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儿童权利

买卖儿童、儿童卖淫和儿童色情制品问题

特别报告员胡安·米格尔·佩蒂特先生

提交的报告

增 编

买卖儿童、儿童卖淫和儿童色情制品问题特别报告员

2002年11月25日至29日对法国进行的访察 \*

\* 此次出访报告的概要将以所有正式语文散发。报告本身载于概要的附件并只按提交的语文和法文分发。

## 概 要

买卖儿童、儿童卖淫和儿童色情制品问题特别报告员胡安·米格尔·佩蒂特先生于 2002 年 11 月 25 日至 29 日对法国进行了访察。当他获悉一些法国儿童据报道成为成人恋童癖和色情制品的受害者并获悉有关买卖儿童和儿童卖淫的情况后，他提出了访察请求。

在访察中，特别报告员会见了政府高级官员、警察和司法人员、非政府组织、受害人、感兴趣的组织和个人。他还访问了国际刑警组织和一个位于查蓬的儿童中心并与法国媒体代表进行了交谈。

报告侧重谈到与贩运儿童和儿童卖淫及儿童色情制品有关的儿童买卖问题及其与家庭儿童性虐待之间的联系。关于儿童买卖、贩运和儿童卖淫，报告介绍了由儿童问题司法专员(儿童辩护人)、警察、非政府组织以及政府部委向特别报告员提供的资料。据这些资料介绍，儿童被贩运到法国的主要来源地有东欧，尤其是罗马尼亚和西非，但也来自亚洲，包括印度和中国等国家。许多这类儿童(如果不是大多数的话)受贩运网控制并被强迫卖淫。法国政府正在与有关国家的当局一道开展遣返儿童的工作，尤其是与罗马尼亚 2001 年签署了一项双边协定。

关于儿童色情制品和儿童性虐待问题，收到了警察、司法当局、医务工作者、非政府组织和受害个人提供的情况。收到的报告称，儿童色情制品有时涉及家庭性虐待，通常情况是儿童的父母彼此疏远。特别报告员突出强调了他对保护这类儿童不受指称虐待人侵犯的司法程序的关切，尤其是据称力图保护儿童不再受虐待的个人可能因此而受到纪律、民事或刑事制裁。

报告载有一些结论和建议，它们对特别报告员提交人权委员会第五十九届会议的关于这次访察初步说明(E/CN.4/2003/79/Add.2)中所载的内容作了补充。

**Annex**

**REPORT OF THE SPECIAL RAPPORTEUR ON THE SALE  
OF CHILDREN, CHILD PROSTITUTION AND CHILD  
PORNOGRAPHY, JUAN MIGUEL PETIT, ON HIS MISSION  
TO FRANCE (25-29 NOVEMBER 2002)**

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## Introduction

1. The Special Rapporteur, Juan Miguel Petit, visited France (Paris, St. Etienne and Lyon) at the invitation of the Government. He had requested the visit having received information about a number of French children who were reportedly victims of paedophilia and pornography. He had also received information about efforts France was making to deal with the trafficking of children and child prostitution. The Special Rapporteur would like to thank the Government of France for the very high level of cooperation and assistance they extended to him throughout his visit.

2. During the visit, the Special Rapporteur met the Minister for the Family (*Ministre délégué de la famille*), the Ambassador for Human Rights (*ambassadeur chargé des droits de l'homme*) high-level representatives from the Ministries of Foreign Affairs, of Justice and of Social Affairs, Labour and Solidarity, the President of the Juvenile Court (*Tribunal pour enfants*), the President of the *Tribunal de grande instance*, the Ombudsman for Children (*Défenseure des enfants*), police officers from the Minors Brigade (*Brigade de la protection des mineurs*) and the Central Office for the Repression of Human Trafficking (*Office central de répression de la traite des êtres humains*), the French National Committee for UNICEF, the President of the Sub-Commission on the Rights of the Child of the National Human Rights Commission (*Sous-commission "droits de l'enfant" de la Commission nationale consultative des droits de l'homme*), and visited a children's centre in Chambon, St. Etienne. He met with non-governmental organizations (NGOs), academics and medical practitioners, and with the International Criminal Police Organization (INTERPOL) in Lyon. He also spoke with representatives of the French media and with parents of child victims.

3. Given the very short period of time between the end of the visit (29 November 2002) and the deadline for submission of documentation for the fifty-ninth session of the Commission on Human Rights (15 December 2002), a short preliminary note (E/CN.4/2003/79/Add.2) on the visit to France was submitted. The present report contains the more detailed findings of the Special Rapporteur as well as information received since his visit.

### I. BACKGROUND TO THE VISIT

4. In Geneva in April 2002, the Special Rapporteur met with representatives of NGOs who told him that a number of French women were moving to and living clandestinely in Switzerland with their children with the aim of avoiding French judicial decisions that compelled them to hand over their children to their estranged husbands or partners on a regular basis, or permanently. The women reported that they had fled France rather than comply with these decisions as they were convinced that the children were being sexually abused and sometimes used in the production of pornography by their fathers or other individuals. Information was also received about other cases in which a parent, usually the mother, had chosen to remain in France and comply with civil custodial orders requiring her to hand over her child to its father at the same time as she was pursuing criminal proceedings against him for sexual abuse.

5. The Special Rapporteur had also received information from a medical practitioner who had been the subject of a series of disciplinary measures by the French Medical Board (*Conseil national de l'Ordre de médecins*) concerning a number of certificates she had written confirming that children she had examined had been sexually abused. In each case, the alleged abuser had

lodged a complaint before the Board, describing the certificates as *certificates de complaisance*, i.e. false certificates issued to help the mother gain custody of her child in divorce proceedings. The practitioner was charged with “calumnious denunciation” (*dénonciation calomnieuse*) and for making “false accusations”. However, according to information received, her diagnoses had been confirmed by other experts in each case.

