

## Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material

**Summary**

In this input, the CNCDH aims not to limit the subject to solely French minors. The lack of official data, about the gender dimension of the sale and sexual exploitation of children, forces us to focus our words on the absolute necessity of adopting a clear criminal policy against the sexual exploitation of minors and improving the identification of minors who are victims by taking better account of the diversity and causes of the phenomenon. Building a relationship of trust with minors involved in prostitution aims to facilitate their long-term and comprehensive care.

The *Commission nationale consultative des droits de l’homme*[[1]](#footnote-1) (CNCDH) [National Advisory Commission on Human Rights] considers that the protection of victims must be both the start point and central part of a public policy aimed at combatting the phenomena of child prostitution and sexual exploitation, regardless of their situation, their gender or origin. This prioritisation in no way weakens the penal response, which must be very firm towards all those involved in this exploitation. The CNCDH notes that child prostitution and trafficking for sexual exploitation[[2]](#footnote-2), known to child protection services, are still poorly quantified in France and often poorly understood by those working with minors. Since 2002, child prostitution has been prohibited throughout the Republic. Any minor who engages in prostitution, even occasionally, is deemed to be in danger and falls under the protection of the Children’s judge under the educational assistance procedure[[3]](#footnote-3).

This phenomenon may concern any minors, of all social categories, girls and boys, whether or not of French nationality. The majority of those trafficked are girls, aged between 13 and 25, who had experienced of domestic sexual violence and abuse during their childhood. But we have to not neglected sexual abuses against boys in survival situations inside camps of migrants, slums and squats. Some of them were rejected, because of their homosexuality or transsexuality and/or their drug addiction, by their family. Some girls are under the influence of lover boys, while others have been recruited by a friend, who could be a girl and a minor too.

A minor in a situation of prostitution is a vulnerable person, a victim of sexual assault, whose situation promotes the power of one or more third parties. A minor cannot be bound by the notion of consent. We note numerous overlaps between criminal classifications (human trafficking for sexual exploitation, procuring minors, corruption of minors, sexual offences against minors, child prostitution, sexual proposition to a minor over the Internet, etc.), and their varied and not always consistent use by the police and judiciary, which makes the applicable criminal framework unclear, a source of ineffectiveness. Although the offence of human trafficking for sexual exploitation has been criminalised since 2013 in the French Criminal Code[[4]](#footnote-4), this classification is often misunderstood by the judiciary and the police and wrongly perceived as being the exclusive responsibility of transnational networks. The CNCDH notes that a public policy focused on the protection of minors in prostitution, victims of procuring or trafficking must pursue three main objectives: improve the identification of victims, ensure the unconditional support of alleged and actual victims, and reinforce the prevention of risky situations and behaviour.

The identification of minors in prostitution or of minors, who are sexually exploited is a condition for their access to assistance and protection. To date, this has hit a series of obstacles, particularly linked to the growing invisibility of their activity. Indeed, the difficulty in counting the number of victims, and in identifying them, is partly explained by the protean nature of the sexual exploitation of minors. The diversity of situations and causes that can lead a minor into prostitution (exploitation by a third party, so-called survival prostitution, the desire to have access to certain consumer goods, access to money perceived as "easy" and fast) is often disregarded by professionals and underestimated by public policies.

The majority of situations of child prostitution are not well known or do not lead to a complaint, in particular because of the increasing use of social networks and Internet contacts. It is therefore necessary to reach out to victims by increasing outreach initiatives, both on the street and on the Internet. The CNCDH hearings highlighted the need to develop a legal framework to enable better cooperation between platforms (dating sites, accommodation, etc.) and the police during their investigations, in accordance with users' fundamental rights.

Many young people in prostitution are at odds with their families, with the institutions supposed to protect them and, more generally, with adults. Therefore, institutional partners often find it difficult to support these minors: their mandate represents everything that the young people want to escape. These minors are particularly vulnerable to certain health risks due to their behaviour (HIV, STIs, etc.) and are often unaware of the protection mechanisms available to them. This issue is concerning notably homosexual boys, but not only. We consider that the first step is to protect them by informing them of their rights (verbally, through the distribution of leaflets or through messages on social networks) and by providing them, if necessary, with harm-reduction materials.

Professionals in contact with minors, both girls and boys, often have little or no training in the phenomena of prostitution and trafficking for sexual exploitation[[5]](#footnote-5) and may feel helpless in the face of these phenomena and their consequences on their handling. This lack of training can lead to distrusting these minors and thus become an obstacle in detecting and identifying victims. All these professionals should also be trained in taking statements from children in order to avoid worsening the trauma experienced by the victims and to allow them to speak freely.

