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**"ALLIANCE AGAINST TRAFFICKING IN PERSONS"
Human Trafficking for Labor Exploitation/Forced and Bonded Labor
Prosecution of Offenders, Justice for Victims
Vienna, Hofburg, Neuer Saal
16 - 17 November 2006**

**Investigation, Prosecution and Access to Justice:
National Experiences in the OSCE Region**

Please find attached the statement by Ms. Florence Gouache, Prosecutor, Department of Social Economic and Financial Affairs, France.

STATEMENT BY MS. GOUACHE

Article 4 of the European Convention on Human Rights prohibits slavery and forced labour, stating that: 1. No one shall be held in slavery or servitude; 2. No one shall be required to perform forced or compulsory labour.

In this way, it would seem that the convention establishes a kind of scale in the various situations, drawing a distinction between slavery, servitude, forced labour and compulsory labour.

In the same way, in the ruling handed down in the case of *Siliadin versus France* of 26 July 2005, the Court introduced qualifications into these situations. It ruled that the appellant had not been held in a state of slavery but in a state of servitude. The Court specified that slavery was to be understood as the deprivation of free will and as the exercise of a right of property over a person, reducing that person to the status of an object, while servitude was to be understood as an obligation to lend one's services under duress and should be "linked with the notion of slavery". Given this approach, how then is one to define forced labour? Taking the discussion a step further in terms of the protection of human rights, what is the definition of compulsory labour?

In Recommendation 1523, in 2001, the Parliamentary Assembly of the Council of Europe expressed regret that "no member State expressly recognizes domestic slavery in its penal code".

However, how should the various countries expressly incorporate the notions of slavery, servitude, forced labour or compulsory labour into the text of their penal laws and translate these subtleties in their legislation when the definitions lack clarity and a distinction needs to be made between various degrees of gravity in the related behaviour?

If we mix and criminalize all these situations under the same label of forced labour, there is a risk that we will create in France misunderstandings in the eyes of the jurors of the court of assizes when dealing with criminal cases and that we will bring about less graduated and ultimately less effective protection in the various cases to be prosecuted. It is for this reason that France has to date not directly incorporated this notion into its legislation.

It would seem important today to specify what the different countries involved in combating forced labour actually include in this notion so as to define the outlines of the kind of protection to be offered.

Judicial predictability, as an element of judicial security (European Court of Human Rights, *Maersk* 1974, and the Court of Justice of the European Communities, *Commission C/Ireland* 1987) ensuring liberty and security, as guaranteed in article 5 of the European Convention on Human Rights, requires that a common definition of forced labour be laid down. This is the essential condition if punishment is to become certain and if the jurisprudence of partner countries is to be able to provide fully effective protection.

In countries with written law, penal law is strictly interpreted. Case law too can bring legal texts to life, but the texts themselves must exist.

To this day, France has not enacted any penal provisions explicitly outlawing slavery. However, the absence of a specific definition does not mean that more varied and recent situations than those provided for under the classic definition of slavery cannot be dealt with.

In this way, French law allows for a broad interpretation of forced labour, dealing with it under numerous offences for which the punishments provided for would appear to be sufficiently severe to afford protection. In addition, the investigative powers are sufficient for dealing with this phenomenon.

On the other hand, although the arsenal of laws available is sufficient, where there is a lack is in the understanding of situations involving forced labour and in the way new phenomena are being dealt with.

I. Indirect but sufficient punishment of forced labour in France

1. Offences to which reference may be made in dealing with situations that may be defined as forced labour

The classic definition of slavery in France, which speaks of the reduction of a person to the status of a thing and the negation of his or her personality, can be understood in terms of criminal offences as follows:

- Unlawful detention, which carries punishments of up to life imprisonment if the offence was committed against minors, against more than one person or by an organized gang;
- Abduction accompanied by failure to provide care or by acts of torture resulting in mutilation, disability or even death, which is punishable here too, according to the specific charges, with up to life imprisonment, which as in the previous case may be imposed if the offences were committed by an organized gang;
- Rape, possibly aggravated by acts of torture, by the age of the victim, by a state of particular vulnerability or by abuse of a position of authority over the victim, punishable by a sentence of life imprisonment;
- Trafficking in human beings, defined as the fact, in exchange for a promise or for remuneration or for any other advantage, of recruiting a person, transferring and housing that person with a view to making him or her available to a third party in order to make possible the commission against that person of the offences of procurement, sexual assault or forced begging, or the submission of that person to working or living conditions incompatible with human dignity, possibly committed by an organized gang or aggravated by acts of barbarity, also punishable by life imprisonment.

The new definition of servitude and forced labour, between which, in my opinion, no distinction can be made, must henceforth be taken to mean the idea of subjugation,

understood as being so flexible as to permit resistance, and involving working conditions. Punishment is thus permitted under French law under the provisions for:

- Submission of a vulnerable or dependent person to working conditions incompatible with human dignity, punishable by five years' imprisonment, a fine of 150,000 euros and attendance at a citizenship training course, which may be increased to seven years' imprisonment and a fine of 200,000 euros if the offences were committed against more than one person or against a minor, and to ten years' imprisonment and a fine of 300,000 euros if the offence involved both these circumstances;
- Assistance in obtaining unauthorized residence, aggravated either by the fact of it being provided by an organized gang or by the fact that the foreigners in question have been subjected to living, transport, working or housing conditions that are incompatible with human dignity, or by the fact that foreign minors have been removed from their traditional or family environment, punishable by ten years' imprisonment and a fine of 750,000 euros;
- Employment of foreigners without proper papers, punishable by three years' imprisonment and a fine of 4,500 euros, multiplied by the number of persons employed.

