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**OPINION  
CREATION OF A "NATIONAL REFERRAL  
MECHANISM" IN FRANCE, TO ENSURE  
EFFECTIVENESS OF THE RIGHTS OF  
VICTIMS OF TRAFFICKING IN HUMAN  
BEINGS**

28 APRIL 2020



*The opinion « **Creation of a "national referral mechanism" in France, to ensure effectiveness of the rights of victims of trafficking in human beings** » was adopted at the Plenary Assembly of 28 April 2020 (unanimous adoption with three abstentions).*

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## ABSTRACT

With a view to ensuring the effectiveness of the rights of victims of trafficking in human beings, the CNCDH recommends that a full-fledged «national referral mechanism» for detection, identification, orientation and support of presumed and known victims of human trafficking be created in France. In this respect, the CNCDH welcomes the initiatives undertaken in early 2020 by the Interministerial Mission for Protecting Women against Violence and Combating Trafficking in Human Beings (MIPROF) and the ministries concerned. Implementation of such a mechanism is all the more necessary and urgent in that the Covid19 pandemic risks further weakening individuals likely to become victims of exploitation.

The national referral mechanism aims to guarantee the fundamental rights of victims of all forms of human trafficking, children and adults alike. It must enable such individuals to become self-reliant and resilient, by meeting their needs in coherent and protective fashion. Hence, the mechanism must cover three forms of action: «preliminary» identification, «formal» identification, and comprehensive support.

The mechanism must first of all make protection of victims its central concern, by providing for a «dual identification» procedure: preliminary and formal. Preliminary identification corresponds to detection of potential victims and to the assessment of the risk of their actually being in a trafficking situation. The CNCDH recommends that preliminary identification be formalised, making the participation of stakeholders on the ground official by authorising them to report presumed victims to the competent authorities. It also recommends that the second step, formal identification, which follows on from the first, be extended beyond police, gendarmerie and labour inspection services alone, and that it be separated from the presumed victim's cooperation in the criminal investigation, which would help ensure prosecution of the perpetrators over the medium term.

Then, in order to provide victims with comprehensive protective support, it is essential that cooperation between stakeholders be formalised and the relevant services reinforced, as human trafficking victims' need come under many different areas of public policy. This being so, creation of the mechanism must start with in-depth assessment of the context; meanwhile, however, it might be well worth paying special attention to a number of structural weaknesses and functional problems. These include reinforcement and deployment of «contact persons for trafficking in human beings», access to protective accommodation, application of existing provisions with regard to right of residence, and guaranteeing the principle of non-punishment of

human trafficking victims.

By making protection of human trafficking victims central to the identification procedure and reinforcing cooperation between stakeholders and accessibility of services, the national referral mechanism will not only enable improvement of the effectiveness of individuals' fundamental rights, but also make prosecution of perpetrators more likely and so further the fight against the phenomenon as a whole. The CNCDH reiterates the importance of creating a national referral mechanism in France and encourages MIPROF to continue with its efforts of dialogue in this respect, including with civil society.

In its Opinion on the Second National Action Plan against Trafficking in Human Beings<sup>1</sup>(2019-2021)<sup>2</sup>, the National Consultative Commission on Human Rights (CNCDH) noted that “implementation of a national referral mechanism” was usefully provided for by the plan but only via a circular, which does not come up to expectations in the fight against the phenomenon at international level.<sup>3</sup> In order to improve the French policy on preventing and combating human trafficking, the CNCDH recommends that a full-fledged “national referral mechanism” for detection, identification, orientation and support of presumed and known victims of human trafficking be created in France. The current Covid19 pandemic makes its implementation all the more necessary and urgent as the economic situation is creating risks for the most vulnerable individuals to become victims of exploitation or trafficking.

The CNCDH welcomes the initiatives undertaken since early 2020 by the Interministerial Mission for Protecting Women against Violence and Combating Trafficking in Human Beings (MIPROF) and the ministries concerned. The CNCDH intention here is to clarify the concept of “national referral mechanism” and make observations intended to guide its design and implementation in France.

