



## **GRETA**

Group of Experts on Action  
against Trafficking in Human Beings

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# **Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the France**

First evaluation round

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on Action against Trafficking in Human Beings  
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## Preamble

As the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) and the monitoring mechanism to evaluate its implementation are relatively new, it is appropriate to set out their salient features at the beginning of the first report to each Party to the Convention.

The Convention was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008. It is a legally binding instrument which builds on already existing international instruments. At the same time, the Convention goes beyond the minimum standards agreed upon in other international instruments and aims at strengthening the protection afforded by them.

The main added value of the Convention is its human rights perspective and focus on victim protection. The Convention clearly defines trafficking as being first and foremost a violation of human rights and an offence to the dignity and integrity of the human being; greater protection is therefore needed for all of its victims. The Convention also has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

As trafficking in human beings is a world-wide phenomenon, one of the express purposes of the Convention is to promote international co-operation in the efforts to combat trafficking. In this context, it is noteworthy that the Convention is not restricted to Council of Europe member states; non-member states and the European Union also have the possibility of becoming Parties.

To be effective, and given the nature of the phenomenon, a strategy for combating trafficking in human beings must adopt a co-ordinated and multidisciplinary approach, incorporating prevention, protection of victims’ rights and prosecution of traffickers. The Convention contains various provisions in each of these three areas, placing obligations on States to take appropriate measures, in partnership with civil society and in co-operation with other States.

The measures provided for by the Convention in the area of prevention include awareness-raising for persons vulnerable to trafficking; economic and social initiatives to tackle the underlying causes of trafficking; actions aimed at discouraging demand; and putting in place border control measures to prevent and detect trafficking in human beings.

The Convention also provides for a series of measures to protect and promote the rights of victims. Victims of trafficking must be identified and recognised as such in order to avoid police and public authorities treating them as “irregular migrants” or criminals. Victims should be granted physical and psychological assistance and support for their reintegration into society. Further, by virtue of the Convention, victims are entitled to a minimum of 30 days to recover and escape from the influence of the traffickers and to take a decision about their possible co-operation with the authorities. A renewable residence permit should be granted if their personal situation so requires and/or if their continued presence is needed in order to co-operate in a criminal investigation. In addition, the Convention establishes the right of victims to receive compensation and provides for measures for their repatriation and return with due regard to the rights, safety and dignity of the victims.

In the area of substantive and procedural criminal law, the Convention places on Parties a series of obligations aimed at enabling the effective prosecution of traffickers and ensuring that they are punished in a proportionate and dissuasive manner. Particular attention is paid to the issue of victim and witness protection during investigation and court proceedings. Parties should also provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities.

Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.

GRETA is composed of fifteen independent and impartial experts chosen for their recognised competence in the fields of human rights, assistance and protection of victims, and action against trafficking in human beings, or because of their professional experience in the areas covered by the Convention. The task of GRETA is to evaluate the implementation of the Convention by the Parties, following a procedure divided into rounds. At the beginning of each round, GRETA defines autonomously the provisions to be monitored and determines the most appropriate means to carry out the evaluation, being guided by the Rules of procedure for evaluating implementation of the Convention adopted at GRETA's 2nd meeting (16-19 June 2009). GRETA has decided that the duration of the first evaluation round shall be four years starting at the beginning of 2010 and finishing at the end of 2013.

In carrying out its monitoring work, GRETA has the right to avail itself of a variety of means for collecting information. As a first step, GRETA sends a detailed questionnaire to the authorities of the Party undergoing evaluation. It may also make additional requests for information. By virtue of the Convention, Parties are obliged to co-operate with GRETA in providing the requested information. Another important source of information is civil society and, indeed, GRETA maintains contacts with non-governmental organisations which can provide relevant information. In addition, GRETA may decide to carry out a visit to the country concerned in order to collect additional information or to evaluate the practical implementation of the adopted measures. This visit allows for direct meetings with the relevant bodies (governmental and non-governmental) and is also an occasion for GRETA to visit facilities where protection and assistance are provided to victims of trafficking and other related structures. Furthermore, GRETA may decide to organise hearings with various actors in the field of action against trafficking in human beings.

GRETA's evaluation reports are thus the result of information gathered from a variety of sources. They contain an analysis of the situation in each Party regarding action taken to combat trafficking in human beings and suggestions concerning the way in which the country may strengthen the implementation of the Convention and deal with any problems identified. In its assessment, GRETA is not bound by the case-law of judicial and quasi-judicial bodies acting in the same field, but may use them as a point of departure or reference. The reports are drawn up in a co-operative spirit and are intended to assist States in their efforts; they can offer support for the changes on which the national authorities have already embarked, and lend legitimacy to the direction of national policies. Because of its multidisciplinary and multinational composition, and as a consequence of its independent approach, GRETA provides a professional and impartial international voice in this process.

As regards the procedure for the preparation of reports, GRETA examines a draft report on each Party in plenary session. The report is sent to the relevant government for comments, which are taken into account by GRETA when establishing its final report. This final report is adopted by GRETA in a plenary session and transmitted to the Party concerned, which is invited to submit any final comments. At the expiry of the time-limit of one month for the Party to make comments, the report and conclusions by GRETA, together with eventual comments made by the national authorities, are made public and sent to the Committee of the Parties. In the context of the first evaluation round, this completes GRETA's task in respect of the Party concerned, but it is only the first stage in an on-going dialogue between GRETA and the authorities.

The second pillar of the monitoring mechanism, the Committee of the Parties, is composed of the representatives in the Committee of Ministers of the Parties to the Convention and of representatives of Parties non-members of the Council of Europe. On the basis of GRETA's reports, the Committee of the Parties may adopt recommendations addressed to a Party concerning the measures to be taken to implement GRETA's conclusions.

## Executive Summary

The French authorities have taken a number of measures to combat trafficking in human beings. The national legal framework in the field of action against human trafficking has evolved in the light of the country's international commitments, and an offence of trafficking in human beings has been introduced into the criminal code in 2003, together with adequate sanctions. That said, GRETA considers that this offence should also include expressly forced labour or services, slavery or similar practices, servitude, as well as organ removal.

An inter-ministerial structure was recently set up with a view to co-ordinating anti-trafficking action among the different competent ministries. GRETA underlines however the importance for this structure to have the necessary authority and resources to carry out its tasks. GRETA considers that the action plan against human trafficking should be launched as a matter of priority in order to strengthen the coherence of the authorities' action, including at local level, and their co-operation with civil society. Alongside action against human trafficking for the purposes of sexual exploitation, further efforts need to be made to combat human trafficking for the purposes of labour exploitation.

GRETA notes that without a statistical system collecting data on victims of human trafficking, it is difficult to have a reliable picture of the national situation and identify trends, in particular between types of exploitation (sexual exploitation, labour exploitation, etc.), and therefore to take the most effective measures against human trafficking.

France being primarily a country of destination, the authorities have led a number of projects in countries of origin for the prevention of human trafficking and have developed good levels of international co-operation. However, GRETA considers that further efforts should be made for those belonging to vulnerable groups (for instance, unaccompanied foreign children - particularly of Roma origin -, irregular migrants, domestic employees, etc.) who are already in France. The authorities should raise awareness among the public at large and take steps to discourage demand of services provided by persons who have been trafficked.

GRETA considers it crucial to clarify the process of detection and identification of victims through a national referral framework which specifies the role of different actors involved, provides common tools for identification (guidance, indicators, etc.), co-ordinates the action of all actors and promotes a multidisciplinary approach which fully involves civil society. In order to follow an approach which focuses on victims and their human rights, identification as well as assistance should not be conditioned by the victims' co-operation with the authorities and the fact they are offenders or irregular migrants should not prevent their identification as THB victims. Training on THB and on identification of victims needs to be stepped up for all public stakeholders (law enforcement officials, border guards, labour inspectors, staff of centres for irregular migrants, shelter staff, etc.).

As regards assistance of victims, while there is a system whereby victims, who agree to it, are accommodated far from their place of exploitation in shelters run by THB-trained staff, many victims are accommodated in non-specialised shelters. A number of assistance measures exist (health coverage, temporary allowance, access to the labour market, etc.), but steps are needed for their effective implementation for all victims, irrespective of their nationality. Victim support lies essentially with NGOs funded by the authorities, it is thus essential to maintain a high level of co-operation and funding in this area.

Child victims are taken care of within the general child protection framework and difficulties arise in terms of both accommodation capacity and assistance, particularly in areas dealing with an influx of unaccompanied children. GRETA notes the initiatives which have recently been taken by the authorities but considers that child victims' assistance must be strengthened.

The 30-day reflexion period for THB victims appears to focus on their decision to co-operate with the authorities, without taking into account their need to recover. Moreover, it is insufficiently known by the authorities as well as victims and as result underused. GRETA considers that the authorities must ensure that all *préfectures* apply in a consistent and systematic manner conditions for victims to benefit not only of the reflection period but also of residence permits, including when it comes to working authorisations. As to repatriation of victims, GRETA considers that the French authorities must fully take into account the specificity of the situation of victims of human trafficking, in particular children, when evaluating risks of revictimisation in the country of return. If THB victims can also obtain compensation outside criminal proceedings, through Commissions for the compensation of victims of criminal offences, this avenue is not sufficiently known to victims and those who assist them.

GRETA observes that some degree confusion remains between the offence of human trafficking and those of exploitation, which is not without having adverse effects on the rights of THB victims, the severity of punishment of traffickers, and the number of sentences. Further, more needs to be done in order to avoid that victims of human trafficking, including children, are punished as offenders as a result of crimes committed under coercion from traffickers.

GRETA welcomes the existence of a system of seizure and confiscation in the framework of criminal law, and considers it important to make full use of it in human trafficking cases. GRETA also welcomes the existence of a coherent set of special investigation techniques which can be used in THB cases. Finally, GRETA considers it indispensable that criminal procedure be strengthened to avoid that victims and witnesses face intimidation or retaliation during investigations and trials, and for this purpose GRETA considers that an effectual, coherent and comprehensive protection framework should be put into place to ensure that the law enforcement authorities can protect them effectively.



## I. Introduction

1. France deposited the instrument of ratification of the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) on 9 January 2008 and the Convention entered into force in respect of France on 1 May 2008.

2. As established in Article 36(1) of the Convention, the Group of Experts on Action against Trafficking in Human Beings (“GRETA”) monitors the implementation of the Convention by the Parties. GRETA does so in conformity with the procedure laid down in Article 38 of the Convention and the Rules on the evaluation procedure of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the parties. For the first evaluation round, GRETA drew up a monitoring timetable according to which the Parties to the Convention were divided into groups, France being in the second group of 10 Parties.

3. In accordance with Article 38 of the Convention, GRETA proceeded with the examination of the measures taken by France to implement the provisions set out in the Convention. The “Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the parties – first evaluation round” was sent to France in February 2011. France submitted its reply on 29 August 2011.

4. In preparation of the present report, GRETA used the reply to the questionnaire by France, other information collected by GRETA and information received from civil society. A country visit to France took place from 26 to 30 March 2012. It was carried out by a delegation composed of:

- Ms Leonor Rodrigues, member of GRETA
- Mr Robert Stratoberdha, member of GRETA
- Mr Gerald Dunn, Administrator at the Secretariat of the Council of Europe Convention on Action against Trafficking in Human Beings
- Ms Clémence Bouquemont, Administrator at the Secretariat of the Council of Europe Convention on Action against Trafficking in Human Beings.

5. During the country visit, the GRETA delegation held meetings with representatives of the French authorities (see Appendix II). Meetings were also held with the Children’s Commissioner, members of the National Consultative Commission on Human Rights (CNCDH) and a member of the National Assembly, who was the rapporteur of a parliamentary report on prostitution in France. These meetings took place in a spirit of close co-operation.

6. The GRETA delegation held separate meetings with representatives of non-governmental organisations (NGOs), researchers and lawyers, as well as the International Organization for Migration (IOM). GRETA is grateful for the information provided.

7. Furthermore, during the French visit the GRETA delegation visited shelters accommodating victims of trafficking in human beings in Lyon and Grenoble.

8. GRETA is grateful for the assistance provided to its delegation by the contact person appointed by the French authorities Ms Élisabeth Moiron-Braud, Head of the Office for victims assistance and associations policy of the Ministry of Justice, and by Mr Arafat Ben Boubaker, officer in the same department. GRETA also extends thanks to Mr Patrick Hefner, Head of the Delegation for victims of the Ministry of the Interior, for his assistance during the visit.

9. The present draft report was adopted by GRETA at its 14th meeting (25-29 June 2012) and was submitted to the French authorities on 17 July 2012 for comments. The comments were received on 1 October 2012 and were taken into account by GRETA when establishing its final report, which was adopted at GRETA’s 15th meeting (26-30 November 2012).

## **II. National framework in the field of action against trafficking in human beings in France**

### **1. Overview of the current situation in the area of trafficking in human beings in France**

10. France is primarily a destination country for victims of trafficking in human beings but, according to the French authorities, it has also become a major transit country owing to its geographical location. It is believed that there could be several thousands of trafficking victims each year in France.<sup>1</sup>

11. The only official statistics supplied by the French authorities in their reply to the GRETA questionnaire regarding the number of victims of THB relate only to victims of trafficking for the purpose of sexual exploitation but also include victims of pimping. The reply indicates 822 victims in 2008 (788 women, 11 men and 23 children), 799 in 2009 (723 women, 56 men and 20 children), 726 in 2010 (672 women, 14 men and 40 children) and 654 in 2011. A figure of 189 French victims is given for 2010 and 149 for 2011, who, according to the French authorities, are primarily victims of pimping.

12. The absence of precise statistics dealing specifically with victims of trafficking makes it difficult to identify trends and assess the current situation of victims, in particular those of THB for the purposes of forced labour, slavery and servitude within the meaning of international law as these forms of exploitation are not explicitly covered by French criminal law (see paragraphs 48). The authorities provided statistics for victims subjected to working conditions contrary to human dignity (inadequate reward or payment, inhumane accommodation conditions), but it was not possible to determine whether that exploitation was connected to trafficking in human beings; 84 victims were reported for 2008, 98 for 2009, 55 for 2010 and 138 for 2011.

13. It may be assumed from the information supplied by the authorities and NGOs that the majority of victims of trafficking in France fall into the framework of prostitution networks, essentially originating from eastern Europe, sub-Saharan Africa (particularly from Nigeria), Brazil, North Africa and China. Where the other types of trafficking are concerned, notably servitude and forced labour, it would appear from the information supplied by specialised NGOs that the victims trafficked for the purpose of domestic work originate chiefly from sub-Saharan Africa and the Philippines. It would appear that seasonal workers, mostly men, constitute a group at risk of forced labour, without it being possible to say to what extent in the absence of statistics or studies. Construction and catering were also mentioned as risk sectors, particularly in the Paris region, as was domestic work in diplomats' households.

14. Furthermore, the French authorities and specialised NGOs report a resurgence of child victims, mainly from South-East Europe and often of Roma origin, trafficked for the purposes of forced begging and theft. One illustration was the dismantling in 2010 of a vast network of trafficking in Roma children from Bosnia and Herzegovina who were exploited for pickpocketing in the Paris region (see paragraph 93).

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<sup>1</sup>

Draft National action plan to combat trafficking in human beings 2011-2013, July 2010.

## 2. Overview of the legal and policy framework in the field of action against trafficking in human beings

### a. Legal framework

15. At international level, in addition to the Council of Europe Convention on action against trafficking in human beings, France ratified the United Nations Convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others in 1960, the United Nations Convention against transnational organised crime in 2003, the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime ("Palermo Protocol") in 2004. France has also ratified the United Nations Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, as well as the United Nations Convention on the Elimination of all Forms of Discrimination against Women and its Optional Protocol. In addition, France is Party to the International Labour Organization (ILO) Conventions on Forced Labour (Nos. 29 and 105) and on the Worst Forms of Child Labour (No. 182). France is also Party to the Convention on Mutual Assistance in Criminal Matters between Member States of the European Union. Finally, France has acceded to several other Council of Europe conventions in the criminal law field which are relevant to action against trafficking.<sup>2</sup>

16. France is furthermore bound by the new Directive 2011/36/EU of the European Parliament and of the Council of the European Union (the Council) of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, replacing Council Framework Decision 2002/629/JHA on combating trafficking in human beings, whose transposition is now in preparation. France is also bound by Directive 2004/80/EC relating to compensation to crime victims, Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, and Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings.

17. Where internal legislation is concerned, Act No. 2003-239 of 18 March 2003 on interior security introduced a specific offence of trafficking in human beings into the Criminal Code in Articles 225-4-1 and following (see paragraphs 46 and following). Trafficking for the purpose of removal of organs is not covered by Article 225-4-1, but Articles 511-2 and following establish, in general terms, the act of selling or facilitating the sale of an organ removed from a living person outside the existing legal framework as an offence (see paragraph 50).

18. Furthermore, the Criminal Code contains other offences for which charges are often brought in connection with THB cases and which relate to various types of exploitation and existed prior to the introduction of the specific offence of trafficking:

- pimping, provided for in Articles 225-5 and following of the Criminal Code;
- the use of minors for prostitution, provided for in Articles 225-7-1 and following of the Criminal Code;
- non-existent or inadequate remuneration and subjecting individuals to conditions of work and accommodation contrary to human dignity, provided for in Articles 225-13, 225-14 and following of the Criminal Code;
- helping an individual to stay in the country illegally "with the result that foreigners are subjected to conditions of living, transport, work or accommodation that are incompatible with human dignity", punishable under Article L622-5-3 of the Code governing the entry and stay of foreigners and right of asylum (CESEDA).

<sup>2</sup> In particular: the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, the Convention on mutual assistance in criminal matters and its additional protocols, the European Convention on extradition, the Convention on the transfer of sentenced persons and its additional protocol, the European Convention on the compensation of victims of violent crimes and the Council of Europe Convention on cybercrime.

19. The system for protecting victims of trafficking is laid down in a number of provisions of the Criminal Code, the Code of Criminal Procedure<sup>3</sup>, the CESEDA<sup>4</sup> and the Code governing social welfare and families<sup>5</sup>. The CESEDA also provides for a reflection period of 30 days for trafficking victims who could potentially cooperate with the judicial authorities (see paragraphs 156 and following), and the possibility of them being allowed to stay, together with social assistance measures.<sup>6</sup> In 2009, a circular from the Minister in charge of immigration on the conditions for allowing foreigners having been victims of THB or pimping to stay on French territory was sent to *préfets* as well as the Director General of National Police and Director General of National Gendarmerie.<sup>7</sup>

20. Where trafficking victims under 18 years of age of foreign origin are involved, it is for the police or gendarmerie services to notify the public prosecutor so that the latter may decide on appropriate protection measures, in accordance with Article R316-10 of the CESEDA.

#### b. National Action Plan

21. France has not yet set up a national action plan to combat trafficking in human beings. However, a draft action plan was drawn up between December 2008 and July 2010 by a working group on the protection and care of victims of trafficking in human beings, established on the joint initiative of the Minister of the Interior and the Minister of Justice. The group brought together representatives of the ministries concerned (justice, interior, foreign affairs, immigration, labour and social affairs), representatives of civil society and also a representative of the International Organisation for Migration (IOM).

22. The draft action plan, originally intended to cover the period 2011-2013, was configured around seven priorities (co-ordination of efforts to combat trafficking in human beings; prevention of the offence of trafficking in human beings; identification of victims, protection of victims; criminal sanctions against perpetrators, international co-operation; monitoring and evaluation of actions carried out). However, no further action has been taken on the draft since then. It should now be revised by the inter-ministerial co-ordination unit for action against trafficking in human beings set up in March 2012 (see paragraphs 62 and 63).

### 3. Overview of the institutional framework for action against trafficking in human beings

#### a. Inter-ministerial co-ordination network

23. An inter-ministerial network for action against trafficking in human beings was set up following an inter-ministerial meeting organised by the Prime Minister's Office on 1 March 2012. It takes the form of a network of "focal points" or contact persons for trafficking, appointed within each ministry concerned (justice, interior, foreign affairs, social affairs, labour and national education). The running of this network has been entrusted to the then Ministry of the Interior, Overseas, Local and regional authorities and Immigration - renamed Ministry of the Interior in June 2012 - following the inter-ministerial meeting organised by the Prime Minister's Office: two people have been appointed within the Ministry to carry out this task (a police superintendent and a police commander). The co-ordination network's first action was intended to re-launch and revise the aforementioned draft action plan and to set up a comprehensive anti-trafficking strategy.

<sup>3</sup> Declaration of domicile at the address of the police station or gendarmerie brigade; hearing under anonymity; techniques disguising the witness' voice; court hearings of witnesses and plaintiffs by video-link, etc.

<sup>4</sup> Confidential transmission of information to victims; police protection for trafficking victims throughout criminal proceedings where there is a risk; changed place of residence for trafficking victims.

<sup>5</sup> Places reserved in accommodation and social reintegration centres to receive trafficking victims in safe conditions.

<sup>6</sup> CESEDA, Articles L316-1 and R316-1 to R316-9.

<sup>7</sup> Circular No. IMIM0900054C of 5 February 2009.

b. Ministry of the Interior

24. Within the framework of the Ministry of the Interior, public security and criminal investigations are within the remit of the national police and the national gendarmerie<sup>8</sup>, under the supervision of public prosecutors. Traditionally, on the ground, the national police is tasked with security in urban districts whereas the national gendarmerie handles security in urban fringe and rural districts. The Ministry's specialised central services for criminal investigations, answerable to either the Directorate General of National Police (Central Criminal Investigation Directorate or Central Directorate of Border Police) or the Directorate General of National Gendarmerie (Criminal Investigation Sub-directorate), include members of the police and gendarmerie, and in some cases other officials (see paragraph 27).

25. The Delegation for Victims (DAV), which is composed of members of the police and gendarmerie, has the role of promoting greater consideration of victims, including THB victims, in the different ministry departments. The DAV is also the main interlocutor for associations of victims within the ministry. It ran the proceedings of the working group on the draft action plan (see paragraphs 21 and 22) alongside the Office for Victims Assistance and Associations Policy of the Ministry of Justice (see paragraphs 31 and 32).

26. The Family Immigration Office is tasked with establishing the conditions of stay for trafficking victims once identified by the criminal investigation services and monitoring the statistics for the issuing of residence permits to victims, except for the issue of certificates covering the reflection period. It intervenes in the event of an appeal to a higher authority following a refusal by a *préfet* to issue a residence permit, but above all as a means of assistance for *préfectures* and sometimes at the request of NGOs.

27. The Ministry of the Interior also has five specialised central offices for criminal investigations which may be required to take action in THB cases depending on the type of exploitation planned by the traffickers. The role of these central offices is chiefly to co-ordinate investigation work throughout the territory in their respective fields of competence. This co-ordination operates partly through joint referrals involving the competent police or gendarmerie authorities. The central offices are also frequently called upon to co-operate beyond the country's borders with foreign investigation services. They hold a joint meeting on a yearly basis for the purposes of coordination. The central offices are as follows:

- Central Office for the Suppression of Trafficking in Human Beings (OCRTEH): this office, coming under the Central Criminal Investigation Directorate (DCPJ) of the Directorate General of National Police (DGPN), identifies and represses offences of trafficking for purposes of sexual exploitation and pimping. It centralises all intelligence potentially facilitating the identification of trafficking networks for prostitution and co-ordinates all operations aimed at clamping down on such activities throughout the territory;
- Central Office for the Suppression of Irregular Migration and the Employment of Irregular Migrants (OCRIEST): this office, coming under the Central Directorate of Border Police (DCPAF) of the Directorate General of National Police (DGPN), is competent for combating the channels of irregular immigration, structured networks employing foreigners without work and/or residence permits and document forgery networks encouraging irregular immigration and illegal labour. It co-ordinates international efforts in this field and analyses pressure resulting from illegal migration. According to the authorities, it is competent for trafficking matters, in the sense that irregular migrants may be victims of trafficking;

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<sup>8</sup> The national gendarmerie is attached to the Ministry of the Interior since 2009. However, it kept its military status, and as a result its operations concern not only public security and criminal investigations but also military goals (operations outside France and territorial defence).

- Central Office for Combating Illegal Labour (OCLTI): this office, coming under the Criminal Investigation Sub-directorate (SDPJ) of the Directorate General of National Gendarmerie (DGGN), is competent in the field of combating offences relating to illegal labour in all its forms and co-ordinates investigations at national and operational level. It is competent in cases of trafficking for the purpose of labour exploitation;
- Central Office for Combating Itinerant Crime (OCLDI): this office, coming under the Criminal Investigation Sub-directorate (SDPJ) of the Directorate General of National Gendarmerie (DGGN), is competent in the field of combating misdemeanours and crimes committed by organised groups roving around different parts of the territory. Accordingly it is competent for cases of trafficking based on itinerant networks;
- Central Office for Combating Environment- and Public Health-related Offences (OCLAESP): this office, coming under Criminal Investigation Sub-directorate (SDPJ) of the Directorate General of National Gendarmerie (DGGN), is competent in the field of combating environment- and public health-related offences. Trafficking for the purpose of organ removal comes within its remit.

28. In addition, the Operational Co-ordination Unit for Combating the Smuggling and Exploitation of Migrants (UCOLTEM), set up in 2010 and answerable to the Central Directorate of Border Police (DCPAF) of the Directorate General of National Police (DGPN), is tasked with compiling and sharing operational intelligence in the area of action against organised crime encouraging irregular immigration in all its forms (channels, illegal labour, criminal activities and also human exploitation). Furthermore, the Roissy-Charles De Gaulle airport platform has a mobile intervention brigade (BMI) experienced in dealing with irregular migration channels.

29. Moreover, in Paris and in three adjacent *départements* (Hauts-de Seine, Seine-St-Denis, Val-de-Marne) the Police *prefecture* is the body competent for public security and criminal investigations.<sup>9</sup> This body is tasked with combating organised or specialised crime or misdemeanours and implementing and monitoring means of technical and scientific police work and forensic identification, IT tools and operational documentation assisting investigations. It includes specialised brigades, whose tasks include investigating trafficking cases: the Brigade for the Protection of Minors (BPM), the Brigade for the suppression of pimping, the Brigade for the suppression of offences against persons. Moreover, the national gendarmerie has a law enforcement unit operating in Paris (Paris Intelligence Section).

30. Finally, the French Office for Immigration and Integration (OFII) is an operator within the Ministry whose tasks include helping foreigners in France, including those present illegally, to return to the country of origin, where they so wish. The major part of the OFII's work concerning trafficking victims is in this area (see paragraphs 190 and following).

#### c. Ministry of Justice and Specialised Inter-regional Courts

31. Part of the work of the Office for Victims Assistance and Associations Policy focuses on support for victims of offences and, in this connection, it is tasked with devising initiatives for assisting victims, in liaison with the relevant directorates of the Ministry of Justice, and participating in the preparation of draft laws and decrees on victims' rights. In collaboration with the Directorate of Criminal Affairs and Pardons, which is responsible for drawing up draft reforms of legislation and regulations in the field of criminal law and criminal procedure as well as for devising national criminal policies, it prepares general instructions relating to assistance to victims addressed to prosecutors and co-ordinates and assesses their implementation (see paragraph 206).

<sup>9</sup> The police *préfet* running this institution is under the authority of the Minister of the Interior. However, the Paris regional criminal investigation directorate within it comes jointly under the Police *prefecture* and the Central criminal investigation directorate of the Directorate General of National Police.

32. The second aspect of the Office's work is supporting victims associations and associations providing victim support, including through grants paid to NGOs providing support to THB victims. In this context, it is the main interlocutor for victims associations and victim support associations, including those dealing with THB victims. Finally, the Office steered the working group on the THB action plan, together with the Delegation for Victims of the Ministry of the Interior (see paragraphs 21 and 22).

33. The Specialised Inter-regional Courts (JIRS) were set up in 2004. They are competent for cases of organised crime and highly complex financial offences, including cases of trafficking. There are eight such courts – in Paris, Lyon, Marseille, Lille, Rennes, Bordeaux, Nancy and Fort-de-France (Martinique) – bringing together prosecutors and investigating judges with experience in this field.

#### d. Ministry of Foreign Affairs

34. A roving ambassador tasked with action against organised crime became operational on 4 February 2000 and saw his mandate extended to action against THB in 2010. In the latter capacity, his role is to raise awareness of action against trafficking at the international level, represent France in international forums, notably the United Nations, and develop initiatives for the implementation of relevant conventions aimed at prevention.