6. The Special Rapporteur wrote to the French Medical Board on 23 January 2002 about this situation and received a detailed response on 30 January 2002.

7. Prior to his visit to France, the Special Rapporteur had sent two communications to the Government concerning two children who were allegedly victims of child pornography and sexual abuse. Following the visit, the Special Rapporteur has brought a number of similar cases to the attention of the Government and at the time of submission of the present report was continuing to receive new cases. In order to protect the identity of the children involved, their names will not be published in this report, but, as in all cases brought to the attention of Governments, full details, including names, have been given in the correspondence. Details of these communications can be found in chapter III.

## II. SALE OF CHILDREN AND CHILD PROSTITUTION

8. The Special Rapporteur received detailed information about the situation of trafficking and prostitution of children from, among others, the Children’s Ombudsman, government ministries, the police, including the Central Office for the Repression of Human Trafficking and the Minors Brigade, and from several NGOs.

### **The Children’s Ombudsman**

9. The Children’s Ombudsman, Mme Claire Brisset, reported that there had been an increase in prostitution and that children were increasingly becoming involved. She had visited the red light districts of Paris with an NGO that drives through such areas giving out food, sanitary items and other assistance to prostitutes and was told that the women and children, including boys, whom she met had come from Eastern Europe, mainly Romania but also Bulgaria, and West Africa, particularly Sierra Leone, Liberia, Ghana and Nigeria.

10. Women and girls from Eastern Europe are often forced to travel to France by organized networks that use various methods, including promises of well-paying respectable jobs, or through forming romantic relationships with network members, making the girls emotionally dependent and easier to manipulate. Once the girl has been brought into France, the networks often use threats against her family members at home to ensure that she will comply with their demand that she work as a prostitute. The phenomenon of Romanian boys being involved in prostitution originated from their travelling to France, sometimes of their own volition and sometimes under the direction of networks, in order to steal money from parking meters. However, during the month of August parking is free and the boys needed to find alternative sources of income. The visa requirement for Romanian citizens to visit France was removed in 2000, which has made it easier for these women and children to travel or be trafficked into the country.

11. Women and girls trafficked from West Africa for prostitution are instructed by their traffickers to tell the authorities that they are from conflict zones, in order to be able to claim asylum. If they admit that they are from certain countries, for example Nigeria, they are usually expelled immediately.

12. Most of the children involved in prostitution, usually aged between 15 and 18, are controlled by pimps and networks and are given mobile phones so that their pimps can keep in contact with them, ordering them back to work if they try to rest. Many of the pimps and procurers now often live in neighbouring countries, such as Belgium and Germany, and appoint older prostitutes to control the children's activities. Children trafficked into France are normally first exploited in Paris, but are often then moved to other cities, such as Bordeaux and Marseille.

### **The police**

13. The Special Rapporteur met with three divisions of the police - the Central Office for the Repression of Human Trafficking, which gave him information about the situation of trafficking of children and child prostitution, the National Division for the Repression of Attacks against Persons and Property (*Division nationale pour la répression des atteintes aux personnes et aux biens*), which advised the Special Rapporteur about its work to combat child pornography, and the Minors Brigade, which is working on both of these issues.

14. The Central Office for the Repression of Human Trafficking was created in 1958 and answers directly to the Central Directorate of the Criminal Investigation Department (*Direction centrale de la police judiciaire*). The Office plays a coordinating role with respect to the different forces working on trafficking and prostitution. Each of the regional criminal police divisions have brigades working on prostitution. The Office agreed that although prostitution was growing enormously, using minors for that purpose was a relatively new problem and that most victims were being trafficked from Eastern Europe and West Africa.

15. The Office advised the Special Rapporteur that it is able to dismantle approximately 20 trafficking networks each year. However, minors involved in such networks are not usually much younger than age 18; and it had not dismantled any networks that involved solely children and could not confirm that such networks existed. However, it is extremely difficult to confirm the ages of those involved as most of the women and children arrive either with false identity papers or without any papers. A special x-ray test which can determine approximate age by examining an individual's bones is available, but it is not fully reliable.

16. The Office estimated that there are between 15,000 and 18,000 known prostitutes working in France, half of whom work in Paris. Of those working in public places in Paris, such as the streets but not including, for example, bars, the Office provided the following figures comprising both minors and adults: 44 per cent are French and 56 per cent are foreign. Of the non-French, 45.7 per cent are from Eastern Europe and the Balkans and 37 per cent are from Africa.

17. In 2001, 466 pimps were indicted and jailed for exploitation of prostitution, of whom 341 (73 per cent) were men; 243 of the pimps were French. Connected with these cases were 607 victims, of whom 21 were male and 586 were female; 70 per cent, or 418, were foreign and the remaining 189 were French. The Office estimated that 95 per cent of foreign prostitutes work for a pimp.

18. The Office reported having seen a slight decrease in such cases since police efforts to investigate them were stepped up. Some pimps and traffickers had moved elsewhere, principally Spain, Italy, Germany and Belgium.

19. The Special Rapporteur met with the Minors Brigade of Paris, which has a staff of 73 divided into two sections, one dealing with problems within families and the other dealing with issues outside the family, including prostitution. The Brigade reported that the particular situation of street children and children in prostitution in Paris is not representative of the situation in the country as a whole, but confirmed that the young foreigners who are drawn to Paris also work in the Mediterranean cities in the south, and that the situation of young Romanians is particularly problematic. The Brigade also expressed doubts about the existence of highly organized networks dealing solely with the trafficking and prostitution of children.

20. The Brigade explained its procedure for dealing with a minor being used in prostitution. A new law which came into effect in 2001 allows police to arrest suspected clients of prostitutes under the age of 18, even prior to sexual activities taking place. Previously, seeking sexual services from a minor was only an offence if the minor was under the age of 15. Under the new law, if, for example, a policeman or -woman sees an individual acting suspiciously around a young person whom they believe to be a child, or sees the child get into the individual's car, they can make an arrest. Following the arrest, both the client and the minor are taken to the headquarters of the Minors Brigade, where the client is detained and questioned. Minors who are seen soliciting may also be brought in even where there is no client, as they are considered to be children in danger.