The mechanism’s main objective is to guarantee respect of the fundamental rights of human trafficking victims and foster their self-reliance and resilience in society over the long term. If it is to succeed, it must meet the needs of such individuals, children and adults alike, in coherent and protective fashion, independently of the type of exploitation they have been victim of (exploitation for economic purposes, sexual exploitation, domestic slavery, forced begging, constraint to commit crimes, etc.).

Largely due to the dependence and isolation deliberately created by perpetrators, victims’ needs vary and so depend on numerous areas of public policy, and

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1. Criminal Code, Article 225-4-1: “1. - the act of recruiting a person, transporting that person, transferring, accommodating and receiving him for the purposes of exploitation in any one of the following circumstances: 1. By using threats, constraint, violence or fraud, targeting the victim, the victim’s family or a person who has an ongoing relationship with the victim; 2. Through a legitimate, natural or adoptive ascendant of that person, or through a person who has authority over that person or who abuses the authority that they enjoy by virtue of their position; 3. By abusing a situation of vulnerability due to a person’s age, illness, infirmity, physical or psychological deficiency or pregnancy, whether apparent or known to the perpetrator; 4. In exchange for, or by granting remuneration, or any other benefit or promise of remuneration or benefit. The exploitation mentioned in the first paragraph is the act of procuring the victim for one’s own use or supplying the victim to a third party, even if that party is not identified, in order either to allow the commission against the victim of the offences of procuring, assault or sexual assault, enforced slavery, forced labour or services, servitude, removal of an organ, exploitation for the purposes of begging, working or accommodation conditions that are contrary to the person’s dignity, or forcing the victim to commit an offence. [...]”

2. CNCDH, *Opinion on the 2nd National Action Plan against the Trafficking of Human Beings (2019-2021)*, 19 November 2019. Accessible online:

[https://www.cncdh.fr/sites/default/files/191119\\_avis\\_2e\\_plan\\_contre\\_la\\_teh.pdf](https://www.cncdh.fr/sites/default/files/191119_avis_2e_plan_contre_la_teh.pdf)

3. For more details, see the Opinion *op.cit.*

consequently on the intervention of a wide range of stakeholders. Orientation and support of victims therefore requires the existence of appropriate services along with effective cooperation between stakeholders: the mechanism aims to formalise these requirements.

Work carried out by the Organisation for Security and Cooperation in Europe (OSCE)<sup>4</sup> underlines that a mechanism of this kind must cover three forms of action with regard to human trafficking victims: “preliminary” or “proactive” identification, “formal” identification, and comprehensive individual support of victims, from their detection to their achievement of lasting self-reliance and including all necessary protection.

Hence, in the opinion of the CNCDH, for the mechanism to be effective its design and implementation must first and foremost be guided by prioritisation of victim identification, a step which, in the French context, must be rethought in order to make protection of presumed and known victims the central concern (Part One), and secondly by formalisation of cooperation between stakeholders and reinforcement of services in order to ensure comprehensive protective support across French soil, including in Overseas France (Part Two).

## **PART ONE : MAKING THE PRINCIPLE OF PROTECTION CENTRAL TO “PRELIMINARY” AND “FORMAL” IDENTIFICATION**

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Protection of presumed and known victims is one of the mechanism’s central aspects, insofar as it contributes significantly to their identification. Protection of victims enables creation of conditions for establishing trust so that the individuals concerned can tell their stories and be identified as victims, and, if they so wish, cooperate in the resulting criminal investigations. This is why protection of presumed victims must be initiated upon preliminary identification (I) and continue during and after formal identification (II).

### **I. Preliminary” identification: the step initiating the protection of presumed victims**

#### **A. “Preliminary” identification: a non-formalised step in France**

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4. See in particular: OSCE, Office for Democratic Institutions and Human Rights (ODIHR), *National referral mechanisms – Joining efforts to protect the rights of trafficked persons – a practical handbook*. Accessible online: <https://www.osce.org/fr/odihr/13972?download=true>



“Preliminary” identification is the process of detection of presumed victims, implemented in several steps. Firstly, looking for evidence that suggests that an individual may be trapped in a human trafficking situation; next, assessment of the probability that the individual is actually in such a situation; and finally, where appropriate and if the person consents, the presumed victim’s referral to the authorities authorised to take action following his/her formal identification.