35. The Democratic Governance Mission, particularly through its Centre for the Rule of Law, Freedoms and Reconstruction, provides support, *inter alia*, to third countries at their request for reinforcing the Rule of law and fundamental freedoms. This covers action against trafficking in human beings through the devising and implementation of projects in the countries concerned, including initiatives aimed at preventing and raising awareness of trafficking. In this context, the Ministry of Foreign Affairs provides financial backing for the United Nations Office on Drugs and Crime (UNODC) and the IOM. Furthermore, one of the tasks of the Sub-directorate for transversal threats is to negotiate internal security agreements with third countries, which are all said to include action against trafficking in human beings.

#### e. Non-governmental organisations

36. There are a number of Non-governmental organisations (NGOs) in France which strive to combat the different forms of trafficking, provide assistance for victims, raise awareness among the authorities, organise training, run public information campaigns and conduct research.

37. Providing assistance for trafficking victims is chiefly the task of the NGOs which receive state grants to do so (see paragraphs 68 and following). There is a pluri-annual agreement with one NGO (*Accompagnement Lieu d'Accueil Carrefour éducatif et social* - ALC) in particular setting out objectives for co-ordinating the national Secure Reception System (*Ac-Sé*) aimed to take victims far from the place where they are exploited and place them in accommodation centres (see paragraph 71). Furthermore, a number of NGOs have grouped together in a collective known as "*Ensemble contre la traite des êtres humains*" (Together against trafficking in human beings) to co-ordinate their efforts (e.g. the *Secours catholique-Caritas* (or Caritas Catholic relief organisation), which runs the collective; the *Fondation Scelles* ; ECPAT France<sup>10</sup>; *Amicale du Nid*; *Comité contre l'esclavage moderne* (CCEM, or Committee against modern slavery) and *Esclavage tolérance zéro* (ETZ, or Zero tolerance for slavery)). There are other NGOs operating outside this collective such as "*Les amis du bus des femmes*" (or Friends of the women's bus) or the STRASS sex workers union in the area of sexual exploitation, "*Hors la rue*" (or Off the streets) assisting foreign unaccompanied children and RUELLE (*Relais urbain d'échanges et de lutte contre l'exploitation*, or Urban relay for dialogue and action against exploitation) which combat all forms of exploitation or the CIMADE for the defence of foreigners' rights.

<sup>10</sup> French antenna of ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes).

38. A number of NGOs active in the anti-trafficking field participated in the working group set up in 2008 under the auspices of the ministries of Justice and the Interior with a view to devising the aforementioned draft national action plan to combat trafficking. It is envisaged that the new inter-ministerial unit for co-ordination on trafficking which has the task of revising and updating the draft will involve the NGOs in this process and also in the framing of a comprehensive anti-trafficking strategy (see paragraphs 62 and 63).



### III. Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by France

#### 1. Integration of the core concepts and definitions contained in the Convention in internal law

##### a. Human rights-based approach to action against trafficking in human beings

39. Article 1(1)(b) of the Convention establishes as one of its purposes the protection of the human rights of the victims of trafficking. Further, Article 5(3) includes the obligation for Parties to promote a human rights-based approach in the development, implementation and assessment of the policies and programmes to prevent THB. The Explanatory Report on the Convention states that the main added value of the Convention is its human rights perspective and its focus on victim protection. In the same vein, the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking emphasise that “the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims”.<sup>11</sup>

40. THB constitutes an offence to the dignity and fundamental freedoms of the human being and thus a grave violation of human rights. GRETA emphasises the obligations of States to respect, fulfil and protect human rights, including by ensuring compliance by non-State actors, in accordance with the duty of due diligence. The human rights-based approach entails that a State that fails to fulfil these obligations may, for instance, be held accountable for violations of the European Convention on Human Rights. This has been confirmed by the ECHR in its judgment in the case of *Rantsev v. Cyprus and Russia*, where the Court concluded that THB within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the European Convention on Human Rights<sup>12</sup> (which prohibits slavery, servitude and forced or compulsory labour). The Court further concluded that Article 4 entails a positive obligation to protect victims or potential victims, as well as a procedural obligation to investigate trafficking.

41. GRETA considers that the human rights-based approach to action against THB requires States to set up a comprehensive framework for the prevention of THB, the protection of trafficked persons as victims of a serious human rights violation, and the effective investigation and prosecution of traffickers. Such protection includes steps to secure that all victims of trafficking are properly identified. It also involves measures to empower trafficked persons by enhancing their rights to adequate protection, assistance and redress, including recovery and rehabilitation, in a participatory and non-discriminatory framework, irrespective of their residency status. Further, measures to prevent THB should be taken in the field of socio-economic, labour and migration policies.

42. GRETA wishes to stress the need for States to also address THB as a form of violence against women and to take account of gender-specific types of exploitation, as well as the particular situation of child victims of trafficking, in line with the relevant international legal instruments<sup>13</sup>.

<sup>11</sup> Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

<sup>12</sup> *Rantsev v. Cyprus and Russia*, No. 25965/04, paragraph 282, ECHR 2010.

<sup>13</sup> Such as the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the United Nations Convention on the Rights of the Child and the Optional Protocol thereto on the sale of children, child prostitution and child pornography, and the United Nations Convention on the Elimination of All Forms of Discrimination against Women.

43. The French authorities have stressed that THB is regarded as a serious violation of human rights which potentially infringes various constitutional principles. The European Convention on Human Rights (ECHR), like other international treaties ratified by France, is directly applicable in internal law and supersedes domestic laws. By way of example, the Court of cassation referred to Article 4 of the ECHR in a case involving trafficking for the purposes of exploitation through domestic work.<sup>14</sup> The criminal offence of trafficking in human beings is classified under the title on violations of the person and more specifically in the chapter on violations of human dignity. The draft national action plan to combat trafficking in human beings, as drawn up by the working group steered by the Ministry of the Interior and the Ministry of Justice (see paragraphs 62 and 63), refers in its introduction to human trafficking as a serious human rights violation. Moreover, a circular of the Director General of National Gendarmerie (DGGN) entitled "Human trafficking: prosecution of perpetrators and protection of victims", issued on 5 October 2012 and distributed to all gendarmerie units, also underlines it (see paragraph 131).

44. The human rights-based approach to action against THB entails transparency and accountability on the part of the State through the adoption of a national policy and action plans for combating trafficking in human beings, the co-ordination of the efforts of all relevant actors, the regular training of relevant professionals, research and data collection, and the provision of adequate funding for the implementation of all these measures. The following sections of this report examine in detail the effectiveness of the policies and measures taken by the French authorities in these areas.

b. Definitions of "trafficking in human beings" and "victim of THB" in French law

i. *Definition of "trafficking in human beings"*

45. In accordance with Article 4(a) of the Convention, trafficking in human beings includes three components: an action ("the recruitment, transportation, transfer, harbouring or receipt of persons"); the use of certain means ("threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person"); and the purpose of exploitation ("at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs"). In the case of children, pursuant to Article 4(c) of the Convention, it is immaterial whether the means referred to above have been used.

46. The offence of trafficking in human beings, incorporated in the French Criminal Code in 2003 and modified in 2007, is defined in Article 225-4-1. This Article states that "trafficking in human beings is the act, in exchange for payment or any other benefit or a promise of payment or a benefit, of recruiting, transporting, transferring, harbouring or receiving a person, in order to place that person at one's own disposal or at the disposal of a third party, who may be unidentified, with a view to allowing offences of pimping, sexual assault or abuse, exploitation for the purpose of begging, working or accommodation conditions in breach of human dignity, to be committed against that person, or to coerce that person to commit a criminal offence".

47. The offence defined in Article 225-4-1 of the Criminal Code refers to the exploitation of prostitution and other forms of sexual exploitation through pimping, sexual assault (namely acts of a sexual nature committed without the victim's consent such as sexual touching or rape) or abuse (corresponding to acts of a sexual nature without threats, coercion, violence or surprise, committed against minors).

<sup>14</sup>

Court of Cassation, Criminal Chamber, judgment of 13 January 2009.

48. GRETA notes that the offence of trafficking provided for in the Criminal Code refers only to the general notions of working and accommodation conditions contrary to human dignity, which could well be subject to varying interpretations by different courts. The French authorities argue that these notions make it possible to sanction certain forms of modern slavery by making an assessment in concreto. Even so, GRETA believes that it would be beneficial for the offence of trafficking to expressly refer to forced labour, forced services, slavery and practices similar to slavery and servitude, notions that are well acknowledged in international law, including in the case-law of the European Court of Human Rights (the Court) regarding Article 4 of the European Convention on Human Rights (ECHR). While provisions covering working and accommodation conditions contrary to dignity may provide grounds for sanctioning aspects of slavery or servitude (for example, remuneration that is non-existent or bears no relation to the work carried out, or accommodation conditions), they do not attack the root of the problem, namely the act of exercising the right of ownership over a person inherent in the notion of slavery (explanatory report to the Convention, paragraph 93, and its reference to the definition in the Geneva Convention on slavery) and the particularly serious form of denial of freedom constituted by servitude (explanatory report to the Convention, paragraph 95).

49. Finally, GRETA notes that the Court concluded in a recent judgment in the case of *C.N. and V. v. France* of 11 October 2012<sup>15</sup> that Articles 225-13 and 225-14 of the Criminal Code had not provided the applicant, a child victim of servitude, with a legislative framework for effectively taking action against servitude and forced labour, resulting in a violation of Article 4 of the ECHR. The Court referred to a previous judgment, *Siliadin v. France*<sup>16</sup>, in which it had pointed out inter alia that these provisions “were open to very differing interpretations from one court to the next” and emphasised that “the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies”.

50. It further notes that the offence does not cover trafficking for the purpose of organ removal. In the section relating to offences in the area of bioethics, the Criminal Code provides for criminal sanctions in connection with removal of organs in Article 511-2 and following, punishing, inter alia, the act of intervening to promote the obtaining of an organ in return for payment, or selling an organ from another person's body, and the act of removing an organ from a living adult without that person's consent or without the necessary authorisation having been granted in the conditions provided for in legislation. Nevertheless, GRETA notes that this offence does not relate to the specific issue of trafficking, and no link or reference is explicitly established between Article 511-2 and the offence of trafficking. Although the authorities put forward the argument that trafficking for the purpose of organ removal could technically be prosecuted on the basis of various ordinary law offences (such as abduction followed by mutilation with a view to committing another crime), GRETA nevertheless believes it desirable for the definition of trafficking in the Criminal Code to include the removal of organs in order to clarify the legal situation in this respect and bring the definition into line with the one given in the Convention.

51. On the other hand, GRETA notes that, in addition to the aims explicitly mentioned in the Convention, Article 225-4-1 provides for exploitation for the purpose of begging, which may be considered as a form of forced labour for the purposes of the Convention, and for exploitation whereby the victim is coerced to commit a criminal offence.

<sup>15</sup> *C.N. and V. v. France*, application No. 67724/09, paragraphs 106 and 107, European Court of Human Rights, 2012.

<sup>16</sup> *Siliadin v. France*, application No. 73316/01, European Court of Human Rights, 2005.

52. GRETA notes that while the different types of acts constituting trafficking are covered by the definition in Article 225-4-1 (recruitment, transportation, transfer, harbouring, receipt), the means listed in the Criminal Code are not constituent elements of the offence but constitute aggravating circumstances, provided for in the following Articles of the Criminal Code. These aggravating circumstances include: the abuse of a position of vulnerability, due to a person's age, sickness, infirmity, physical or mental deficiency or pregnancy, provided for in Article 225-4-2, 2°; the abuse of power by a legitimate ascendant or by a person with authority over the victim arising under Article 225-4-2, 8°; the use of threats, coercion, violence or fraudulent tactics provided for in Article 225-4-2, 7 and, according to the authorities, covers fraud and abduction. GRETA observes nonetheless that the means of giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation provided for in Article 4 of the Convention is not mentioned in the Criminal Code. GRETA notes that the means provided for in the Criminal Code constitute aggravating circumstances rather than constituent elements of the offence, in contrast to what is provided for in the Convention for adult victims where means are one of the three constituent elements of THB. GRETA notes that the inclusion of the means of Article 4 of the Convention as constituent elements of the trafficking offence contained in the Criminal Code would bring the definition of THB closer to the Convention (see explanatory report to the Convention, paragraphs 74 and following).

53. GRETA further notes that there is another constituent element listed in connection with the offence provided for in Article 225-4-1, namely "in exchange for payment or any other benefit or a promise of payment or a benefit". GRETA observes that this amounts to a general condition applicable to all acts and purposes provided for in French law, which is at odds with the definition laid down in the Convention. GRETA considers that, given that this element amounts to an additional requirement, which is moreover a general one, in comparison with those of the Convention, it constitutes an obstacle to characterising the offence of trafficking and may lead to THB cases not being recognised as such. To combat trafficking more effectively and assist victims, GRETA underlines that it is of fundamental importance to use a definition of trafficking in human beings on which there is international consensus (explanatory report of the Convention, paragraph 72).

54. The committing of a trafficking offence in respect of a minor, namely a child under eighteen years of age under French law, is considered as an aggravating circumstance, in accordance with Article 225-4-2, 1°.

55. GRETA notes that the French authorities are revising the offence of trafficking in connection with the transposition of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011, which must be completed in March 2013. Accordingly, **GRETA wishes to be kept informed of the revision of the offence of trafficking.**

56. According to the French authorities, the consent of a person to exploitation, whether envisaged or actual, has no bearing on the recognition of that person as a victim of THB in internal law. The authorities are of the view that this principle results of the constitutive components of the offence contained in Articles 225-4-1 and 225-4-2. **GRETA considers that stating explicitly the irrelevance of the consent of the victims to the intended exploitation could improve the implementation of anti-trafficking provisions.**

57. **GRETA urges the French authorities to:**

- **amend the definition of trafficking so that the aims provided for expressly include exploitation for the purposes of forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs;**
- **incorporate the means of “giving or receiving [...] payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”, as provided for under Article 4 of the Convention;**
- **remove the general element, constituent of the offence, which reads “in exchange for payment or any other benefit or a promise of payment or a benefit” and is not provided for in the Convention.**

58. The offence of trafficking in human beings is further examined under the section on substantive criminal law, including sanctions, and so are offences of exploitation provided for in the Criminal Code (paragraphs 200 and following).

*ii. Definition of “victim of THB”*

59. The Convention defines “victim of THB” as “any natural person who is subjected to THB as defined in Article 4 of the Convention”. Recognition of victims of trafficking as such is essential as it gives rise to their entitlement to the broad range of protection and assistance measures set out in the Convention.

60. According to the authorities, any individual who is the victim of the offence provided for in Article 225-4-1 will be considered as a “victim of trafficking”. GRETA infers from this that there is no autonomous definition of THB victim laid down in law. The status and rights of victims of trafficking are analysed in more detail in the sections of this report on measures to protect victims and promote their rights.

- c. Comprehensive approach to action against THB, co-ordination of all actors and actions, and international co-operation

*i. Comprehensive approach and co-ordination*

61. One of the aims of the Convention is to design a comprehensive framework for the protection and assistance of victims and witnesses. To be effective, any national action to combat THB must be comprehensive and multi-sectorial, and take on board the required multidisciplinary expertise. Article 29(2) of the Convention requires Parties to take measures to ensure the co-ordination of national policies and actions against THB, including through the setting-up of specific co-ordinating bodies. Further, the Convention refers to the need to co-operate and build strategic partnership with civil society through co-operative frameworks that can help governments fulfil their obligations under the Convention (Article 35).

62. As previously mentioned in paragraphs 21 and 38, a draft national action plan to combat trafficking in human beings has been drawn up by a working group comprising representatives of the ministries concerned, representatives of civil society active in the anti-trafficking field and the IOM. This group held meetings from 2008 to 2010. The draft action plan covers the different types of trafficking and incorporates several sections, the first of these being national and local co-ordination of action against trafficking. NGOs involved in the group's work have mentioned the constructive dialogue forged with the authorities within the framework of this group, while deploring the fact that they were not informed of follow-up to the draft once it had been adopted by the working group in July 2010. The draft plan, which was to cover the period 2011-2013, was not finalised at governmental level and has remained pending since then.

63. GRETA notes that an inter-ministerial co-ordination network for action against trafficking in human beings was set up in March 2012 (see paragraph 22), with a view to ensuring a more coherent approach to trafficking by all the ministries concerned (justice, interior, foreign affairs, labour, social affairs and national education). It is established within the Delegation for Victims of the Ministry of the Interior. Each of the ministries involved has already appointed contact persons (“focal points”) in this area, who will be required to meet at regular intervals. One of the co-ordination network’s objectives will be to develop a comprehensive strategy for action against trafficking in human beings running across the board between ministries. It is responsible for revising the draft national action plan. The French authorities informed GRETA that meetings concerning the action plan were scheduled for September and October 2012 with representatives of the ministries concerned as well as the civil society representatives who had participated in the working group on the aforementioned draft action plan, and these discussions were scheduled for completion by November 2012. **GRETA wishes to be kept informed of progress on the timeframe for the adoption of the anti-trafficking national action plan.** GRETA stresses the importance of having a structure that not only is multidisciplinary but also wields the greatest possible authority. GRETA notes that, in a number of countries, the structures which co-ordinate action against THB are not placed within a particular ministry but, rather, are directly subordinated to the council of ministers; this can secure its authority and demonstrate the willingness of the authorities to ensure that such structures have a genuine inter-institutional functioning.

64. GRETA notes that current inter-ministerial co-ordination of anti-trafficking efforts, where this exists, is formalised only through mission orders; trafficking-related actions, measures and initiatives carried out by various ministerial departments are therefore lacking in visibility externally. Civil society actors have emphasised the multitude of institutional actors active in the anti-trafficking field and the lack of clarity regarding their respective competences. In particular, where the Ministry of the Interior is concerned, the French authorities have pointed out that the large number of departments competent within the Ministry is due to the fact that the offence of trafficking would relate to networks of illegal immigration, illegal labour and pimping, which would have no links between them. GRETA stresses that, while it may be connected to irregular immigration, illegal labour and pimping, trafficking in human beings must be regarded as a crosscutting phenomenon. It is not uncommon for a trafficking victim to be subjected to different types of exploitation simultaneously or in succession (for example, sexual exploitation and forced theft or begging) while at the same time being irregularly present in the country. Close co-operation focused on trafficking is thus essential between competent authorities. On a general level, the French authorities have further pointed out that focal points have now been established in each ministry since March 2012. GRETA emphasises the importance of bringing these to the attention of civil society in order to create good channels of communication.

65. Generally speaking, the efforts of the authorities, particularly when it comes to law enforcement, seem to be focused at present on combating trafficking for the purposes of sexual exploitation, exploitation of begging and of committing offences. GRETA reiterates the importance of covering all types of trafficking, including for the purpose of labour exploitation (for example, for seasonal work, domestic work and work in the building sector).

66. Furthermore, concerning action at *département* level, the differing practices of *préfectures* in issuing certificates covering the reflection period and residence permits to victims of trafficking have been emphasised by all NGOs (see paragraphs 170 and following). Where child victims are concerned, some NGOs have pointed to problems of co-ordination, both among local authorities (*département* councils, which are competent in this field) and between those authorities and the State, in the care of foreign children who fall victim to trafficking. The responsibility for and management of the system for assisting children in difficulty has now been transferred to *département* councils (see paragraphs 148 and following).

67. GRETA welcomes the creation of a roving ambassador tasked with combating transnational organised crime and trafficking in human beings, attached to the Ministry of Foreign Affairs, aimed, inter alia, at raising awareness of anti-trafficking action on the international scene, and proposing initiatives within the framework of the United Nations, the European Union and other regional and informal forums as well as to French and foreign NGOs.

68. Assistance to victims of trafficking is chiefly entrusted by the authorities to specialised NGOs (see paragraph 147). Generally speaking, it is the task of the Office for victims assistance and associations (Ministry of Justice) and the Delegation for victims (Ministry of the Interior) to serve as key interlocutors for NGOs assisting victims of trafficking. GRETA notes, however, that some NGOs have reported that, after having enjoyed regular contacts with interlocutors dealing specifically with trafficking-related matters throughout work on the draft action plan, had found access to specialised interlocutors more difficult since the work on that project had been completed.

69. The NGOs working in the area of reception of trafficking victims receive grants mainly from the Ministry of Justice, but also from the Ministry of Social Affairs and Health (hereafter, Minister of Social Affairs), although trafficking is not treated as a priority. Within the framework of the agreements concluded with NGOs, some evaluation of the activities is carried out. By way of example, the Ministry of Justice paid a grant of 15 000 euros to the Committee against Modern Slavery (CCEM) in 2010, and a pluri-annual agreement (2009-2011) was concluded between that association and the Ministry of Social Affairs, with a grant of 171 000 euros. In 2012, the Ministry of Justice granted 10 000 euros to the NGO *Hors-la-Rue*, which deals with foreign unaccompanied children in the Paris region, including trafficking victims. In 2011, the Ministry of Social Affairs allocated some 1.7 million euros of funding to NGOs combating pimping at both national and local level, entailing initiatives set up by specialised NGOs aimed at prevention and assistance for individuals working as prostitutes through funding earmarked for prostitution. GRETA notes the important amount of funding allocated and the fact that the *Ac-Sé* secure reception network benefits from funding from the Ministry of Social Affairs. However, it also notes that that funding is not specifically earmarked for action against trafficking for the purpose of sexual exploitation, but rather for action against pimping. Some NGOs have expressed regret that these grants are not specifically earmarked for trafficking, which would emphasise the importance of specific action against trafficking.

70. In addition, Paris City Council has also set up an Observatory for equality between women and men, which has included action against trafficking amongst its activities, and granted over 80 000 euros to NGOs involved in combating THB in 2011.

71. The management of the network of reception centres for adult trafficking victims,<sup>17</sup> which are located across France so that victims may be moved far from the place where they are exploited (*Ac-Sé* secure reception system) was entrusted to an NGO (*Accompagnement Lieu d'Accueil Carrefour éducatif et social* - ALC) in 2001 under a pluri-annual agreement with the Ministry of Social Affairs (paragraphs 140 and 141). The functioning of this network relies on public funding. In 2010 it received a grant of 180 000 euros from the Ministry in charge of social affairs, 20 000 euros from Paris City Council and 36 672 euros from other sources, making a total budget of 236 672 euros.

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<sup>17</sup> These include victims accompanied by their children, often of a young age, who appear to constitute a growing category.

72. A steering committee representing the different partners, under the auspices of the Ministry of Social Affairs, is tasked with helping to ensure that measures to assist and protect trafficking victims are correctly applied and harmonised and that observations on emerging trends in trafficking are reported back to the decision-makers. It includes representatives of different ministries tasked with protecting victims, the partners involved in the *Ac-Sé* system and the NGO ALC. The steering committee was supposed to meet twice a year but no meetings have taken place between 2009 and 2012. GRETA welcomes the resumption of the steering committee meetings, with the convening of a new meeting on 20 September 2012, and emphasises the importance of holding those meetings on a regular basis, as initially envisaged, to guarantee regular exchanges of information between the institutional and civil society stakeholders regarding care of victims.

73. **In order to guarantee comprehensive and coherent action against trafficking and the involvement of civil society, GRETA urges the French authorities to:**

- **ensure that the newly established inter-ministerial co-ordination network has adequate authority, mandate and resources for fulfilling its role of co-ordination of the policies and action against THB of the government's departments and other public agencies, and can involve, to a certain extent, NGOs specialised in action against THB and assisting victims;**
- **ensure co-ordination both among local authorities and between them and the State, with regard to protection of trafficking victims, particularly children;**
- **ensure that civil society is fully involved in devising, implementing and, ultimately, evaluating the national action plan to combat trafficking;**
- **maintain a high level of co-operation with NGOs assisting victims and ensure not only that funding is adequate but also that it is specifically earmarked for trafficking in all its forms;**
- **adopt measures to combat all forms of trafficking in human beings, including for the purpose of labour exploitation, and mainstream efforts to combat child trafficking.**

*ii. Training of relevant professionals*

74. As part of the further training provided by the National School for the Judiciary (*École Nationale de la Magistrature*, ENM), annual sessions on trafficking in human beings have been run since 2010. In principle, these sessions are open to 20 members of the judiciary, i.e. judges and prosecutors, as well as 10 gendarmerie officers and 10 police superintendents. Although the first session in 2010 was cancelled, owing to low enrolment numbers, the second session was attended by 30 participants, of whom nine were members of the judiciary, five were trainee police superintendents and 16 were gendarmerie officers. The session ran over two days, focusing on: the definition of trafficking, *inter alia*, in the light of international instruments and its criminalisation in Article 225-4-1 of the Criminal Code; the operational means available for investigation and court proceedings; criteria for identifying victims; international co-operation in action against trafficking. The second session, scheduled for November 2012, was attended by 40 participants from the judiciary, police and gendarmerie, as well as two senior officials - it will run for three days. The topics tackled by the practitioners will include assistance to victims. In addition, the ENM schedules one or two individual courses, each lasting one week, for members of the judiciary at the Central Office for the Suppression of Trafficking in Human Beings (OCRTEH). GRETA welcomes the further training programme set up by the ENM for judges and prosecutors and the fact that has been opened to members of the police and gendarmerie. **GRETA invites the French authorities to ensure that the different aspects of action against trafficking, and particularly the offence of trafficking provided for in the Criminal Code, are also included in the initial training for judges and prosecutors.**



75. For the specialised central offices of the Ministry of the Interior, and more generally the national police there is no basic or further training module specifically on trafficking within the offices under the national police or for the national police personnel concerned. Training seems to be chiefly in-house, through experienced colleagues and the practical experience gained. The Central Office for the Suppression of Trafficking in Human Beings (OCRTEH) provides operational immersion courses on a regular basis for national police and national gendarmerie staff. In the absence of a specific trafficking module, the issue of trafficking seems more or less directly covered in the course of basic, qualification or further training programmes for national police staff. In the Central Office for Combating Illegal Labour (OCLTI), under the Criminal Investigation Sub-directorate of the Directorate General of National Gendarmerie, a cascading training system is in place using relay trainers who train investigators working on the ground in the sphere of illegal labour, including trafficking. In addition, as of 2013, a “trafficking in human beings” module will be incorporated in training given to investigators and heads of investigation of the national gendarmerie at the National training centre for criminal investigation police and the national gendarmerie; according to the authorities, 140 heads of investigation and 200 criminal investigators will be trained in this discipline each year. **GRETA wishes to be kept informed of any development and the implementation of these training courses.**

76. Furthermore, the Paris Police *préfecture* lays on a two-day training course for new investigators assigned to action against the trafficking of victims under 18 years of age, with emphasis on the reception and care of victims, in collaboration with institutional partners (members of the judiciary, lawyers, medical examiners, social workers and victims' associations). Both national police and national gendarmerie personnel participate in the ENM training mentioned in the previous paragraph. Some interlocutors spoken to by the GRETA delegation nevertheless pointed out that their priority was to arrest the perpetrators. GRETA reiterates that the protection of trafficking victims is central to the Convention and therefore considers it crucial that the different aspects of action against trafficking, including the detection and identification of trafficking victims, form an integral part of basic training and of further training for all central office staff, and also for the specialised brigades of the Paris Police *préfecture* and law enforcement personnel deployed on French territory who are required to operate in this area.

77. According to the authorities, consular services in charge of issuing visas have been made aware of trafficking, and special attention is paid to children and young women on their own in potential risk situations (for example those without definite plans or financial resources) and visas for certain types of professionals (for example, performing artists). Training courses to combat document fraud are also organised.

78. Where border guards are concerned, the Central Directorate of Border Police (DCPAF), coming under the Directorate General of National Police (DGPN), recently participated in the translation of the anti-trafficking training manual for border guards prepared by Frontex and covering the identification of victims; the manual should be completed in November 2012 and is to be used in training for border police immediately thereafter.

