

Mandates of the Working Group on discrimination against women and girls; the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; the Special Rapporteur on trafficking in persons, especially women and children and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Working Group on discrimination against women and girls; Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; 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 41/6, 34/16, 35/5 and 41/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **a network of Romanian social media accounts publishing child sexual abuse material depicting under-aged girls and the lack of adequate legal protection for the girl child victims of online sexual exploitation and abuse.**

According to the information received:

Since 2 January 2020, child sexual abuse images depicting girls from the city of Craiova - some of them as young as 12 years old - have been posted online on an Instagram account by anonymous users without the girls' knowledge. It is alleged that among the victims there are Roma girls.

Romania has reportedly one of the highest number of victims of trafficking in Europe. Groups engaged in criminal activities increasingly use tailored approaches such as targeted advertising, enabled by digital environments and social media platforms, to contact children with heightened risks of exploitation for the purpose of forced criminality, sexual exploitation and other forms of sexual exploitation.

The account is one of several Romanian anonymous Instagram accounts, and shared on a Telegram group chat named "Porn(RO)Info: Sursa nr. 1 de conținut +18 și informații despre târfe din România!", with very similar usernames and with the same content, i.e. sexualised photos of girls as young as 12 years old, reportedly leaked by adult members without the children's knowledge. Content is uploaded daily on this group chat, and members sometimes point out their relationships to the victims, including as current partners of the victims. A Romanian journalist reportedly traced back the accounts to a chatroom on the

Telegram messenger application, a multi-platform messaging services and online application, where almost 34 000 anonymous members shared pictures of the same content. These pictures were then re-shared on other social media platforms such as Instagram.

It has been reported that 4 out of 5 teenagers in Romania have been subjected to sexual exploitation and abuse online, including online grooming and extortion. The report published in 2019¹ by the NGO Save the Children Romania indicates that “20% of Romanian children have received messages through social media and messaging platforms which requested a photo or a video of sexual nature”. Girls are disproportionately affected by this type of online abuse.

The number of social media accounts displaying sexual images of girls has become rampant. This is allegedly due to messages sent to the followers of these accounts, indicating that more pornographic content will be uploaded if these followers share the pictures on other platforms.

This situation has been aggravated by the pandemic, with most teenagers spending longer time online, and uploading more self-generated images on these social media platforms. Allegedly, social media platforms such as Instagram and Telegram have not exercised their responsibility in blocking these messages containing images of nudity of young girls or of a sexual character. Furthermore, it appears that there is a gap in adequate and effective mechanisms to monitor and remove child sexual abuse materials online. Girls who tried to report to Instagram about the posting of their nude or sexualized images received a message from the Instagram support team, stating: “We couldn’t review your report. We have fewer people available to review reports because of the Coronavirus (COVID-19) pandemic, so we are only able to review content with the most potential harm (...)”.

On 27 April 2020, a press release was issued on the subject by the Scena9, an online publication that charts the cultural scene in Romania, denouncing the above mentioned Telegram group chat. The press release explained that the Telegram group chat was also shared on Instagram, alongside quotes from anonymous sources saying that the members of the group chat had been asking for the addresses and phone numbers of the children whose images were posted online. The press release called for the Romanian police to investigate the situation. We have been informed that none of the victims have been contacted by the police.

At the same time, it appears that Romania’s national legal framework, including anti-trafficking legislation, is not fully in line with the latest Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC/C/156). The Optional Protocol was ratified by Romania in 2001. The

¹ <https://www.salvaticopiii.ro/sci-ro/files/92/928f0bff-bffa-447a-9a27-df979ba1008f.pdf>

Guidelines provides detailed recommendations on criminalizing acts of online sexual abuse and exploitation.

On 10 June 2020, a law was passed by the Parliament to criminalize cyber violence, including online harassment, online hate messages, online stalking, online threats, non-consensual publication of intimate graphic content, illegal access to interception of communications and private data and other forms of misuse of information and communication technology through computers, smartphones, or other similar devices that use telecommunications or can connect to the Internet and transmit or use social or e-mail platforms for the purpose of embarrassing, humiliating, scaring, threatening, or reducing to silence the victims. In addition, revenge pornography is made illegal under this legislation and punishable by up to two years in prison.

However, according to Article 3 of this law, cyber violence is only punishable if the violation occurs within the family or the domestic environment and if the perpetrator is a former or current partner or wife or husband of the victim, but not if the victim has any other relationship to the aggressor.

Additionally, Bill n°606/2019, a draft law amending and supplementing Article 226 of the Criminal Code, intended to criminalize “the disclosure, dissemination, presentation or transmission in any way of an intimate image of a person identified or identifiable (...) without the consent of the person depicted” has not been passed yet. We have been informed that the bill was sent to the Chamber of Deputies on the 28 October 2019 where it is awaiting a vote and that the Government has publicly expressed its position regarding this bill requesting two changes. The changes relate first to the specification that “revenge pornography will not be considered a crime if the intimate photo reveals information of public interest” and second, the definition of abuse should be amended to introduce the notion of “intention to harm”. This amendment implies that an act of revenge pornography can be equated to a form of cyber-violence and accordingly be punishable on the condition that the harm is materially established.