This being so, preliminary identification may depend on multiple actors, specialists or non-specialists in questions of human trafficking and provision of assistance to victims. Finding evidence may well involve any citizen who has witnessed a worrying situation, who, for example, may have observed signs of distress in their neighbours’ domestic worker or the staff in a restaurant. It may also involve non-specialist professionals, such as caregivers or international coach drivers concerned about the respective situations of a patient or passenger. This is why, although it goes beyond the mechanism’s design per se, awareness raising among the public at large and non-specialist professionals may contribute considerably to detection of potential victims.

However, assessment of the probability that an individual is definitely a victim, in order to identify him/her as a presumed victim, requires a measure of expertise. It must therefore be carried out by trained professionals capable of analysing the facts, informing individuals of their rights, and, where necessary, obtaining their informed consent to referral to the authorities tasked with making formal identification. These may be associations specialising in questions of human trafficking in all its forms, trade unions, or associations specialising in child protection, health, provision of support to foreigners, etc.

In France, although, in practice, various professionals contribute to detection of victims on a daily basis, the preliminary identification phase is yet to be formalised. In the absence of official procedures, such as authorisation to report a presumed victim to the competent authorities, no special consideration is given to their analyses of the situation in the process of identification and deciding whether or not a person is actually a victim. Action on the part of such stakeholders on the ground is officially limited to advising victims on what steps to take, and nothing they do prior to formal identification by the authorities is taken into account.

**Recommendation no.1:** The CNCDDH recommends that an awareness raising campaign, in support of implementation of the national referral mechanism, be carried out among the general public and non-specialist professionals (international coach drivers, hotel managers, teachers, hospital professionals, housing rental professionals, etc.), developed in collaboration with the individuals concerned and stakeholders on

the ground, in particular associations and trade unions involved in combating human trafficking. The campaign could draw on examples of specific situations connected with the various activity sectors concerned, with a view to familiarising the public with indications of human trafficking situations and informing them on what initial action they might take in order to protect potential victims, such as which organisations to contact.

## **B. Formalising the preliminary identification procedure in France: requirements for protection of presumed victims**

### *Creating the conditions for identification: protecting, informing and allowing time for reflection*

The threats made, and the anxiety, dependence and isolation created by exploiters are all factors that hamper human trafficking victims' willingness to identify themselves as such without prompting at first contact with a third party. As a result, self-identification is very rare indeed.

Conditions must therefore be created that enable individuals to tell their stories and in which the stakeholders to whom they tell them can identify possible human trafficking situations. Creation of such conditions first of all requires that individuals be guaranteed immediate protection once reasonable suspicion exists, i.e. that their most immediate needs be met, such as accommodation or medical and psychological support. It also requires that they be informed of their rights so that they come to understand that the situations they have experienced are by no means normal and that the law provides for the punishment of perpetrators and protection of victims. Finally, it requires that they be allowed time for reflection, during which they are referred to the relevant organisations and services able to protect them and at the end of which they can take an informed decision on whether or not to lodge a complaint or cooperate in the criminal investigation. Together, these three conditions encourage victims to talk about their situation, and consequently their subsequent formal identification.

**Recommendation no.2:** The CNCDH recommends that all institutional stakeholders likely to be in contact with potential victims are provided with training and the necessary tools to inform them of their rights, in order to improve the content and form of the information they deliver. This involves a wide range of professionals, including the border police, town hall officials, teachers, healthcare professionals, managers of accommodation centres and children's homes, labour inspectors, protection officers, judges and lawyers.

### *Identification criteria: an initial tool for detection*

Drawing up identification criteria, as recommended by the CNCDH in previous opinions and provided for in the Second National Action Plan, may contribute significantly to improvement of detection by providing a reference framework for professionals working in contact with potential victims. Such indicators may vary, however, depending on the type of exploitation an individual is the victim of: indicators of a situation of exploitation for economic purposes, for example, may differ from those for a situation of exploitation for forced begging purposes; as well as on the context in which a professional meets the individual concerned: a police officer, for example, may not necessarily base his conclusions on the same evidence as a physician.