79. GRETA takes note of the plan to provide basic and further training for labour inspectorate staff aimed at raising their awareness of trafficking and enabling them to more easily spot workers who are victims of trafficking and ascertain which bodies could provide assistance (trade unions, NGOs, reception facilities, etc.). It is also planned to draw up a reference guide to situations involving trafficking for the purpose of forced labour and the correct course of action to take in such situations (relations with prosecutors, law enforcement agencies, central offices). Finally, a French translation is planned of an ILO handbook entitled “Forced labour and human trafficking: handbook for labour inspectors”. **GRETA wishes to be kept informed of the implementation of these initiatives.**

80. Civil society actors run a number of training initiatives, including for institutional actors, notably law enforcement agencies, aimed in particular at the detection of trafficking victims. ECPAT-France has implemented awareness-raising initiatives at the Brigade for the Protection of Minors where detection is concerned. The Committee against Modern Slavery (CEM) also organises training sessions aimed at professionals who have to deal with trafficking for the purpose of labour exploitation. Training in the identification of trafficking victims, as part of an IOM project, is organised by the co-ordinating body of the *Ac-Sé* network and involves the NGO "*Les amis du bus des femmes*" and the Romanian NGO ADPARE. It is aimed at representatives of NGOs, social and medical services, law enforcement agencies and judicial institutions. In 2012, six training sessions, each lasting one and a half days, funded by the Ministry of Justice under an annual agreement, were scheduled to be held around the country. In addition, two seminars are held each year for the partners of the *Ac-Sé* network, which are non-specialised accommodation centres reserving a number of places for trafficking victims, aimed at raising awareness of various aspects such as the law applying to foreign trafficking victims or the specific characteristics of trafficking involving victims originating from Nigeria.<sup>18</sup>

**81. GRETA considers that the French authorities should ensure that all personnel concerned periodically attend training courses, in order to improve the detection of potential trafficking victims, the official identification of victims and the assistance provided to them. These courses should be aimed at members of law enforcement agencies, personnel involved in social welfare for children, staff working in reception centres for refugees and holding centres for irregular migrants, staff working in accommodation centres for trafficking victims, diplomatic and consular staff, healthcare professionals, social workers, particularly those involved in outreach work, and labour inspectors.**

*iii. Data collection and research*

82. The human rights-based approach to anti-trafficking policies advocated by the Convention requires adequate monitoring and evaluation. An essential element is the regular availability of comprehensive statistical information on both trends in human trafficking and on the performance of main actors in the fight against trafficking. The collation of data from different state institutions and NGOs raises concerns about data protection, especially when personal data are involved. International standards have been set for the collection, storage, transfer, compilation and dissemination of data. In order to ensure full compliance with these standards, Parties are expected to apply appropriate measures and techniques of data protection. An additional requirement for human rights-based anti-trafficking policies is the conduct of research and analysis with special attention to the rights and interests of victims.

83. GRETA notes with concern the lack of official statistics specifically related to trafficking victims. There are no inventories of the victims of the different types of trafficking. The only data available are those gathered by the Central Office for the Suppression of Trafficking in Human Beings (OCRTEH), which pools the victims of trafficking for the purpose of sexual exploitation with the victims of pimping. The French authorities said that a statistical tool (the national police procedures drafting application, or "LRPPN") which will allow automatic data reporting, is to be introduced in late 2013/2014. There are statistics indicating the number of victims having benefited from arrangements to remove them from the place where they are exploited (*Ac-Sé* secure reception system) but these represent only those victims having requested or agreed to such arrangements.

<sup>18</sup> The networks trafficking victims originating from Nigeria maintain some control over them, notably through a so-called "ju-ju" charm.

84. Furthermore, there is currently no statistical tool for the number of criminal procedures lodged, although a new tool now being deployed should ultimately make this possible ("*Cassiopee*" IT application), it cannot however be said when it will be operational. By contrast, the number of convictions for trafficking is known, as is the number of residence permits issued under Article L316-1 of the CESEDA (see paragraphs 226 and 167 respectively). On the other hand, there are no statistics regarding the issue of certificates for the reflection period or the number of victims having benefited from the subsidiary protection of asylum. The French authorities have signalled their intention to approach the departments concerned with a view to gathering statistical data on the issue of certificates covering the reflection period. On the other hand, they have also emphasised that the database of the French Office for the protection of refugees and stateless persons (OFPRO) does not allow the generation of statistics on the grounds for the decisions as to whether to grant subsidiary protection or refugee status.

85. As regards research on trafficking, it should firstly be noted that the National Consultative Commission on Human Rights (CNCDH) has on its own initiative carried out an inventory of French law in the field of THB and exploitation.<sup>19</sup> As a result, an exhaustive study was produced under the auspices of the CNCDH which was published in January 2010. This study has involved a large number of hearings and consultations with institutional stakeholders and civil society. Jointly with the findings of the study, the CNCDH adopted an opinion on 18 December 2009, drawing together targeted recommendations on how to improve the State's legal arsenal and action against trafficking. That opinion was formally transmitted to the Government. **GRETA invites the French authorities to take due account of the CNCDH's work on human trafficking.**

86. GRETA is aware of several university research studies on trafficking<sup>20</sup>, including for the purpose of sexual exploitation in the case of Nigerian women,<sup>21</sup> and on the situation of foreign unaccompanied children.<sup>22</sup> NGOs also carry out research work, some of which focuses on sexual exploitation.<sup>23</sup>

87. Furthermore, a parliamentary fact-finding mission on prostitution published in 2011 in the form of a report has also highlighted the increasing scale of trafficking for the purpose of sexual exploitation in recent decades (see paragraph 109).

88. **GRETA urges the French authorities to develop and maintain, for the purpose of preparing, monitoring and evaluating anti-trafficking policies, a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical information from all main actors and allowing disaggregation (concerning sex, age, type of exploitation, country of origin and/or destination, etc.). This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection.**

<sup>19</sup> The role of the CNCDH is to provide the Government with advice and proposals in the field of human rights. It is made up of 30 representatives of civil society and 30 qualified personalities (members of the judiciary, lawyers, academics, former ministers, independent experts working in international bodies, representatives of religions and currents of thought).

<sup>20</sup> For example, "*De la victime-idéale à la victime-coupable. Traite des êtres humains et sociologie des politiques de la pitié*" [From ideal victim to guilty victim. Trafficking in human beings and the sociology of public policies based on pity], M. Jaskic, Ecole des hautes études en sciences sociales, June 2011.

<sup>21</sup> For example "*Autonomie et protection des personnes vulnérables: le cas de femmes nigérianes se prostituant en France*" [Autonomy and protection of vulnerable individuals: the case of Nigerian women working as prostitutes in France], B. Lavaud-Legendre, National scientific research centre (CNRS) and Bordeaux University, January 2012.

<sup>22</sup> For example "*Traite des mineurs roumains migrants: processus d'exclusion, types d'exploitation et stratégies d'adaptation*" [Trafficking of Romanian migrant minors: exclusion process, types of exploitation and adaptation strategies], O. Peyroux, article published in the *Journal du droit des jeunes* (JDJ) [Young people's law journal], March 2012.

<sup>23</sup> For example, "*Rapport mondial sur l'exploitation sexuelle*" [World report on sexual exploitation], Fondations Scelles, 2012.

89. **GRETA invites the French authorities to carry out and support research on THB issues, so that public authorities can draw on the research findings in order to devise future anti-trafficking measures. The fields requiring more in-depth research include child victims, particularly Roma, trafficking for the purposes of labour exploitation, domestic servitude, and national human trafficking.**

*iv. International co-operation*

90. The Convention requires Parties to co-operate with each other “to the widest extent possible” in order to prevent and combat THB, protect and assist victims, and investigate related criminal offences (Article 32).

91. France has signed numerous treaties and bilateral agreements on international co-operation which, according to the authorities, all include a section on THB.

92. The Central Section of Operational Police Co-operation (SCCOPOL), which comes under the Ministry of the Interior, is the central national authority responsible for international operational police co-operation. It is an inter-ministerial structure in which the Ministry of Justice participates via the members of the judiciary assigned to the Office for Mutual Assistance in International Criminal Matters (BEPI). Operational intelligence is exchanged, *inter alia*, via Europol and Interpol and in the framework of the Schengen Convention. In 2011, 250 files were exchanged in the area of THB. The OCRIEST and the Directorate General of National Gendarmerie also contribute to the Europol file dedicated to action against trafficking beings (AWF PHOENIX).

93. Concerning tools for operational co-operation, one example cited by the authorities was an International Rogatory Commission to seize criminal assets in Romania in connection with a trafficking case. In the course of their investigations, the Specialised Inter-regional Courts (JIRS) make frequent use of international co-operation in connection with organised crime, particularly through Eurojust and joint investigation teams (JITs). Three JITs have been implemented in the trafficking sphere with Romania and Belgium, one of which was set up in 2008 and has now been closed (after the perpetrator was apprehended) with investigations into property and finances still ongoing, while the other two (opened in 2011 and 2012 respectively) are still under way. The example of a case which ran from 2008 to 2010 and concerned the trafficking of more than a hundred Roma children from Bosnia and Herzegovina for the purpose of pickpocketing in the Paris metro was cited as an illustration of international co-operation, as the head of the network lived in Italy. This co-operation took place through the offices of Eurojust. The head of the network was arrested in Italy under a European arrest warrant, together with six accomplices, and a wave of 13 arrests were carried out at the same time in France within the framework of an investigation by the Paris specialised inter-regional court, using the operational input of the Central Office for Combating Itinerant Crime (OCLDI) and the Paris Brigade for the Protection of Minors, in conjunction with their Italian, Belgian and Austrian counterparts. The French authorities have stated that a good level of co-operation in action against trafficking has been developed, via international rogatory commissions, with a number of countries (Belgium, Hungary, Portugal and Romania) but co-operation with certain others has proved problematic (Nigeria and the Russian Federation for example).

94. The Ministry of the Interior conducts technical co-operation initiatives, which take the form of training sessions and visits (two examples being a study visit on assistance to victims for a delegation of Moldovan police officers to the Delegation for victims and training in Romania on the seizure of criminal assets including those related to THB). In addition, the Ministry signed protocols on police co-operation with its Romanian and Bulgarian counterparts, in 2002 and 2003 respectively, which are updated on a regular basis and define levels of operational, technical and institutional co-operation in action against pimping networks. In this connection, a number of Romanian police officers have been seconded to France for training purposes, notably to the central offices competent for trafficking matters, and police or gendarmerie officers have been seconded to the competent services of Romanian law enforcement agencies. In addition, the Criminal investigation directorate has hosted some Bulgarian police officers within the framework of the European Police College. The French authorities also mentioned similar exchanges with the Chinese police. Twenty-five initiatives were carried out in 2011, including two seminars in Brunei and Indonesia. In 2012, 12 specific initiatives have already been run and six others are planned by the end of the year.

95. Technical co-operation with countries of origin or transit outside the European Union is mainly carried out through interior security attachés (ASI), police or gendarmerie officers leading 84 delegations posted in French diplomatic missions covering 156 countries. They are tasked with advising their assigned ambassador on interior security but, as representatives of the police or gendarmerie, are also key points of contact for the local law enforcement agencies. The importance of their role was emphasised by the French authorities, especially the Paris Brigade for the Protection of Minors, which mentioned two projects requiring input from the interior security attachés concerning a pimping network involving minors and a network exploiting children who are coerced into stealing mobile phones.

96. Technical co-operation initiatives are also carried out by the Ministry of Foreign Affairs, in collaboration with the ministries concerned, including in Africa and Asia. Assistance and protection for trafficking victims form one of the priorities here and direct support for specialised NGOs is one means used to develop them. A sum of 200 000 euros was earmarked for this purpose in 2011. The French authorities have listed a great many initiatives pursued outside Europe that are backed, funded or organised by them in the trafficking sphere and, more generally, relate to the prevention of violence sometimes suffered by women and children in Africa, as well as in South America and Asia. These initiatives are carried out *inter alia* via NGOs or international organisations.

97. A technical adviser on action against trafficking in South-East Europe has been seconded by the Ministry of Foreign Affairs to the French permanent representation to the Vienna United Nations agency and other international organisations. The adviser is also tasked with working at the Permanent Representation to the OSCE. This adviser's tasks include implementing concrete technical co-operation and assistance initiatives in 16 countries aimed at institutional capacity-building and support for civil society, and has an annual budget for this purpose. This has resulted in funding, together with the Ministry of the Interior, for rooms for interviewing child victims in the "Former Yugoslav Republic of Macedonia" and Albania in 2010-2011. Another recent project is aimed at prevention within Roma communities in Bulgaria. Other examples include measures aimed at raising awareness of trafficking among teenagers in the Republic of Moldova. The technical adviser is also working to set up and run a network of co-operation with the national co-ordinators for action against trafficking in South-East European countries, partly through seminars. Finally, the adviser participates in the development of NGO networks in the Balkans by organising meetings of experts, some of which are geared to tackling trafficking in children.

98. In addition, a regional centre for action against organised crime, set up under the French embassy in Croatia, has competence covering 13 countries in South-East Europe and the task of launching initiatives on new and insufficiently known forms of crime. It is run by a diplomat and includes a member of the judiciary, a gendarme and a customs officer. By way of example, in 2011 the regional centre organised a seminar on the identification of victims of trafficking.

99. Moreover, in 2012, the National School for the Judiciary (ENM) has concluded agreements with the Romanian authorities in two anti-trafficking projects. The first, lasting 24 months, is being implemented by the Prosecutor's office of the Court of Cassation of Romania, and is aimed at strengthening co-operation in the criminal law field in the area of THB. The second one, run by the Romanian Ministry of Justice for a period of 14 months, is aimed at preparing a manual of good practices within the framework of working meetings in the three partner countries (France, Germany, Romania) with input from Eurojust.

100. Finally, through the OSCE, France contributed funding amounting to 30 000 euros in 2008 for the creation of a support unit aimed at improving assistance to victims in Armenia. Finally, France supports the voluntary trust fund for victims of human trafficking launched in 2010 and managed by UNODC, having contributed 25 000 euros in 2011 to funding for a project on the protection of minor victims in the Balkans. In the area of combating trafficking networks, France contributed 200 000 euros to the work of UNODC in 2011.

101. GRETA welcomes the international co-operation forged by France's law enforcement services so that investigations and prosecutions may be successfully carried out against traffickers, both in France and abroad. **GRETA encourages the authorities to continue developing international co-operation and the initiatives carried out to prevent trafficking and assist the victims in the countries of origin, including beyond Europe.**

## **2. Implementation by France of measures aimed to prevent trafficking in human beings**

102. According to Article 5 of the Convention, Parties must take co-ordinated action to prevent THB, with the involvement of relevant NGOs, other organisations and members of civil society as appropriate. The Convention requires Parties in particular to take measures to discourage demand, strengthen border controls and ensure the integrity, security and validity of travel or identity documents (Articles 6 to 9).

### **a. Measures to raise awareness and discourage demand**

103. In accordance with the Convention, measures to discourage demand for the services of victims of trafficking, especially women and children, should be understood as a positive obligation on Parties to adopt and reinforce such measures as regards THB for the purpose of any form of exploitation (see paragraph 108 of the Explanatory Report of the Convention). As it is stated in the Recommended Principles and Guidelines on Human Rights and Human Trafficking, strategies aimed at preventing THB shall address demand as a root cause of trafficking.<sup>24</sup>

104. GRETA notes that the French authorities have not yet run a national, anti-trafficking campaign. For their part, specialised NGOs carry out initiatives on a regular basis, particularly in the form of poster campaigns raising public awareness of the different types of trafficking, using their own limited resources. By way of example, the Committee against Modern Slavery (CCEM) has organised several poster campaigns in recent years in the Paris underground with the help of an advertising agency providing its services free of charge. GRETA also takes this opportunity to underline the benefit of targeted campaigns in risk sectors and for vulnerable groups.

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<sup>24</sup> Principle 4 of Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1).

105. As part of the inter-ministerial plan (2011-2013) to combat violence against women, a national awareness-raising campaign is planned in 2013 to show how client demand fuels prostitution networks and contributes to trafficking in human beings. This three-year plan has been allocated 30 million euros. The three themes to be focused on in 2013 are action against pimping, reception of victims and looking at how to tackle pimping. Action to promote equality and combat violence against women is cascaded down at *département* level via special advisers on women's rights and equality who co-ordinate the activities of local institutional actors.

**106. GRETA urges the authorities to build greater public awareness of the different types of trafficking and victims. It considers it important in this connection that the authorities organise information and awareness-raising campaigns, involving civil society and using the findings of research and impact assessments.**

107. Preventive measures aimed at girls and boys during their school education focusing on gender discrimination and every individual's right to dignity have been implemented under an agreement between eight ministries.<sup>25</sup> In addition, initiatives to raise awareness of the issue of prostitution are organised in lower and upper secondary schools, through NGOs funded by the authorities.

108. The national education system provides for civic education throughout pupils' schooling and more specifically at secondary level, with civic education classes emphasising, *inter alia*, respect for human dignity. While general education follows a fixed framework where themes are concerned, teachers are given a high degree of flexibility for issues they wish to explore with their pupils. **GRETA encourages the authorities to include expressly the topic of trafficking in human beings in the civic education programme.**

109. GRETA further notes that a parliamentary debate has been launched on the subject of criminalising demand for prostitution. A fact-finding mission on prostitution organised by the National Assembly in 2011 stressed that the vast majority of prostitutes on French territory are supplied by trafficking networks.<sup>26</sup> Follow-up to the fact-finding mission is to be implemented by the new legislature taking up office after the parliamentary elections in June 2012.

**110. GRETA urges the authorities to step up their efforts to discourage the demand for services provided by persons subjected to trafficking not only for the purposes of sexual exploitation but also for the purposes of domestic servitude or labour exploitation, for example in the sectors of agriculture, construction, catering and hotel sector, and cleaning, *inter alia*, through awareness-raising campaigns.**

b. Social, economic and other initiatives for groups vulnerable to THB

111. Given that France is essentially a destination and transit country, the French authorities reported a number of initiatives supported by them aimed at preventing trafficking in the countries of origin, for example in Bulgaria, the Republic of Moldova and in African countries (see paragraphs 97 and following). They also mention the setting up and running of a network of NGOs specialising in the protection of child victims of trafficking and street children in the Balkans.

<sup>25</sup> The aim is to implement a gender mainstreaming approach, including measures specifically aimed at girls, in 70 000 teaching establishments (improved careers advice, the place of women and men in society, prevention of sexist violence, training of educators, etc.). A guide on the subject of sexist and sexual violence ("*Comportements et violences à caractère sexiste et sexuel : prévenir, repérer, agir*") ["Behaviour and violence of a sexist and sexual nature: prevention, identification, action"]) was published in 2011 in order to emphasise the role of schools and their actors in this area.

<sup>26</sup> At its meeting on 16 June 2010, the National Assembly laws commission decided to set up a fact-finding mission on prostitution in France. The mission was chaired by Mrs Danielle Bousquet and Mr Guy Geoffroy was the rapporteur, both being members of parliament. The mission submitted its report on 13 April 2011: <http://www.assemblee-nationale.fr/13/rap-info/i3334.asp>

112. GRETA welcomes the initiatives supported by France in aid of vulnerable groups in the countries of origin and encourages the authorities to pursue those initiatives. GRETA nevertheless believes it crucial to provide for measures aimed at vulnerable groups already in France. GRETA is aware of street operations organised by Paris City Council, through night-time outreach workers, and also by a number of NGOs in areas notorious for prostitution. This includes efforts towards children who may be trafficking victims. They are offered assistance and, where applicable, accommodation by the associations, while night-time outreach workers refer them to the bodies co-ordinating outreach activities, which, in turn, refer them to the competent associations and accommodation centres.

113. However, GRETA notes for example that the last report of the European Commission against Racism and Intolerance (ECRI) on France<sup>27</sup> underlines the problems of schooling for Roma children originating from central and eastern Europe, resulting not only from issues of domiciliation but also refusals on the part of municipalities. Problems of access to care and housing are also pointed out. Moreover, GRETA points out that irregular migrants, particularly unaccompanied children, demonstrably constitute a group vulnerable to trafficking. In this respect, the UN Committee on the Rights of the Child, in its concluding observations on the national situation<sup>28</sup>, has highlighted the risks of exploitation faced by foreign unaccompanied children placed in waiting zones in French airports. The Committee is concerned that these children, especially vulnerable to exploitation, have no psychological assistance available to them. It recommends ensuring the availability of adequate psychological assistance for unaccompanied children and children placed in waiting zones and providing them with protection from exploitation, in particular through strict surveillance of the access to such zones. GRETA can only endorse that recommendation.

**114. GRETA considers that the French authorities should take social, economic and other measures for vulnerable groups who are already in France in respect of the different types of human trafficking, be it for the purposes of sexual or labour exploitation, such as foreign unaccompanied children - in particular of Roma origin or placed in waiting zones - irregular migrants or domestic employees.**

c. Border measures to prevent THB and measures to enable legal migration

115. Article 5(4) of the Convention requires the Parties to take specific measures to enable migration to take place legally, in particular through dissemination of accurate information by relevant offices, on the conditions of legal entry in and stay on their territory. Furthermore, under Article 7 of the Convention, the Parties must strengthen border controls in order to prevent and detect trafficking in human beings, without prejudice to international commitments in relation to the free movement of persons.

116. According to the authorities, combating networks is one of the priorities of the Central directorate of border police, which includes a Central Office for the Suppression of Irregular Migration and the Employment of Irregular Migrants (OCRIEST) and 49 mobile search brigades spread throughout the territory. A Mobile Intervention Brigade (BMI) is deployed at the major airport hub of Roissy-Charles De Gaulle. It comprises 17 staff specialising in the detection of forged documents, the departure points presenting a risk and irregular migratory flows. The Directorate for international co-operation of the Ministry of the Interior is also able to inform the Central directorate of border police in real time of the imminent arrival of passengers with a risk profile in terms of migration as well as the presence of potential people smugglers. The BMI also co-operates with the security services of airline companies and the "Paris Airports" authority.

<sup>27</sup> ECRI report on France (fourth monitoring cycle), published on 15 June 2010, paragraphs 106 and following.

<sup>28</sup> Committee on the Rights of the Child, 51st session, Consideration of reports submitted by States parties to the Convention on the rights of the child, Concluding observations of the Committee: France, 22 June 2009, CRC/C/FRA/CO/4.



117. Reference has been made to specific training in the area of trafficking provided by the EU's Frontex agency ("common curriculum/training tool on THB") and a training manual for border guards that will be published and used in the near future (see paragraph 78) **GRETA considers that the French authorities should ensure that trafficking, as distinct from irregular immigration, should be fully taken into account in the framework of action taken by the border police. GRETA considers that the French authorities should ensure that all staff of the law enforcement agencies concerned receive training on trafficking and the detection of trafficking victims, at regular intervals in order to keep up with trends in THB (see paragraph 81).**

118. The OCRIEST centralises and analyses operational intelligence before passing it on to the competent investigation services, both national and international. Based on the information supplied by the OCRIEST, the Unit for the Operational Co-ordination of Action against the Smuggling and Exploitation of Migrants (UCOLTEM) collects and passes on operational intelligence in the field of action against organised crime fostering illegal immigration in all its forms, including for the purpose of trafficking. The UCOLTEM also has the task of strengthening the co-ordination of French and foreign services engaged directly or indirectly in combating illegal immigration networks, co-ordinating operational action and bringing any useful information to the attention of the judicial authorities. The French authorities point out that the UCOLTEM has no brief to be in contact with victims and that its work is geared to dismantling illegal immigration networks through managing operational intelligence. GRETA reiterates that trafficking is a crime phenomenon which, while it may be linked to illegal immigration, is not to be confused with it. Accordingly, **GRETA considers that the French authorities should ensure that the staff of the UCOLTEM are also specifically trained on trafficking, as distinct from illegal immigration, at regular intervals in order to keep up with trends in THB.**

119. Information on the requirements governing entry to and stay in France is available on the Ministry of Foreign Affairs website.<sup>29</sup> In addition, when consular posts grant visas, they insert an information sheet on the requirements governing entry to France in the passports of those concerned. The French Office for Immigration and Integration (OFII), which has outlets in the countries from which people mainly emigrate to France, provides information on the requirements governing immigration to France and also handles reception and guidance for foreigners when they arrive in France. Practical information on applying for visas is available on several websites of French consular missions, including in the Balkans. **GRETA encourages the French authorities to ensure that all the information on the requirements governing entry to and stay in France is available in several languages not only on consulate websites but also in the information sheet inserts supplied with the visa so that the target persons can understand it.**

120. As concerns the issue of visas, applicants must submit documents showing the purpose of their trip to the consular services, and consular staff may interview applicants to check that their application is genuine and honest. If in doubt, they may also check certain information on the people who take responsibility for, and receive visa applicants in France. They also have databases showing the individuals who are blacklisted, including those identified by the Schengen Information System (SIS) or in wanted persons files. The authorities have stated that, in their efforts to identify those who are victims of or involved in the trafficking of human beings, the visa services in embassies and consulates are particularly attentive to document forgery (authenticity of travel documents, civil status certificates and documents attesting to applicants' socio-professional situations). It has also been pointed out that visa applications for children are given special attention (checking of parental authorisations to leave the country, restriction of the duration of visa validity, seeing the child in person), and visa applications to exercise certain professions in France (dancing or modelling, for example) also come under close scrutiny.

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<sup>29</sup> The ministry's website, *France Diplomatie*, has a section called "*Entrer en France*" to which French consulates can create a link on their own site

121. If, in the light of the information gathered either at local level or on the host of the visa applicant in France, there is a suspicion of trafficking, the official responsible for examining the visa application may immediately suspend that examination and refer the matter to their superiors so that the case may be referred, for investigation, to the representative of the Ministry of the Interior (interior security attaché or Directorate of international co-operation) either in the consular post itself or the closest competent post. The investigation may be carried out in conjunction with the local law enforcement agencies which must then take the necessary steps to ensure that the potential victim is protected and subsequently dismantle the network. If the suspicions are confirmed, the visa may be refused or instead issued at the request of the police authorities for operational reasons. GRETA stresses the importance of training consular staff, interior security attachés and Directorate of international co-operation staff in THB issues and the detection of victims.

122. GRETA welcomes the measures already taken by the French authorities to detect trafficking when issuing visas and promote lawful migration. **GRETA considers that the French authorities should ensure that written information is provided to foreigners planning to come to France in a language that they can understand, in order to warn them of the risks of trafficking for the purposes of sexual exploitation, labour exploitation and domestic servitude, to inform them of the bodies which they may approach for assistance and advice, and to provide them with information on their rights, for instance through the setting up of a hotline.**

d. Measures to ensure the quality, security and integrity of travel and identity documents

123. The French passport incorporates all the international standards and technical recommendations laid down by the International Civil Aviation Organisation and Council Regulation (EC) No. 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States. Accordingly, the French electronic and biometric passport supports numerous security features which are checkable without specific detection equipment being required. In addition, they actually incorporate electronic components and, since 2009, biometric components. Furthermore, the passport production chain has been changed in order to increase the level of security (the "one person, one passport" rule, whereas, previously, children could be included on their parents' passport; centralisation of passport production; personalisation of passports in a single place). Where the issuing chain is concerned, there is emphasis on training to combat document fraud and identity theft for town hall and *préfecture* staff in charge of issuing passports.

124. GRETA notes, however, that thousands (between 500 000 and one million according to some unofficial sources cited by the media) of the 6.5 million biometric passports in existence are alleged to have been issued on the basis of forged documents. To remedy this situation, a secure transmission system is being gradually set up between town halls and *préfectures* (electronic communication of civil status data) as of February 2011, as the failings previously identified related to the non-secure transmission of copies of birth certificates which could then be used to obtain passports.<sup>30</sup> **GRETA invites the authorities to continue their efforts to reinforce security of the different phases of passport issue.**

<sup>30</sup> At the request of the European Parliament, studies have been carried out to analyse the different loop-holes, but the findings are not yet known.

### 3. Implementation by France of measures to protect and promote the rights of victims of trafficking in human beings

#### a. Identification of victims of trafficking in human beings

125. Article 10 of the Convention requires Parties to adopt measures to identify victims. In order to do so, Parties must provide their competent authorities with persons who are trained and qualified in preventing and combating THB and in identifying and helping victims, including children. Identifying a trafficking victim is a process which takes time, and therefore the Convention provides that if the competent authorities have reasonable grounds to believe that a person has been a victim of trafficking, that person shall not be removed from the country until the identification process is completed and shall receive the assistance required by the Convention.

126. France has no formalised procedure or established criteria for identifying victims of trafficking. The inter-ministerial working group involved in the drawing up of a national action plan drew up a list of indicators for identifying THB victims.<sup>31</sup> This list was to be included on a card distributed to all professionals employed by institutions or NGOs likely to come into contact with potential victims of trafficking. The action plan and its measures have not been implemented yet (see paragraphs 62 and 63).

127. In principle, the victim identification process may be initiated by the law enforcement agencies but also by institutional or civil society actors (such as the judiciary, lawyers, *préfectures*, municipalities, labour inspectorate, schools, trade unions, etc.) as soon as there are grounds to suspect that someone is a victim of trafficking. In practice, although the process may be initiated by various actors, identification is linked to the police investigation and will result *de facto* from the police or gendarmerie forces contacting a *préfecture* with a view to the issue of a residence permit (provisions of Article L316-1 of the Code governing the entry and stay of foreigners and right of asylum, CESEDA). The identification of trafficking victims lies solely within the remit of the law enforcement agencies. Even though this is not a requirement, according to several interlocutors, the victim's identification appears to be reliant in practice on the victim co-operating with the authorities, or even depend on it. However, this procedure relates solely to victims illegally present in France. GRETA notes that there are no formal arrangements for identifying all other victims of trafficking, such as those who are legally resident, including EU nationals, or of French nationality, for example.