In addition, we have been informed that a Bill under draft law 655/2020 is currently under review by the Senate. This amendment adds a condition regarding the “intent” of the aggressor so that he or she can be prosecuted for the crime of trafficking. The victims would need to prove that the aggressor’s intention was to harass or cause psychological damage to the victim. In the event that the victim is unable to prove the specific intent required by the law, the case would be dismissed.

While we do not wish to prejudge the accuracy of the information received, we wish to express serious concern at the fact that social media is being used to publish child sexual abuse images, through peer-to-peer networks and instant messaging platforms such as Telegram and Instagram. We are gravely concerned about the increasing number of children that become victims of trafficking. Especially now, during the COVID-19

pandemic, there is an increased level of risk as children spend more time online. Therefore, children can find in increased situations of vulnerability to trafficking and related exploitation.

We are also gravely concerned about the draft initiative of Law 655/2020, currently under debate in the Senate. Even if the references to child trafficking are reinserted into the legislation, the draft law should not require the intent of the aggressor as a condition to qualify the crime of online sexual exploitation and abuse.

Further, as the recently adopted law on cyber violence does not specifically provide for the protection of child victims of online violence when the aggressor does not have an existing close, or familial relationship to the victim, we are concerned that victims of online abuse and online child pornography remain unprotected.

We are also concerned that the scope of the law is limited to sexual violence. Given that girls are the majority of victims of online violence and abuse, they more likely to be victims of trafficking for the purposes of sexual exploitation, which may amount to discrimination as defined by the Convention on the Elimination of All Forms of Discrimination against Women, ratified by your Excellency's Government on 7 January 1982.

In addition, protection of children against violence requires acts of violence against children to be investigated, punished and compensation provided to the victims, including children victims of trafficking. We are concerned that, in the absence of a strong State response, which includes preventive actions, regulations and sanctions for all those involved, the publications on social media might lead to the global exposure of girls to cyber harassment. This could lead to their sexual exploitation and abuse in the offline context, in violation of their fundamental rights such as the right to liberty and security, privacy, and the right to be free from physical, psychological and mental abuse.

In relation to the definition of abuse foreseen by Bill n°606/2019, we express our deep concern that linking the definition of abuse to the intention to harm would adversely affect victims given it may be difficult to prove intent, especially in the case of posting pictures on social media platforms.

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 be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.

2. Please provide information about protective measures and policies that have been put in place to protect children, and particularly girls, from risks of online sexual exploitation and abuse and to effectively investigate and prosecute sexual exploitation of children online, as well as other acts related to producing, distributing, disseminating, importing, exporting, offering, selling or possessing, for the purposes of sexual exploitation, child sexual abuse material, including self-generated content.
3. Please provide information on any criminal investigations undertaken and the outcome of such investigations in particular regarding these Telegram anonymous group chats.
4. Please provide information on any measures of international cooperation in investigating the alleged crimes, and information on any special investigative techniques used by law enforcement bodies.
5. Please provide information on what measures of specialized assistance and support were put in place for the children affected, and what child-friendly procedures are in place to facilitate their participation in any investigations undertaken.
6. Please provide information on what compensation has been provided in respect of the alleged crimes committed.
7. Please provide information on the status of Bill n°606/2019 to extend the scope of the existing laws on cyber violence to include a wider range of relationships between the victim and the perpetrator.
8. Please provide any specific measures taken by the Government with regard to the Roma girls who are victims of the alleged practices considering that they belong to a particularly vulnerable and disadvantaged group.
9. Please provide information on the status of Bill 655/2020, namely in relation to the scope of the intent of the aggressor to prosecute the crime of child trafficking.
10. Please provide information about any regulations adopted on international social media platforms and if there are any national regulations in place providing for these platforms to monitor, review and remove inappropriate contents by users and share digital forensic evidence with law enforcement authorities.
11. Kindly indicate what measures have been adopted to ensure prevention of trafficking and child pornography.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

Please be informed that letters on the same subject have also been addressed to the Governments of the United Kingdom and of the United States where the companies are based, and to the companies involved in the above-mentioned allegations.

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

Elizabeth Broderick
Chair-Rapporteur of the Working Group on discrimination against women and girls

Mama Fatima Singhateh
Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material

Siobhán Mullally
Special Rapporteur on trafficking in persons, especially women and children

Dubravka Šimonovic
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 attention to the following human rights standards:

We would like to refer to articles 7, 8 and 24 of the International Covenant on Civil and Political Rights, ratified by Romania on 9 December 1974. In particular, Article 24 (1) provides that every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

Article 19 of the Convention on the Rights of the Child, ratified by Romania on 28 September 1990 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, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Article 34 of the Convention also foresees that States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For those purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (c) the exploitative use of children in pornographic performances and materials.