Use of indicators for detection must nonetheless be flexible. They cannot be regarded as constituting a list of criteria all of which individuals have to meet if they are to be regarded as potential victims. Such indicators are by no means exclusive and must enable establishment of an accurate and consistent body of evidence showing that there are reasonable grounds for suspecting that an individual is a victim of human trafficking.

**Recommendation no.3:** The CNCDH recommends drawing up identification criteria for each type of exploitation, taking account of the differences there might be between children and adult victims and adapting such criteria to the competences of the professionals concerned. They will have to be drawn up in collaboration with organisations and stakeholders on the ground, which already possess expertise and tools that have proved their worth<sup>5</sup>. It will require the involvement of the individuals concerned and use of already existing tools. Such identification criteria will have to be an integral component of the national referral mechanism<sup>6</sup>.

### *Officialising the value of the expertise and role of stakeholders on the ground: an essential step to preliminary identification*

As with associations and unions, the capacity that actors on the ground have with regard to collection of information on potential victims' needs and the risks to which they are exposed, during their formal and informal contacts with them, is partly based on their ability to establish a relationship of trust with the individuals concerned. This may come about in a wide range of situations: in the context of a round-up in the

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5. Including those developed by the "Ensemble contre la traite des êtres humains" (Together against Trafficking in Human Beings) Collective coordinated by Secours Catholique - Caritas France and its 28 member associations. [www.contrelatraite.org](http://www.contrelatraite.org)

6. See Part Two, I. Functional services and cooperation formalised by the national referral mechanism: guarantees of the coherence of the comprehensive support provided.

case of a victim of exploitation for sexual or forced begging purposes, for example, or during an interview at the French Office for the Protection of Refugees and Stateless Persons (OFPRA) for a foreign victim. Such stakeholders make major contributions to initial identification of victims and the information they possess may be crucial in the subsequent formal identification phase.

It is of key importance to take such information into account if we are to limit risks of secondary traumatisation of individuals triggered by multiple actors' multiple requests to share their stories. Therefore, in France, the mechanism's design must above all guarantee official recognition of such expertise and the credibility of the information that these actors collect. Such official recognition must come about through creation of a "dual identification" system that formalises the preliminary identification phase prior to formal identification, in which such actors, along with all professionals trained in detection of signs of possible human trafficking situations, play a key role in the assessment of risks to which individuals are exposed and are authorised to report presumed victims, subject to their consent, to the competent police or other authorities<sup>7</sup>.

For the OSCE<sup>8</sup>, this inclusive approach to identification, complementing the traditional approach of formal identification by the authorities, addresses the problem of non-protection of presumed victims who cannot or do not wish to cooperate with the authorities. By recognising the status of presumed victim, creation of the preliminary identification phase enables immediate implementation of the care and protection protocol following detection rather than after completion of the formal identification procedure.

**Recommendation no.4:** The CNCDH recommends that associations working with human trafficking victims, along with trade unions and all staff trained in detection and assessment, be made official stakeholders in the national referral mechanism at the preliminary identification stage and authorised to report presumed victims to the competent authorities with their consent. This official role, incumbent upon associations among other entities, should in no case be limited to major community operators but must also include associations with field expertise in this particular area.

**Recommendation no.5:** The CNCDH recommends creation of practical guides for use by professionals in all sectors concerned, presenting the various detection means and indicators along with the protocols for orientation and protection of presumed victims.

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7. See II. B. Extending the formal identification procedure in France in order to better protect victims.

8. OSCE, *Uniform Guidelines for the Identification and Referral of Victims of Human Trafficking* within the Migrant and refugee Reception Framework in the OSCE Region, 2019. Accessible online: <https://www.osce.org/mission-to-bosnia-and-herzegovina/413123?download=true>

**Recommendation no.6:** The CNCDH recommends that the national referral mechanism to be created explicitly provides for a “dual identification” procedure, by formalising a preliminary identification phase prior to formal identification and initiating the protocol for provision of care and protection to presumed victims, on the basis of analysis of their immediate needs and, as the case may be, up until all doubt is dispelled.

