**Written observations submitted by the International Council of Women, the Jean and Jeanne Scelles Foundation, and the National Council of French Women**

**General discussion on the Technical Working Group on General Recommendations on Trafficking in Women and Girls in the Context of Global Migration.**

For the attention of Ms Buchmann (dbuchmann@ochcr.org)

*Over the past 26 years, the Jean and Jeanne Scelles Foundation has been campaigning to bring an end to the prostitution system and the exploitation of prostituted persons. It is also an active International Observatory for monitoring and analysing issues around prostitution.*

*The International Council of Women was founded in 1888 and is present in most countries across the world. The Council, together with its Permanent Representatives to the United Nations, advocates for equality between women and men and for access to universal and fundamental human rights. The National Council of French Women was founded in 1901 and is the French branch of the International Council.*

Ladies and Gentlemen, Members of the Working group

As we all know, migration has taken on an unprecedented scale since the Second World War. Moreover, 20 million people are the reported victims of human trafficking around the world, the large majority of whom are women and minors. According to UNODC[[1]](#footnote-1), 83% of women and 72% of girls are trafficked for the purposes of sexual exploitation. In France, around 37,000 people are in situation of prostitution, of whom 85% are women[[2]](#footnote-2). The French Secretary of State for Equality Between Women and Men and the Fight against Discrimination has reported that 93%[[3]](#footnote-3) of prostituted persons are of foreign origin, mostly from West Africa (Nigeria), Eastern Europe (Bulgaria, Romania) and China. The number of minors is growing sharply.

These migrants and/or minorities are the victims of armed conflict, climate disaster, or are fleeing insecurity, ethnic or religious discrimination. They are today’s primary victims of large-scale sexual exploitation. These vulnerable groups are at the mercy of smugglers, traffickers, and transnational organised crime networks. Let’s for a moment imagine the journey of a young Nigerian woman, who has been through the worst forms of physical and psychological violence. She has been conned by a ‘mama’ into being sold and recruited, groomed, raped and prostituted during her migratory journey. She has already had her life broken, if not been killed, prior to reaching the sidewalks of Italy, France or Spain, or being posted on an anonymous online prostitution website. The exploitation of these young migrant women and girls’ vulnerability, their distress, uprooting, economic misery, and racism and xenophobia, are at the origin of today’s sordid reality. Sexual violence is not just the doing of traffickers and smugglers, but also of local militias, corrupt police officers, or even sometimes the humanitarian organisations that are supposed to protect them. Cases of prostitution have been widely reported by various organisations, particularly in the vicinity of refugee camps or in transit areas. The NGO Save The Children Italy has reported that over 1,900 girls, including 160 children, were sexually exploited between 2017 and 2018, after the Roya[[4]](#footnote-4) camp was dismantled.

Such discrimination is in total violation of at least two UN Conventions for State Parties: the Convention on the Elimination of All Forms of Discrimination Against Women, especially article 6 (CEDAW - 1979), and the United Nations Convention for the Suppression of the Trafficking in Human Beings and the Exploitation of the Prostitution of Others (1949).

Moreover, the Additional Protocol to the United Nations Convention against Transnational Organized Crime to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo, 2000), calls to “discourage demand”, to deny procurement the sources of profit that fuel human trafficking. Let’s also remember that the Parliamentary Assembly of the Council of Europe adopted a resolution on prostitution, trafficking and modern slavery on 8 April 2014, recommending the penalization of the purchasers of sexual acts, and not individuals in situation of prostitution.

As far as children are concerned, Article 34 of the 1989 United Nations Convention on the Rights of the Child, ratified by 195 States, obliges signatory States to protect all children from violence and sexual exploitation. The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2002), ratified by 169 States, explicitly prohibits “*using a child for the purpose of sexual activity, for payment or any other form of benefit*”.

On 13 April 2016, France adopted a law aimed at bolstering the fight against system of prostitution. It also aimed to support prostituted persons, which the Constitutional Council had just declared to be compliant with the constitution. The legislation stated its intention to “*fight this activity and human trafficking for the purpose of sexual exploitation, and criminal activities involving coercion and servitude*”. The Constitutional Council notification further specified that the legislator “*intended to pursue the safeguarding of the dignity of the human person against these forms of enslavement and to pursue the constitutional value of safeguarding public order and the prevention of offenses*”. Banning the purchase of another’s body is a means of protecting the fundamental rights of the person.

**The International Council of Women, the Jean et Jeanne Scelles Foundation and the National Council of French Women call for the following amendments to the general recommendations of the Working Group on the trafficking of women and girls in the context of international migration:**

**On CEDAW’s concept note** with its general recommendations on the trafficking of women and girls in the context of global migration:

* **-**Article 6 should be quoted in full. “*State Parties shall take all appropriate measures, including legislation, to stop all forms of trafficking in women and the exploitation of women through prostitution”* without omitting “*the exploitation of women through prostitution”.*
* **-**Paragraph 53: The terms “forced prostitution” and “forced sexual exploitation” should be removed as they have no definition in International Law. As a fresh reminder, the preamble to the Convention of 2 December 1949 states that prostitution and trafficking for the purpose of prostitution are “incompatible with the dignity and worth of the human person, and endanger the wellbeing of the human being, family and community”.  Moreover, the use of ‘forced’ form implies that it is possible to have a ‘consensual’ form. This runs contrary to the principles of fundamental human rights, the dignity of the human person and the non-commodification of the body. There is no mention of consent in the 1949 Convention. Prostitution and human trafficking are incompatible with the dignity of the human person, whether ‘forced’ or ‘voluntary’. In the same way, the United Nations Universal Declaration of Human Rights (1948) stresses, from its first sentence, that **dignity** is a **fundamental right**: “*Recognition of the inherent dignity and equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world*”. The preamble of the United Nations Charter, ratified by 193 States, solemnly declares its resolution “*to proclaim once again our faith in the fundamental rights of man, in* *the dignity and the worth of the human person, in the equal rights of men and women, as well as nations, large and small*”.