Moreover, it is necessary and a priority to establish a national referral mechanism for the identification, prevention and referral of victims, as provided for by the second national action plan[[6]](#footnote-6). Therefore, emergency accommodation appropriate for the needs of a minor should be offered prior to any formal identification.

The CNCDH notes that the clients of minors involved in prostitution are rarely pursued, despite the offence provided for in Article 225-12-1 of the French Criminal Code punishing the use of minors in prostitution. It would be preferable to prosecute once it can be established that the client had knowledge of the victim being a minor.More human and financial resources should be employed so that more investigations lead to the dismantling of networks and the seizure of assets and property illegally acquired or used for the sexual exploitation of minors[[7]](#footnote-7).

Young victims find themselves subject to a lot of broken relations. Comprehensive care must include psychological care adapted to the minor and any other pathologies (drug addiction, eating disorders, etc.). In addition, understanding the root causes leading to prostitution enables the implementation of appropriate tools to facilitate the protection of each minor and prevent the risk of exploitation again.

Furthermore, the length of the procedures for both recognition of victim status and compensation may now lead to a risk of re-exploitation for a minor victim who, on coming of age, leaves the protection system with no training or money. A minor who has been a victim of trafficking and forced to take part in illegal activities (mendacity for boys and prostitution for girls) should be exempt from criminal responsibility and his or her victim status should be taken into account in the decision on compensation. The CNCDH wishes to point out that insecurity[[8]](#footnote-8) exposes these minors, whether they are French or foreigners, and then young adults to a greater risk of being trafficked for sexual exploitation. Thus, the CNCDH proposes to include alleged victims among the potential beneficiaries of a universal active income.

In recent years, the departmental child welfare services have been faced with a significant increase in the number of minors at risk, mainly unaccompanied minors[[9]](#footnote-9). The financing of child protection policy, and in particular support for unaccompanied minors, is subject to the contingencies of the budgetary debate or dependent on the cooperation of departmental actors. We note a great disparities in care for minors between regions are the result of the decision, in the early 1980s, to decentralise child protection policy to departmental level. And we don’t have any data about the victims at the regional and national levels despite the establishment Inter-ministerial mission for the protection of women against violence and to fight human trafficking (MIPROF). The fight against child prostitution and sexual exploitation must be a nationally-driven policy: the government is obliged to guarantee the equal treatment of protected children throughout the country.

Among the tools for preventing the risks of prostitution and sexual exploitation among minors, sex education and information are undoubtedly one of the avenues to be pursued, but only alongside others. In schools, sex education has been included in the French Education Code since 2001[[10]](#footnote-10). Despite this legal framework, such education is generally insufficient and sometimes still neglected by schools[[11]](#footnote-11). Where it does exist, these lessons are largely limited to addressing sexuality from the perspective of reproduction and health issues. As an extension of the recommendations of the Human Rights Defender, the CNCDH believes that it is necessary to promote education that prioritises "a comprehensive approach to sexuality, integrating its emotional, psychological and social aspects in the same way as its reproductive aspects"[[12]](#footnote-12). The section of this training devoted to violence, particularly sexual violence[[13]](#footnote-13), should facilitate the disclosure of violence suffered by children. This aspect requires support with a proposal for care.

In addition to sex education, it is important to carry out actions to raise awareness targeted at the most vulnerable minors. Indeed, the hearings highlighted certain systemic situations and discrimination that promote the appearance of certain forms of exploitation: LGBT phobias, the social exclusion of unaccompanied minors, the fragility of minors taken into the care of the ASE, who are sometimes placed in hotels, etc. These are all reasons and situations that are at the origin of vulnerabilities that promote the power of third parties involved in prostitution and sexual exploitation. In this respect, the CNCDH considers it necessary to develop preventive actions in the places where these minors spend time or live. The CNCDH also draws attention to the need to develop actions to raise the awareness of minors on the Internet, and in particular on social networks, which are areas where a large proportion of relationships are formed and where minors confide without any filter.

Among the most vulnerable minors are unaccompanied foreign minors who face additional problems due to their administrative insecurity. Indeed, when an unaccompanied minor arrives in France, he or she is particularly exposed to the influence of third parties or to poverty. It is necessary to inform them immediately of their rights to schooling and access to child welfare, but also of their right to seek asylum in France. Indeed, even if, as the law on foreigners stands, a minor does not need to apply for a residence permit, he or she may nevertheless, as a minor, file an application for asylum with the prefecture. Refugee status is important in the pathway out of prostitution for unaccompanied minors. In most cases, however, the minors concerned do not know that they can apply for it. Moreover, ASE staff are also often unaware of this. The CNCDH considers that part of the prevention process involves better information for unaccompanied foreign minors on their rights in terms of schooling and access to the ASE, as well as the right to seek asylum.