## **II. Formal identification: a necessary abandonment of the condition of a presumed victim’s cooperation in the criminal investigation**

### **A. Formal identification: a procedure too restricted in France**

Formal identification is the procedure by which an individual’s status changes from presumed victim to known victim of trafficking in human beings, via the competent authorities’ acknowledgement that there are sufficient grounds for reasonable suspicion. In some countries, it is this second identification phase that opens access to the rights that human trafficking victims may legally enjoy. In the OSCE’s opinion, this situation hampers identification and protection insofar as, for the reasons cited above, many victims are not in a position to share their stories with the authorities.

Unlike preliminary identification, which may involve a wide range of actors, some of them specialising in human trafficking and some not, formal identification usually only concerns a limited number of stakeholders, who must be trained specialists and, in the context of the mechanism, identified and designated as such beforehand. They may take the form of a platform of trained police officers or gendarmes, or of such non-police actors as social services, associations, trade unions, or other representatives of civil society.

In France, only police, gendarmerie and labour inspection services are authorised to decide whether an individual, regardless of his/her nationality is a victim of human trafficking. From a legal standpoint, such individual will enjoy all the rights guaranteed to all victims of offences under French law, including the right to compensation. For foreign victims of human trafficking, two levels of formal identification exist in practice: the first by agreeing to cooperate with the authorities, which entitles them to a provisional residence permit; and the second in the event of the perpetrator’s final conviction, which entitles them to a resident card. Although the request for an L.316-1-1 residence permit<sup>9</sup> partly eliminates the necessity to cooperate for victims of human trafficking for the purposes of sexual exploitation, the conditions for its obtainment

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9. Code for Entry and Residence of Foreigners and Right of Asylum (CESEDA), Article L.316-1. Accessible online: <https://www.legifrance.gouv.fr/affichCodeArticle.do?pidArticle=LEGIART000032171485&cidTexte=LEGITEX00006070158&dateTexte=20161101>

are nonetheless too difficult to really make the permits protective<sup>10</sup>. Likewise, although an individual may also be identified as a human trafficking victim by OFPRA or the National Court of Asylum (CNDA) following a request for asylum<sup>11</sup> and so enjoy right of residence<sup>12</sup>, the definition of social group, which is very narrow, makes recognition of such status and consequent formal identification difficult in such cases<sup>13</sup>. However, for French victims, formal identification does not go with protective measures specific to their status as human trafficking victims, such as social support, even though European law provides for such protection.

## **B. Extending the formal identification procedure in France in order to better protect victims**

### **Separating formal identification from cooperation in criminal investigations: a prerequisite of any approach based on human rights**

In 2004, the European Commission's Experts Group on Trafficking in Human Beings *"emphasised that a human-rights-based approach is characterised by "recognition of human trafficking victims as rights holders, meaning that the rights to protection, assistance and compensation are not conditioned by the human trafficking victim's desire or ability to cooperate in legal proceedings or provide evidence."*<sup>14</sup> The OSCE also stresses that an inclusive approach should be prioritised for formal identification, *"involving attribution of the status of human trafficking victim: by the designated social protection services; outside the context of legal proceedings; independently of a presumed victim's desire to collaborate with police authorities"*.<sup>15</sup>

Such dissociation is essential insofar as an individual's emancipation from their

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10. Very few residence permits on the basis of Article L.316-1-1 are delivered to victims of human trafficking for the purposes of sexual exploitation.

11. The CNDA has delivered rulings on requests for asylum by victims of servitude and slavery (CNDA, 23 September 2011, M.D., no.11007337 and CNDA, 29 April 2015, No.14032437). It has also protected individuals it considers to be victims of human trafficking. As a result, since 2011, protection bodies have granted refugee status to victims on the basis of their fear of being persecuted due to their belonging to a given social group.

12. As beneficiaries of international protection (subsidiary or refugee protection).

13. The definition of social group is extremely narrow as far as victims of human trafficking for the purposes of sexual exploitation are concerned, due partly to victims being required to have managed to extricate themselves from networks and partly to insistence on complainants' exact geographical origin.

14. Commission Decision 2003/209/EC of 25 March 2003, bearing on setup of a consultative group to be known as "Experts Group on Trafficking in Human Beings".