21. The child is photographed and sent to the emergency ward of the hospital where he or she is examined and has his or her bones x-rayed to determine his/her approximate age. If the hospital confirms that the individual is under the age of 18, the Brigade will continue with legal proceedings against the detained client. The police are instructed to consider the child as the victim.

22. The police will try to get precise information from the child, but very often the child will give false information. An educational protection measure is ordered for most of the children, which usually involves their being placed in a temporary home for a few days while decisions are made about their immediate future. In September 2001, France and Romania signed a bilateral agreement to the effect that when France sends a Romanian child home, the child will be supported and monitored following his or her return and will not have to face the same circumstances which made him or her leave in the first place. However, the Brigade reported that the majority of these children run away from the temporary homes before they can be returned home or placed in an educational facility.

23. The Minors Brigade reported that in 2002, 83 minors - 68 boys and 15 girls - were brought to its headquarters having been apprehended for soliciting for prostitution. None of them had identity papers, but it was discovered that 60 of them came from Romania - 53 boys and 7 girls. The majority of the 83 children were aged 16 and over.

### **Non-governmental organizations**

24. The Special Rapporteur met with several NGOs working with street children, children in prostitution and young trafficking victims. The NGOs agreed that there has been an increase in the number of children in prostitution, and felt that the authorities were acknowledging that it was a growing problem.

25. Some of the NGOs operate by sending teams of educators into the street to try to get the confidence of the children by building up relationships with them. However, they often discover that the children are part of a network and are being closely watched, which makes access to them difficult. Where they can gain access to the children, the street workers invite them to come to the NGO offices where the children can get food and basic health care and talk to the staff, who encourage them to consider alternative lifestyle options. Once contact has been made with a child, street workers try to see them every day. One NGO reported that between 20 and 40 children came to its centre every day from the squats in which they live in the suburbs of Paris; its programme covered the whole city. As well as seeing children from West Africa and Eastern Europe, the NGOs reported that children came from India, Bangladesh and China.

26. The Special Rapporteur was given information about the particular concerns of young unaccompanied victims of trafficking, economic migrants, and those demanding asylum in France. Studies indicate that approximately 35 per cent of such children arrive by aeroplane, 30 per cent by train, 20 per cent by boat and 15 per cent on foot. Many of these children travel to France having agreed to pay to their traffickers a price that could amount to more than 10 years of work in Europe, but if they are sent back and have to repay their debt in their country of origin, the result might be a lifetime of slavery. Of particular concern is the situation in which some of these children find themselves when they first arrive in France and are held in "waiting areas" in French airports. In these "waiting areas", which are not considered to be on French territory, the children are reportedly in a legal vacuum and are "maintained" rather than "detained", and subject to the same law as is applied to adults. Many children without proper papers are immediately sent back to the countries from which it is believed they came, whereas others can be "maintained" in the "waiting areas" for up to four days before being taken before a court.

27. Following his mission to France, the Special Rapporteur was given the testimonies of two Chinese boys aged 14 and 15 who arrived in Paris in January and March 2003, respectively, and are now being assisted by NGOs. Their testimonies are given in the following paragraphs.

28. Child "Y.M.":

"I arrived with four other Chinese - three girls and one boy aged between 16 and 18. We were put in a room and the next day the police told us that we would be sent back to Singapore. We didn't want that and we cried because previously, in the waiting area, we were told that in Singapore, we would be sent to jail. In the little car, on the



road to the aeroplane, we hung on and resisted by shouting, and finally the aeroplane left without us. The police put us in a little room without any windows. It was the morning. The police slapped us all, even the girls. We stayed without eating and drinking until the evening. At around 2 in the morning, the police sent us back to the little room, where we stayed for two days.”

29. Following this ordeal, the children were taken before a court. Before speaking to the judge, the boy met a Chinese girl who had been born in France and who told him to tell the judge that she was his cousin. He did this and was then released. He was taken to a hostel and then taken care of by an NGO.

30. Child “W”:

“I was born in 1987 in Quing Tian. My parents are farmers. I had to leave school when I was 13 and start working because my parents were poor and could not continue to pay for my schooling. They sent me to work in the town of Wenzhou in a sewing workshop. I worked there for nearly three years, seven days a week from 6 in the morning until 10 in the evening. I was paid 400 yen per month, of which only 100 yen (about 15 euros) came directly to me. The rest went to my parents. My boss suggested that I go to France because I could earn more there. I agreed because there was no reason to stay in China. My boss organized my trip and paid for my air ticket. Once I arrived in France, one of his friends would find work for me.

“I arrived at Roissy-Charles de Gaulle airport in March 2003, early one morning. I don’t know which airline I flew with or the number of my flight, only that I left Beijing and travelled to Guinea, where I changed aeroplanes before arriving in Paris. I had been given a passport but I don’t know if there was a visa in it as I don’t know what they look like. The police took my passport and I didn’t get it back.

“When I arrived, the police asked me, through an interpreter, whether I wanted to return to China. I refused. The interpreter left. Two policemen tried to put me on an aeroplane. I was handcuffed to one of the policemen, and I bit one of them on the arm. Three other policemen arrived and the five of them beat and slapped me on the back, chest and face. This lasted for about 15 minutes in a corridor without windows which was close to the aeroplane.

