recover and locate the victims who were re-trafficked as well as to trace the location of the traffickers who took the rescued victims into custody. Civil society organisations monitoring the case have approached the Supreme Court of India to issue directions for the formation of a Special Investigation Team (SIT) to investigate the whole matter.

Mr. Sunil Kumar, intervened as a witness in the above case and recorded his statement before the Special Judge, Agra court, established under the Protection of Children from Sexual Offences (POCSO) Act, 2012. On 19th January 2018, at around 4 p.m., while standing outside the Court, Mr. Kumar was approached by three supporters of the accused individual in this case, allegedly at his behest. The supporters verbally abused Mr. Kumar, threatening to kill him if he gave statements against the accused in court again. Mr. Kumar then approached the New Agra police station to file a complaint on the basis of the threats and was directed to the Diwani Kachahari police chauki (out post). Despite providing the police with information about the threats, including the description of his harassers, no complaint has been filed yet.

The details of the incident were also sent to the Chief Minister of Uttar Pradesh, the Home Secretary, the Principal Secretary, the Department of Women and Child Development and also to the District Magistrate and Senior Superintendent of Police of Agra, but no action has been taken to date.

Mr. Sunil Kumar has also filed an application in the Sessions Court of Allahabad, requesting protection from harassment by the traffickers and their associates on 11th and 19th February 2018 in the related case where the victims were rescued from the Allahabad red light area, so that he can safely continue to appear as a witness in the case.

Other human rights defenders involved in the case have also allegedly faced threats including death threats.

While we do not wish to prejudge the accuracy of these allegations, we express grave concerns over the pattern of re-trafficking of rescued victims, including women and children, by illegally releasing them to traffickers and brothel keepers, through the alleged complicity of warden homes and other officials, that should instead be tasked with their protection and rehabilitation. We express grave concerns at the threats, including threats to life, and acts of intimidation against Mr. Sunil Kumar and other human rights defenders involved in the case. Despite report of such threats and intimidations in several instances, no action has allegedly been taken by the authorities so far.

Victims who break free from their traffickers often find themselves in a situation of great insecurity and vulnerability: they may be physically injured as well as emotionally traumatized; they may be afraid of retaliation and they are likely to have few, if any, means of subsistence. The Immoral Trafficking Prevention Act, 1956 (ITPA) criminalizes trafficking for commercial sexual exploitation; similarly, section 370 of the Indian Penal Code criminalize trafficking in persons for the purpose of prostitution or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the forced removal of organs and section 372 and 373 specifically criminalize selling and buying minors for the purpose of prostitution. Article 23 of the Indian Constitution, prohibits forced labor, making human trafficking – particularly of minors – a violation of fundamental rights, as well as a criminal offence. Similarly, under international human rights law, States have an obligation not only to combat traffickers but also to ensure protection and assistance to victims of trafficking, including by preventing them to be subjected to further exploitation and harm.

We equally wish to express serious concerns over the threats and intimidation faced by Mr. Sunil Kumar, including death threats which appear to be aimed at preventing him from acting as a witness during trials, which impairs on the right of involved parties to have a fair trial. We express further concern at the apparent lack of measures taken to investigate the threats and intimidation and to provide him with protection and remind your Excellency's Government of the obligation to provide effective protection to those who receive death threats and to investigate such threats.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** 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 therefore 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.
2. Please provide detailed information on the status of the 49 adults and 8 children victims of trafficking allegedly released to the custody of their traffickers and brothel keepers and on the measures taken to ensure that they are rescued, prevented from further re-trafficking and ensured appropriate protection and assistance. Please also provide any updates on the ongoing investigation in this regard, following the arrest of the alleged perpetrator in this case .
3. Please provide information on measures taken to ensure protection of Mr. Sunil Kumar, and other human rights defenders, as well as to uphold his right to participate as a witness in trial in support of victims of trafficking
4. Please provide information on the measures taken to investigate the threats and harassment of Mr. Sunil Kumar. Please explain why no complaint has been filed in this case.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence, to take action to locate the victims and provide for their protection and support and to ensure the accountability of any person(s) responsible for the alleged violations.

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

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

Michel Forst

Special Rapporteur on the situation of human rights defenders

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

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

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

Article 6(1) of the International Convention on Civil and Political Rights (ICCPR), ratified by India on 10 April 1979, provides that every individual has the right to life and that no person shall be arbitrarily deprived of his or her life. In General Comment No. 6, the Human Rights Committee reiterated that the right to life is the supreme right from which no derogation is permitted even in time of public emergency that threatens the life of the nation.

Slavery, slave trade, servitude, forced labour and other slavery-like practices are in all forms prohibited under international human rights law. The 1926 Slavery Convention, ratified by the government of India on 12 March 1954, and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, ratified by your Excellency's Government on 23 June 1960, established the obligation of States to take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of slavery and slavery-like institutions and practices.

Similarly, the 1930 Forced Labour Convention of the International Labour Organisation, ratified by the government of India on 30 November 1954, determines that States are obliged to eliminate forced or compulsory labour in all its forms. Article 2 of the 1930 Forced Labour Convention defines "forced or compulsory labour" as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

In addition, the International Covenant on Civil and Political Rights provides that no one shall be held in slavery or servitude, and that no one shall be required to perform forced or compulsory labour. Furthermore, the ICCPR establishes that slavery and the slave-trade in all their forms shall be prohibited (article 8).

Article 6 of the UNODC Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which has been ratified by Your Excellency on 5 May 2011, imposes on State parties an obligation to protect and assist victims of trafficking in persons, including by implementing measures to provide for their physical, psychological and social recovery through appropriate housing, counselling and information, medical, psychological and material assistance and employment, educational and training opportunities.

Similarly, under Principle 8 of UN OHCHR Commentary to Recommended Principles and Guidelines on Human Rights and Human Trafficking (2010), States shall

ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings. The State is hence required to ensure that the victim is protected from further exploitation and harm and to act with due diligence to ensure their safety. Importantly, such provision is a non-negotiable right of the victim.

We would further like to refer to Human Rights Committee General Comment no. 35 which states that the right to personal security obliges States to take appropriate measures in response to death threats against persons in the public sphere, and more generally to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors. It further notes that States must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury. We would also like to refer your Excellency's Government to paragraph 4 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989/65 according to which it is incumbent upon States to provide "effective protection through judicial or other means to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats".

We would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders: article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We would also like to refer to Human Rights Council resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.