128. In cases where victims are under 18 years of age, the law enforcement agencies notify the public prosecutor, who determines the protection measures appropriate to the situation of the children in question. The French authorities have pointed to the efforts made in respect of child victims of trafficking networks, claiming that the secondment of Romanian police officers to the Paris police *préfecture* since spring 2011 has made it possible to identify over 200 young people. However, GRETA received contrasting views from civil society, which believes that the authorities' current response regarding child victims of trafficking is deeply inadequate, partly owing to weaknesses in the process of identifying child victims. GRETA has received worrying allegations that child victims of forced delinquency or trafficking for the purpose of sexual exploitation, many of whom are repeat offenders (theft, soliciting, etc.), have been repeatedly punished without ever being identified as trafficking victims despite repeated contact with the police and judicial authorities. Indeed, the French authorities acknowledge that, notwithstanding certain initiatives, including those mentioned above, this phenomenon raises the issue of what responses are called for to protect these children from traffickers.

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<sup>31</sup> Such as very high debts incurred by travelling, abnormally low salary, very difficult working conditions, restricted freedom of movement etc. The draft action plan also recommended that victims presenting several of these indicators be interviewed individually and in-depth.

129. It is often NGOs that are responsible for putting victims into contact with law enforcement agencies, having come into contact with the victims, particularly as a result of their on-street outreach work. However, while the circular of 5 February 2009 sent by the Minister responsible for immigration to *préfets* and directors general of the national police and gendarmerie invites the actors concerned to accept the involvement of NGOs recognised for their victim support work, it states that they "are not qualified to designate individuals entitled to benefit from the provisions of Article L316-1 or in particular to assess the likelihood that a foreigner is actually a victim of trafficking". Moreover, as underlined by several NGOs consulted, the aforementioned circular is not legally binding. The involvement of NGOs in the initial phase of identification goes no further than contacting the police and gendarmerie services when they encounter suspected trafficking cases.

130. The French authorities have stated that the Paris Brigade for the Protection of Minors (BPM) takes all statements from children even if there is no complaint or report, and a psychologist has been on the BPM staff since 2003. However, the NGOs reported that victims are reluctant, whether adult or under eighteen years of age, to approach law enforcement agencies, particularly as they fear being expelled from the territory if they are staying irregularly or reprisals by traffickers against their families. Mention was made of the strong likelihood of trafficking victims being placed in administrative detention and expelled from French territory without ever being identified as trafficking victims and enjoying the associated rights. Civil society actors believe that, in the absence of formal identification, trafficking victims are all too often regarded as petty offenders or irregular migrants. Other cases were mentioned where complaints from potential trafficking victims, supported by NGOs, were allegedly rejected by the police, and yet the entire subsequent procedure of victim identification and assistance depends on the lodging of a complaint in the first place and, in principle, any complaint lodged must be accepted.

131. Despite the lack of a formalised procedure for identifying trafficking victims that is common to all the stakeholders concerned, GRETA notes the existence of several projects carried out by various structures to improve identification, including:

- an information DVD on THB for use by professionals and containing messages for victims (available in several languages) prepared with the participation of the Delegation for victims and distributed in 2009 to build awareness in law enforcement agencies of trafficking and the detection and identification of trafficking victims. The French authorities have stated that the DVD has been widely distributed and an additional wave of distribution is planned, although there was no indication of scale;
- a detailed circular entitled "Human trafficking: prosecution of perpetrators and protection of victims" has just been distributed to all gendarmerie units. It contains specific guidance regarding identification and protection of trafficking victims together with a list of identification criteria. This circular lists the situations in which gendarmerie units may come into contact with victims and indicates the procedures to follow in particular to ask for the reflection period;<sup>32</sup>
- the posting by the Central Office for the Suppression of Trafficking in Human Beings (OCRTEH) on the Ministry of the Interior intranet site of a model interview of victims of sexual exploitation intended to help police officers distinguish between a prostitute and a victim of a pimping or trafficking network by asking a set of predetermined questions;
- a guide drawn up jointly by the NGO ECPAT-France and the Brigade for the Protection of Minors (BPM) on detection of trafficking victims by police services: the guide was sent to six Paris police stations, as well as the directorate of transport police and the Night Brigade against Crime, in May 2012,. An assessment was to be carried out in September 2012 before the guide is rolled out across the country if the test phase is successful.

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Memorandum No. 79000, 5 October 2012, issued by the Director General of National Gendarmerie.

- a interview methodology (general interviewing process or “ProGREAI”) was introduced in 2010 within the gendarmerie to help gendarmerie investigators adapt interviews to the individuals concerned (victims, including those aged under 18 years, witnesses or suspects) and the situation. This method is currently being evaluated under the auspices of the national gendarmerie research centre by four research academics. GRETA deems that the theme of trafficking should specifically be dealt with in this interview methodology, given the specificity of the situation of trafficking victims and, in particular, their difficulty in providing information on their exploitation.

132. GRETA takes note of the various initiatives aimed at improving the detection and identification of trafficking victims by law enforcement agencies, and underlines the need for greater co-ordination in this matter. **GRETA wishes to be kept informed of developments in this sphere.**

133. More specifically concerning the issue of trafficking for the purposes of labour exploitation, the labour inspectorate, which comes under the Ministry of Labour and Employment, is competent for checking on any form of illegal labour (including clandestine labour and the employment of foreigners without residence permits) and logging abuses of vulnerability pursuant to Article L 8112-2 of the Labour Code. Labour inspectorate staff are not competent for seeking out and ascertaining criminal offences related to trafficking but may play a role in detecting acts of trafficking and reporting them to the public prosecutor in accordance with Article 40 of the Code of Criminal Procedure. In this connection, the labour inspectorate issued four fines and forwarded seven reports to the prosecutor's office on suspected cases of THB in 2010 and issued nine fines and forwarded five reports in 2011.

134. The Labour inspectorate may also carry out joint investigations with the Central Office for Combating Illegal Labour (OCLTI) or with local police and gendarmerie forces. The French authorities referred to reinforced checks on employers in a drive against illegal labour offences which may occasionally reveal acts of trafficking, through eight inspection bodies and special procedural derogations (lifting of professional secrecy between the different staff of these services, right of criminal investigation officers to carry out checks on workplaces at the requisition of a prosecutor). The labour inspectorate's priority aim and main activity is to detect illegal labour. It does not specifically look for the offence of trafficking, and trafficking victims are rarely identified as such but reportedly rather as illegal workers. As a result, they risk being expelled from France and do not have access to support arrangements provided for trafficking victims. Furthermore, labour inspectors are not specifically trained to detect trafficking in human beings for the purpose of labour exploitation. However, GRETA has been told that the labour inspectorate services distribute pamphlets available in six languages to the workers they meet during inspections to raise their awareness of trafficking – and possibly make them realise that they are perhaps victims themselves. GRETA is concerned by the lack of a proper identification system for victims of THB for the purposes of labour exploitation and as a result that victims may end up being treated as irregular migrant workers. GRETA notes the efforts devoted to training in action against trafficking aimed at labour inspectorate staff (see paragraph 79).

135. In addition, the National Commission for Combating Illegal Labour decides on a national plan indicating the business sectors where the inspection services are to step up their efforts. GRETA stresses the importance of action against trafficking being fully integrated into these arrangements, with the focus remaining on the priority of protecting victims of trafficking for the purpose of labour exploitation rather than the illegal nature of their administrative situation on the territory.

136. The labour inspectorate is not competent to assess domestic work, which, in principle falls within the remit of the Central Office for Combating Illegal Labour (OCLTI). Detecting victims of trafficking for the purpose of work in domestic households is left to NGOs specialised in this area, particularly the Committee against Modern Slavery (CCEM) and *Esclavage tolérance zéro* (ETZ), and, obviously, the law enforcement agencies for the subsequent procedure. As regards trafficking for the purpose of labour exploitation in diplomatic households, both these NGOs have told GRETA that supervision measures have been tightened up by the Protocol department of the Ministry of Foreign Affairs through the issue of a special card and introduction of an annual interview with the domestic worker in question. Nevertheless, GRETA has also been informed that these measures have not been sufficient to eradicate trafficking in diplomatic households, which is said to be still practised in France, although it is difficult to evaluate. GRETA deems that full use should be made of the competence of the OCLTI to combat trafficking for the purposes of labour exploitation.

137. **GRETA urges the French authorities to:**

- **strengthen the multidisciplinary approach to the identification of victims by introducing a national referral framework defining the role to be played and the procedure to be followed by all the authorities and professionals who may come into direct contact with trafficking victims, including NGOs;**
- **develop tools for common use by all the actors concerned (guides, indicators, etc.) for identifying trafficking victims, so that steps for the detection and identification of trafficking victims are formalised and co-ordinated;**
- **not make the identification of trafficking victims from the outset conditional upon their co-operation with law enforcement agencies;**
- **place special emphasis on the identification of child victims and, to that end, adopt tools and a procedure geared to their particular situation;**
- **ensure the identification of foreign victims held in detention centres prior to deportation**
- **develop training on the detection and identification of victims for institutional actors, particularly the police and gendarmerie forces and also labour inspectors, in order to avoid confusion between trafficking victims - particularly those belonging to vulnerable groups such as the Roma or unaccompanied foreign children - and offenders or irregular migrants (see paragraphs 75 and following).**

b. Assistance to victims

138. The Convention requires Parties to take measures to assist victims in their physical, psychological and social recovery, taking account of the victim's safety and protection needs, in co-operation with NGOs and other organisations engaged in assistance to victims. This assistance must be provided on a consensual and informed basis, taking account of the special needs of persons in a vulnerable position, as well as children, and it must not be made conditional on the victim's willingness to act as a witness (Article 12). The need to take account of victims' needs is also referred to in the Convention's provisions concerning temporary residence permits (Article 14) and the rights of children victims of trafficking (Article 12(7)). The Convention also establishes that the assistance to victims of THB must include appropriate and secure accommodation.

139. In France, Article R316-8 of the Code governing the entry and stay of foreigners and right of asylum (CESEDA) stipulates that a victim holding a temporary residence permit has access to reception facilities, accommodation, temporary housing and social supervision for the underprivileged and, in particular, to accommodation and social reintegration centres. Furthermore, Article R316-1 enshrines trafficking victims' right to information. In addition to information on their entitlement to a reflection period (see paragraph 160), the law enforcement agencies must inform a potential trafficking victim of the possibility of being allowed to stay and exercise a professional activity, the measures for reception, accommodation and protection available, and also the possibility of obtaining legal aid to uphold their rights. This information must be provided in a language which the victim understands and on a confidential basis.

140. The CESEDA further stipulates that, when victims require a change of place of residence for their own safety, the victim may be referred to the national structure for receiving victims of THB and pimping, the *Ac-Sé* secure reception system set up in 2001. This system is co-ordinated by the NGO ALC, which is bound by a pluri-annual agreement setting out objectives to the Ministry of Social Affairs (see paragraph 71). The *Ac-Sé* system provides THB victims with accommodation far away from the place where they were exploited. Non-specialised accommodation facilities which normally house persons in social difficulty accept to take in THB victims and are trained accordingly. The fact that they are spread throughout France ensures that the THB victim is housed a safe distance away, in a location that remains confidential. Requests for accommodation are centralised by a co-ordination team run by ALC which receives reports of individuals needing to be placed in a refuge, assesses the situation and looks for the right facility with a place available in the network. Victims must freely agree to the proposal that they be taken in by a centre.

141. The *Ac-Sé* system took in 56 victims in 2008 (55 women and one man), 61 in 2009 (60 women and one man), 64 in 2010 (63 women and one man) and 68 in 2011 (66 women and two men). It is funded by the Ministry Social Affairs and Paris City Council and supervised by an inter-partner steering committee under the auspices of the Ministry of Social Affairs (see paragraph 72). The GRETA delegation visited two *Ac-Sé* partner centres, one in Lyon and the other in Grenoble. The Grenoble centre had 75 places, two of which were reserved for the *Ac-Sé* system and were occupied by trafficking victims on the day of the visit. The Lyon Centre had 40 places, three of which were reserved for trafficking victims, two of these being occupied at the time of the visit. This centre was for young adults aged between 18 and 25. It had 30 individual studio flats fitted with a bathroom and a kitchenette in a recent, well maintained building; the delegation was able to view the studio flat which was unoccupied.

142. The other victims, who do not need or wish to be far from the place where they are exploited, may be placed in public or private accommodation and social reintegration centres (CHRS) (or on a temporary basis, emergency shelters), which are non-specialised shelters and fulfil a general role of helping individuals and families experiencing serious difficulties, particularly economic, family, housing, health or integration problems, to gain or recover personal and social autonomy. In such cases there is no reception or care specifically geared towards the situation of THB victims. Moreover, GRETA was told that, since accommodation facilities were saturated in France, there could be shortages of places. The French authorities stated that the heavy pressures between the level of budget funding, the available places and ever growing demand to be taken in, particularly from asylum seekers between 2010 and 2011, have had an impact on non-specialised shelters; in certain areas this situation may result in requests to be taken into care not being satisfied. A Ministry of Social Affairs circular of 11 July 2002 stipulates that while a contribution may be requested from the persons accommodated towards their upkeep, such contributions may not be requested from people with no resources, and therefore, according to the authorities, cannot be a ground for refusal. Nevertheless, GRETA is concerned by the information it has received to the effect that the shelters have often been unable to take in victims without any resources.

143. GRETA has no statistical data on accommodation of adult victims who do not come under the *Ac-Sé* system or on child victims, all of whom are received in non-specialised shelters, but it would appear that a large proportion of victims fall into this category.

144. As concerns the system of assistance, the French authorities have stated that trafficking victims may benefit from the following measures:

- material assistance entailing payment of a temporary waiting allowance (ATA) of 11 euros a day by the local job centre covering the applicant's place of residence. In addition, the active solidarity income benefit is open to persons having been legally resident in France for at least five years whose household has an income lower than the rate of guaranteed income;
- access to medical care under the general care regime (universal sickness coverage (CMU), plus complementary insurance) if they are legally resident or state medical aid (AME) if they are staying irregularly. Counselling is also provided by medico-psychological centres and by associations;
- access to the labour market, vocational training and education facilitated by support from the local job centre, advisers and social workers operating within public or private bodies;
- aid for translation and interpretation granted by the competent courts, which designate court translators and interpreters.

145. GRETA notes that a number of measures for assisting and protecting THB victims are provided for but has concerns over whether they are effectively implemented. GRETA was informed, for example, of major difficulties in securing payment of the temporary waiting allowance (the low amount paid was also emphasised) as well as access to healthcare. A lack of identity papers, often confiscated by traffickers, or documents normally issued by *préfectures* after a lengthy wait, required by victims to justify their case was cited as one of the reasons. Where the temporary waiting allowance and more generally the facilitating of access to the labour market were concerned, the lack of familiarity with the situation of victims on the part of job centre staff was also cited as one of the difficulties. There was also mention of particularly long lead-times for implementing assistance measures allegedly leaving victims destitute and at risk and hampering their reintegration.

146. Furthermore, there appears to be no provision for specific assistance for victims not benefiting from a residence permit under Article L316-1 of the CESEDA because their application has been turned down by the *préfecture* services. Where victims of French nationality or nationals of a European Union country are concerned, the French authorities point out that they also enjoy access to the *Ac-Sé* system and a number of assistance measures (medical, legal, interpreting etc.). Even so, it seems to GRETA that, apart from access to the *Ac-Sé* network, the assistance measures are generic and not specifically defined for victims of trafficking, and therefore not always fully suited to their needs, for example regarding information provided by the law enforcement agencies specifically to trafficking victims. As for nationals of EU member countries, the French authorities point out that the circular of 5 February 2009 sent to *préfets*, the national police and the national gendarmerie makes it possible to take into account the situation of Bulgarian and Romanian nationals subject to transitional measures and issue them with a residence permit entitling them to work. GRETA notes nevertheless that this circular is not legally binding and may therefore result in people being treated differently by different *préfectures*.



147. The authorities also provide assistance to victims through the NGOs which they subsidise, in some cases under annual or pluri-annual agreements setting out objectives (see paragraph 68 and 69). Accordingly, it is mainly NGOs which provide victims with assistance and legal, social and administrative guidance, ensuring that they have access to justice and social, educational and vocational integration. Nevertheless, the NGOs reported increasing difficulties in fulfilling this role devolved to them from the State, partly because of inadequate or irregular funding. Furthermore, France is not evenly covered by NGOs and their services are often saturated in the main urban areas.

148. When the victim is under 18 years of age, “the police or gendarmerie services shall notify the public prosecutor so that the latter may decide on appropriate protection measures” (Article R316-10 of the CESEDA). The measures decided may include launching a police investigation, ordering temporary placement or referring the matter to the juvenile judge with a view to educational assistance measures. Generally speaking, any child in danger in France must benefit from educational assistance measures<sup>33</sup> whose implementation is the responsibility of the *département* child welfare services. In addition to notification by the law enforcement agencies, the prosecutor's office may be notified of a present danger by anyone in contact with potential victims, such as national education system staff, specialised NGOs, etc.

149. Regarding the existence of any legal guardianship arrangement for foreign unaccompanied children, the French authorities stated that there are different procedures applicable to their legal representation, with practices varying between *départements*. The legislator has provided for the involvement of an *ad hoc* guardian in the absence of a legal representative when the child enters a waiting zone or when an unaccompanied child requests refugee status. The children's judge may then entrust the child to the care of the child welfare services, which will be authorised to take decisions on the child's behalf. Cases may be referred by the prosecutor to the guardianship judge, and guardianship may be transferred to the *département*, which is the public authority competent for child welfare matters. GRETA is nevertheless concerned over the observation by the UN Committee on the Rights of the Child that unaccompanied children placed in waiting zones are not systematically assigned an *ad hoc* guardian, in contrast to what is stipulated in legislation, and furthermore that they are often returned to countries where there is a risk of them being exploited, without a proper assessment of their situation.<sup>34</sup>

150. Specialised NGOs reported major difficulties regarding assistance to child victims of trafficking. As regards the reception of these victims, there is no system for removing them to another geographical location along the lines of the *Ac-Sé* system, which is said to pose a real problem, as minor victims are often placed in the same refuges, well known to the networks, which take them back shortly afterwards, often the following day. Since child welfare and child accommodation are managed at the level of the *département*, it is very difficult to set up a system removing them to other geographical locations on a national scale. The NGO *Hors La Rue* attempted to devise a scheme making it possible to remove minor victims to other geographical locations along the lines of the *Ac-Sé* system for adults, but this initiative was not followed through.

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<sup>33</sup> Civil Code, Article 375.

<sup>34</sup> Committee on the Rights of the Child, 51st session, Consideration of reports submitted by States parties to the Convention on the rights of the child, Concluding observations of the Committee: France, 22 June 2009, CRC/C/FRA/CO/4.

151. GRETA was also told that child welfare was saturated in certain *départements* (particularly those where the main French airports are located) primarily because of the mass arrival of unaccompanied foreign minors, and the *départements* are suffering from a lack of means, human resources and training in this area. According to the French authorities, there are thought to be over 7 000 foreign unaccompanied children in France. THB child victims do not appear to all receive adequate and appropriate assistance. In this connection, the Children's Commissioner was petitioned in April 2012 by a group of civil society actors (CIMADE, *Hors la rue*, *Ligue des droits de l'homme*, trade union of the judiciary, etc.) alerting her to what they described as a substantial deterioration in the care of unaccompanied foreign minors in the Paris region, in terms of both a lack of accommodation and inadequate social support. The French authorities indicate that unaccompanied children represent 25 to 30% of the children receiving social welfare from Paris city council, which devotes 80 million euros to their care. In addition, the State funds around a hundred places in Paris for children in difficulty, to the tune of 3 million euros. GRETA has also received information indicating that THB child victims coerced to commit offences (theft, soliciting, etc.) are primarily regarded as petty offenders and therefore do not benefit from any assistance measures (see paragraph 215) and that in some cases child victims are released but not provided assistance. GRETA is generally concerned about the lack of proper assistance available to child victims of trafficking. GRETA is concerned, for example, about what happened to the child victims of the pickpocketing network dismantled in the Paris region in 2010, who were from the Balkans and of Roma origin, and all the more so given the risks for them of being taken back by other ramifications of the network.

152. The French authorities indicated the problems they faced in caring for certain young victims of networks who move around between different countries, spending a few months or years in each one without attending school, and are incorporated in a community existence from which it is difficult to remove them for the sake of their care. Any attempts at placement would result in them running away. The French authorities are looking into care alternatives. NGO staff have been on hand at the Paris Children's court on a regular basis since 2009 to encourage young people to sign up to a care scheme. Furthermore, Paris city council recruited a Romanian-speaking educator in September 2011 who is posted with the educative unit in the Paris children's court, and their educative follow-up work is said to be achieving positive results (the idea of care is approached from a different viewpoint, and young people are more receptive; the young people supervised by the educator have access to full social cover; they participate in educative activities; there is little or no repeat offending during supervision). A second Romanian educator is to be recruited in autumn 2012, in connection with the arrival of a Romanian socio-educative adviser announced by the Romanian authorities. The French authorities have further indicated that several other initiatives are envisaged:

- gathering of socio-educative information for foreign unaccompanied children referred to the children's court, with a view to adjusting the nature and content of interviews with them, gathering information on their background and movements and supplementing any social services inquiries carried out in their country;
- identification of fresh options for placing young people in localities far removed from the networks exploiting them, in conjunction with the Paris child welfare services;
- exploring prospects for schooling in connection with the CASNAV facility (centre for the reception and schooling of new arrivals and itinerant children) run by the national education system, providing very low-level learning for the young people concerned.

153. GRETA takes note of the measures that the French authorities have taken or intend to take in the near future to provide better care for child victims of trafficking, particularly Romanian and Roma children. However, GRETA is concerned over problems of identifying and assisting child victims of trafficking in general and the fact that they are often arrested as delinquents rather than first and foremost treated as victims whose human rights have been violated.

154. **GRETA urges the French authorities to step up measures of assistance to trafficking victims and, in particular, to:**

- **provide all trafficking victims with the same level of assistance regardless of their nationality, their willingness to co-operate with law enforcement agencies or their situation as regards the right to stay;**
- **ensure that the services provided in shelters are adequate and suited to the special needs of trafficking victims;**
- **strengthen the system for assisting child victims of trafficking, with respect to both accommodation and the setting up of medium- and long-term support programmes, geared towards the children's needs;**
- **provide sufficient human and financial resources to guarantee that all victims are effectively provided with the assistance they need, even where the provision of that assistance is delegated to NGOs;**
- **train all professionals tasked with implementing measures to assist and protect trafficking victims.**

c. Recovery and reflection period

155. As victims of trafficking are extremely vulnerable after the trauma they have experienced, Article 13 of the Convention introduces the obligation for Parties to provide in their internal law for a recovery and reflection period of at least 30 days. The minimum 30-day period constitutes an important guarantee for victims and potential victims and it serves a number of purposes, including to allow them to recover and escape the influence of traffickers and/or to take a decision on co-operating with the competent authorities. During this period, Parties must authorise the person concerned to stay on their territory and expulsion orders cannot be enforced.

156. Article R316-1 of the CESEDA provides for a reflection period of 30 days. This may be granted to persons declaring themselves as victims of THB so that they may take a decision on co-operating with the police and judicial authorities. As stated in the paragraphs concerning identification, the police and gendarmerie services interview the potential victims and assess the likelihood of them actually being THB victims, and may, where applicable, ask the *préfecture* services to issue a certificate granting them a reflection period. When a victim is granted a reflection period, they may not be removed from the territory and the execution of any expulsion measures is suspended.

157. This specific certificate, which differs from the certificate issued when a residence permit is applied for, is not renewable and the reflection period may be shortened, either on the victim's own initiative by deciding to co-operate or, *a contrario*, not to follow the procedure, or on the authorities' initiative if it appears that the victims have renewed links, on their own initiative, with the people who were exploiting them or that their presence constitutes a grave threat to public order.

158. GRETA notes in this connection that the renewing of links on the victim's own initiative with the people who were exploiting them is not provided for in the Convention; it may prove difficult to determine whether a victim has voluntarily renewed such links or has been subjected to irresistible pressure by trafficking networks to do so. The French authorities agree that this is a problem, particularly in the light of the short-lived validity of the reflection period. They consider that, in practice, it is when the first residence permit is renewed that it may be more clearly ascertained whether a victim has renewed links with the people who were exploiting them.

159. The holder of a certificate may normally exercise a professional activity and benefit from certain assistance measures (Article R316-6 of the CESEDA).<sup>35</sup>

160. In addition, Article R316-1 of the CESEDA guarantees THB victims' right to information. The law enforcement agencies must inform victims of the possibility of being granted a reflection period, in a language which the victim understands and on a confidential basis so that they are reassured and protected. Nevertheless it appears that the reflection period is not commonly known not only by the police and gendarmerie services which must request it on behalf of victims, but also by the *préfecture* services, which must grant it. In a judgment of 15 June 2012 the *Conseil d'Etat* found that the police had failed to inform a potential victim of her right to be granted a period of reflection; the applicant was later served with a removal order which she challenged before the courts.<sup>36</sup> The French authorities stated that a reminder of the instructions would be issued to all the police services concerned, and that a reminder had already been issued within the national gendarmerie through a circular of the Director General of National Gendarmerie on 5 October 2012 (see paragraph 131). In practice, law enforcement agencies directly request a residence permit for victims agreeing to co-operate, which goes against the spirit of the Convention. Furthermore, there are no statistics relating to the reflection period. GRETA notes with concern that victims are not properly informed of their right to enjoy a reflection period.

161. In addition, this period is considered solely as a time for the victim to reflect on whether to co-operate with the police or gendarmerie, with no thought for the aspect of recovery, which, according to the Convention, is equally a part of that period. GRETA wishes to reiterate the importance of this period for the recovery of THB victims and the effective access of victims to related rights. GRETA also reiterates that this period must not be confused with residence permits and does not depend on the victim co-operating with the authorities responsible for investigations and prosecutions (see the explanatory report to the Convention, paragraph 175).

162. **GRETA urges the French authorities:**

- **to ensure that trafficking victims are systematically informed of the possibility of a recovery and reflection period and are effectively granted one;**
- **to better inform, to that end, the services competent for requesting and granting the recovery and reflection period that such a possibility exists for victims, and the need for these services to systematically make use of it;**
- **to ensure that no termination of the recovery and reflection period is carried out on the ground that victims or potential victims have “on their own initiative renewed contact with the perpetrators” without due regard to and a thorough assessment of the individual situation of the victim or potential victim of trafficking.**

<sup>35</sup> Including state medical aid and the temporary waiting allowance.

<sup>36</sup> *Conseil d'Etat*, application No. 339209, judgment of 15 June 2012.

d. Residence permits

163. Article 14(1) of the Convention provides for two possibilities when it comes to the issuing of renewable residence permits to victims of trafficking: on the basis of their personal situation and/or their co-operation with the competent authorities in the investigation or criminal proceedings.

164. In France, victims having lodged a complaint or testified in a criminal procedure against a person who may have committed trafficking offences may be granted a temporary residence permit valid for at least six months, entitling them to work, without this right being subject, as is the case for other categories of foreigners, to the prior production of an employment contract (Article L316-1, CESEDA).

165. As indicated in paragraphs 127 and following, in practice it is the task of the police and gendarmerie services to ascertain whether foreign nationals are victims of trafficking. In practice, the police and gendarmerie services approach the *préfecture* services, requesting them to grant a residence permit to victims who co-operate with them, although there is no obligation for such requests to transit via the law enforcement agencies. The judicial authorities must confirm to the *préfecture* services that judicial proceedings have been initiated against the perpetrator of the trafficking offence. They then examine the case, checking, among other things, that the victim does not constitute a threat to public order and that he or she has effectively broken off all links with the perpetrator of the offences in question, at which point they may decide to issue a residence permit. This residence permit is temporary and renewable throughout the duration of the judicial proceedings lodged following the victim's complaint and/or testimony. This permit may be withdrawn if the victim has not broken off links with the presumed perpetrator of the offences, if their testimony proves unfounded or if, in general terms, the victim ceases to co-operate with the competent authorities.

166. The *préfecture* may also issue a residence permit valid for 10 years once the conviction of the person prosecuted has become definitive (Article L316-1, CESEDA). In the event of the victim's co-operation or testimony not resulting in a conviction, the circular of 5 February 2009 sent by the minister responsible for immigration to *préfets* and directors general of the national police and gendarmerie services asks the *préfecture* services to give favourable consideration to the possibility of maintaining their right to stay.