15. See France Expertise Internationale (FEI, Ministry of Foreign Affairs), EuroTrafGuID, Guidelines for preliminary identification of human trafficking victims in Europe, June 2013. Accessible online: [www.astree.ch/pdf/131003\\_Guidelines-FRA.pdf](http://www.astree.ch/pdf/131003_Guidelines-FRA.pdf)

16. OSCE, *Uniform Guidelines for the Identification and Referral of Victims of Human Trafficking within the Migrant and refugee Reception Framework in the OSCE Region*, 2019. Accessible online: <https://www.osce.org/mission-to-bosnia-and-herzegovina/413123?download=true>

situation of economic, emotional and often legal dependence vis-à-vis their exploiter and consequent exposure of the situation are only possible if the individual is provided with a substitute protective environment. Conditions for reconstruction and sharing of victims' stories must also be created, which requires that individuals must be protected before they are formally identified. Their possible future cooperation with the police will partly depend on the ability to protect and create a relationship of trust. Creation of such a relationship is based on close cooperation between actors on the ground involved in preliminary identification and the authorities, which is why such cooperation must be formalised in the context of the mechanism, by recognising these actors as official stakeholders in the preliminary identification procedure.

**Recommendation no.7:** The CNCDH recommends that victims' formal identification be separated from their ability or desire to cooperate with the authorities, regardless of the type of exploitation they are victims of.

### **Changing perspectives: protecting victims even without their prior cooperation with the authorities helps ensure prosecution of perpetrators over the medium term**

By fostering creation of relationships of trust, protecting victims and allowing them time to recover their equilibrium, we also create conditions that make them more likely to lodge complaints and, more generally, cooperate in criminal investigations and so ensure that perpetrators are prosecuted. This being so, making formal identification conditional to cooperation with the authorities is counterproductive with regard to combating human trafficking. Hence, although it must be possible for victims to participate in legal proceedings, the existence of legal proceedings must not condition their being recognised as victims of human trafficking.

In order to overcome this problem, two distinct formal identification procedures must be provided for, one in the context of judicial cooperation for victims able to cooperate immediately and the other not involving judicial cooperation for victims who cannot or do not wish to cooperate. Both procedures must result in recognition of the same status of human trafficking victim and grant the same rights, pursuant to the principle of non-discrimination.

This is what happens in Georgia, for instance, where, if the victim is willing to cooperate, she/he is referred to the police by the first identifier (an association for example); a criminal investigation is initiated and it is up to the prosecutor to establish that human trafficking is at issue, so acknowledging that the individual concerned is a victim. In the event of the victim being unable or unwilling to cooperate, a body exists dedicated to investigation of such cases and including a permanent group with

five members representing international and local organisations<sup>17</sup>. The first identifier reports the presumed victim to the organisation and an interview is held by a select group composed of a psychologist and a lawyer, who communicate the information they collect to the permanent group, which decides whether or not to grant the status of human trafficking victim within 48 hours.

**Recommendation no.8:** The CNCDH recommends the creation of two distinct formal identification procedures, both recognising the same status of human trafficking victim and granting the same rights: a procedure in the context of judicial cooperation, and a procedure not including such cooperation for victims unable or unwilling to cooperate with the authorities. Both procedures must result in recognition of the same status and grant the same rights.

**Recommendation no.9:** The CNCDH recommends that design of the mechanism include creation of multi-actor platforms with an operational role, organised at départemental level and studying the cases of victims not cooperating with criminal investigations. Such platforms' decision-making members could include representatives of institutions and civil society (trade unions, associations, physicians, psychologists, etc.). Their composition will have to be specified when the mechanism is created, in cooperation with all actors concerned. Local coordinators of the fight against human trafficking might also be appointed, who would oversee platforms and be tasked with coordinating local actors in the fight against human trafficking in all its forms and receiving reports of cases of presumed victims from actors on the ground authorised to make them.

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17. In this case, the International Organisation for Migration in Georgia, the International Centre for Migration Policy Development in Georgia, the Georgian Young Lawyers' Association, the 'Tanadgoma' Informational Medical-Psychological Centre, and the Anti-Violence Network of Georgia.



