

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

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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, 43/22, 44/4 and 41/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding alleged use of a company based in the United States of America: Instagram, owned by Facebook Inc. by **a network of social media accounts to publish 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 in Romania.**

According to the information received:

Since 2 January 2020, child sexual abuse images depicting girls from the city of Craiova in Romania, 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 the several Romanian anonymous Instagram accounts, and shared on group chats 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 adults members without their knowledge. Content is uploaded daily on this group chat, and members sometimes point out their relationships to the victims, who are often then-partners of the victims. A Romanian journalist reportedly traced back the accounts to a chatroom on messenger 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, these social media platforms such as Instagram 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 practice of sharing these pictures 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. Furthermore, 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.

Without prejudging 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 Instagram. Therefore, children are vulnerable to trafficking and related exploitation. We are concerned that by not reviewing such pictures before accepting those to be posted online, Instagram may be committing human rights abuses with regards to existing international human rights standards protecting the rights of the child against online sexual abuse and exploitation.

In addition, protection of children against violence requires acts of violence against children be investigated, punished and compensation provided to the victims,

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

including children victims of trafficking. We are concerned that, in the absence of a strong State response including where the company is based, such as 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.

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 measures and policies that your Excellency's Government has put in place to protect against human rights abuses by business enterprises domiciled in its territory, including Instagram, to respect human rights throughout its operations. This includes conducting effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their operations (including abroad), as set forth by the UN Guiding Principles on Business and Human Rights.
3. Please indicate the steps that your Excellency's Government has taken, or is considering to take, to ensure effective access to domestic judicial mechanisms for victims of business-related human rights abuses.
4. Please indicate the steps that your Excellency's Government has taken or is considering to take to ensure that business enterprises such as Instagram provide effective, operational-level grievance mechanisms, or cooperate in the provision of effective remedies through legitimate processes to the affected victims if they have contributed to adverse human rights impact.

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 Romania, the United Kingdom, 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 your Excellency's Government on 8 June 1992. 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.

We would like to bring to Your Excellency's attention 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.

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), the use of information and communication technologies pose a great risk in creating new threats or forms of abuse, such as the solicitation of children and the live streaming of child abuse.

We wish to refer to Articles 1, 2 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by your Excellency's Government in 1994.

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 3 November 2005, through which your Excellency's Government is obliged to refrain from acts which would defeat or undermine the Protocol's objectives and purposes, which include to prevent and combat trafficking in persons, to ensure assistance to victims, to provide effective remedies and to prosecute those responsible.

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".

In addition, we would also like to bring to your attention the work of the Special Rapporteur on trafficking in persons, especially women and children and in particular her recommendations to private sector companies to address trafficking in persons and risk of trafficking in persons in their activities and those of their suppliers and contractors, particularly the recommendations made in her report to the Human Rights Council in 2017, A/HRC/35/37, her report to the General Assembly in 2019, A/74/189, and her submission on the draft General Comment on children's rights in relation to the digital environment.

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."

Finally, we would like to remind your Excellency's Government that the United Nations Guiding Principles on Business and Human Rights clarifies that the business enterprises have an independent responsibility to respect human rights. However, States may be considered to have breached their international human rights obligations where they fail to take appropriate steps to prevent, investigate and redress human rights abuses committed by private actors. While States generally have discretion in deciding

upon these steps, they should consider the full range of permissible preventative and remedial measures.