167. According to the figures supplied by the national authorities relating to cases where a definitive conviction was handed down, one certificate of application for a permit, which constitutes a temporary stay document, was issued in 2009, and four residence permits and 19 certificates were granted in 2010. As for permits issued after the lodging of a complaint and covering the duration of criminal procedures, most of the temporary permits and documents were very short-lived, making the victims' situation more precarious (see paragraph 145), as they were mainly certificates - and therefore only valid for a short period - or temporary stay certificates (87 in 2008, 243 in 2009 and 277 in 2010). The number of temporary residence permits valid for less than one year (newly created or renewals) came to two in 2008, three in 2009 and 12 in 2010, while temporary residence permits valid for one year (newly created or renewals) numbered 21 in 2008, 93 in 2009 and 138 in 2010. Although the total number of temporary residence permits granted to THB victims under Article L316-1 has increased noticeably (29 in 2008, 102 in 2009, 160 in 2010, and 189 in 2011), these include a significant proportion of temporary residence permits and documents valid for a very short duration.

168. Furthermore, Article L313-14 of the CESEDA provides for permission to stay on humanitarian or exceptional grounds, which is not specific to trafficking victims. The circular of 5 February 2009 nevertheless asks *préfecture* services to exercise this option for the benefit of trafficking victims in situations of distress who are not co-operating for fear of reprisals against themselves or their family. In such cases the *préfecture* services must take account of the victim's situation and the reintegration efforts made, such as enrolment for language or vocational training, the exercise of a professional activity, etc.<sup>37</sup> A temporary residence permit, which is automatically renewable, may be issued in such cases. However, GRETA was told that this option is rarely exercised, partly because renewal of this residence permit is automatic. The French authorities have no statistics making it possible to accurately determine the number of victims issued with this type of residence permit.<sup>38</sup> As far as GRETA is aware and in light of information gathered during the evaluation visit, 16 victims were granted a residence permit on grounds of their personal circumstances in 2009.

169. The issue of a residence permit depends initially on the power of the police and gendarmerie services to freely assess each individual situation. NGOs have reported cases in which the law enforcement agencies allegedly offered the benefits afforded under Article L316-1 only to those victims whose testimony or complaint provided grounds for the opening of a criminal investigation, the arrest of the trafficker and their likely conviction. It would also appear that a victim providing testimony in the course of proceedings would not be guided in the direction of the *préfecture* either.

170. Practices in issuing residence permits appear to be highly diverse amongst *préfectures*. Some *préfectures* were said to be very strict as regards the issuing criteria and took the view, for example, that the fact of already having been convicted of soliciting or of working as a prostitute constituted a threat to public order and an obstacle to issuing a residence permit. In addition, there was mention of a great variety of documents, of a more or less temporary nature, valid for varying periods and authorising recipients to work in some cases and not in other cases. GRETA heard of some instances where victims received nothing more than certificates of applications for permission to stay lasting a maximum of three months, over long periods. The same piecemeal approach is to be found in the practice of permit renewal. The French authorities stated that the central services of the Ministry of the Interior are assisting *préfecture* services with a view to harmonising practices in this area and avoiding unequal treatment. Nevertheless, the NGOs spoken to by GRETA expressed concern over the failure to treat victims equally, depending on the practices of the local *préfecture* and often the quality of relations between the NGOs and contacts at the *préfecture*.

171. Moreover, the NGOs stressed that the multiple issue of residence documents valid for very short periods, in some cases without permission to work, keep victims in a precarious situation which seriously jeopardises their reintegration, which may prove problematic as reintegration may be a requirement for having the right to stay in France. The NGOs also pointed to the very high costs of the application for and issue of a residence permit, said to have doubled in recent years. As of 1 January 2012, the cost of an initial application for a residence permit on the basis of Article L316-1 amounts to 708 euros, partly non-refundable, while renewal costs 106 euros. Those costs are often borne by the NGOs, but their budget is increasingly suffering as a result. The French authorities consider that the residence permit issued to victims is not a specific permit but a generic one and, in the interests of treating foreigners equally, providing them at a cheaper rate for trafficking victims could not be envisaged. GRETA is however concerned about the costs of applications for residence permits by victims who are more often than not entirely dependent on funding from the NGOs assisting them. Consequently, the impact on the NGOs having to cover these costs is such that they find themselves in a position of not being able to financially support all victims in their applications for residence permits.

<sup>37</sup> According to the Circular of 5 February 2009 sent by the minister responsible for immigration to *préfets* and directors general of the national police and gendarmerie services (see paragraph 18).

<sup>38</sup> The number total of residence permits issued granting exceptional permission to stay on the basis of Article L313-14 of the CESEDA was 892 in 2008, 2 229 in 2009, 2 882 in 2010 and 4 392 in 2011 (provisional figure).

172. Trafficking victims may also request asylum or seek to benefit from subsidiary protection<sup>39</sup> on the assumption that they would be under threat if they returned to their country. GRETA has been told that, given the aforementioned malfunctions in the procedure for granting THB victims permission to stay and the related costs, the victims, who are usually assisted by NGOs, often make parallel applications for refugee status to the French Office for the protection of refugees and stateless persons (OFPRA)<sup>40</sup> by claiming right of asylum or subsidiary protection, which is not conditional on lodging a complaint and enables them to receive the active solidarity income benefit with no conditions as to prior length of stay with permission to work.

173. However, it would appear that THB victims are often pushed into making an initial asylum request by the trafficking networks, submitting false information regarding their identity. This means that they are officially allowed to stay in France for several months, pending the processing of their request by the competent services, which makes it easier to exploit them. This initial application is usually rejected by the services of the OFPRA. As a result, the second, genuine, application will often be processed under a priority procedure, which is more cursory and does not offer the same level of protection as the normal procedure.

174. In practice, it appears that THB victims can only claim subsidiary protection on grounds such as "the persecution feared is not based on one of the grounds listed in the Geneva Convention"<sup>41</sup> while the UNHCR guidelines<sup>42</sup> recommend a different treatment of this issue, whereby refugee status can, under certain circumstances, be recognised to victims of trafficking. Two THB victims were granted refugee status on grounds of their belonging to a particular social group in two decisions of 2011 and 2012<sup>43</sup> of the National Court of Asylum.<sup>44</sup> The OFPRA has lodged two appeals with the *Conseil d'Etat*. **GRETA wishes to be kept informed about the outcome of these appeals.**

175. Child victims are not subject to the obligation to hold a residence permit before the age of 18 years, unless they wish to exercise a salaried activity from the age of 16 years. The circular of 5 February 2009 states that the possibility of being granted the right to stay on the basis of Article L316-1 must be recognised for minor victims of at least 16 years of age who wish to exercise a salaried activity and erstwhile trafficking victims who co-operated with the police and judicial authorities who reach the age of 18 years.

176. **GRETA urges the French authorities:**

- **to ensure that victims of trafficking enjoy the right to obtain a renewable residence permit in line with internal law and in compliance with Article 14 of the Convention;**
- **to ensure that legislation is homogeneously applied throughout France, in particular, by appointing a contact person in each French préfecture who is trained on trafficking in human beings.**

177. **GRETA considers that the French authorities should ensure that permits issued are of**

<sup>39</sup> Under the Act of 10 December 2004, subsidiary protection is for persons not eligible for the refugee status provided for in the Geneva Convention but are exposed in their country to grave threats making it necessary to grant them protection. The beneficiaries of subsidiary protection are automatically granted a one-year residence permit bearing the reference "private and family life", in accordance with Article L 313-13 of the CESEDA. They do not have to pay the cost of issuing the first residence permit and may receive the active solidarity income benefit as soon as their status is recognised (instead of waiting five years like migrants under ordinary law).

<sup>40</sup> The OFPRA is a public establishment, with administrative and financial autonomy, tasked with the recognition of refugee and stateless person status and also the granting of subsidiary protection.

<sup>41</sup> Decision of the National Court of Asylum of 13 June 2006, Mlle F.

<sup>42</sup> Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked (7 April 2006).

<sup>43</sup> Decision of the National Court of Asylum of 15 mars 2012, A.O.; Decision of the National Court of Asylum of 29 April 2011, J.E.F.

<sup>44</sup> The National court of asylum (CNDA) is a specialised administrative court whose role is to rule on appeals against refusals by the OFPRA to grant refugee status or subsidiary protection. An appeal may be lodged with the *Conseil d'Etat* against the decisions of the CNDA within two months following the decision.

**sufficient duration and allow access to the labour market, thus promoting the reintegration of trafficking victims.**

e. Compensation and legal redress

178. Article 15 of the Convention establishes the obligation for Parties to provide in their internal law for the right of victims of trafficking to legal assistance and free legal aid. Parties must also provide for the right of victims of trafficking to compensation from the perpetrators as well as adopt legislative or other measures to guarantee compensation for victims from the State. Further, Article 15(1) of the Convention establishes that victims of trafficking must have access to information on relevant judicial and administrative proceedings in a language which they can understand.

179. In France, trafficking victims are entitled to legal aid under ordinary law, chiefly intended as legal assistance for judicial and administrative procedures, with lawyers' fees and court costs fully or partly covered by the legal aid system. Legal aid is granted to individuals whose resources are not sufficient to exercise their rights in court, subject to conditions of nationality and being legally resident<sup>45</sup> and depending on their means. Applications must be lodged with the legal aid office of the regional court where the victim is domiciled.

180. Victims of a criminal offence may obtain compensation for the damage caused by this offence before criminal court judges. The French authorities have nevertheless stated that they are unable to supply statistics on this point, on the ground that trafficking victims do not appear as plaintiffs at the hearing and disappear without leaving an address in most cases. The Committee against Modern Slavery (CCEM) told GRETA that victims of trafficking for the purpose of labour exploitation supported by that NGO have been paid damages ranging from 10 000 to 70 000 euros, on average.

181. In addition, some victims, including THB victims, may claim damages for personal injury before a Commission for the Compensation of Victims of Criminal Offences (CIVI), in accordance with Article 706-3 of the Code of Criminal Procedure. These commissions are established within every regional court and are equivalent to a civil court ruling at first instance. The amounts awarded by the commissions are paid by the guarantee fund for victims of acts of terrorism and other offences, financed by levies on property insurance policies. Cases may be brought before a CIVI in parallel with criminal proceedings or outside any criminal proceedings on condition that the acts perpetrated present the material elements of a THB offence. The victim may receive compensation even if the perpetrator of the acts has not been identified or is insolvent.

182. Applications may be made to the CIVI by any injured party of French nationality in respect of acts committed in France or abroad. If the victim is not French, the acts must have been perpetrated in France and the injured party must be either an EU national or legally resident on the date of the acts or the application. Furthermore, the application must be made no later than three years after the acts.

183. In theory, a THB victim may apply to a CIVI as soon as they receive the certificate covering the reflection period but GRETA is concerned that, in practice, the aforementioned difficulties regarding the issue of certificates covering the reflection period or residence permits could hinder trafficking victims' effective access to the compensation procedure. Even if the victim subsequently returns home or is expelled from the territory, the procedure is supposed to continue. The NGOs consulted by GRETA nevertheless said that the compensation procedure was heavily compromised by expulsion measures.

184. Furthermore, unlike other victims of criminal offences, trafficking victims do not have to prove

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<sup>45</sup> Applicants must be French or citizens of a European Union State or may hold another nationality on condition of being lawfully and habitually resident in France. Otherwise, legal aid is not subject to the condition of residence for foreigners who are minors, assisted witnesses, defendants, charged, accused, convicted or plaintiffs, if they benefit from a protection order or have agreed to a plea-bargain, or are kept in a holding area, or have a residence permit refusal referred to the residence permit commission or are subject to an expulsion measure, or placed in detention. Before the National asylum court (CNDA), it is sufficient to habitually reside in France.



work incapacity. Even so, Article 706-3 of the Code of Criminal Procedure allows compensation to be reduced in case of contributory negligence of the victim. The French authorities have pointed out however that any contributory negligence on the part of a trafficking victim may be ruled out in the light of the coercion exercised against them, and these provisions should therefore not apply.

185. According to the data submitted by the authorities, for the whole of France, compensation of 10 000 euros was awarded by a CIVI in 2007, as well as in 2008 and 2009, and 20 000 euros in 2010, each time in a single case. There seem to be few cases of THB victims being compensated in practice. The CIVI of the Lyon regional court has not dealt with any such cases in the last three years, for example, but believes that a number of THB victims apply to the CIVI for other offences, such as sexual assault.

186. The French authorities stated that the law enforcement agencies must inform victims through all possible means of their rights, including the rights to claim compensation for the damage suffered, file a civil lawsuit, receive the assistance of a lawyer and apply to a Commission for the Compensation of Victims of Criminal Offences (CIVI). When a criminal court decision is handed down, the victims are notified of any possibility they might have to apply to a CIVI or the Damages recovery assistance service for criminal offences (SARVI) in the event of damages being awarded. The Sentence enforcement offices and Victim assistance offices have the task of informing victims, at their request, of the workings of the criminal procedure. GRETA notes that, even so, there appears, in practice, to be a lack of information in France for trafficking victims and those who assist them as to the procedure for compensation via commissions for the compensation of victims of criminal offences, as well as difficulties for victims to effectively access that procedure.

**187. GRETA considers that the French authorities should adopt measures to facilitate and guarantee access to compensation for victims of trafficking and, in particular:**

- **ensure that trafficking victims are systematically informed, in a language they understand, of their right to claim compensation and the procedures to follow;**
- **enable victims to exercise their right to compensation by guaranteeing them effective access to legal aid and to Commissions for the compensation of victims of offences;**
- **include all victims within the scope of compensation of victims of offences, regardless of their nationality and whether they are legally in France.**

**188. In addition, GRETA invites the French authorities to introduce a system for recording the compensation claimed and obtained by trafficking victims, regardless of the type of compensation.**

f. Repatriation and return of victims

189. Article 16 of the Convention requires Parties to establish repatriation programmes which aim at avoiding re-victimisation and involve relevant national or international institutions and NGOs, as well as to make efforts to favour the reintegration of victims into the society of the State of return. Parties must also make available to victims of trafficking contact information or structures that can assist them in the country of return, such as law enforcement offices, NGOs, legal professionals and social welfare agencies. The return of victims of trafficking must preferably be voluntary and needs to be carried out with due regard for the rights, safety and dignity of the person and for the status of any legal proceedings related to the fact that the person is a victim of THB.

190. Article R316-9 of the CESEDA provides that a trafficking victim holding a temporary residence permit wishing to return to their country of origin or go to another country may benefit from the system of support for return funded by the French Office for Immigration and Integration (OFII). The OFII is tasked with participating in all administrative actions relating to foreigners' return to and reintegration in their country of origin (Article L5223-1 of the Labour Code).

191. In addition to trafficking victims holding a residence permit, those eligible for assistance for return from the OFII also include foreigners illegally present in France as well as foreigners legally or illegally present on French territory who are in a situation of deprivation and great financial insecurity and wish to return home. The OFII assists with organising their return and obtaining travel documents, and covers the cost of the air ticket and of secondary transport upon arrival in the return country for the applicant and family members accompanying them. Financial aid may also be granted to them. The amount varies according to the country of return, the length of stay in France (at least three months) and the circumstances in which they arrived in France, and ranges from 300 euros to 2 000 euros per adult. This financial assistance is paid to the applicants on the day of their departure at the airport.

192. Financial support for economic reintegration may also be paid to those wishing to establish a business in their country. This entails business start-up funding, which generates incomes and creates jobs, including support from a local technical operator for the setting up and supervision of a business project, training relating to the project and financial aid of up to 7 000 euros for starting up the project.<sup>46</sup>

193. As regards THB victims, the French authorities have stated that, in practice, the OFII usually receives applications directly from NGOs specialising in victim support and guidance, enabling it to closely co-ordinate return arrangements with these structures, which often operate in tandem with relay NGOs in the country of return. Nevertheless, GRETA was unable to establish how many trafficking victims have benefited from this arrangement, as OFII statistics are compiled by nationality and not by category.

194. A specific programme for the emergency reception of Bulgarian victims of prostitution networks was set up by the OFII between 2003 and 2006, in co-operation with a Bulgarian NGO, the Nadia Centre Foundation. The programme was open to Bulgarian nationals who were victims of prostitution networks or networks of trafficking in human beings and wished to voluntarily return to Bulgaria after a stay in France. The support provided covered essentially travel assistance (including travel costs) in France, and welfare assistance in Bulgaria. The French authorities said that, during this programme, 24 people (23 women and one man) had benefited from the support provided.

195. The OFII is also responsible for organising returns of unaccompanied foreign children solely on decision of the children's judge, in the best interests of the child. Restrictions apply to returns: willingness of the young person, agreement with the country of origin, guarantees that the young person will be handed back safely either to their family or to an institution offering prospects of reintegration. The information required for a decision regarding return is supplied by French diplomatic and consular services in the countries of origin in liaison with the social services and the police authorities, as well as the competent NGOs. At the request of the competent judge, the OFII handles the material organisation of a child's return (covering the cost of transport and assisting with the obtaining of travel documents) in conjunction with the different actors involved in child welfare and the structures for accommodating and supervising the children concerned. Unaccompanied foreign children are then accompanied back to their home country and handed over to a legal guardian or an authorised body with which the OFII has made prior arrangements. It is GRETA's understanding that this procedure is not specific to victims of trafficking and it wonders how the risks of revictimisation in the countries of origin are assessed in practice.

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<sup>46</sup> This reintegration aid arrangement is currently operational in the following countries: Armenia, Benin, Burkina Faso, Cameroon, Congo Brazzaville, RD Congo, Ivory Coast, Georgia, Guinea, Haiti, Mali, the Republic of Moldova, Romania, Senegal, Togo, Tunisia and Ukraine.

196. There have been bilateral agreements covering the return of unaccompanied Romanian children, also entrusted to the OFII. The first one, dating from 2002<sup>47</sup> provides, *inter alia*, for the involvement of a children's judge and a social services investigation in France, and social, education and health supervision in Romania. However, specialised NGOs claim that the guarantees provided by the 2002 agreement are not systematically implemented and it is alleged that numerous Romanian children have been and continue to be sent back to Romania despite the risks they face there. A second Franco-Romanian agreement dating from 2007 stipulated, *inter alia*, that the prosecutor's office, and not only the children's judge, could initiate the procedure for returning unaccompanied Romanian children merely upon validation by the Romanian authorities and without any social services investigation into the family of the minor concerned. That agreement was however annulled by the Constitutional Council. The French authorities stated that it was decided not to renegotiate this agreement owing to the competence assigned to the EU pursuant to Council regulation No. 2201/2003 of 27 November 2003<sup>48</sup> which now prevents bilateral agreements being concluded in these areas. Nevertheless, a co-operation body bringing together French and Romanian institutions, known as the Franco-Romanian contact group, has been maintained. The Group consists, for both sides, of members of the judiciary and representatives of the ministries of Justice, the Interior and, for the Romanian side, Social affairs. The Group has been meeting on a regular basis since June 2011. According to the French authorities, the exchanges within the Group are helping to improve identification of Romanian children, improve care for them and facilitate their return to Romania, as well as more effectively combat the networks which exploit them. The French authorities have said that the number of returns, 50 or so during the validity of the 2002 agreement remains low. Finally, a regional co-operation attachée for children's rights (covering Romania, Bulgaria and the Republic of Moldova) is operating within the French embassy in Bucharest, co-operating with civil society representatives in the field of action against trafficking and sexual exploitation, reintegration and rehabilitation, in liaison with the regional adviser for action against trafficking.

197. According to the data supplied by the French authorities, 105 unaccompanied foreign children, of different nationalities and aged from two to 17 years, have been repatriated by the OFII since 2003. Over half of the unaccompanied children were Romanian (see paragraph 196), aged at least 15 years old. They were mostly staying in the Paris region and placed under child welfare and, in some cases, monitored by the *Hors la Rue* Association. In 2010, four returns to Romania and one return to Bulgaria involved THB child victims. However, in the light of the findings of the UN Committee on the Rights of the Child and statements by some of its talking partners, GRETA is concerned over allegations that unaccompanied children, including those placed in waiting zones in French airports, are frequently sent back to countries where they risk being revictimised, without their personal situation being duly assessed.

198. **GRETA urges the French authorities to determine whether current arrangements for return and repatriation are suited to trafficking victims, who form a special category of candidates for return. In this respect, GRETA considers that the French authorities should:**

- **create a specific system of repatriation support for all victims of trafficking, ensuring in particular that they can travel in complete safety and reintegrate upon their return, in order to avoid re-trafficking;**
- **assess the risks of re-trafficking specific to child victims and systematically take the best interests of the child into account;**
- **strive to develop co-operation with the countries to which trafficking victims are returned, in order to improve their reintegration and rehabilitation.**

<sup>47</sup> Franco-Romanian bilateral agreement of 4 October 2002 on co-operation aimed at protecting Romanian children in difficulty on French territory and upon their return to their country of origin and also at combating exploitation networks.

<sup>48</sup> Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

#### **4. Implementation by France of measures concerning substantive criminal law, investigation, prosecution and procedural law**

##### **a. Substantive criminal law**

199. Pursuant to Article 18 of the Convention, Parties have the obligation to establish THB as a criminal offence when committed intentionally. Further, the Convention requires Parties to consider taking measures to criminalise the use of services which are the object of exploitation, with the knowledge that the person is a victim of THB (Article 19). In addition, forging travel or identity documents, removing, concealing or destroying them, as well as procuring or providing them, must also be established as criminal offences, when committed intentionally and for the purpose of enabling THB (Article 20).

200. The Criminal Code criminalises trafficking in human beings in Article 225-4-1. GRETA has already examined the definition of the offence of trafficking, as provided for in the Criminal Code, in paragraphs 45 and following. In this section it will consider other aspects of substantive criminal law, such as sanctions. The offence of trafficking is punishable by seven years' imprisonment and a fine of 150 000 euros. Any deliberate attempt to commit the offence of trafficking receives the same punishment (Article 225-4-7). As previously mentioned (see paragraphs 52), in French criminal law, the means constitute aggravating circumstances resulting in a harsher punishment of 10 years' imprisonment and a fine of 1 500 000 euros.

201. Under Article 225-4-2, the following also constitute aggravating circumstances punishable by 10 years' imprisonment and a fine of 1 500 000 euros: the fact that the victim was a minor; the fact that the victim was exposed to an immediate risk of death or injuries likely to result in mutilation or permanent disability; the fact that the offence was committed by an individual whose duties require them to participate in action against trafficking or maintaining public order. Furthermore, Article 225-4-3 provides for punishment of 20 years' imprisonment and a fine of 3 000 000 euros in cases where the trafficking offence is committed by an organised gang. Accordingly, GRETA notes that the aggravating circumstances provided for in Article 24 of the Convention are listed in connection with the trafficking offence provided for in the French Criminal Code.

202. GRETA notes that, as acknowledged by the French authorities themselves, the offence of trafficking under Article 225-4-1 is not sufficiently prosecuted in practice. Besides the fairly recent nature of the offence of trafficking and the lack of case-law at the highest level, offences relating to different types of exploitation are often opted for, partly because they are more strongly established in case-law, the requirements of proof are regarded as less demanding and, in certain cases, the sanctions are identical.

203. The offence of pimping is better known to all the authorities (police, gendarmerie, prosecutors, judges), which have been dealing with it for a long time. This offence, provided for in Article 225-5, involves, *inter alia*, recruiting, grooming or corrupting a person for the aim of prostitution or exerting pressure on that person to work as a prostitute or to continue to do so. In contrast to the offence provided for in Article 225-4-1, proof of the action (recruiting, transporting, transferring, harbouring or receiving) is not required. The sanctions incurred are the same as for trafficking and the aggravating circumstances coincide in part (the victim being a minor or vulnerable, the perpetrator being an ascendant of the victim or a person with authority over them, use of coercion or fraudulent tactics) but there are fewer of them. Nevertheless, several interlocutors stressed that where international co-operation was concerned, the offence of pimping could prove problematic and it was preferable to charge people with trafficking, since legislation on pimping is not as uniform in European countries as it is for trafficking.

204. Secondly, offences relating to labour and accommodation conditions in breach of human dignity and non-remuneration or manifestly inadequate remuneration for work (Articles 225-13 and 14) seem to be the charges most frequently preferred in connection with trafficking for the purpose of labour exploitation. GRETA notes that following the judgment of the European Court of Human Rights in *Siliadin v. France*, a case of servitude in which the perpetrators had not been punished in the criminal proceedings brought against them and in which the Court found a violation of Article 4 of the European Convention on Human Rights, the constituent element of abuse of vulnerability of the victim was removed and it is now sufficient that perpetrators were aware of the victim's state of vulnerability. Nevertheless, GRETA notes that they incur lesser sanctions (five years' imprisonment and a fine of 150 000 euros) than if these types of exploitation were prosecuted under Article 225-4-1, and do not seem harsh enough, given the gravity of the acts to which they appear applicable, notably trafficking for the purposes of servitude or slavery. In addition, there are fewer aggravating circumstances (the victim being a minor, the victim being in a state of vulnerability known to the perpetrator, the offence being committed against more than one victim) and the use of means of coercion is not included, for example. These aggravating circumstances are also less harshly punished (seven years' imprisonment and a fine of 200 000 euros).

205. For offences relating to the exploitation of begging (Articles 225-12-5, 3° and 4° of the Criminal Code), and as with the offence of pimping and offences relating to labour exploitation, there is no need to prove the action (recruiting, transporting, transferring, harbouring or receiving). The sanctions are significantly inferior to those provided for under Article 225-4-1 (three years' imprisonment and a fine of 45 000 euros). The aggravating circumstances are comparable to those connected with the offence of pimping and punishment is far less severe than for the offence of trafficking (five years' imprisonment and a fine of 75 000 euros). The offence provided for in Article L622-5-3 of the CESEDA, punishing assistance for an illegal stay where this results in foreigners suffering living, transport or accommodation conditions that are incompatible with human dignity has been referred to in trafficking cases on six occasions since 2010, but no convictions were recorded between 2007 and 2010, as not all the procedures have been completed.

206. Regarding proceedings brought for trafficking offences, two circulars have been sent out to prosecutors by the Ministry of Justice. First, a circular by the Director of Criminal Affairs of 3 January 2003 on the criminal law provisions of Act No. 2003-239 of 18 March 2003, which presents, inter alia, the THB offence introduced by the said Act. Secondly, a general criminal policy circular of 2 November 2009 which gave a reminder that prosecutions brought on the specific basis of Article 225-4-1 of the Criminal Code do not rule out action on other offences (pimping, exploitation of begging, working and accommodation conditions contrary to human dignity). Because it gives specific entitlements to victims, prosecutor's offices were asked to ensure that it was this offence that was most commonly cited. Despite that circular, problems seem to subsist owing to a certain lack of knowledge or under-use of the offence of trafficking which, while mentioned, is often not applied by members of the judiciary, preferring to cite offences with which they are more conversant. **GRETA considers that a degree of confusion remains as a result of the application of offences relating to exploitation in trafficking situations, which is not without consequences for the rights of victims, for international co-operation - particularly regarding trafficking for the purpose of sexual exploitation - and for sanctions and protection, in particular for victims of trafficking for the purposes of labour exploitation and begging. Accordingly, it invites the authorities to make further efforts to clarify the situation, in particular through a general criminal policy circular devoted to trafficking.**

207. For the time being, there are no provisions criminalising the services provided by a victim in the Criminal Code, although certain exploitation offences relate, for example, to the use of prostitution services provided by minors. **GRETA invites the French authorities to explore the possibility of criminalising the use of the services of a victim in the knowledge that that person is a victim of trafficking, not only in cases of sexual exploitation but also for the purposes of labour exploitation.**

208. The trafficking offence provided for in Article 225-4-1 does not refer to complicity, but Article 121-7 stipulates that a person is an accomplice to a crime or a misdemeanour when they knowingly aided and abetted its preparation or committing.

209. Regarding the consideration of previous convictions in other States Parties, the French authorities have stated that the Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings has been transposed in the Criminal Code and the Code of Criminal Procedure. According to Article 132-23-1 of the Criminal Code, "the convictions handed down by the criminal courts of a European Union Member State shall be taken into account in the same manner as French criminal court convictions and produce the same legal effects as those convictions". Where convictions handed down by courts of States Parties to the Convention which are not European Union members are concerned, the French authorities have pointed out that the courts have the option of taking into account final convictions handed down in another State party for offences established in accordance with the Convention.