“Still handcuffed, I was taken to a police station where I stayed for two hours. Three other foreigners were also there. I was slapped several times by the police. Then they took me to a doctor who asked me where I was hurt. He examined my face and hands and wrote a certificate that the police kept. Then I was taken back to the police station. Another interpreter came and asked me what had happened. I told him and he asked me to sign something but I didn’t understand what it was. In the evening I was taken to a hospital and examined by a doctor. On my return, I was locked up in a room with about 100 others. We were so many that it was not possible to lie down to sleep. To go to the toilet, we had to form a group with enough people that the police would agree to accompany us. I stayed in this room for five days. I was only allowed out once,

on the fourth day, to be presented to a judge, who refused to release me. After five days, I was transferred to a room with five beds, but which already had seven or eight other Chinese there. The police again tried to get me on to an aeroplane to China but didn't have time to get all of us on it. Eventually only six of my compatriots were put on the airplane.

“After 12 days in the ‘waiting zone’ I was presented to another judge who released me because I was a minor. When the interpreter told me I was free to go I left straightway without going back to the ‘waiting zone’ to collect my things. I went to Paris on foot and slept for many nights in the streets. I had a few dollars for food. Some Chinese I met told me about an association which could help me and so I arrived at their reception place.”

### **III. CHILD PORNOGRAPHY AND CHILD SEXUAL ABUSE**

31. The Special Rapporteur met with the National Police Division for the Repression of Attacks against Persons and Property which has a staff of five dealing with particular offences against minor victims. The Division mainly works on offences committed abroad, particularly those relating to child pornography, and receives information from foreign police about suspected French paedophiles. With respect to child pornography on the Internet, if the Internet Protocol (IP) address can be identified, the Division works to discover the physical address of the person involved, then apprehends him or her, searches the computer and attempts to identify the child(ren) involved. Recent operations succeeded in identifying children in Russia, the United States and the Netherlands, some of whom had been photographed in professional photo studios.

32. The Division receives thousands of Uniform Resource Locator (URL) electronic addresses every year and is able to identify a few hundred. Each year, between 40 and 50 arrests result from the work of the Division. Individuals who log on to child pornography range from students who look at the pictures out of curiosity, to those who regularly seek out hard-core pornography. Normally, the Division will not prosecute if it finds one or two images on a computer, but where many images are found, the person will be prosecuted.

33. The Division reported that there are approximately 1 million images of child pornography available worldwide, and that it is working on a project with INTERPOL, the European Police Organization (EUROPOL) and the French gendarmerie to (i) determine which images are already known; (ii) sort the images into categories; and (iii) identify the victims and the perpetrators. The Division reported having discovered very strong links between individuals involved in pornography, in some cases including members of the judiciary.

34. The Minors Brigade also works on the issue of child pornography, but is not legally empowered to infiltrate paedophilia and pornography networks. The Brigade also reported doubts about the existence of child pornography “networks” as such, but agreed that many of the adults whom they had investigated for the possession and distribution of pornographic images had been very well connected socially.

35. Prior to and during the visit to France, the Special Rapporteur received information that the production of child pornography involving French children is often connected with domestic child sexual abuse. He received allegations that parents and family friends are committing acts of child sexual abuse and sometimes making pornographic materials out of the abuse.

36. In his preliminary note, the Special Rapporteur stated that he had been told about the existence of a CD-ROM containing 8,000 pornographic images, known as the "Zandvoort" CD, after the town in the Netherlands where it was discovered. A number of French parents had reportedly seen images of their children on this CD. French authorities examined the CD, forwarded it to the authorities of other countries they believed were concerned, but concluded that the images dated back to the 1970s. However, some parents contest this, alleging that some of the photos contain clear evidence that they were taken recently. The Special Rapporteur was advised that the CD had not been officially sent to INTERPOL for its expert examination and comparison with images in its database, which would likely have led to a determination of the age of the photos. In its response of 4 April 2003 to the Special Rapporteur's preliminary note, the Government stated that the CD had been sent to INTERPOL in 1998 by the Dutch authorities; however, INTERPOL stated that it had only received a copy of it from a Swiss NGO and that the Dutch authorities had sent it only to the countries they thought were concerned. Furthermore, INTERPOL stated that it would support any national investigations and, if it received the CD from a national law enforcement agency with an official request, it would check the CD against its database. Accordingly, the Special Rapporteur would reiterate his recommendation that the French police make such an official request to INTERPOL.

37. Concerning child pornography, the Government advised the Special Rapporteur that legislation had been amended to cover any representation of a child; accordingly, proceedings may be brought against persons disseminating non-real images as well as the creators of such images. Furthermore, the Law of 17 June 1998 also makes the use of a telecommunication network, such as the Internet, to commit certain offences of a sexual nature against children an aggravating circumstance.

38. An inter-ministerial governmental web site has been developed ([www.internet-mineurs.gouv.fr](http://www.internet-mineurs.gouv.fr)) which went online in November 2001. Internet surfers have access to an online reporting form and are given an e-mail address. The web site links the Ministries of Justice, the Interior, Defence and the Family and forwards the reports to a database which is managed by the Central Office for the Fight against Criminality Connected with Information Technology and Communication (*Office central de la lutte contre la criminalité liée aux technologies de l'information et de la communication*). Many reports are transmitted to INTERPOL, when the web sites are based abroad, and to the public prosecutor who has jurisdiction when the acts which constitute a criminal offence are committed on national territory.

### **Cases forwarded to the Government of France**

39. As examples of the kind of concerns brought to the attention of the Special Rapporteur and raised with the Government of France, three cases are outlined below.

*Case 1 - child S*

40. On 26 April 2002, the Special Rapporteur wrote to the Government of France concerning the situation of child S, born in 1998, who, according to information received, had been the victim of sexual abuse and had been used in the production of pornographic films and photographs. The child's parents were separated and the abuse was allegedly perpetrated by her father whilst exercising his visitation rights. In March 1998, the child was examined by a medical practitioner who confirmed that she had been sexually abused and in June that year, the Family Affairs Judge (*juge aux affaires familiales*) of the *Tribunal de grande instance* in Paris reduced the right of access of the father to the child to one Saturday afternoon every two weeks in a supervised environment. Whilst the Special Rapporteur appreciated that such measures had been taken in acknowledgement that the child was at risk of sexual abuse, he remained concerned that the child was forced to spend this time with her father, reportedly against her will. She reportedly became very anxious and upset before each visit with him. In 2001, a pornographic photograph was reportedly identified as being that of child S by the British National Crime Squad.