In addition, Article 2 (c) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, which Romania ratified on 18 October 2001, provides that child pornography means any representation, by whatever means, of a child engaged in real or explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes. The same Protocol in its Article 3 stresses that each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature. The Optional Protocol also recognizes that children are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited and prohibits the sale of children, child prostitution and child pornography.

In its General Comment No. 13 on the right of the child to freedom from all forms of violence, the Committee on the Rights of the Child recognizes the direct relevance of Article 19 to the Optional Protocol on the sale of children, child prostitution and child pornography and the Optional Protocol on the involvement of children in armed conflict. However, the Committee hold that Article 19 forms the core provision for discussions and strategies to address and eliminate all forms of violence in the context of the Convention more broadly.

Furthermore, in its General Comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child, the Committee noted that

for rights to be meaningful, effective remedies must be available to redress violations (para. 23).

With reference to the Concluding Observations of the Committee on the Rights of Child on its review on Romania, the Committee refers to its General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights and reiterates its previous recommendation (CRC/C/ROM/CO/4, para. 42). It recommends that the State party strengthen its efforts to protect children from harmful information, harmful products and online risks and guarantee the right to have access to appropriate information for all children, including those who live in remote and rural areas and in conformity with their age and maturity.

We would like to bring to Your Excellency's 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. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women and girls who are subjected to violence. Women and girls 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 victims of their rights in seeking redress through such mechanisms.

The Convention on the Elimination of All Forms of Discrimination against Women, which your Excellency's Government ratified in 1982, recognizes that trafficking constitutes a violation of human rights and establishes State obligations in this regard (article 6). We wish to also highlight general recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, specifically section dedicated to assistance and protection for women and girls who are victims of trafficking and access for victims to justice.

In this context, we wish to recall that the Committee on the Elimination of Discrimination against Women (CEDAW) in its general recommendations No. 19 (1992) and No. 35 (2017), 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, 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”.

In addition, the Special Rapporteur on Violence against women, its causes and consequences mentioned in her report on online violence against women and girls from a human rights perspective (A/HR/38/47) that in many States, the non-consensual online dissemination of intimate or sexually explicit images of an adult person, even if identifying information is included with the image, is not per se illegal. In States where such acts are not criminalized, prosecutors are limited to charging perpetrators with other crimes, such as stalking, harassment, unlawful surveillance or the dissemination of child sexual abuse material. Without criminalization, victims cannot protect their human rights to privacy and dignity. Even where criminal laws specifically criminalize the non-consensual distribution of sexually explicit images, many such laws have shortcomings; for example, many criminal laws require evidence of the intent to cause harm or emotional distress to the victim, which may be difficult to prove, making convictions harder to achieve. Moreover, many laws currently in place do not address threats to release a certain image or video. In the same report, she recommended States Parties to promote digital literacy in the use of the Internet and ICT for all, without sex- or gender-based discrimination, and promote gender equality at all levels of education, including online education, from early childhood onwards.

She further recommended that States should inform children and teenagers about the risks of taking, or allowing others to take, intimate images, and that the dissemination of such images is a form of gender-based violence and a crime. Girls should also learn about safety on social media platforms and the Internet, and how to protect their own privacy online.

We would like to remind your Excellency’s Government of the report of the Special Rapporteur on the sale of children, child prostitution and child pornography, presented to the Human Rights Council in 2015 on the issue of information and communication technologies (A/HRC/28/56), stating that the use of information and communication technologies poses a great risk in creating new threats or forms of abuse, such as the solicitation of children and the live streaming of child abuse.

Furthermore, we would like to draw the attention of your Excellency’s Government 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 (Palermo Protocol), ratified by your Excellency’s Government on 4 December 2002.

We also would like to refer to the Recommended Principles and Guidelines on Human Rights and Human Trafficking, issued by the Office of the High Commission for Human Rights in July 2012. Principle 13 of these 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”.

We would like to highlight to your Excellency's Government, the Report of the Secretary-General in 2018 on trafficking in women and girls, A/73/263, and specifically his recommendation that States work with technology companies to prevent and address trafficking, especially in women and girls. "Greater efforts should also be made to prevent the use of technology and, in particular, the Internet and social media, for trafficking."

The Council of Europe Convention on Action against Trafficking in Human Beings, which your Excellency's Government ratified in 2006, states important obligations aimed at improving the protection of victims of trafficking. We would like in particular to refer to Articles 5(5), 10, 11, 12 and 17.

Finally, we would like to highlight the report concerning the Implementation of the Council of Europe Group of Experts on Action against Trafficking in Human Beings by Romania (Second Evaluation Round) GRETA (2016), esp paras. 69-71, 103, 119, 121, 128), the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, ratified by your Excellency's Government in 2011, in particular, Articles 1, 2 and 9, and Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combatting trafficking in human beings and protecting its victims, in particular Articles 11 to 16.