210. The act of retaining, removing, altering, damaging or destroying a travel or identity document of another person committed intentionally and for the purpose of enabling THB does not constitute a specific criminal offence in French criminal law. The authorities have pointed out that there are ordinary law offences covering such acts. The offence of thefts provided for in Article 311-1 of the Criminal Code is punishable by five years' imprisonment when committed by several people and facilitated by the state of vulnerability of a person or accompanied or followed by an act of destruction, damage or defacing of property (Article 311-4 1°, 5° et 8°). The destruction, damage or defacing of property belonging to another person is punishable under Article 322-1 by five years' imprisonment when committed by several people and facilitated by the state of vulnerability of a person (Article 322-3 1° and 2°). The authorities also mention the offences of handling stolen goods (Articles 321-1-6 to 6), extortion (Articles 312-1 and following) and blackmail (Articles 312-10 and following). GRETA notes however that the ordinary law offences are very general compared with the situations set out in Article 20 (c) of the Convention. GRETA nonetheless notes that the ordinary law offences are very general compared with the situations set out in Article 20 (c) of the Convention. Travel and identity documents are important tools of transnational trafficking. False documents are often used to traffic victims through countries and into the countries where they will be exploited. Consequently identifying the channels through which false documents pass may bring to light criminal networks engaged in trafficking in human beings. **GRETA urges the French authorities to incorporate a specific offence in the Criminal Code to punish the act of retaining, removing, altering, damaging or destroying a travel or identity document of another person, intentionally and for the purpose of enabling trafficking in human beings.**

211. The act of manufacturing a fraudulent travel or identity document or procuring such a document for the purpose of enabling THB does not constitute a specific offence either. The authorities have pointed out however that the Criminal Code does list the offences of forgery and the use of forged administrative documents (Article 441-2) and the supplying (Article 441-5) or improper obtaining (Article 441-6) of such forgeries, punishable by five years' imprisonment and a fine of 75 000 euros. Where these offences are committed by a person in a position of public authority, committed on a habitual basis or with a view to facilitating the committing of a crime or misdemeanour, the penalty is increased to seven years' imprisonment and a fine of 10 000 euros.

212. The possibility of holding a legal person criminally liable for trafficking is provided for in Article 225-4-6 of the Criminal Code. For the repressive measures, that Article refers to Article 131-38 which provides for a fine equivalent to a maximum of five times that applicable to natural persons, and to Article 131-39 which lists the different supplementary penalties applicable to a legal person, including dissolution. In addition, Article 225-25 specifies that both natural and legal persons found guilty of THB and pimping offences may also incur confiscation of all or part of their assets, of whatever type, movable or immovable.

b. Non-punishment of victims of trafficking in human beings

213. Pursuant to Article 26 of the Convention, Parties must provide for the possibility of not imposing penalties on victims of trafficking for their involvement in unlawful activities, to the extent that they have been compelled to do so.

214. In France, according to Article 122-2 of the Criminal Code, a person is not criminally liable for acts they committed under the influence of force or constraint which they could not resist. Prosecutors have the discretion to consider the desirability of prosecutions when trafficking victims have committed offences (Article 40 of the Code of Criminal Procedure).

215. Notwithstanding this general criminal law principle, GRETA is concerned by information received from several interlocutors representing both civil society and the authorities that THB victims, including child victims, are often not identified as such, partly because of the time needed for identification, but rather as perpetrators of petty offences, which can be more readily established (soliciting, pick-pocketing, etc.) and punished. In this connection, in the light of information brought to its attention, GRETA notes that efforts are also required to prevent any stigmatising of entire groups as petty offenders, such as Roma, who can include THB victims. It was also reported to GRETA that, as a result of repeat offending (pick-pocketing for example child victims of trafficking networks are imprisoned, notably), children end up being imprisoned in spite of being victims of trafficking networks. Furthermore it has been reported that the fact that THB victims were often illegally present in France resulted in them being placed in detention, making identification more difficult, and subsequently being expelled from the territory (see paragraph 130).

**216. GRETA urges the French authorities to take all appropriate measures to ensure that the possibility provided for in internal law of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so, be fully upheld in accordance with Article 26 of the Convention, having regard to the serious human rights violation victims have suffered.**

c. Investigation, prosecution and procedural law

217. One of the purposes of the Convention is to ensure the effective investigation and prosecution of THB (Article 1(1)(b)). In this context, Parties are required to co-operate with each other regarding investigations or criminal proceedings related to THB (Article 32). Further, the Convention establishes that the investigation or prosecution of THB offences must not be dependent on victims' reports, and that associations or NGOs aimed at fighting THB or protecting human rights must be able to assist and support victims during criminal proceedings, in accordance with the conditions established in the internal law and with the victim's consent (Article 27).

218. The principle of the expediency of proceedings, enshrined in Article 40-1 of the Code of Criminal Procedure, enables the judicial authorities to consider, in the light of the circumstances, whether or not it is expedient to initiate proceedings, regardless of the victim's situation. If the public prosecutor takes no action, proceedings may be initiated, *inter alia*, if the victim lodges a complaint launching a civil action.

219. GRETA notes that the offence of human trafficking is not excluded from the procedure of pre-trial plea of guilty or plea bargaining (“*comparution sur reconnaissance préalable de culpabilité*”) provided for by Article 495-7 of the Criminal Procedure Code, whilst other serious offences punished by over five years’ imprisonment are excluded. According to this procedure, the prosecutor may directly propose, without a trial, a punishment to a person who pleads guilty. A group of senators lodged an appeal with the Constitutional Council (*Conseil constitutionnel*) in December 2011. In its decision of 8 December 2011, the Constitutional Council held that extending the scope of the pre-trial plea of guilty or “plea bargaining” (“*comparution sur reconnaissance préalable de culpabilité*”) was not unconstitutional if the president of the regional court had the option of refusing to approve the penalty proposed if they considered that the nature of the acts, the personality of the accused, the situation of the victim or the interests of society justified an ordinary criminal hearing or if statements by the victim shed new light on the conditions in which the offence was committed or on the perpetrator’s personality. The French authorities have stated that, accordingly, no reform was envisaged. GRETA is nevertheless concerned that such a procedure could be applied to cases of trafficking in human beings, given the seriousness of human rights violations suffered by the victims. **GRETA encourages the French authorities to exclude the offence of trafficking from the plea bargaining procedure.**

220. Investigations may be undertaken by police or gendarmerie units which may act jointly with the criminal investigation central offices, under the responsibility of a public prosecutor or an investigating judge. In some cases central offices may request co-operation with local agencies. The Specialised Inter-regional Courts (JIRS) are often entrusted with the prosecution of THB offences, because of their specialisation in organised crime (see paragraphs 93), even though all criminal courts are competent for examining trafficking cases. In addition, operational co-operation is often set up with the authorities of other countries where the trafficking networks are established, and a number of common tools are deployed, such as international arrest warrants, mutual assistance tools (international requests for judicial assistance), joint investigation teams, etc. (see paragraph 93).

221. The special investigation techniques are no different from the ones used for organised crime offences when it comes to aggravated types of trafficking as provided for by Articles 225-4-2 to 225-4-7 of the Criminal Code.<sup>49</sup> This will be the case, for instance, in cases where the victim is a minor or is vulnerable, or simply when there is more than one victim (see paragraphs 52, 54 and 201). Law enforcement agencies may implement surveillance measures throughout the territory in respect of those suspected of involvement. They may also carry out undercover operations, phone-tapping, in all types of investigations, and use technical means to record private conversations in all places, including vehicles (audio and video). They may carry out searches outside regular times. All these measures are possible on condition of authorisation by a custodial judge (*juge des libertés et de la détention*) and will be carried out under that judge’s supervision.<sup>50</sup> In accordance with Act No. 95-73 of 21 January 1995, law enforcement authorities, whether the police or gendarmerie, may pay for information directly bringing to light criminal offences or leading to the identification of the perpetrators of such offences, when this information is provided by any person not belonging to public administration. Moreover, Act No. 2007-297 of 5 March 2007 on crime prevention introduced new provisions authorising investigators to carry out investigations on the Internet using pseudonyms, including in cases involving harm to minors, trafficking and pimping, has been sent out to prosecutors. GRETA recalls the importance of special investigation techniques within the meaning of Recommendation Rec(2005)10 of the Committee of Ministers to Member States on “special investigation techniques” in relation to serious crimes including acts of terrorism. GRETA welcomes their inclusion in criminal proceedings and the use made of them in THB proceedings.

<sup>49</sup> Code of Criminal Procedure, Article 706-73.

<sup>50</sup> Ibid., Articles 706-80 and following.



222. Under Article 131-21 of the Criminal Code, any asset qualifying for confiscation may be seized at the criminal investigation stage. This seizure of assets may be initiated by the prosecutor's office when the assets appear to be the proceeds of the crime<sup>51</sup> or if they are cash, gold bars, personal effects or securities or components making up the wealth of the perpetrator of the offence<sup>52</sup>. It may also be prompted by the investigation authorities with a view to securing everything necessary to resolve the investigation and safeguard the rights of the parties<sup>53</sup> or take the form of precautionary measures provisionally confiscating the assets of the individual under investigation in order to guarantee the payment of fines and compensation for victims<sup>54</sup>.

223. In accordance with Act No. 2010-768 of 9 July 2010, confiscated assets may be used to compensate victims, including of trafficking.<sup>55</sup> This Act has also extended the range of assets which can be seized and confiscated<sup>56</sup> and set up a special procedure of seizure for the purpose of confiscation in criminal matters. Furthermore, an Asset Recovery Office, known as the Agency for the Management and Collection of Seized and Confiscated Assets (AGRASC), was established in 2011 in order to facilitate seizure and confiscation in criminal matters. AGRASC, which is responsible for the management of all assets that have been seized and confiscated, must in particular ensure priority compensation of those that have started civil action in respect of the assets of the person sentenced.<sup>57</sup> GRETA welcomes the existing system of seizure and confiscation in criminal proceedings. **GRETA encourages the French authorities to make full use of the existing system of seizure and confiscation in the context of THB cases.**

224. Although Articles 2-1 and following of the Code of Criminal Procedure provide for the possibility of NGOs launching a civil action on behalf of victims or intervening to assist them, this applies solely to the offences specifically provided for in those Articles and does not include trafficking in human beings. The authorities have pointed out that Act No. 75-229 of 9 April 1975 has opened up this possibility for the NGOs involved in combating pimping in respect of pimping offences and associated offences, which means that associations combating trafficking for the purpose of sexual exploitation may lodge proceedings on behalf of victims. Nonetheless GRETA notes that this possibility is not open to the NGOs working to combat other types of trafficking. GRETA considers it important that the possibility of launching a civil action on behalf of victims or intervening to assist them is open to all the NGOs working to combat trafficking in human beings, regardless of the type of exploitation. **GRETA encourages the French authorities to consider the possibility of including the offence of trafficking among those expressly listed in the Code of Criminal Procedure for which authorised NGOs may launch a civil action on behalf of victims or intervene to assist them.**

225. There is no statistical tool as of yet for establishing the total number of criminal proceedings lodged for THB offences. The authorities have nonetheless reported an increase in the number of procedures opened for the specific offence of trafficking over the last three years<sup>58</sup>. Seven of the cases currently examined by the specialised inter-regional courts list trafficking as the main offence. Since the offence of trafficking was created, there have been 37 cases in which trafficking was listed as a secondary offence before the Specialised Inter-regional Courts (JIRS). Ten of these have resulted in a verdict, four of them with convictions for trafficking<sup>59</sup>, while the others did not ultimately uphold the trafficking offence but rather pimping or aggravated theft.

<sup>51</sup> Ibid., Articles 54 paragraph 2 and 67.

<sup>52</sup> Ibid., Articles 54 paragraph 7 and 67.

<sup>53</sup> Ibid., Article 97.

<sup>54</sup> Ibid., Article 706-103.

<sup>55</sup> Ibid., Article 706-164.

<sup>56</sup> Assets which may be seized and confiscated include not only rights relating to immovable or movable property but also assets or rights relating to intangible movable property such as money placed on a bank account or invested in a business.

<sup>57</sup> Ibid, Article 706-164.

<sup>58</sup> In 2008, the JIRS dealt with three cases where trafficking was listed as the main or secondary offence; eight cases in 2009; 12 cases in 2010; 11 cases in 2011; and three cases in 2012 (at 4 April).

<sup>59</sup> Paris JIRS, 27 April 2011: one person sentenced to two years' imprisonment and a fine of 50 000 euros; Paris JIRS, 3 September 2010: one person sentenced to three years' imprisonment and a fine of 100 000 euros; Bordeaux JIRS, 1 December 2006: two people sentenced to five years' imprisonment, one sentenced to one year in prison, one sentenced to eight months suspended and one sentenced to 200 days; Bordeaux JIRS, 31 August 2006: final acquittal.

226. The total number of convictions on the basis of the specific offence of trafficking handed down by the JIRS and all criminal courts in recent years breaks down as follows: in 2010, 19 people were convicted of trafficking (with 14 of them receiving sentences of over 10 years' imprisonment, two of them receiving nine-year sentences, and three of them receiving sentences of less than two years); in 2009, there were no convictions; in 2008, there were three convictions; in 2007, there were 33 convictions and, in 2006, two people were convicted. By way of comparison, in 2008, 2009 and 2010 over 900 convictions were handed down for pimping offences, and between 150 and 200 for other types of exploitation.

227. GRETA notes that, while the number of cases involving trafficking offences dealt with by the JIRS has increased over the last three years, it is still fairly low, as is the number of convictions for the offence of trafficking. **GRETA encourages the French authorities to step up their efforts to ensure that the offence of trafficking is prosecuted whenever justified by the circumstances of the case, including through specific training for or specialisation of the competent actors (see paragraphs 81).**

d. Protection of victims and witnesses

228. By virtue of Article 28 the Convention, Parties must take measures to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after the investigation and prosecution of perpetrators. This protection can be of various types (physical, relocation, identity change, etc.) and is to be provided to victims of trafficking, to those who report it or otherwise co-operate with the investigating or prosecuting authorities, to witnesses who give testimony and, when necessary, to members of the families of those listed above. Further, Article 30 of the Convention includes a provision requiring Parties to take measures to protect victims' private life and identity and to provide for their safety and protection from intimidation in the course of judicial proceedings, including special protection measures for child victims of THB.

229. In France, Article R316-7, 4° of the Code governing the entry and stay of foreigners and right of asylum (CESEDA) provides that a foreigner holding a temporary residence permit issued under Article L316-1 (see paragraph 164) may be afforded "police protection for the duration of criminal proceedings, if they are in danger". Nevertheless, this protection is not further specified and GRETA therefore understands that the protection of victims, witnesses or plaintiffs in trafficking cases, whether they come under Article L316-1 of the CESEDA or not, is determined by the general provisions applicable to any victim of offences set forth mainly in the Criminal Code and the Code of Criminal Procedure. Those provisions stipulate, *inter alia*, that a witness may be authorised to give anonymous testimony by the custodial judge where "hearing the person may gravely endanger the life or physical integrity of that person, members of their family or friends"<sup>60</sup>; witnesses may be protected by not having to reveal their true address and electing domicile with the investigation services<sup>61</sup>; a plaintiff may also declare their address as that of their lawyer<sup>62</sup>; provisions concerning video-conferences and audio-conferences also enable courts to hear witnesses and plaintiffs without them having to face the accused in person.<sup>63</sup>

<sup>60</sup> Criminal Procedure Code, Article 706-58.

<sup>61</sup> *Ibid.*, Articles 706-57, R.53-22 to R.53-26.

<sup>62</sup> *Ibid.*, Article 89 paragraph 2.

<sup>63</sup> *Ibid.*, Article 706-71.

230. There is no system of police protection of victims in France as such that could be used by the police or gendarmerie. The French authorities have however stated that, depending on circumstances, arrangements for protecting a person's physical integrity may be decided on by the law enforcement agencies, or where applicable demanded by the prosecutor's office or the judge, for witnesses, victims or their families. The draft National Action Plan brings to light this problem and the need to remedy it. NGOs and several practitioners consulted by GRETA said that such arrangements have never been implemented, at least in the cases of which they were aware, and reported cases of victims coming under severe retaliation threats from perpetrators during the court procedure, particularly when entering and leaving courtrooms. It was also said by representatives of civil society, law enforcement agencies and the judicial authorities that, while the protection of victims was practised in France, many victims abandoned the idea of judicial proceedings for fear of reprisals against members of their family outside French territory and therefore not within the jurisdiction of the French law enforcement agencies and judicial authorities.

231. Pursuant to Article 706-63-1 of the Code of Criminal Procedure, persons having attempted to commit a crime who have alerted the authorities and made it possible to prevent the carrying out of the offence and, where applicable, identify the other perpetrators are given protection for their own safety and, where relevant, may benefit from measures facilitating their reintegration. However, the implementation decree has not been adopted yet.

232. The French authorities have stated that, in trial proceedings, assistance to any victim of an offence consists essentially of material assistance (transport, meals, etc.) and counselling. A few days before hearings begin, a group visit to the courtroom may be organised for the purpose of explaining the role of the members of the judiciary concerned. During the trial, victims are spared any forced meetings with the media or the accused. The plaintiffs are provided with assistance in the courtroom and also in rest areas for victims giving testimony. Support may also be provided after the trial at the initiative of victim support associations or the prosecutor's office dealing with follow-up (recovery of damages, for example). Furthermore, the French authorities stressed that the aforementioned recent national gendarmerie circular regarding trafficking (see paragraphs 131) also covers the protection of victims and witnesses under threat. In addition to placing gendarmerie units under obligation to systematically request the judicial authorities to afford these measures to witnesses and victims, it asks the units to contact the Crime Department, answerable to the Criminal Investigation Sub-directorate (SDPJ) of the Directorate General of National Gendarmerie (DGGN), with a view to considering the most appropriate protection measures.

233. It should be noted that the Criminal Code and the Code of Criminal Procedure also provide for the punishment of all acts of pressure or violence against victims or witnesses aimed at preventing them from participating in judicial proceedings (i) during the investigation of the case, the need to protect witnesses, plaintiffs or victims is one of the criteria for placing an individual who is under investigation in provisional detention, where there is a risk of pressure on or reprisals against a witness to make them withdraw their statements<sup>64</sup>; some court supervision obligations (prohibition from going to certain places or meeting witnesses) also contribute to this objective; (ii) attempts to tamper with witnesses<sup>65</sup> and threats or acts of intimidation committed with a view to persuading the victim of a crime or a misdemeanour not to lodge a complaint or to retract a complaint<sup>66</sup> are punishable by three years' imprisonment and a fine of 45 000 euros; (iii) offences involving intentional violence are more severely punished if the victim was a "witness, victim or plaintiff in civil proceedings" at the time when the acts were committed "either to prevent them from reporting acts, lodging a complaint or giving evidence, or owing to their complaint, report or evidence"<sup>67</sup>; the same applies to cases of destruction, damage or defacing of property.<sup>68</sup>

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<sup>64</sup> Ibid., Article 144.

<sup>65</sup> Criminal Code, Article 434-15.

<sup>66</sup> Ibid., Article 434-5.

<sup>67</sup> Ibid., Articles 222-8 5°, 222-12 5°, 222-13 5°.

<sup>68</sup> Ibid., Article 322-3-4°.

234. On the subject of protection of victims and witnesses aged under 18 years, the French authorities have stated that there are specific measures applicable, including for offences of a sexual nature (Articles 706-47 and 706-48 to 706-53 of the Code of Criminal Procedure). In this connection, children undergo a medico-psychological examination to establish whether treatment or care is necessary. An *ad hoc* guardian is designated to represent the child when their interests cannot be protected by their legal representatives (for example, if the parents are found guilty). During hearings, the child may be assisted by a doctor, a member of the family, the *ad hoc* guardian or a person appointed by the children's judge. The hearing of child victims may be recorded on audio or video tape in order to avoid repeated questioning. GRETA notes nevertheless that these guarantees do not apply to all possible cases of trafficking, which may be accompanied by other types of exploitation than sexual exploitation, and is concerned, therefore, that there is no broader protection covering all child victims of trafficking for different forms of exploitation, notably those already provided for in French legislation.

235. GRETA notes the existence of certain measures to protect victims and witnesses but that there is no protection framework, within the meaning of the Convention, provided for in legislation or regulations. It recalls that the question of protection for victims and witnesses, which is one of the main obligations of the Convention, was comprehensively dealt with by the Council of Europe in Recommendation No. R(97)13 of the Committee of Ministers to member states concerning intimidation of witnesses and the rights of the defence, adopted on 10 September 1997. The recommendation establishes a set of principles as guidance for national law on witness intimidation and retaliation. Article 28 of the Convention requires that such a system of protection of persons who are threatened by reason of their testimony in criminal proceedings be set up; it refers to a number of measures mentioned in the recommendation, as identity change or relocation. The measures required depend on the assessment of the risks victims and witnesses run (see explanatory report of the Convention, paragraphs 280 and following).

**236. GRETA urges the French authorities:**

- **to strengthen the procedural measures available for protecting victims and witnesses within the meaning of the Convention, and avoid them being subjected to intimidation and reprisals during and after the criminal proceedings;**
- **to provide for protection specific to child victims of trafficking, regardless of the resulting type of exploitation;**
- **to ensure that victims are duly informed and assisted, that the law enforcement authorities are trained in assessing the risks faced by victims, and that international co-operation tools are reinforced and effectively implemented in the case of persons living in danger outside France;**
- **to provide the police and gendarmerie with adequate human resources and procedural means to ensure the protection of victims and witnesses who are threatened in the framework of the investigations they are leading.**

## 5. Concluding Remarks

237. GRETA welcomes the efforts made by the French authorities in order to combat human trafficking, particularly the establishment of a legislative and institutional framework. GRETA notes the recent setting-up of an inter-ministerial structure of focal points which - provided it is given adequate terms of reference, resources and authority - should strengthen co-ordination for the purposes of anti-trafficking action and lead to the launching of the first action plan against human trafficking without delay.

238. GRETA considers more generally that the French authorities should take further steps to ensure that the human rights-based and victim-centred approach underpinning the Convention is fully reflected and applied in the national policy to combat THB, from prevention to redress, protection and prosecution.

239. GRETA underlines the importance of awareness-raising of human trafficking and the grave human rights violation it constitutes amongst the public at large.

240. GRETA stresses that an identification process systematised through a national referral framework that takes a multidisciplinary approach, fully involving civil society, is a means of better detecting, identifying and thus protecting victims. It is crucial, in order to adopt an approach focused on victims and their human rights, to ensure that identification is not conditioned by the victim's co-operation with the authorities. The fact that a victim has committed an offence under coercion or is an irregular migrant must not be an obstacle to identification. In this context, improved training on THB and identification of all public stakeholders who come into contact with victims is instrumental.

241. GRETA also underlines the importance of not prosecuting THB victims for offences committed under coercion, in particular child victims, having regard to the serious human rights violation they have suffered.

242. Furthermore, GRETA stresses that victims must be effectively granted a period of reflexion which importantly should give time not only to decide on whether to cooperate with the authorities but also to recover from the serious human rights violation suffered. More also needs to be made so that victims effectively access adequate measures of assistance, including child victims.

243. Finally, GRETA emphasises the need to offer adequate protection to THB victims and witnesses within the meaning of the Convention during the whole criminal proceedings and after.

## Appendix I: List of GRETA's proposals

### Core concepts and definitions

1. GRETA considers that stating explicitly the irrelevance of the consent of the victims to the intended exploitation could improve the implementation of anti-trafficking provisions.
2. GRETA urges the French authorities to:
  - amend the definition of trafficking so that the aims provided for expressly include exploitation for the purposes of forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs;
  - incorporate the means of "giving or receiving [...] payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation", as provided for under Article 4 of the Convention;
  - remove the general element, constituent of the offence, which reads "in exchange for payment or any other benefit or a promise of payment or a benefit" and is not provided for in the Convention.

### Comprehensive approach and co-ordination

3. In order to guarantee comprehensive and coherent action against trafficking and the involvement of civil society, GRETA urges the French authorities to:
  - ensure that the newly established inter-ministerial co-ordination network has adequate authority, mandate and resources for fulfilling its role of co-ordination of the policies and action against THB of the government's departments and other public agencies, and can involve, to a certain extent, NGOs specialised in action against THB and assisting victims;
  - ensure co-ordination both among local authorities and between them and the State, with regard to protection of trafficking victims, particularly children;
  - ensure that civil society is fully involved in devising, implementing and, ultimately, evaluating the national action plan to combat trafficking;
  - maintain a high level of co-operation with NGOs assisting victims and ensure not only adequate funding, but also specifically earmarked for the different types of trafficking;
  - combat all forms of trafficking in human beings, including for the purpose of labour exploitation, and mainstream efforts to combat child trafficking.

### Training of relevant professionals

4. GRETA invites the French authorities to ensure that the different aspects of action against trafficking, and particularly the offence of trafficking provided for in the Criminal Code, are also included in the initial training for judges and prosecutors.

5. GRETA considers that the French authorities should ensure that all personnel concerned periodically attend training courses, in order to improve the detection of potential trafficking victims, the official identification of victims and the assistance provided to them. These courses should be aimed at members of law enforcement agencies, personnel involved in social welfare for children, staff working in reception centres for refugees and holding centres for irregular migrants, staff working in accommodation centres for trafficking victims, diplomatic and consular staff, healthcare professionals, social workers, particularly those involved in outreach work, and labour inspectors.

### **Data collection and research**

6. GRETA invites the French authorities to take due account of the CNCDH's work on human trafficking.

7. GRETA urges the French authorities to develop and maintain, for the purpose of preparing, monitoring and evaluating anti-trafficking policies, a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical information from all main actors and allowing disaggregation (concerning sex, age, type of exploitation, country of origin and/or destination, etc.). This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection.

8. GRETA invites the French authorities to carry out and support research on THB issues, so that public authorities can draw on the findings in order to devise future anti-trafficking measures. The fields requiring more in-depth research include child victims, particularly Roma, trafficking for the purposes of labour exploitation, domestic servitude, and national human trafficking.

### **International co-operation**

9. GRETA encourages the authorities to continue developing international co-operation and the initiatives carried out to prevent trafficking and assist the victims in the countries of origin, including beyond Europe.

### **Measures to raise awareness**

10. GRETA urges the authorities to build greater public awareness of the different types of trafficking and victims. It considers it important in this connection that the authorities organise information and awareness-raising campaigns, involving civil society and using the findings of research and impact assessments

11. GRETA encourages the authorities to include expressly the topic of trafficking in human beings in the civic education programme.

12. GRETA urges the authorities to step up their efforts to discourage the demand for services provided by persons subjected to trafficking not only for the purposes of sexual exploitation but also for the purposes of domestic servitude or labour exploitation, for example in the sectors of agriculture, construction, catering and hotel sector, and cleaning, *inter alia*, through awareness-raising campaigns.

### **Social, economic and other initiatives for groups vulnerable to THB**

13. GRETA considers that the French authorities should take social, economic and other measures for vulnerable groups who are already in France in respect of the different types of human trafficking, be it for the purposes of sexual or labour exploitation, such as foreign unaccompanied children - in particular of Roma origin or placed in waiting zones - irregular migrants or domestic employees.

### **Border measures to prevent THB**

14. GRETA considers that the French authorities should ensure that trafficking, as distinct from irregular immigration, should be fully taken into account in the framework of action taken by the border police. GRETA considers that the French authorities should ensure that all staff of the law enforcement agencies concerned receive training on trafficking and the detection of trafficking victims, at regular intervals in order to keep up with trends in THB.

15. GRETA considers that the French authorities should ensure that the staff of the UCOLTEM are also specifically trained on trafficking, as distinct from illegal immigration, at regular intervals in order to keep up with trends in THB.

16. GRETA encourages the French authorities to ensure that all the information on the requirements governing entry to and stay in France is available in several languages not only on consulate websites but also in the information sheet inserts supplied with the visa so that the target persons can understand it.

17. GRETA considers that the French authorities should ensure that written information is provided to foreigners planning to come to France in a language that they can understand, in order to warn them of the risks of trafficking for the purposes of sexual exploitation, labour exploitation and domestic servitude, to inform them of the bodies which they may approach for assistance and advice, and to provide them with information on their rights, for instance through the setting up of a hotline.

### **Measures to ensure the quality, security and integrity of travel and identity documents**

18. GRETA invites the authorities to continue their efforts to reinforce security of the different phases of passport issue.