41. On 24 September 2002, the Government of France replied to the Special Rapporteur, reporting that an inquiry into the allegations of sexual abuse had been carried out in 1998 and in 1999, the *parquet de Paris* (public prosecutor's office) had dismissed the allegations as lacking proof. An investigation to confirm whether the child was in fact the same child who appeared in the pornographic materials was under way, and the child's father was being heard as a witness but was not at that time under investigation. The Government also reported that no request had been made by the mother to modify or suppress the father's visitation rights.

*Case 2 - child P*

42. On 31 July 2002, the Special Rapporteur addressed an urgent appeal to the Government of France concerning the situation of a woman who had travelled to Switzerland with her child P, born in 1997. The woman had made a complaint against her ex-partner, the child's father, for sexual abuse of the child. This complaint was dismissed despite the reported confirmation of a doctor that the child had been sexually abused. Rather than continue to hand over her child to her ex-partner in compliance with his visitation rights, the woman went to Switzerland to request political asylum. Shortly after her departure from France, she was sentenced by the Criminal Court (*tribunal correctionnel*) of Paris to one year in prison for failing to make the child available to its father. An international arrest warrant was issued and she was arrested in Switzerland in June 2002. Her child was placed in a home for children of her age. The mother then reportedly began a hunger strike. In his letter, the Special Rapporteur appealed to the Government to take all measures to protect the child from sexual abuse and to assure the mother that such measures were being taken.

43. In its response of 8 November 2002, the Government confirmed that a complaint had been made in February 2002 by the child's mother against her ex-partner for sexual abuse of the child P, but that the medical certificate did not reveal any evidence of gynaecological trauma in the child. The Paris Minors Brigade carried out an investigation and interviewed the child's father. Following this, the child's mother then took her child to be examined by a different doctor after each visit with the father, but no gynaecological trauma was reported. The complaint was then dismissed in July 2000. In November 2001, the Family Affairs Judge

ordered the continuation of joint parental custody of child P and set the visitation rights of the father at one weekend in two and one Wednesday in two, as well as time during the school holidays. The Government reported that the child's mother refused to comply with these custodial decisions and the father then filed a complaint.

44. The Government reported that in view of the inquiry carried out by the police, it considered that the allegations of sexual abuse were unfounded, and that it should be noted that the child's mother did not appeal the judge's decision of November 2001 but instead decided to leave France.

*Case 3 - child L*

45. Following his mission, on 12 December 2002 the Special Rapporteur addressed a joint urgent appeal to the Government of France, together with the Special Rapporteur on freedom of opinion and expression. This appeal concerned the situation of child L, born in 1993. According to information received, the boy had been sexually abused by his father since he was 3 years old. Sexual abuse had reportedly been confirmed by specialist doctors and psychiatrists in 1996, who found that the boy was suffering from a sexually transmitted disease. The boy allegedly reported that his father and other individuals had made pornographic films and taken photographs of him. According to the information received, the boy had consistently stated that he did not want to live with his father, to whom custody had been awarded. He was allegedly continually emotionally and physically abused by his father and had reportedly become suicidal.

46. In its response of 5 February 2003, the Government stated that following the complaint made by the mother of child L against the child's father in 1996, the boy had had a medical-psychiatric examination which had not confirmed that he was a victim of sexual abuse. Accordingly, the complaint against the father had been dismissed. The mother then referred the case to the Family Affairs Judge, requesting that the right of access of the father to the child be suspended. This request was rejected.

47. In 1998, the Court of Appeal ruled that the boy should reside with his father and gave the mother a right of access. In its reply the Government stated that the psychiatrists and psychologists who had examined the child believed that he had wrongly interpreted the tender or awkward gestures of his father and that the mother, who was also examined by a psychiatrist, had convinced herself that her son was being abused. In 2000, the mother again made a complaint against the father for sexual abuse, having been shown a photograph from a CD-ROM containing many pornographic images of children, in which she reportedly recognized her son. The Family Affairs Judge then ruled that the child should reside with his mother, according visitation rights in a neutral place to the father. This decision was reversed later that year by the Court of Appeal, which stated that no new elements had existed which justified overturning the original decision to place the child with his father, and that an investigation had revealed that the child on the CD was not child L.

48. In all three cases, the Special Rapporteur has continued to receive information from the children's mothers as well as NGOs working with these families that they continued to consider that the children remained at risk of sexual and/or emotional abuse.

49. On 6 May 2003, the Special Rapporteur addressed 13 new cases to the Government of France. As with the three cases outlined above, the Special Rapporteur is not in a position to judge the merits of each piece of evidence presented to him concerning the facts of the cases, but the similarities of many of the allegations that have been presented to him have caused continuing concern about the manner in which such situations are being dealt with by the French judiciary.

50. In his letter of 6 May 2003 and in the 13 new cases presented at that time, the Special Rapporteur alluded to the enormous difficulties faced by individuals, particularly mothers, who make complaints against those they suspect of abusing their children in that they are then at risk of measures being taken against them for making false accusations - measures which in some cases ultimately lead to their losing custody of their child(ren). Some of these mothers pursue legal avenues until they can no longer afford to pay for legal assistance, at which point they believe that their only options are to continue to hand over the child to his or her alleged abuser, or to take the child and seek refuge abroad. Even some judges and lawyers who understand the weaknesses of the judicial system are reported to have informally advised some parents to take this course of action. These parents are then at risk of criminal proceedings for their actions, both in France and often in the country to which they travel.