## **PART TWO: FORMALISING PROCEDURES FOR COOPERATION BETWEEN STAKEHOLDERS AND REINFORCING SERVICES IN ORDER TO ENSURE COMPREHENSIVE PROTECTIVE SUPPORT**

In parallel with the dual preliminary and formal identification procedure, the national referral mechanism must ensure that victims are guaranteed comprehensive support. The coherence of such support requires the existence of functional services and formalised coordination between stakeholders (I). Although design of the mechanism must necessarily start with in-depth assessment of context and needs, it might be well worth paying immediate attention to a number of structural weaknesses and functional problems (II).

### **I. Functional services and cooperation formalised by the national referral mechanism: guarantees of the coherence of the comprehensive support provided**

If human trafficking victims are to be provided with comprehensive support, full account must be taken of their immediate needs (such as accommodation, medical and psychological support, etc.) along with their medium- and long-term needs, in order to ensure the material, physical and psychological security necessary to their recovery and return to self-reliance.

Their short-, medium- and long-term needs are many and varied, including recognition of victim status, protection and sometimes geographical distancing from the scene of exploitation, accommodation, French classes for foreign victims, vocational training, compensation by the courts for non-material and material harm suffered, to make up for wages not paid during the period of exploitation, etc. Victim support therefore involves several areas of public policy (social, healthcare, justice, etc.).

**Recommendation no.10:** The CNCDH recommends that the national referral mechanism's design take account of the intersectoral aspect of support to human trafficking victims and continue to include all relevant sectors in discussions. The justice system, for example, must ensure that human trafficking victims are compensated for all forms of harm they have suffered.

In order to ensure that victims are directed to the services appropriate to their

situations, action by professionals involved in the various policy areas must be coordinated. Hence, the mechanism must provide for formalisation of such actors' networking and cooperation, which must be organised from initial detection of a potential victim until their long-term self-reliance is ensured.

It is essential that the various professionals involved counsel and orientate victims in consistent non-contradictory fashion when they advise them on what steps to take. The consistency of their words and actions depends on the clarity of orientations and procedures defined at national level and implemented across the territory, as well as on the existence and accessibility of the services to which professionals direct victims.

**Recommendation no.11:** The CNCDH recommends that the mechanism is provided with a legal basis more binding than a circular alone. To this end, it considers that the fight against all forms of exploitation and trafficking in human beings should be made the subject of a law covering all its aspects (preventive and repressive, administrative and judicial, legal and social alike) and enabling full implementation of international and European instruments in its favour. In addition, there must be provision for coordination of the mechanism at national level in order to guarantee the protocol's consistency throughout the territory.

Finally, if the services and bodies to which professionals direct victims are not accessible, this would not only hinder access to rights but also compromise the mechanism's operation over the medium and long term. If, for example, a health professional finds that the accommodation facility he has been told to direct a victim to is unable to take in the victim, there will be nothing more he can do to remedy the situation. It is absolutely essential that professionals do not contradict one another when advising victims, as this would result in confusion detrimental to the effectiveness of the care provided to them.

It would therefore appear essential that design of the mechanism in France start with in-depth assessment of national needs with regard to victim support, in order to identify present weakness and shortcomings. The goal of such assessment is to ensure that the mechanism is not created ex nihilo but rather draws on already existing national entities, in order to avoid creation of superfluous infrastructures and procedures. Numerous regional and international tools<sup>18</sup> have been developed to assist States in such procedures.

**Recommendation no.12:** The CNCDH recommends that work on design of the mechanism in France begin with an in-depth assessment of stakeholders, services and

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18. See in particular the OSCE's ODIHR and the International Organisation for Migration (IOM).

infrastructures, including an analysis of initiatives that have already been taken at local level. To do so, it will be necessary to call upon the expertise of specialised regional bodies such as the Organisation for Security and Cooperation in Europe's (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) in order to assist MIPROF in the initiatives it has already undertaken.

**Recommendation no.13:** The CNCDH recommends development of a protocol in keeping with the *standard operating procedures* recommended by the OSCE,<sup>19</sup> setting out the specific procedures to be followed in provision of assistance to victims, from preliminary identification to comprehensive support. The protocol will have to include each step in victim orientation, detailing clear procedures, providing timeframes for each step (such as the deadline for decision-making in formal identification), and describing stakeholders and their respective roles. The identification criteria for detection of victims could be included as an appendix to the protocol.