### **Identification of victims of trafficking in human beings**

19. GRETA urges the French authorities to:

- strengthen the multidisciplinary approach to the identification of victims by introducing a national referral framework defining the role to be played and the procedure to be followed by all the authorities and professionals who may come into direct contact with trafficking victims, including NGOs;
- develop tools for common use by all the actors concerned (guides, indicators, etc.) for identifying trafficking victims, so that steps for the detection and identification of trafficking victims are formalised and co-ordinated;
- not make the identification of trafficking victims from the outset conditional upon their co-operation with law enforcement agencies;
- place special emphasis on the identification of child victims and, to that end, adopt tools and a procedure geared to their particular situation;
- ensure the identification of foreign victims held in detention centres prior to deportation;
- develop training on the detection and identification of victims for institutional actors, particularly the police and gendarmerie forces and also labour inspectors, in order to avoid confusion between trafficking victims - particularly those belonging to vulnerable groups such as the Roma or unaccompanied foreign children - and offenders or irregular migrants.



## **Assistance to victims**

20. GRETA urges the French authorities to step up measures of assistance to trafficking victims and, in particular, to:

- provide all trafficking victims with the same level of assistance regardless of their nationality, their willingness to co-operate with law enforcement agencies or their situation as regards the right to stay;
- ensure that the services provided in shelters are adequate and suited to the special needs of trafficking victims;
- reinforce the system for assisting child victims of trafficking, with respect to both accommodation and the setting up of medium- and long-term support programmes, geared towards the children's needs;
- provide sufficient human and financial resources to guarantee that all victims are effectively provided with the assistance they need, even where the provision of that assistance is delegated to NGOs;
- train all professionals tasked with implementing measures to assist and protect trafficking victims.

## **Recovery and reflection period**

21. GRETA urges the French authorities:

- to ensure that trafficking victims are systematically informed of the possibility of a recovery and reflection period and are effectively granted one;
- to better inform, to that end, the services competent for requesting and granting the recovery and reflection period that such a possibility exists for victims, and the need for these services to systematically make use of it;
- to ensure that no termination of the recovery and reflection period is carried out on the ground that victims or potential victims have "on their own initiative renewed contact with the perpetrators" without due regard to the individual situation of the victim or potential victim of trafficking.

## **Residence permits**

22. GRETA urges the French authorities:

- to ensure that victims of trafficking enjoy the right to obtain a renewable residence permit in line with internal law and in compliance with Article 14 of the Convention;
- to ensure that legislation is homogeneously applied throughout France, in particular, by appointing a contact person in each French préfecture who is trained on trafficking in human beings.

23. GRETA considers that the French authorities should ensure that permits issued are of sufficient duration and allow access to the labour market, thus promoting the reintegration of trafficking victims.

### **Compensation and legal redress**

24. GRETA considers that the French authorities should adopt measures to facilitate and guarantee access to compensation for victims of trafficking and, in particular:

- ensure that trafficking victims are systematically informed, in a language they understand, of their right to claim compensation and the procedures to follow;
- enable victims to exercise their right to compensation by guaranteeing them effective access to legal aid and to Commissions for the compensation of victims of offences;
- include all victims within the scope of compensation of victims of offences, regardless of their nationality and whether they are legally in France.

25. In addition, GRETA invites the French authorities to introduce a system for recording the compensation claimed and obtained by trafficking victims, regardless of the type of compensation.

### **Repatriation and return of victims**

26. GRETA urges the French authorities to determine whether current arrangements for return and repatriation are suited to trafficking victims, who form a special category of candidates for return. In this respect, GRETA considers that the French authorities should:

- create a specific system of repatriation support for all victims of trafficking, ensuring in particular that they can travel in complete safety and reintegrate upon their return, in order to avoid re-trafficking;
- assess the risks of re-trafficking specific to child victims and systematically take the best interests of the child into account;
- strive to develop co-operation with the countries to which trafficking victims are returned, in order to improve their reintegration and rehabilitation.

### **Substantive criminal law**

27. GRETA considers that a degree of confusion remains as a result of the application of offences relating to exploitation in trafficking situations, which is not without consequences for the rights of victims, for international co-operation - particularly regarding trafficking for the purpose of sexual exploitation - and for sanctions and protection, in particular for victims of trafficking for the purposes of labour exploitation and begging. Accordingly, it invites the authorities to make further efforts to clarify the situation, in particular through a general criminal policy circular devoted to trafficking.

28. GRETA invites the French authorities to explore the possibility of criminalising the use of the services of a victim in the knowledge that that person is a victim of trafficking, not only in cases of sexual exploitation but also for the purposes of labour exploitation.

29. GRETA urges the French authorities to incorporate a specific offence in the Criminal Code to punish the act of retaining, removing, altering, damaging or destroying a travel or identity document of another person, intentionally and for the purpose of enabling trafficking in human beings.

## **Non-punishment of victims of trafficking in human beings**

30. GRETA urges the French authorities to take all appropriate measures to ensure that the possibility provided for in internal law of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so, be fully upheld in accordance with Article 26 of the Convention, having regard to the serious human rights violation victims have suffered.

## **Investigation, prosecution and procedural law**

31. GRETA encourages the French authorities to exclude the offence of trafficking from the plea bargaining procedure.

32. GRETA encourages the French authorities to make full use of the existing system of seizure and confiscation in the context of THB cases.

33. GRETA encourages the French authorities to consider the possibility of including the offence of trafficking among those expressly listed in the Code of Criminal Procedure for which authorised NGOs may launch a civil action on behalf of victims or intervene to assist them.

34. GRETA encourages the French authorities to step up their efforts to ensure that the offence of trafficking is prosecuted whenever justified by the circumstances of the case, including through specific training for or specialisation of the competent actors.

## **Protection of victims and witnesses**

35. GRETA urges the French authorities:

- to strengthen the procedural measures available for protecting victims and witnesses within the meaning of the Convention, and avoid them being subjected to intimidation and reprisals during and after the criminal proceedings;
- to provide for protection specific to child victims of trafficking, regardless of the resulting type of exploitation;
- to ensure that victims are duly informed and assisted, that the law enforcement authorities are trained in assessing the risks faced by victims, and that international co-operation tools are reinforced and effectively implemented in the case of persons living in danger outside France;
- to provide the police and gendarmerie with adequate human resources and procedural means to ensure the protection of victims and witnesses who are threatened in the framework of the investigations they are leading.

## **Appendix II: List of public bodies and intergovernmental and non-governmental organisations with which GRETA held consultations**

### **Public bodies**

- Ministry of Justice
- Ministry of the Interior
- Ministry of Foreign Affairs
- Ministry of Social Affairs and Health
- Ministry of Education
- Ministry of Labour and Employment
- *Préfecture* of the Rhône *département*
- French office for the protection of refugees and stateless persons (OFPRA)
- National court of asylum (CNDA)
- Commission for the compensation of victims of offences (CIVI), Regional court of Lyon
- Specialised inter-regional court (JIRS) of Lyon
- National School for the Judiciary (ENM)
- Children's Commissioner, Deputy to the Ombudsperson
- National Consultative Commission on Human Rights (CNCDH)
- Paris City Council
- Member of the National Assembly, Rapporteur for a parliamentary report on prostitution

### **Intergovernmental organisations**

- IOM France

### **Non-governmental organisations**

- ALC (Association Accompagnement Lieux d'Accueil Carrefour éducatif et social)
- Amicale du Nid
- « Les amis du Bus des femmes »
- Amnesty International
- CIMADE
- Collectif « Ensemble contre la traite des êtres humains »
- Comité contre l'esclavage moderne (CCEM)
- ECPAT-France
- Esclavage tolérance zéro (ATZ)
- Fondation Scelles
- Hors la Rue
- RUEILLE (Relais urbain d'échanges et de lutte contre l'exploitation)
- Secours catholique – Caritas

## **Government's comments**

### **The following comments do not form part of GRETA's analysis concerning the situation in France**

GRETA engaged in a dialogue with the authorities of France on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version.

The Convention requires that "the report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned." GRETA transmitted its final report to the French authorities on 19 December 2012 and invited them to submit any final comments. The French authorities' comments, submitted on 18 January 2013, available only in French, are reproduced hereafter.



SECRETARIAT GENERAL  
SERVICE DE L'ACCES AU DROIT ET A LA JUSTICE  
ET DE L'AIDE AUX VICTIMES  
Bureau de l'aide aux victimes et de la politique associative

## **COMMENTAIRES DE LA FRANCE SUR LE RAPPORT CONCERNANT LA MISE EN ŒUVRE DE LA CONVENTION DU CONSEIL DE L'EUROPE SUR LA LUTTE CONTRE LA TRAITE DES ÊTRES HUMAINS PAR LA FRANCE**

La France tient à remercier la délégation composée de Madame Leonor Rodrigues et Monsieur Robert Stratoberdha, membres du Groupe d'experts sur la lutte contre la traite des êtres humains ainsi que de Madame Clémence Bouquemont et Monsieur Gerald Dunn, administrateurs, membres du secrétariat de la Convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains pour la qualité du rapport concernant la mise en œuvre de la Convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains par la France.

La France tient également à remercier Madame Petya Nestorova, Secrétaire Exécutive de la Convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains pour l'esprit particulièrement constructif dans lequel elle exécute sa mission.

Le rapport constitue un outil précieux qui permettra à la France d'améliorer sa politique publique en matière de lutte contre ce fléau, en développant des actions tendant à prévenir l'infraction, protéger et prendre en charge les victimes, poursuivre les auteurs, dans le cadre d'une coopération internationale et d'un partenariat entre les acteurs institutionnels et associatifs.

Postérieurement à la visite de la délégation précitée, le Gouvernement, réuni en Comité interministériel aux droits des femmes et à l'égalité entre les femmes et les hommes, le 30 novembre 2012, a décidé de renforcer la protection des victimes de la traite des êtres humains. Une mission interministérielle pour la protection des femmes contre les violences et la lutte contre la traite des êtres humains a été créée pour assurer la coordination nationale de la lutte contre la traite des êtres humains au titre de la Convention du Conseil de l'Europe du 16 mai 2005. Elle révisera, en lien avec les associations spécialisées, le projet de plan d'action élaboré en 2011 et mobilisera l'ensemble des services de l'Etat.

Créée par décret n°2013-7 du 3 janvier 2013, cette structure est directement rattachée à la ministre chargée des droits des femmes. Elle dispose de personnels du ministère chargé des droits des femmes et de personnels mis à la disposition de ce ministère par les départements ministériels concernés. Les crédits nécessaires à son fonctionnement sont inscrits au budget de l'Etat. Le décret constitutif prévoit expressément que cette mission est chargée « d'assurer le suivi de la mise en œuvre de la Convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains du 16 mai 2005 en liaison avec le groupe d'experts sur la lutte contre la traite des êtres humains (GRETA) ». Ainsi, la France souhaite poursuivre une fructueuse coopération avec le GRETA dans la mise en œuvre de la Convention du Conseil de l'Europe.

Enfin, la France présente ci-dessous ses commentaires relatifs au rapport rédigé par le GRETA.

**Paragraphe 48**

Le GRETA note que l'infraction de traite prévue dans le code pénal ne se réfère qu'aux notions générales de conditions de travail et d'hébergement contraires à la dignité qui risquent de souffrir d'interprétations variables selon les juridictions. Les autorités françaises avancent que ces notions permettraient de sanctionner certaines formes d'esclavage moderne en procédant à une évaluation in concreto. Le GRETA estime malgré tout qu'il serait bénéfique que l'infraction de traite se réfère explicitement au travail forcé, aux services forcés, à l'esclavage et aux pratiques analogues à l'esclavage, et à la servitude, notions au demeurant bien reconnues en droit international y compris dans la jurisprudence de la Cour européenne des droits de l'homme (la Cour) sur l'article 4 de la Convention européenne des droits de l'homme (CEDH). Si les conditions de travail et d'hébergement contraires à la dignité peuvent sanctionner les manifestations d'une situation d'esclavage ou de servitude (par exemple, rémunération inexistante ou sans rapport au travail fourni ou conditions d'hébergement), elles ne s'attaquent pas aux racines, à savoir le fait d'exercer sur une personne les attributs du droit de propriété que recouvre la notion d'esclavage (rapport explicatif de la Convention, paragraphe 93, et sa référence à la définition de la Convention de Genève relative à l'esclavage) et la forme particulièrement grave de négation de la liberté que constitue la servitude (rapport explicatif de la Convention, paragraphe 95).

*Dans le cadre de la transposition de la directive 2011/36/UE du Parlement européen et du Conseil du 5 avril 2011 concernant la prévention de la traite des êtres humains et la lutte contre ce phénomène ainsi que la protection des victimes et remplaçant la décision-cadre 2002/629/JAI du Conseil, le ministère de la justice a préparé un projet de loi qui modifie l'article 225-4-1 du code pénal dans le sens demandé. Il appartiendra au Conseil d'Etat puis au Gouvernement (Conseil des ministres prévu en février 2013) et enfin au Parlement d'adopter les modifications.*

**Paragraphe 50**

Le GRETA note de surcroît que l'infraction prévue à l'article 225-4-1 ne comprend pas la traite aux fins du prélèvement d'organe. Le code pénal prévoit, dans sa partie relative aux infractions en matière d'éthique biomédicales, des sanctions pénales en matière de prélèvement d'organes aux articles 511-2 et suivants, punissant notamment le fait d'apporter son entremise pour favoriser l'obtention d'un organe contre son paiement, ou de vendre un organe du corps d'autrui, et le fait de prélever un organe sur une personne vivante majeure sans que le consentement de celle-ci ait été recueilli ou sans que l'autorisation ait été délivrée dans les conditions prévues par la loi. Toutefois, le GRETA note que cette infraction ne s'inscrit pas dans la problématique propre à la traite et qu'aucun lien ou renvoi n'est établi explicitement entre l'article 511-2 et l'infraction de traite. Si les autorités avancent que la traite aux fins de prélèvement d'organes pourrait techniquement être poursuivie en ayant recours à divers qualifications de droit commun (par exemple, enlèvement suivi de mutilation en vue de la commission d'un autre crime), le GRETA estime néanmoins qu'il serait souhaitable de prévoir l'inclusion dans la définition de la traite prévu au code pénal du but de prélèvement d'organe pour clarifier la situation juridique et rapprocher la définition de celle prévue dans la Convention.

*Dans le cadre de la transposition de la directive 2011/36/UE du Parlement européen et du Conseil du 5 avril 2011 concernant la prévention de la traite des êtres humains et la lutte contre ce phénomène ainsi que la protection des victimes et remplaçant la décision-cadre 2002/629/JAI du Conseil, le ministère de la justice a préparé un projet de loi qui modifie l'article 225-4-1 du code pénal : « Au premier alinéa de l'article 225-4-1, après les mots « ou d'hébergement contraires à sa dignité, » sont insérés les mots « d'obtention de l'un de ses organes, ». Il appartiendra au Conseil d'Etat puis au Gouvernement (Conseil des ministres prévu en février 2013) et enfin au Parlement d'adopter les modifications.*

*Cette transposition doit être en principe effective au plus tard début avril 2013.*

**Paragraphe 52**

Le GRETA note que si les différents types d'actions constitutifs de la traite sont couverts par la définition de l'article 225-4-1 (recrutement, transport, transfert, hébergement, accueil), les moyens retenus dans le code pénal ne sont pas des éléments constitutifs de l'infraction mais constituent des circonstances aggravantes, prévues par les articles suivants du code pénal. Ainsi, parmi les

circonstances aggravantes figurent notamment : l'abus d'une situation de vulnérabilité, qu'elle soit liée à l'âge, la maladie, l'infirmité, la déficience physique ou psychique ou l'état de grossesse, est prévu à l'article 225-4-2, 2° ; l'abus d'autorité par un ascendant légitime ou par une personne ayant autorité sur la victime ressort de l'article 225-4-2, 8° ; l'emploi de menaces, de contraintes, de violences ou de manœuvres dolosives est prévu à l'article 225-4-2, 7° qui, selon les autorités, couvre la fraude et l'enlèvement. Le GRETA note toutefois que le moyen prévu à l'article 4 de la Convention qui prévoit l'offre ou l'acceptation de paiements ou d'avantages dans le but d'obtenir le consentement d'une personne ayant autorité sur une autre aux fins d'exploitation ne figure pas dans le code pénal. Le GRETA observe que les moyens prévus dans le code pénal constituent des circonstances aggravantes et ne sont pas constitutifs de l'infraction, contrairement à ce qui est prévu dans la Convention pour les victimes adultes où ils sont l'un des trois éléments constitutifs de la traite. Le GRETA note que l'inclusion des moyens de l'article 4 de la Convention comme éléments constitutifs de l'infraction de traite prévue au code pénal rapprocherait la définition de traite de celle de la Convention (rapport explicatif de la Convention, paragraphes 74 et s.).

*Dans le cadre de la transposition de la directive 2011/36/UE du Parlement européen et du Conseil du 5 avril 2011 concernant la prévention de la traite des êtres humains et la lutte contre ce phénomène ainsi que la protection des victimes et remplaçant la décision-cadre 2002/629/JAI du Conseil, le ministère de la justice a préparé un projet de loi qui modifie l'article 225-4-1 du code pénal dans le sens demandé, par la pénalisation de l'infraction de traite des êtres humains envers un mineur, en caractérisant désormais un fait de traite des êtres humains même en l'absence de versement d'une rémunération ou d'un quelconque avantage (ajout dans l'article 225-4-2).*

*Cela permettra de poursuivre des faits impliquant des mineurs dans des affaires de prostitution, d'atteintes ou d'agressions sexuelles, de mendicité, de vols en bande organisée sous le contrôle de gangs de voleurs, de travail dans des conditions indignes ou insalubres, qui n'étaient pas jusqu'à présent forcément poursuivis en raison de l'absence de rémunération ou d'avantage quelconque reçu (cela pourrait notamment concerner les enfants utilisés gratuitement par leurs parents pour mendier par exemple). Il appartiendra au Conseil d'Etat puis au Gouvernement (Conseil des ministres prévu en février 2013) et enfin au Parlement d'adopter les modifications.*

### **Paragraphe 53**

Le GRETA note par ailleurs qu'un autre élément est constitutif de l'infraction prévue à l'article 225-4-1, à savoir « en échange d'une rémunération ou de tout autre avantage ou d'une promesse de rémunération ou d'avantage ». Il observe qu'il s'agit d'une condition générale s'appliquant à l'ensemble des actions et des fins prévues par le droit français, ce qui n'est pas conforme à la définition telle que prévue par la Convention. Le GRETA estime que cet élément, eu égard au fait qu'il rajoute une exigence, qui plus est générale, à celles de la définition de la Convention constitue un obstacle à la qualification de l'infraction de traite et pourrait avoir pour conséquence que des cas de traite ne soient pas reconnus comme tels. Afin de lutter efficacement contre le phénomène de la traite et porter secours à ses victimes, le GRETA rappelle qu'il est fondamental d'avoir recours à une définition de la traite des êtres humains qui a fait l'objet d'un consensus au niveau international (voir rapport explicatif de la Convention, paragraphe 72).

*Dans le cadre de la transposition de la directive 2011/36/UE du Parlement européen et du Conseil du 5 avril 2011 concernant la prévention de la traite des êtres humains et la lutte contre ce phénomène ainsi que la protection des victimes et remplaçant la décision-cadre 2002/629/JAI du Conseil, le ministère de la justice a préparé un projet de loi qui modifie l'article 225-4-1 du code pénal dans le sens demandé. Il appartiendra au Conseil d'Etat puis au Gouvernement (Conseil des ministres prévu en février 2013) et enfin au Parlement d'adopter les modifications.*

### **Paragraphe 55**

Le GRETA note que les autorités françaises sont en train de réviser l'infraction de traite dans le cadre de la transposition de la directive 2011/36/UE du Parlement européen et du Conseil du 5 avril 2011, transposition qui doit être achevée en mars 2013. Le GRETA souhaiterait donc être tenu au courant de la révision de l'infraction de traite.



*Le ministère de la justice transmettra le projet dès qu'il sera adopté par le Gouvernement. Actuellement l'examen du projet de loi est envisagé lors du Conseil des ministres du 13 février 2013.*

### **Paragraphe 56**

Selon les autorités françaises, le consentement d'une personne à l'exploitation, que cette dernière soit envisagée ou effective, est sans effet dans la reconnaissance de cette personne en tant que victime de la traite des êtres humains par le droit interne. Elles avancent que ce principe résulte des éléments constitutifs de l'infraction de traite réprimée par les articles 225-4-1 et 225-4-2. Le GRETA considère que le fait d'indiquer expressément que le consentement de la victime de traite n'entre pas en ligne de compte pourrait améliorer la mise en œuvre des dispositions anti-traite.

*Cette exigence est déjà contenue dans les articles 225-4-1 du code pénal (« ...afin de permettre la commission contre une personne des infractions de proxénétisme, d'agression ou d'atteintes sexuelles, d'exploitation de la mendicité, de conditions de travail ou d'hébergement contraires à sa dignité, soit de contraindre cette personne à commettre tout crime ou délit »).*

*Par ailleurs, « l'emploi de menaces, de contraintes, de violences ou de manœuvres dolosives » est prévu à l'article 225-4-2, 7° du même code.*

### **Paragraphe 57**

Le GRETA exhorte les autorités compétentes à :

- modifier la définition de la traite afin d'inclure expressément parmi les buts prévus l'exploitation aux fins de travail ou services forcés, d'esclavage ou de pratiques analogues à l'esclavage, de servitude et de prélèvement d'organes ;
- intégrer le moyen prévu à l'article 4 de la Convention qui prévoit « l'offre ou l'acceptation de paiements ou d'avantages pour obtenir le consentement d'une personne ayant autorité sur une autre aux fins d'exploitation » ;
- ne pas retenir l'élément général non prévu par la Convention « en échange d'une rémunération ou de tout autre avantage ou d'une promesse de rémunération ou d'avantage » comme élément constitutif de l'infraction.

*Dans le cadre de la transposition de la directive 2011/36/UE du Parlement européen et du Conseil du 5 avril 2011 concernant la prévention de la traite des êtres humains et la lutte contre ce phénomène ainsi que la protection des victimes et remplaçant la décision-cadre 2002/629/JAI du Conseil, le ministère de la justice a préparé un projet de loi qui modifie l'article 225-4-1 du code pénal dans le sens demandé. Il appartiendra au Conseil d'Etat puis au Gouvernement (Conseil des ministres prévu en février 2013) et enfin au Parlement d'adopter les modifications.*

### **Paragraphe 63**

Le GRETA note qu'une structure à vocation interministérielle sur la lutte contre la traite des êtres humains a été nouvellement instituée en mars 2012 (voir paragraphe 23), dans le but d'assurer une approche plus coordonnée et cohérente de la traite par l'ensemble des ministères concernés (justice, intérieur, affaires étrangères, travail, affaires sociales et éducation nationale). Elle est placée au sein de la Délégation aux victimes du ministère de l'Intérieur. Chacun des ministères impliqués a d'ores et déjà nommé des personnes de référence (« points focaux ») sur la question ; elles seront amenées à se réunir à intervalles réguliers. Cette structure de coordination aura notamment pour but de développer une stratégie globale en matière de lutte contre la traite des êtres humains de manière transversale entre ministères. Elle est en charge de la révision du projet de plan national d'action. Les autorités françaises ont informé le GRETA que des réunions relatives au plan d'action étaient prévues en septembre et octobre 2012 avec les représentants des ministères concernés ainsi que les acteurs de la société civile ayant participé au groupe de travail sur le projet de plan d'action susmentionné, et que la fin de ces travaux était prévue pour novembre 2012. Le GRETA souhaiterait être tenu au courant de l'adoption du plan national d'action de lutte contre la traite. Le GRETA souligne d'ailleurs l'importance d'avoir une structure non seulement multidisciplinaire mais aussi qui ait l'autorité la plus grande possible. Le GRETA note que dans un certain nombre de pays, les instances coordonnant l'action contre la traite ne sont pas placées sous l'autorité d'un ministère particulier mais dépendent

directement du Conseil des ministres, ce qui peut assoir son autorité et témoigner de la volonté des pouvoirs publics de garantir un fonctionnement véritablement interinstitutionnel de ces instances.

*Dans le cadre de sa mission, la structure de coordination qui était placée auprès du ministère de l'intérieur avait effectivement organisé au mois de septembre 2012 une réunion avec les représentants des ministères et services concernés et une rencontre avec les acteurs de la société civile impliqués dans la lutte contre la traite des êtres humains.*

*Par décret n°2013-7 du 3 janvier 2013, la coordination nationale de la lutte contre la traite des êtres humains a été confiée à la mission interministérielle pour la protection des femmes contre les violences et la lutte contre la traite des êtres humains créée (cf. supra). Elle se chargera notamment de la révision du projet de plan d'action et mobilisera l'ensemble des services de l'Etat.*

*La structure de coordination qui était rattachée au ministère de l'intérieur devient point focal intégré à la délégation aux victimes et constituera l'interface avec l'ensemble des services du ministère de l'intérieur.*

### **Paragraphe 68**

L'aide aux victimes de la traite est essentiellement confiée par les autorités à des ONG spécialisées (voir paragraphe 147). D'une manière générale, il revient au Bureau de l'aide aux victimes et de la politique associative et à la Délégation aux victimes d'entretenir des relations privilégiées avec les ONG venant en aide aux victimes de la traite. Le GRETA note qu'un certain nombre d'ONG ont néanmoins fait part de difficultés depuis la fin des travaux sur le projet de plan d'action à pouvoir avoir accès aisément à des interlocuteurs sur les questions touchant spécifiquement à la traite, après avoir entretenu des contacts réguliers pendant la durée des travaux sur ledit projet.

*Le ministère de la justice et le ministère de l'intérieur qui ont co-dirigé le groupe de travail relatif à la protection et la prise en charge des victimes de la traite des êtres humains peuvent aisément être contactés par les acteurs associatifs impliqués dans la lutte contre la traite des êtres humains.*

*S'agissant du ministère de la justice, le chef du bureau de l'aide aux victimes et de la politique associative, par ailleurs personne de contact chargée de faire la liaison avec le GRETA, est à la disposition des associations en tant que de besoin.*

*S'agissant du ministère de l'intérieur, les associations peuvent notamment contacter les deux chargés de mission dédiés à la traite des êtres humains (délégation aux victimes) ainsi que les services actifs du ministère de l'intérieur et de la préfecture de police.*

*Par ailleurs, les 153 correspondants départementaux « aide aux victimes » ont vu leurs compétences élargies à la traite des êtres humains sur instructions du directeur général de la police nationale à compter du mois de janvier 2013.*

*Ce dispositif est complété par 289 correspondants locaux répartis dans les commissariats de sécurité publique.*

*Les mêmes dispositions sont prévues pour la préfecture de police pour Paris et la petite couronne.*

*Les associations locales bénéficient de contacts nationaux et locaux spécialisés auxquels s'ajoute la mission interministérielle pour la protection des femmes contre les violences et la lutte contre la traite des êtres humains qui constituera un interlocuteur majeur pour les acteurs associatifs, pleinement associés aux actions de cette nouvelle structure.*

### **Paragraphe 74**

Dans le cadre de la formation continue de l'École nationale de la magistrature (ENM), des sessions annuelles sont prévues sur la traite des êtres humains depuis 2010. Ces sessions sont ouvertes en principe à 20 magistrats (à savoir, juges et procureurs) ainsi que 10 officiers de gendarmerie et 10 commissaires de police. Alors que la première session de 2010 a été annulée faute d'inscriptions en

nombre suffisant, la deuxième session a rassemblé 30 participants, dont neuf magistrats, cinq élèves-commissaires de police et 16 officiers de gendarmerie. Cette session s'est étalée sur deux journées au cours desquelles ont été étudiés : la définition du phénomène notamment à l'aune des textes internationaux et l'incrimination de l'article 225-4-1 du code pénal ; les moyens opérationnels disponibles, de l'enquête et du traitement judiciaire ; les critères d'identification des victimes ; la coopération internationale en matière de lutte contre la traite. La deuxième session prévue pour novembre 2012 était ouverte à 40 participants issus de la magistrature, de la police et de la gendarmerie ainsi qu'à deux hauts fonctionnaires ; elle devait s'étaler sur trois journées. Parmi les thèmes abordés par les praticiens figurera l'assistance aux victimes. Par ailleurs, l'ENM prévoit chaque année un ou deux stages individuels pour les magistrats auprès de l'Office central de répression de la traite des êtres humains (OCRTEH) d'une durée d'une semaine. Le GRETA salue le programme de formation continue qui a été mis en place par l'ENM en direction des magistrats (juges et procureurs) et le fait qu'il soit ouvert à des policiers et gendarmes. Le GRETA invite les autorités françaises à veiller à ce que les divers aspects de la lutte contre la traite, et notamment l'infraction relative à la traite prévue par le code pénal, soient aussi inclus dans le programme de formation initiale des juges et procureurs.