51. The Special Rapporteur was advised that the credibility of the allegations made by mothers that their children were being sexually abused was undermined by the fact that such allegations were invariably made during divorce proceedings. The implication is that such allegations are being used as a weapon to ensure that custody of the child is awarded to the mother. The Special Rapporteur agrees that this is a possibility, and was informed that there have been cases where lawyers have reportedly advised their clients to make such false allegations. However, in at least several of the cases presented to the Special Rapporteur, a closer examination of some of the reasons why the parents were divorcing revealed a pattern of domestic abuse within the family, including violence perpetrated against the mother. Accordingly, the issue of sexual abuse of the child should perhaps more accurately be viewed as one of the reasons, if not the main one, for the divorce. It is also important to note that in some of the cases brought to the attention of the Special Rapporteur, custody arrangements had reportedly already been agreed upon in an amicable manner, and neither partner had any apparent motive for making false accusations against the other.

52. In several of the cases received by the Special Rapporteur, it was reported that the alleged abusers had strong ties with members of the judiciary or were individuals highly placed in the administrative system of the State who were in a position to influence the outcome of proceedings against them; this point had also been raised by the National Division for the Repression of Attacks against Persons and Property.

53. Since the Special Rapporteur's visit to France, other cases have been brought to his attention, but not all of them have been forwarded to the Government. Some had important details missing and those involved could not be contacted for clarification. Some cases were not acted upon as the allegations did not fall within the Special Rapporteur's mandate, for example situations of abduction of a child by one parent that were not related to sexual exploitation, or cases of physical, non-sexual mistreatment. Where he continues to receive detailed information about cases relating to his mandate, he will bring these to the attention of the Government of France.

### **The child's right to be heard**

54. Of particular concern to the Special Rapporteur were reports that in civil cases to determine custody arrangements, the child has no automatic right to be heard. Although civil courts can hear the child at the discretion of the presiding judge, in almost all cases, the child is reportedly not heard. However, in its response of 4 April, the Government stated the following:

“Other than the child's views which ... can be taken into account and transmitted to the judge, it may also be ordered that the child be heard by the judge personally. Where a minor so requests, his hearing may be denied only by a specially reasoned decision. Specific provisions govern the procedure of such hearing; under article 388-1 of the Civil Code, the child may be accompanied by a lawyer or any person of his choice. However, in order to avoid the risk of an adult putting pressure on the child and to ensure, as far as possible, the freedom of expression of the children, it is provided that if the choice does not appear to be in the child's welfare, the judge may appoint another person. The intervention of an ad hoc administrator responsible for accompanying and representing the child victim throughout the proceedings in the event of the conflict of interest between the child and his statutory representatives is possible.

“Since the Law of 17 June 1998 (came into force), the child victim may be accompanied by a psychologist, a specialist children's doctor, a member of his family, or by the designated ad hoc administrator or even by a person holding the mandate from the juvenile judge, when he is heard during the proceedings or the inquiry.

“The hearing of child victims may be filmed by way of audiovisual recording. This new provision notably allows successive hearings of the child - which, as has often been observed, are traumatic for the child - to be avoided.”

### **Child rights training for the judiciary**

55. In his preliminary note, the Special Rapporteur stated that a lack of adequate resources, training and specialization among judges and lawyers in dealing with cases of child sex abuse means that the rights of the child involved in judicial proceedings in some cases are not adequately protected, often leaving the children concerned at risk of continued abuse. The Ministry of Justice agreed that the majority of judicial figures dealing with such cases were trained at a time when the issue of child sexual abuse was not given due importance, and that such training now needs to become part of their advanced professional training. Although this is starting to happen, it is likely to take time before results begin to be seen.

56. In its response of 3 April, the Government stated that:

“The French National School for the training of judges and prosecutors has taken action and arranged in-house training courses on the matter, so that audio-visual recording best fulfils its initial purpose, that is the reduction of the number of repeated hearings of child victims, which may be particularly traumatic.”

57. The Government reported that at the initial training stage at the French National School in Bordeaux (nine months), trainee judges undergo core training in child psychology and sexual abuse and physical and psychological mistreatment, training which is given by legal experts, medical doctors, psychiatrists and psychologists. During their court training (12 months), the future judges come to understand the position of child victims through all the different judicial functions.

### **Medical and other professionals working with children**

58. As well as the particular vulnerabilities faced by parents, particularly mothers, who initiate legal proceedings against the alleged abusers of their children, the Special Rapporteur is concerned about the situation of medical and social professionals who have similar worries about a child or who confirms sexual abuse through a medical or psychiatric examination of the child.

59. In his preliminary note, the Special Rapporteur stated that “individuals who suspect and report child abuse can find themselves accused of lying or manipulating the children concerned, and are at risk of prosecution or administrative sanctions for defamation if their allegations do not lead to the successful prosecution of the alleged abuser. In particular, medical professionals are at risk in this respect, and doctors do not appear to receive the assistance and support of the French National Medical Board” (para. 14). The Special Rapporteur would revise his earlier statement in that the charge which such individuals face is not “defamation”, but “calumnious denunciation”. He recommended that the French National Medical Board urgently review its procedures in order to support rather than condemn doctors who report their suspicions of child abuse.

60. The Medical Board wrote to the Special Rapporteur on 19 March 2003 regretting the Special Rapporteur’s failure to contact the Board in order to check the truthfulness of his information.

61. By letter of 23 May 2003 to the Medical Board, the Special Rapporteur apologized that it had not been possible to meet with representatives of the Board during his visit to France as his visit had consisted of just three working days in Paris during which time his schedule was extremely full. He reiterated his thanks for the information which the Board had sent to him in January 2002, which had provided a significant part of the information on which he had based his concerns. He invited practitioners to forward relevant information to him.