To quote the lawyer Muriel Fabre-Magnan in his work ‘*L’institution de la liberté’* (Trans: The Institution of Freedom; PUF, 2018): “*without the freedom to say ‘no’, ‘yes’ is nothing but a sign of renunciation and resignation.*”

The concept should include, in its entirety, the complete Palermo Protocol definition, including Article 9-5: “*State Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand for all forms of exploitation of persons, in particular of women and children, that can lead to trafficking*.”

**Concerning General recommendations**

**- Decriminalise victims and criminalise the purchase of sexual acts:** This legislative model was established in Sweden in 1999. It stipulates for decriminalization and assistance for people in situation of prostitution, the incrimination of the purchase of sexual acts, the criminalization of pimps, and for awareness-raising and prevention initiatives. By recognizing prostituted persons as victims and fighting demand for prostitution, its aim was to denounce the prostitution system’s violence against women and minors, to promote equality between women and men, and to fight procurement and transnational crime, depriving it of its sources of profit. Sweden is one of the countries in Europe with the lowest rates of human trafficking for the purposes of sexual exploitation. Today, Norway, Iceland, Canada, Northern Ireland, France, Ireland and, recently, Israel, have adopted the same model.

**-Set up Internet governance:** growing awareness of the spread of online sexual exploitation, particularly on the online advertisement platforms that facilitate these abuses, has pushed certain States to act. In the United States, the adoption of the FOSTA/SESTA law made it possible for the authorities to take down the website Backpage. In France, at a time when 62% of prostitution is reportedly set up online[[5]](#footnote-5), an online advertising platform has been prosecuted for aggravated pimping, and has removed its ‘Encounters’ section. We call for open thinking on global internet governance to take appropriate action against any online facilitation of human trafficking for the purposes of sexual exploitation, including via social media and social networks, and other forms of communication, encrypted or not.

**- Take joint action through international cooperation:** Multilateral and bilateral legal assistance agreements can be concluded between countries to facilitate police and judicial cooperation. The success of these initiatives have convinced governments that international cooperation should be further developed to help fight human trafficking. We recommend that every step possible be taken to this end, particularly in the countries of origin of the victims of human trafficking.

- The Concept Note and General Recommendations **cannot include ILO Convention No. 182** on the ‘Worst Forms of Child Labour’. This convention violates the Palermo Protocol, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination Against Women. The exploitation of children in prostitution is sexual abuse and a such a crime, not a job.

We call for States Parties to be obliged to disaggregate their statistics on trafficking on the basis of gender, age and form of exploitation, under indicator 16.2.2.2 of the Sustainable Development Goals.

* **-**We call to **develop research on the pervasive physical and psychological harm** endured by the victims of prostitution and human trafficking, beyond the fight against HIV/AIDS and healthcare access. In France, prostituted persons consume 4.5 times more pharmaceuticals, particularly antidepressants and anxiolytics, than the general population[[6]](#footnote-6). Prostitution can result in severe psychological suffering, particularly due to the repetition of unwanted sexual relations, which can lead to post-traumatic stress disorder. Prostituted persons may develop a defence mechanism called traumatic ‘dissociation’ to detach from themselves and protect themselves from an unbearable experience.
* **-  We call for the confiscation of criminal assets** to the benefit of victims. The ability to confiscate all or part of the assets of those involved in human trafficking can be turned into resource for victim assistance, preventative initiatives, and strengthening the ways of fighting traffickers. Moreover, taking steps to trace the illegal profits of human trafficking can include detecting or confiscating the profits of networks. Public-private cooperation should make it possible, in all transparency, to mobilise all players across society to help fight organised crime and the exploiters of human trafficking.

We thank the CEDAW Committee’s Technical Working Group for taking our expertise into consideration on the key issue of violence against migrant women, and particularly as regards prostitution.

5 February 2019

1. UNODC, Global Report on Trafficking in Persons 2018 [↑](#footnote-ref-1)
2. Mouvement du Nid, Psytel, ProstCost. Estimation du coût économique et social de la prostitution en France, 2015 [↑](#footnote-ref-2)
3. « Prostitution en France : ampleur du phénomène et impact sur les personnes prostituées », La Lettre de l’Observatoire national des violences faites aux femmes, n°7, octobre 2015. [↑](#footnote-ref-3)
4. https://www.savethechildren.it/cosa-facciamo/pubblicazioni/piccoli-schiavi-invisibili-2018 [↑](#footnote-ref-4)
5. Mouvement du Nid, Psytel, ProstCost. Estimation du coût économique et social de la prostitution en France, 2015 [↑](#footnote-ref-5)
6. Etude Prosanté, 2013 [↑](#footnote-ref-6)