*Dans le cadre de la formation initiale des auditeurs de justice et de leur période d'études, aucune intervention spécifique sur le thème de la traite des êtres humains n'a été programmée en 2012 et 2013, compte tenu du caractère général de cette période de formation. Néanmoins, ces questions sont abordées de manière transversale lors des enseignements du pôle « justice pénale » au sein duquel sont traitées les questions du cadre procédural et des pouvoirs d'enquête (fonctions substitut du procureur de la République et juge d'instruction). Ces questions peuvent être également évoquées lors des séquences de formation du pôle de formation « environnement judiciaire » concernant « l'évolution de la délinquance » ou « la place de la victime dans le procès pénal », mais également à l'occasion de la présentation des services centraux d'enquête traitant ce contentieux.*

### **Paragraphe 79**

Le GRETA note le projet de mettre en œuvre des formations initiale et continue à destination des agents de l'inspection du travail pour les sensibiliser à la traite, leur permettre de mieux identifier les travailleurs victimes de la traite, et de déterminer les organismes susceptibles de leur venir en aide (syndicats, ONG, structures d'accueil, etc.). Il est prévu d'élaborer par ailleurs un référentiel de situations de traite aux fins de travail forcé et de « bons réflexes » en cas de situations de traite (relations avec les procureurs, les forces de l'ordre, les offices centraux). Enfin, la traduction vers le français d'un manuel de l'OIT intitulé « Le travail forcé et la traite des êtres humains – Manuel à l'usage des inspecteurs du travail » est prévue. Notant avec intérêt les développements prévus, le GRETA souhaite être tenu au courant de la mise en place de ces initiatives.

*Les travaux engagés sur ces trois actions seront poursuivis en 2013, avec l'objectif d'une parution du Manuel au 1er trimestre 2013 en coopération avec le bureau international du travail.*

*Par ailleurs, un module de formation se rapportant à la traite des êtres humains, en complément ou en autonomie de celui consacré au travail illégal et aux conditions abusives d'exploitation par le travail, sera élaboré par l'institut national du travail, de l'emploi et de la formation professionnelle et la direction générale du travail. Les premières sessions devraient être dispensées cette année, tant dans le cadre de la formation initiale que dans celui de la formation continue des agents de l'inspection du travail, pour accompagner la montée en compétence nécessaire des agents de contrôle. L'objectif est de développer leur capacité à travailler dans un champ de compétences mutualisé et de les sensibiliser davantage à la lutte contre la traite des êtres humains, notamment pour faire cesser les abus de vulnérabilité des étrangers en situation irrégulière. Il s'agit d'un objectif du plan national d'action adopté par la Commission nationale de lutte contre le travail illégal présidée par le Premier ministre le 27 novembre 2012.*

*Enfin, la prochaine édition du Précis de réglementation sur le travail illégal, ouvrage juridique et méthodologique diffusé à tous les agents compétents en matière de travail illégal (inspection du travail, agents des organismes de recouvrement des cotisations sociales, policiers, gendarmes,*

*douaniers, agents de l'administration fiscale et magistrats) comportera un chapitre spécifique sur la traite des êtres humains/exploitation par le travail.*

### **Paragraphe 81**

Le GRETA considère que les autorités françaises devraient faire en sorte que tous les personnels concernés suivent périodiquement des formations, afin d'améliorer la détection des victimes potentielles de la traite, l'identification officielle des victimes et l'aide qui leur est apportée. Ces formations devraient être destinées aux membres des forces de l'ordre, aux personnels impliqués dans l'aide sociale à l'enfance, au personnel travaillant dans les centres d'accueil des réfugiés et les centres de rétention pour migrants en situation irrégulière, au personnel travaillant dans les foyers pour victimes de la traite, au personnel diplomatique et consulaire, aux professionnels de santé, aux travailleurs sociaux, notamment ceux impliqués dans des maraudes, et aux inspecteurs du travail.

*Le ministère des affaires étrangères mettra en place en 2013 un module consacré à l'identification et à l'assistance des victimes de traite dans le cadre de la formation (prochaine session avril- juillet 2013) des nouveaux hauts fonctionnaires de ce ministère qui sera dispensée par son Institut diplomatique et consulaire.*

*En outre, le ministère de l'intérieur précise que des contacts ont d'ores et déjà été pris par les chargés de mission dédiés à la traite des êtres humains (auprès de la délégation aux victimes) afin d'organiser un module de formation spécifique pour améliorer la détection et l'identification des victimes et l'aide qui doit leur être apportée. Cette formation doit également être organisée au profit des agents de l'office français de protection des réfugiés et apatrides (établissement public placé sous la tutelle du ministère de l'intérieur).*

*Enfin, il convient de se référer aux formations citées sous les paragraphes 74 et 79.*

### **Paragraphe 106**

Le GRETA exhorte les autorités à sensibiliser davantage le grand public aux différents types de traite et de victimes ; il considère que, pour ce faire, les autorités devraient organiser des campagnes d'information et de sensibilisation, en y associant la société civile et en s'appuyant sur les résultats de recherches et des évaluations d'impact.

*Les pouvoirs publics, en particulier la direction générale de la cohésion sociale et le service des droits des femmes et de l'égalité entre les femmes et les hommes, soutiennent des associations qui, entre autres, mènent des actions d'information et de sensibilisation sur la traite des êtres humains, comme :*

*- l'Association Accompagnement Lieux d'Accueil Carrefour éducatif et social (ALC) qui assure la gestion du dispositif d'accueil sécurisant (Ac-Sé). Elle organise notamment des journées régionales de sensibilisation et de formation relatives à la traite des êtres humains. Elle produit des documents d'information destinés aux intervenants. A titre d'exemple, en 2004, MTV Europe Foundation MTV Networks Europe, et SIDA (Swedish International Development Cooperation Agency) ont lancé une initiative en direction des jeunes : Exit (End eXploitation and Trafficking). Il s'agit d'un outil d'information et de sensibilisation, réalisé puis diffusé dans les pays d'origine et dans les pays de destination. Des jeunes femmes victimes de la traite des êtres humains, des clients, des acteurs de la lutte contre la traite s'expriment dans un DVD qui peut être utilisé comme support de discussion, de débats et d'alertes sur la question à destination des jeunes mais également des adultes. En France, c'est cette association qui a été, dès le départ, associée à cette campagne d'information grand public. Le DVD a été diffusé, au niveau local, par l'association ALC, et au plan national, via les partenaires du dispositif national Ac-Sé auprès d'étudiants, enseignants, acteurs associatifs et institutionnels, sous différentes formes: conférences, interventions, séances de formation et d'informations. Les DVD ont également été diffusés lors de concerts (Radio Head à Nîmes), dans le cadre d'un partenariat avec Amnesty international.*

*- le comité contre l'esclavage moderne qui agit pour sensibiliser le public et les décideurs aux situations d'esclavage domestique. Des agences de publicité ont réalisé des campagnes pour faire*

*connaître son action via par exemple des affiches réalisées bénévolement, placardées notamment dans le métro parisien.*

### **Paragraphe 108**

L'éducation nationale prévoit, en outre, un parcours civique tout au long du cursus scolaire, et plus particulièrement au collège avec des cours d'éducation civique, qui met notamment l'accent sur le respect de la dignité de la personne. Si un cadre général d'enseignement est fixé quant aux thèmes, une grande latitude est laissée aux enseignants s'agissant des questions qu'ils souhaitent approfondir avec les élèves. Le GRETA encourage les autorités à inclure explicitement la thématique de la traite des êtres humains dans le cadre du programme d'éducation civique.

*Dès l'école primaire, les programmes actuels d'instruction civique et morale conduisent les élèves à réfléchir et à acquérir des connaissances et des compétences sur l'estime de soi, le respect et l'intégrité des personnes, y compris de la leur, la conscience de la dignité de la personne humaine et les conséquences à en tirer au quotidien, l'importance absolue des atteintes à la personne d'autrui et le respect des valeurs partagées ; ils étudient les règles élémentaires d'organisation de la vie publique et de la démocratie et notamment le refus des discriminations de toute nature, contraires aux valeurs de la République.*

*En histoire, l'étude des premiers empires coloniaux, de la traite des Noirs et de l'esclavage est abordée et l'accent est mis sur les traits constitutifs de la nation française et notamment sur la connaissance de la Déclaration des droits de l'Homme et du citoyen qui proclame la liberté et l'égalité comme principes fondamentaux.*

*Au collège, les enseignements, en particulier d'histoire-géographie, mais aussi de lettres, de langues vivantes et d'histoire des arts permettent à tous les élèves d'acquérir des connaissances sur la question des traites, des esclavages et de leurs abolitions. Ces connaissances doivent leur permettre de comprendre la singularité d'une histoire longue et complexe et de ses héritages. Elles peuvent aussi les aider à développer une réflexion toujours actuelle sur le respect de la dignité et de l'intégrité de l'être humain et sur la notion de crime contre l'humanité, participant ainsi à l'approche préventive recommandée par la Convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains. Dès la classe de 6ème, en éducation civique, par exemple, l'élève est conduit à questionner la notion d'identité juridique et à réfléchir aux droits de la personne. La question de la traite des êtres humains peut ainsi être abordée en lien avec les diverses thématiques annuelles d'éducation civique qui, au collège, mettent l'accent sur les notions d'enfant, d'égalité et de diversité, de libertés, droit et justice.*

*En référence à la loi par laquelle le Parlement a reconnu la traite et l'esclavage comme crime contre l'humanité, la « Journée nationale des mémoires de la traite, de l'esclavage et de leurs abolitions » est désormais fixée à la date du 10 mai. Comme le souligne la note de service n°2012-070 du 16 avril 2012, cette journée est également l'occasion de rappeler aux écoliers, collégiens et lycéens qu'il existe un esclavage moderne et que la traite des êtres humains n'appartient pas qu'au passé.*

*Aujourd'hui l'instruction civique à l'école, l'éducation civique au collège et l'éducation civique, juridique et sociale au lycée concourent à ces enseignements.*

*Le projet de loi d'orientation et de programmation pour la refondation de l'école de la République prévoit de donner davantage de continuité et de lisibilité à ces principes.*

### **Paragraphe 113**

(...) le GRETA note par exemple que dans le dernier rapport de la Commission européenne contre le racisme et l'intolérance (ECRI) sur la France, les problèmes de scolarisation des enfants roms d'origine d'Europe centrale et orientale sont soulignés, en raison non seulement des problèmes de domiciliation mais aussi parfois de refus des municipalités (...).

*L'article L. 131-1 du code de l'éducation dispose que « l'instruction est obligatoire pour les enfants des deux sexes, français et étrangers, entre six et seize ans ».*

*Il appartient aux personnes responsables des enfants remplissant ces conditions de veiller à leur inscription scolaire auprès du maire de la commune sur le territoire de laquelle ils résident (cf. articles L. 131-5 et L. 131-6 du code de l'éducation). Le critère du lieu de résidence est donc le critère habituellement utilisé pour déterminer la compétence du maire en matière d'inscription scolaire. Cette inscription tient compte du « ressort » de chaque école, « déterminé par délibération du conseil municipal » (art. L. 212-7 du code de l'éducation).*

*Même si le critère du « lieu de résidence » n'est pas applicable stricto sensu à l'égard d'enfants de familles itinérantes et étrangères, il n'en demeure pas moins que les maires sont tenus de faire droit aux demandes formulées conformément à l'article L. 131-1 du code de l'éducation par des familles installées provisoirement dans leur commune.*

*La circulaire du 6 juin 1991 se contente de préciser que « l'inscription est enregistrée par le directeur de l'école sur présentation d'une fiche d'état civil ou du livret de famille, d'un certificat du médecin de famille, d'un document attestant que l'enfant a subi les vaccinations obligatoires pour son âge ou justifie d'une contre-indication et du certificat d'inscription délivré par le maire de la commune dont dépend l'école. Ce dernier document indique, lorsque la commune dispose de plusieurs écoles, celle que l'enfant fréquentera. Il convient de rappeler qu'aucune discrimination ne peut être faite pour l'admission dans les classes maternelles d'enfants étrangers, conformément aux principes généraux du droit ».*

*Cependant, dès lors que les conditions susmentionnées sont satisfaites, l'enfant soumis à l'obligation scolaire doit donc être scolarisé dans une école de la commune concernée. Aucune discrimination ne doit être faite, lors de la procédure d'inscription, à l'égard des « enfants étrangers ». Il appartient au maire, « agissant en qualité de représentant de l'Etat lorsqu'il participe à la procédure d'admission dans les écoles publiques » de veiller à prononcer les inscriptions en tenant compte de l'intérêt du service, en fonction de la capacité d'accueil de chaque école.*

*Dans l'hypothèse où un maire refuserait de satisfaire à l'obligation de scolarisation d'un enfant, il appartient au préfet de se substituer au maire pour prononcer l'inscription de l'enfant. L'article L. 2122-34 du code général des collectivités territoriales dispose en effet que « dans le cas où le maire, en tant qu'agent de l'Etat, refuserait ou négligerait de faire un des actes qui lui sont prescrits par la loi, le représentant de l'Etat dans le département peut, après l'en avoir requis, y procéder d'office par lui-même ou par un délégué spécial ».*

*Il est par ailleurs précisé que la circulaire interministérielle du 26 août 2012 précise les mesures à prendre en cas d'existence de campements organisés sur le territoire sans droit ni titre. « Les services académiques s'engageront au côté des préfets dans le respect du principe de l'obligation scolaire ».*

*Les enfants concernés étant souvent de nationalité étrangère, la circulaire n°2002-063 du 20 mars 2002 relative aux modalités d'inscription et de scolarisation des élèves de nationalité étrangère s'applique. Elle précise qu'« en l'état actuel de la législation aucune distinction ne peut être faite entre élèves de nationalité française et de nationalité étrangère pour l'accès au service public de l'éducation. »*

*En référence à l'ensemble de ces dispositions, le directeur académique des services de l'éducation nationale sera particulièrement attentif à la participation active des services de l'éducation nationale au diagnostic prévu par la circulaire interministérielle.*

*Avec l'appui du centre académique pour la scolarisation des enfants allophones nouvellement arrivés et des enfants issus de familles itinérantes et de voyageurs (CASNAV), il prendra les mesures nécessaires en matière de prise en charge scolaire en mobilisant prioritairement les moyens de droit commun, et en particulier ceux qui s'adressent aux enfants, nouvellement arrivés en France, allophones en application de la circulaire relative à l'organisation de leur scolarité.*

*En application de la circulaire interministérielle du 26 août 2012 relative à l'anticipation et à l'accompagnement des opérations d'évacuation des campements illicites, un vade-mecum destiné à*

*fournir un appui méthodologique aux préfets couvrant les différents aspects et les différentes étapes de la mission précitée sera élaboré. Il se compose de fiches techniques construites dans un cadre interministériel et destinées à mettre en œuvre la circulaire dans les domaines de l'accès au logement et à l'hébergement, de l'accès à l'emploi, de l'accès aux soins, de la protection de l'enfance et de l'accès à l'école.*

*Deux fiches relatives à la gestion de la scolarisation des enfants concernés par le démantèlement d'un camp illicite sont prévues :*

- la scolarisation des enfants, conditions et moyens mobilisables ;*
- la protection des mineurs.*

### **Paragraphe 119**

L'information sur les conditions d'entrée et de séjour en France est disponible sur le site du ministère des Affaires étrangères. Par ailleurs, les postes consulaires insèrent un encart d'information sur les conditions d'entrée en France dans le passeport des personnes bénéficiaires d'un visa. L'Office français de l'immigration et de l'intégration (OFII), qui est présent dans les principaux pays d'émigration vers la France, fournit des informations sur les conditions d'immigration et assure l'accueil et l'orientation des étrangers à leur arrivée sur le territoire français. Les informations utiles sur l'obtention des visas sont disponibles sur plusieurs sites web de missions consulaires françaises, notamment dans les Balkans. Le GRETA encourage les autorités françaises à veiller à ce que l'ensemble des informations sur les conditions d'entrée et de séjour sur le territoire français soient disponibles en plusieurs langues, non seulement sur les sites web des consulats mais aussi dans les encarts remis avec le visa, de façon à s'assurer que leurs destinataires puissent les comprendre.

*Le ministère des affaires étrangères prend acte des propositions du GRETA et veillera à la bonne compréhension des informations sur les conditions d'entrée et de séjour sur le territoire français. Il précise que les sites internet des ambassades sont au minimum accessibles en deux langues.*

### **Paragraphe 122**

Le GRETA se félicite des mesures déjà prises par les autorités françaises pour détecter la traite lors de la délivrance des visas et favoriser la légalité des migrations. Le GRETA considère que les autorités françaises devraient s'assurer que des informations écrites sont fournies aux étrangers envisageant de se rendre en France dans une langue qu'ils peuvent comprendre, afin de les mettre en garde contre les risques de la traite aux fins d'exploitation sexuelle, d'exploitation par le travail et de servitude domestique, de les renseigner sur les services auxquels ils peuvent s'adresser pour obtenir de l'aide et des conseils, et de leur donner des informations sur leurs droits, par exemple en créant une ligne de téléphone d'assistance.

*Le ministère des affaires étrangères prend acte des propositions du GRETA et favorisera l'échange d'informations sur la problématique de la traite des êtres humains lors de la délivrance des visas.*

### **Paragraphe 152**

(...) Les autorités françaises indiquent par ailleurs que plusieurs autres initiatives sont envisagées :  
(...) - perspectives de scolarisation en lien avec le dispositif CASNAV (centre d'accueil et de scolarisation des nouveaux arrivants et des enfants du voyage) de l'Education nationale, en adoptant les apprentissages au très bas niveau de scolarité des jeunes concernés.

*Pour rendre possible l'atteinte des objectifs de scolarisation prévus par la circulaire 26 août 2012, trois nouvelles circulaires publiées le 11 octobre 2012 formulent une série de préconisations relatives à la scolarisation et scolarité des enfants issus de familles itinérantes et de voyageurs, à l'organisation de la scolarité des élèves allophones nouvellement arrivés et à l'organisation des CASNAV. Ces trois circulaires constituent un cadre dans lequel s'inscrit l'accompagnement des populations d'âge scolaire, présentes dans les campements en termes de prise en charge pédagogique et d'acquisition des savoirs fondamentaux.*

*Elles permettent de créer des réseaux d'écoles et de collèges qui accueillent ce public. Ce réseau capitalise ressources et expertise pour répondre de manière efficace aux difficultés rencontrées quant à la scolarisation de ces élèves.*

*En effet, une prise en charge pédagogique adaptée, notamment dans les unités pédagogiques pour élèves allophones arrivants (UPE2A) et un accès à tous les dispositifs d'aide et d'accompagnement sont à mobiliser pour garantir une inclusion dans une classe ordinaire et permettre à ces élèves de construire un parcours adapté sans que la maîtrise linguistique ne soit un handicap.*

*Autant que de besoin, un médiateur scolaire peut être mis en place, intermédiaire entre les usagers et l'institution scolaire, pour accompagner les familles, établir le dialogue avec le référent collège, mais aussi être un relais entre tous les partenaires impliqués dans les procédures et le suivi de la scolarisation. Le médiateur scolaire aura un rôle déterminant en matière d'incitation à la scolarisation des enfants et des jeunes.*

### **Paragraphe 173**

Il semblerait, par ailleurs, qu'il arrive que les victimes de traite soient amenées à faire une première demande d'asile sous l'influence des réseaux, en présentant de fausses informations quant à leur identité. Le séjour en France est ainsi régularisé pendant quelques mois, dans l'attente du traitement de la demande par les services compétents, ce qui facilite l'exploitation de la victime. Cette première demande est généralement rejetée par les services de l'OFPRA. Une deuxième demande, présentée cette fois de bonne foi, sera souvent traitée dans le cadre d'une procédure prioritaire, plus rapide et n'offrant pas le même niveau de protection pour la victime que la procédure normale.

*L'office français de protection des réfugiés et apatrides précise que pendant toute la durée de la procédure de demande d'asile, le demandeur peut effectivement résider légalement sur le territoire en étant muni d'un récépissé. Dans l'hypothèse où la victime dépose une seconde demande d'asile auprès de la préfecture en fournissant des renseignements exacts s'agissant de son identité, de sa provenance et de son parcours, il est possible que le préfet conclue au caractère abusif de cette seconde demande et que l'office français de protection des réfugiés et apatrides soit dès lors saisi en procédure prioritaire. Pour autant, même si le demandeur ne peut plus alors bénéficier des mesures d'accompagnement prévues pour les demandeurs d'asile dont le dossier est traité dans le cadre de la procédure normale, la procédure prioritaire n'empêche pas un examen individualisé du dossier.*

### **Paragraphe 204**

En outre, les infractions relatives aux conditions de travail et d'hébergement contraires à la dignité humaine et au travail non rétribué ou rétribué d'une manière manifestement insuffisante (articles 225-13 et 14) semblent le plus souvent invoquées en matière de traite aux fins d'exploitation par le travail. Le GRETA note que, à la suite de l'arrêt *Siliadin c. France* de la Cour européenne des droits de l'homme (la Cour), qui concernait un cas de servitude pour lequel les auteurs n'avaient pas été condamnés au pénal et dans lequel la Cour a trouvé une violation de l'article 4 de la Convention européenne des droits de l'homme, l'élément constitutif d'abus de la vulnérabilité de la victime a été supprimé et il suffit désormais que l'auteur ait eu connaissance de la vulnérabilité de celle-ci. Néanmoins, le GRETA note que dans un récent arrêt C.N. et V. c. France, rendu dans une affaire similaire de servitude, la Cour a estimé que ces amendements n'étaient pas suffisants pour arriver à une conclusion différente de celle de l'affaire *Siliadin* en raison notamment du fait que les dispositions en cause étaient susceptibles d'interprétations variables suivant les juridictions, préjudiciables à la victime (voir paragraphes 48 et 49). Les sanctions encourues en outre sont moindres (cinq ans d'emprisonnement et 150 000 euros d'amende) que si ces types d'exploitation étaient soulevés sous l'angle de l'article 225-4-1, et n'apparaissent pas suffisamment sévères au regard de la gravité des faits auxquels elles semblent être appliquées, notamment la traite aux fins de servitude ou d'esclavage. Par ailleurs, les circonstances aggravantes sont moins nombreuses (la victime est mineure, la victime est en situation de vulnérabilité connue par l'auteur, l'infraction est commise à l'encontre de plusieurs victimes) et n'incluent pas par exemple l'usage de moyens de coercition. Elles sont également moins sévèrement punies (sept ans d'emprisonnement et 200 000 euros d'amende).



*Il est précisé que dans le cadre de la transposition de la directive 2011/36/UE du Parlement européen et du Conseil du 5 avril 2011 concernant la prévention de la traite des êtres humains et la lutte contre ce phénomène ainsi que la protection des victimes et remplaçant la décision-cadre 2002/629/JAI du Conseil, le ministère de la justice a préparé un projet de loi qui modifie l'article 225-4-1 du code pénal. Il appartiendra au Conseil d'Etat puis au Gouvernement (Conseil des ministres prévu en février 2013) et enfin au Parlement d'adopter les modifications.*

### **Paragraphe 206**

Quant au recours à l'infraction de traite, deux circulaires ont été adressées aux procureurs par le ministère de la Justice : d'une part une circulaire du directeur des affaires criminelles et des grâces en date du 3 janvier 2003 présentant les dispositions de droit pénal de la loi no 2003-239 du 18 mars 2003, qui présente, entre autres, l'infraction de traite introduite par ladite loi ; d'autre part, une circulaire de politique pénale générale du 2 novembre 2009 qui rappelle que des poursuites engagées sur le fondement précis de l'article 225-4-1 du code pénal ne sont pas exclusives d'autres qualifications (proxénétisme, exploitation de la mendicité, conditions de travail et d'hébergement indignes à la personne). Parce qu'elle ouvre des droits spécifiques aux victimes, il a été demandé aux parquets généraux de veiller à ce que cette qualification soit plus souvent retenue. Malgré ladite circulaire, des problèmes semblent subsister en raison d'une certaine méconnaissance ou sous-utilisation de l'infraction de traite qui bien qu'invoquée n'est souvent pas retenue au profit d'infractions mieux connues des acteurs judiciaires. Le GRETA considère qu'une certaine confusion persiste en raison du recours aux infractions d'exploitation dans des situations de traite, ce qui n'est pas sans conséquences en matière de droits de victimes, de coopération internationale, en particulier pour la traite aux fins d'exploitation sexuelle, et de sanctions et protection, notamment pour les victimes de traite aux fins d'exploitation par le travail et d'exploitation de la mendicité. Il invite donc les autorités à renforcer leurs efforts visant à clarifier la situation, notamment par le biais d'une circulaire de politique pénale générale consacrée à la traite.

*L'infraction finalement retenue dans l'ordonnance de renvoi du juge d'instruction ou dans le jugement de condamnation, qui n'est pas toujours le délit de traite des êtres humains initialement poursuivi par le parquet, résulte non pas d'une confusion, d'une méconnaissance ou d'une mauvaise application de l'infraction de traite des êtres humains à laquelle il conviendrait de remédier, mais des difficultés à prouver le délit de traite pendant la phase d'instruction ou de jugement de l'affaire.*

*Il est envisagé en tant que de besoin qu'une circulaire de politique pénale présente le dispositif de lutte contre la traite des êtres humains à l'issue de la transposition en droit interne en cours.*

### **Paragraphe 207**

La pénalisation des services d'une victime n'est pas pour l'instant prévue par le code pénal, même si certaines infractions d'exploitation concernant par exemple le recours à la prostitution de mineurs le permettent. Le GRETA invite les autorités françaises à envisager la possibilité d'incriminer le fait d'utiliser les services d'une victime en sachant qu'elle est victime de la traite, non seulement en cas d'exploitation sexuelle mais aussi d'exploitation par le travail.

*Cette incrimination est déjà prévue en des termes très voisins par les articles 225-13 et 225-14 du code pénal (dans la section III « des conditions de travail et d'hébergement contraires à la dignité de la personne »).*

*Par ailleurs, rien n'interdit de poursuivre une personne qui recourt en connaissance de cause, aux services d'une victime de la traite sur le fondement de l'incrimination de recel de traite des êtres humains. L'absence d'incrimination spécifique n'interdit pas les poursuites sur ce fondement prévu par les articles 321-1 et suivants du code pénal.*

### **Paragraphe 210**

Le fait de retenir, de soustraire, d'altérer, d'endommager ou de détruire un document de voyage ou d'identité d'une autre personne, intentionnellement et afin de permettre la traite, ne constitue pas une infraction pénale spécifique en droit pénal français. Les autorités indiquent qu'il existe des infractions de droit commun qui sont susceptibles de couvrir ces agissements. L'infraction de vol prévue à l'article

311-1 du code pénal est punie de cinq ans d'emprisonnement lorsqu'elle est commise par plusieurs personnes et lorsqu'elle est facilitée par l'état de vulnérabilité d'une personne ou lorsqu'elle est accompagnée ou suivie d'un acte de destruction, dégradation ou détérioration (article 311-4 1°, 5° et 8°). L'infraction de destruction, dégradation ou détérioration d'un bien appartenant à autrui est punie par l'article 322-1 à cinq ans d'emprisonnement lorsqu'elle est commise par plusieurs personnes et lorsqu'elle est facilitée par la vulnérabilité de la personne (article 322-3 1° et 2°). Les autorités mentionnent également les infractions de recel (articles 321-1-6 à 6), d'extorsion (articles 312-1 et suivants) et de chantage (articles 312-10 et suivants). Le GRETA note toutefois que les infractions de droit commun sont très générales par rapport aux situations énoncées à l'article 20 (c) de la Convention. Les documents de voyage et d'identité constituent des instruments importants dans le cadre de la traite transnationale. Souvent de faux documents sont utilisés pour faire transiter et entrer les victimes dans les pays où elles seront exploitées. Dès lors, l'identification de filières de faux documents peut permettre de mettre au jour les réseaux criminels qui pratiquent la traite des êtres humains. Le GRETA exhorte que les autorités françaises à intégrer dans le code pénal une infraction spécifique punissant le fait de retenir, de soustraire, d'altérer, d'endommager ou de détruire un document de voyage ou d'identité d'une autre personne intentionnellement afin de permettre la traite.

*La création d'une incrimination spécifique, telle que demandée par le GRETA, alors qu'il existe déjà une incrimination générale, n'est pas sans inconvénients : la multiplication des incriminations dans le code pénal – déjà fort nombreuses – rend leur utilisation plus complexe, elle peut également être source de contentieux (le droit pénal spécial primant par principe le droit pénal général).*