France can even claim to be taking steps against abuse of this kind extending as far as compulsory labour understood as necessary and underpaid work, specifically under the terms of the offence of:

- Remuneration below the legal minimum, punishable by a fine of 1,500 euros.

2. The investigative powers for combating forced labour

France, as a sign that it wants to do more than merely act against situations involving domestic slavery, has set up a number of central interministerial offices for the purpose of combating criminal networks.

The OCLTI (Central Office for Combating Illegal Labour, since May 2005), the OCRIEST (Central Office for the Prevention of Illegal Migration and the Employment of Undocumented Foreigners, D06/08/1996) and the OCRTEH (Central Office for the Prevention of Trafficking in Human Beings) are entrusted with the task of investigating networks involved in exploiting paid workers and bringing them into French territory.

In addition, cases of domestic slavery are the responsibility of the Gendarmerie and local police stations, of whom it is fair to say that their lack of sensitivity in such situations may result in longer inquiries than necessary and require follow-up by the judge.

In most cases, the French justice system has to deal with complaints brought to the attention of the police by the victims, often with the help of the Committee against Modern Slavery. Very often, the victims seek the assistance of the police after having disclosed their predicament to persons in their own circle (neighbours or, in particular, people they know at work). More and more often, the French justice system deals with these cases in the form of

an inquiry into an obvious offence or in the form of a preliminary inquiry, all the more so since it is now possible to conduct searches of the homes of those suspected without their consent but upon authorization by the judge who is to rule whether they are to remain free or be taken into custody (article 76 of the Code of Criminal Procedure). This form of inquiry is reserved to an examining judge in non-criminal cases in order to speed up the inquiry and to prevent the victim from disappearing during the proceedings. Moreover, these proceedings may be pursued very expeditiously, in particular by having the defendant appear before the court without delay so as to make possible a ruling following police detention in cases that might result in sentences of less than ten years.

In criminal cases, the disclosure of information continues to be the normal practice. Persons under investigation can be taken into temporary custody, primarily to prevent any pressure from being brought to bear on the victim and because of the seriousness of the breach of public order involved.

In view of the above, even now French legislation provides adequate means for effectively dealing with situations involving forced labour, the challenge from now on being how best to uncover cases involving forced workers.

II. The role of investigation in uncovering instances of forced labour

The difficulty of uncovering cases involving forced labour leads us to take a more balanced view of the effectiveness of efforts in this regard, all the more so since new practices are constantly appearing.

1. Reporting instances of forced labour

It remains difficult to get the victims themselves to file a complaint. Of the 307 cases brought to the attention of the Committee against Modern Slavery in 2005, 146 victims failed to provide any follow-up after having been contacted by the Committee and after their case had been deemed relevant to the investigation of instances of modern slavery. However, France does allow complaints to be lodged anonymously at the start of an inquiry.

Follow-up in respect of victims is also problematic in many cases, with the victims failing to respond to a summons to appear before the court, either because their isolation leads them to return to a status of servitude or because they fail to appear owing to their irregular situation and their fear of being deported. There has been hardly any improvement in this regard despite the fact that it is possible in France to file an action as party to a case and, in this way, to obtain the services of an appointed lawyer from the outset of the inquiry.

It is therefore essential that the rights to be accorded to the victims of forced labour be examined if these proceedings are to lead anywhere. In France, an organization for victims of forced labour has been set up within the Ministry of Internal Affairs to increase the attention being paid to them and to encourage police officials to show leniency towards them (as called for in the circular of 31 October 2005 regarding “victims of trafficking in human beings”, which makes the point that the victims’ predicament should be examined with “compassion and kindness”). Unfortunately, it will take a certain amount of time to put these practices into

wide use, nor can the circulars be cited before an administrative tribunal. In practice, however, France is making progress. In my department, for example, we are distributing information leaflets in the victims' languages about their rights, especially their rights before the courts.

2. The definition of forced labour: the challenge of emerging practices

Some situations that have come to light in connection with large-scale monitoring have led to questions regarding new forms of forced labour. For example, in my area of responsibility, a discovery was made on 29 September 2006 of a warehouse that had been converted into housing, in defiance of all the rules of town planning, and contained 23 flats. They were all occupied by Chinese families, the majority of whom did not have proper papers and who explained that despite paying rent (the landlord received around 10,000 euros per month) they had been given a sewing machine and told to work from home. The Chinese nationals were working around 12 hours per day for a monthly wage of 400 to 1,000 euros. They said that they had no information as to who was behind the work. To this day, the people in charge have still not been identified, but the whole arrangement raises many problems. The fact that these workers work "at home" and in small production units makes internal-company controls useless. Who is putting pressure on them to work and how are they doing it? Asian debt systems are complex and moral pressure is often enough. Can it be that physical coercion or the fear of reprisals by smugglers who have not been paid, including those in the destination country, are behind their silence?

The question of cultural differences is particularly relevant in the case of Chinese immigrants and must be dealt with when one considers that in the district of Seine-Saint-Denis where I work the legally resident Chinese population has doubled in five years (4,856 persons in 2000 and 8,718 in 2005).

The importance of inter-State collaboration in rethinking the definition of forced labour and providing the best possible protection for the individual is essential if we are to deal with these networks and with the illusion of voluntary labour and the silence of their victims for which they are responsible.