To conclude, the CNCDH notes that the prostitution and sexual exploitation of minors is largely ignored by most of our fellow citizens. This lack of knowledge of the phenomenon hampers awareness of the urgency of preventing and effectively combatting prostitution and the sexual exploitation of minors. Although there are currently a number of information and awareness-raising initiatives in France, they are unfortunately too few in number, dispersed and carried out without coordination between the various actors concerned.

1. In 2014, the CNCDH issued an opinion on the proposed law strengthening the fight against the prostitution system [*avis sur la proposition de loi renforçant la lutte contre le système prostitutionnel*] (opinion of 22 May 2014, JORF no. 0136 of 14 June 2014, Text no. 70) before being appointed as an independent national rapporteur on human trafficking. It is in this capacity, in particular, that the Commission adopted, in November 2019, an opinion on the 2nd national action plan against human trafficking (2019-2021) [*avis sur le 2nd plan d’action national contre la traite des êtres humains*] and, in April 2020, an opinion *on the creation of a "National Referral Mechanism for the identification, prevention and referral of victims" [Mécanisme National de Référence pour l’identification, la prévention et l’orientation des victimes] in France, for the effective exercise of the rights of victims of human trafficking* (see: CNCDH, *Opinion on the 2nd national action plan against human trafficking* (2019-2021), 19 September 2019, JORF no. 0279 of 1 December 2019, Text no. 55; available here: <https://www.cncdh.fr/sites/default/files/191119_avis_2e_plan_contre_la_teh.pdf>;

   CNCDH, *Opinion on the creation of a "National Referral Mechanism" in France, for the effective exercise of the rights of victims of human trafficking*, A – 2020 – 5, JORF no. 0108 of 3 May 2020, Text no. 48 available here <https://www.cncdh.fr/fr/publications/avis-creation-dun-mecanisme-national-de-reference-concernant-la-traite-des-etres>). [↑](#footnote-ref-1)
2. Human trafficking is established by a complex material element (the perpetrator must have recruited, transported, transferred or harboured another person, the act must have been carried out under duress and with the aim of exploiting the victim). However, for victims who are minors, it is not necessary for the offence to have been committed under one of the circumstances provided for in this article in order for it to be established. Thus, the offence could be established for a minor without there having been coercion. Finally, the second element of trafficking, the non-material element, is the intention of the offence. [↑](#footnote-ref-2)
3. According to Law no. 2002-305 of 4 March 2002 *on parental authority*. [↑](#footnote-ref-3)
4. Art. 225-4-1 of the French Criminal Code: act of transporting, transferring, accommodating or harbouring a minor and placing this minor at one’s own disposal or that of a third party for sexual exploitation. [↑](#footnote-ref-4)
5. This includes professionals as varied as the police, the gendarmerie, teachers, health professionals, managers of shelters, children's homes (ASE), extended day care workers, judges, and lawyers, etc. [↑](#footnote-ref-5)
6. CNCDH, *Opinion on the creation of a 'National Referral Mechanism' in France for the effective exercise of the rights of victims of human trafficking*, 28 April 2020, *op.cit.* [↑](#footnote-ref-6)
7. French Code of Criminal Procedure, Article 706-164. [↑](#footnote-ref-7)
8. The CNCDH considers it useful to note that a foreign minor who is a victim of trafficking has the right to international protection. [↑](#footnote-ref-8)
9. *Observatoire national de la protection de l’enfance* [National Observatory for Child Protection] (ONPE), *Les connaissances pour agir en protection de l'enfance: de leur production à leur appropriation*, 14th report to the government and parliament, May 2020. [↑](#footnote-ref-9)
10. French Education Code, Art. L. 312-16. [↑](#footnote-ref-10)
11. cf. *Haut conseil à l’égalité entre les femmes et les hommes* [High Council for gender equality], Report on sex education, " *Répondre aux attentes des jeunes, construire une société d’égalité femmes-hommes* " [Meeting young people's expectations, building a society with gender equality], report no. 2016-06-13-SAN-021, 13 June 2016. [↑](#footnote-ref-11)
12. *Défenseur des droits* [Human Rights Defender], *Rapport sur les Droits de l’enfant* [Report on the Rights of the Child] 2017, p. 90. [↑](#footnote-ref-12)
13. French Education Code, Art. 312-17-1. [↑](#footnote-ref-13)