62. In its letter the Medical Board advised the Special Rapporteur that article 44 of the Code of Medical Ethics (*Code de déontologie médicale*) stipulates that when a doctor determines that a person whom he/she examines is a victim of maltreatment or deprivation, he must use the most appropriate means to protect the person, demonstrating prudence and circumspection. If the person is a minor under 15 or a person who cannot protect him- or herself because of his/her age or physical or mental state, the doctor, unless there are particular circumstances that the doctor acknowledges in good conscience, must alert the judicial, medical or administrative authorities.

63. On the other hand, when the doctor alerts the prosecutor about the situation, he can only state the facts noted by him and cannot indicate the supposed perpetrator of the maltreatment. He can only cite the statements made by the victim or a third person as information that was



reported to him, and with the necessary prudence. The doctor must remain a neutral and impartial witness in such circumstances, which are often dramatic, and, in the best interests of the victim and of justice, his testimony must be reliable.

64. The Government response of 3 April 2003 stated the following:

“The Special Rapporteur’s recommendation seems outdated insofar as the law of 17 January 2002 provides that ‘no disciplinary sanction may be pronounced following the reporting of abuse by the doctor to the competent authorities under the conditions provided for in the present article’. On 25 February 2002, the French Medical Board circulated [a] memorandum to all the presidents and secretaries-general of the Board’s regional councils to inform all physicians of the new legal provisions.

“In spite of his obligation of professional secrecy, the breach of which is an offence under article 226-13 of the Penal Code, a doctor, like any citizen, must reveal to the public prosecutor the crimes of which he may have knowledge in the exercise of his professional activities and he cannot be subject, on that basis, to administrative sanctions (Law of 17 January 2002: ‘no administrative sanctions may be pronounced against a doctor having reported abuse to the competent authorities under the conditions provided in this article’).”

65. In April 2003, the Special Rapporteur received a copy of a petition sent to the Ministers of Health and of Justice which, by August 2003, had been signed by 157 medical practitioners, primarily paediatricians, of whom 32 were heads of service or functional units and 22 were university or hospital practitioners. In the petition, the doctors complained that they could no longer assist children who were victims of sexual maltreatment because of the personal danger they risked by alerting the authorities. The petition stated that colleagues were continuing to be the subject of disciplinary sanctions by the French Medical Board. However, not to report cases of abuse in order to avoid sanctions left them open to criticism for not having assisted a person at risk. As a consequence, children would continue to suffer sexual abuse until they reached majority, when they could make their own complaints.

66. The petition demanded that the law be changed as a matter of urgency and that clear measures of legal protection for the doctors and professionals working with abused children be adopted. In particular, the petition called for the suppression of article L.4124-6 of the Public Health Code (*Code de santé publique*) of 17 January 2002, and for the prohibition of all disciplinary actions as well as all legal proceedings against any professional working with children who, acting in good faith, alert the authorities.

#### **IV. VISIT TO CHAMBON CHILDREN’S CENTRE**

67. The Special Rapporteur visited the Chambon children’s centre, near St. Etienne, which houses up to 130 children who have been removed from their families for various reasons, including sexual abuse. The centre, which has a pleasant and friendly environment, has two houses for the children as well as a family house where a child’s family members can visit and stay with the child in a supervised environment. The centre cares for children of all ages - from birth until adulthood - and has individualized housing units for the older children and young adults to enable them to learn to be autonomous.

68. Eighty per cent of the children at Chambon are sent following a decision by the Juvenile Court Judge of the *Tribunal de grande instance* at Le Puy-en-Velay. Ninety-two per cent of the children are from families living in the department, while the others come from the neighbouring departments of the Ardèche and the Loire. However, there is a waiting list and the centre cannot take more than 1 out of 10 children who need to be housed there.

69. Staff explained that when there is an allegation of sexual abuse together with testimony from the child, the judiciary can intervene very quickly to protect the child and investigate the case. When there is a report of possible sexual abuse, the Juvenile Court Judge will usually request an investigation and order interviews with educational and medical experts. In an emergency school personnel can place a child before the judge has made a decision.

70. Staff reported that there has been an increase in the number of reports of sexual abuse in families in recent years. Although some of the reports do turn out to be false, in the majority of cases they were not. Some cases of sexual abuse are not discovered until the child becomes an adolescent and starts to speak out about abuse suffered as a child prior to coming to the centre.

71. Other social problems causing children to be sent to the centre include physical and emotional mistreatment, alcoholism and mental illness in the family.

## V. CONCLUSIONS AND RECOMMENDATIONS

### Concerning sale and trafficking of children, and child prostitution

72. **Some of the following conclusions and recommendations were contained in the preliminary note on the Special Rapporteur mission to France, (E/CN.4/2003/79/Add.2), submitted to the Commission on Human Rights at its fifty-ninth session.**

73. **Children are entering or travelling through France for the purposes of theft, begging and prostitution. Many of them are trafficked by force while others travel of their own volition - some later becoming caught up in trafficking networks. The majority of these children come from Eastern Europe - notably Romania - and from West Africa.**

74. **The Government of France is attempting to work with the Governments of countries from which the children originate. Good cooperation has been established with the authorities of Romania and the two police forces are working together to ensure the protection of any child who is returned to Romania. NGOs report that the accords between France and Romania in this respect do appear to be working. The Special Rapporteur recommended that measures be taken to establish the same level of cooperation with the authorities of all the other main countries from which children are trafficked.**

75. **The situation of the apparent legal vacuum of the "waiting areas" in French airports, from which trafficked children can reportedly be sent back to the countries from which they have travelled, often in circumstances of great danger, must be addressed. The particular legal protection due to minors under French law must be extended to all children arriving in France, regardless of the circumstances of their arrival.**

76. Prostitution is reportedly growing rapidly, but the regular use of minors as prostitutes is a relatively new phenomenon and new legislation has been introduced to ensure that the clients of child prostitutes will be arrested. The Special Rapporteur commends the Government of France for its efforts not to criminalize the children concerned by subjecting them to detention, and recognizes the difficulties it is facing in protecting such children from continuing in prostitution.

77. Many foreign children are involved in prostitution. Most of the children in prostitution are controlled by pimps, some of whom live in another country and control the prostitution by cell phone from abroad, usually getting an older child to supervise the younger victims.

78. Concerning child sex tourism, the Government of France is taking measures to combat these offences being committed abroad by French citizens. The Government has adopted extraterritorial legislation to increase the chances of their being arrested and brought to trial, and all government representatives abroad have been instructed to collaborate with local police on these cases. There were no reports of sex tourism within France.

79. Concerning international adoption, approximately 3,000 children are adopted into France every year. The procedure regulating adoptions into France has become stricter in accordance with France's obligations under The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, and France does not appear to be affected by the phenomenon of sale of children into France through adoption. Since his visit, the Special Rapporteur has been advised of a situation in which two children were reportedly adopted from the Central African Republic by French parents, who later came to believe that the children in fact had parents and a home in their country of origin and could possibly be victims of sale for the purposes of adoption. At the time of writing of this report, the Special Rapporteur was seeking further details about this case.

80. The Government of France responded to the preliminary note of the Special Rapporteur in a letter of 4 April 2003, welcoming his positive assessment of the actions of the French authorities in several areas relating to the mission and providing some additional information and clarifications. Concerning prostitution, the Government stated that "in the absence of figures and statistics, we find it difficult to assert that 'prostitution is reportedly growing rapidly', or that 'many foreign children are involved in prostitution'". These assertions had been made to the Special Rapporteur by both government and non-governmental figures during his visit, and particularly by the police, but he agrees that it is important that studies be carried out which could provide detailed comparative figures and statistics, in order for the authorities properly to assess the extent of the problem and continue to develop adequate responses and policies to address it.

#### Concerning child pornography and child sexual abuse

81. In his preliminary note, the Special Rapporteur noted that he did not consider that child sexual abuse was any more prevalent in France than in other European countries. However, the connection of child sexual abuse with the use of children in the production of pornography is particularly complex and is typified by many accusations that false

allegations are being made by those involved. The Special Rapporteur feels that many individuals in a position of responsibility for the protection of children's rights, particularly within the judiciary, are still largely in denial about the existence and extent of this phenomenon, unable to accept that many of the allegations of sexual abuse may be true and accusing those making the allegations of having a political agenda. On the other hand, some of the mothers, NGOs and others involved are very quick to attribute the failure of certain elements of the judiciary to help them to the involvement of those elements in paedophile networks themselves. The level of mistrust and suspicion on both sides is currently such that, although the Special Rapporteur did detect a genuine willingness in the part of some individuals to address these concerns for the sake of the children, serious progress is unlikely to be achieved unless the Government, the judiciary, NGOs and victims can begin to work together.

82. In this respect, the Special Rapporteur welcomes information from the Minister for the Family that a project is under way to establish an office for abused children (*Observatoire national de l'enfance maltraitée*) during 2003, which would formalize a national network of assistance for children with police, doctors and other professionals working together in a coordinated way.

83. The Special Rapporteur thanks the Government of France for the detailed information concerning judicial procedures and the training which judges and lawyers have in order to work with children, and would encourage that this training be made available to all judges and lawyers, including those who have been practising for many years. In this respect, adequate resources must be allocated to the judiciary for child rights training.

84. Where criminal proceedings are being taken against alleged abusers, civil rulings to determine custody arrangements or visitation rights are not supposed to be made until all criminal proceedings have been exhausted. The Government advised the Special Rapporteur that when acts of sexual abuse or pornography are denounced by a relative during a civil procedure, the judges seized of the civil and the criminal procedure start working very closely together. However, the Special Rapporteur had been advised that this was not happening in practice, resulting in the situation whereby a child is forced to spend time, often unsupervised, with a person under criminal investigation for abusing him or her.

85. In principle, a child who asks to be heard by a judge can currently only be denied by a specially reasoned decision, but in practice it is reported that most judges are not willing to hear children. The Special Rapporteur recommends that it should be obligatory for the judge to hear a child if the child so wishes. In this regard, the Special Rapporteur should recall that article 12 of the Convention on the Rights of the Child states that the child who is capable of forming his or her own views has the right to express them, and that the child shall "in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child". The Special Rapporteur understands the importance of avoiding a situation in which a child is forced to repeat allegations several times, however, it is more important that the child be taken seriously and believed when he or she does speak of abuse.

86. The Special Rapporteur recommends that in legal proceedings where allegations of sexual abuse against children are made, the “precautionary principle” should prevail, i.e. the onus should be placed on proving that the child is not at risk of abuse. Visitation rights of the alleged abuser should be exercised under supervision until the veracity of the allegations has been substantiated, and where a child has expressed a clearly stated desire, in the presence of competent and trained child rights professionals, that he or she does not wish to spend time with the alleged abuser, the child’s wishes should be respected.

87. Full and impartial investigations must be carried out against the alleged perpetrators, particularly where the doctors’ medical reports, psychologists’ reports and reports of social workers substantiate the allegations of sexual abuse.

88. The Government of France should officially transmit the “Zandvoort” CD-ROM to INTERPOL in order that it may examine it and confirm the age of the photos contained on it.

89. The Special Rapporteur would reiterate his recommendation that an independent body should carry out an urgent investigation into the situation of the failure of justice for child victims of sexual abuse and for those trying to protect them. The Government’s response indicated that the French National Human Rights Commission is not empowered to conduct investigations, but may conduct studies or give its opinion. The response stated that the Commission had launched a debate in line with the Special Rapporteur’s recommendations. The Special Rapporteur welcomes this development and considers that it is vital that such delicate and sensitive concerns be discussed openly in such a forum.

90. The Special Rapporteur hopes to have contributed to the necessary public discussion of these important concerns and invites the Government of France and members of civil society to continue to provide him with information about relevant developments in this respect.

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