## **II. Disruptions in support provided to victims of human trafficking: a few illustrations of structural weaknesses and functional problems**

Failing an exhaustive assessment, which can only be carried out under the abovementioned conditions, a few avenues for consolidation that will have to be taken into account in discussions on the national referral mechanism's design are suggested below. In addition to bodies and procedures that may have to be created<sup>20</sup>, a number of already existing organisations and procedures will have to be reinforced.

### **A. "Contact persons for trafficking in human beings" in prefectures and public prosecutors' offices: a potential to be reinforced, deployed and made aware of throughout the territory**

Appointment of "*contact persons for trafficking in human beings*" ("*référénts*") in prefectures, as provided for in the Circular of 19 May 2015<sup>21</sup>, as well as in public prosecutors' offices and Regional Directorates for Enterprises, Competition Policy, Consumer Affairs, Labour and Employment (DIRECCTEs), as provided for in the *Second*

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19. OSCE, *Uniform Guidelines for the Identification and Referral of Victims of Human Trafficking within the Migrant and refugee Reception Framework in the OSCE Region*, 2019. Accessible online: <https://www.osce.org/mission-to-bosnia-and-herzegovina/413123?download=true>

20. See in particular *Part One, I. "Preliminary" identification: the step at which protection of presumed victims is initiated*.

21. Ministry of the Interior, *Instruction bearing on residence conditions for foreign nationals who are victims of human trafficking or sexual exploitation*, 19 May 2015, no.NOR INTV1501995N. Accessible online: [http://circulaire.legifrance.gouv.fr/pdf/2015/05/cir\\_39619.pdf](http://circulaire.legifrance.gouv.fr/pdf/2015/05/cir_39619.pdf).

*National Action Plan*, is a highly positive initiative that would help improve pooling of information, cooperation between stakeholders and harmonisation of practices.

At present, however, such contact persons continue to play a limited and unequal role, for several reasons. First of all, as there is no list identifying them, they remain largely unknown to the various actors who might make use of them, so hampering their liaison role. A measure of transparency is therefore required if they are to fulfil their role effectively. Secondly, as regards contact persons in prefectures and public prosecutors' offices, not all have yet been appointed: at present a good many prefectures have no contact persons, and as for public prosecutors' offices, only specialised interregional courts (JIRSs) have them, making eight such contact persons in all. Furthermore, although the missions entrusted to contact persons in prefectures are detailed in the *Second National Action Plan*, this is not the case for contact persons in public prosecutors' offices. Clarification of their role and clear definition of their missions and competences are required in order to facilitate coordination. Finally, the added value of having contact persons present in prefectures and public prosecutors' offices, which are currently too dependent on the individuals appointed to the position, fluctuates as changes are made, and as these are frequent, they pose problems in ensuring continuity of cooperation between actors at local level.

**Recommendation no.14:** The CNCDH recommends that "*contact persons for trafficking in human beings*" be appointed in all prefectures, as provided for in the *Second National Action Plan*, and that appointment of contact persons in public prosecutors' offices' be extended beyond Specialised Interregional Courts.

**Recommendation no.15:** The CNCDH recommends that, in the context of the national referral mechanism, the role and competences of "*contact persons for trafficking in human beings*" in prefectures, public prosecutors' offices and DIRECCTEs be clearly defined. They must be provided with the necessary resources so that they can assume a full-fledged liaison and coordination role, as well as contribute to improvement and understanding of the provisions made at national level.

**Recommendation no.16:** The CNCDH recommends that "*contact persons for trafficking in human beings*" be suitably trained for the roles and competences allocated to them, so as to ensure effective implementation of the procedures provided for and guarantee respect of human trafficking victims' rights.

**Recommendation no.17:** The CNCDH recommends that lists of "*contact persons for trafficking in human beings*" be published and updated in order to enable effective coordination between stakeholders in accordance with their defined roles and

competences.

## **B. Access to protective accommodation for human trafficking victims: an under-dimensioned service**

As regards infrastructures, the accommodation situation illustrates the necessity of carrying out an accurate assessment of needs at national level. Although the national Ac.Sé network has demonstrated its effectiveness, it still has major limitations. As regards effective care of victims, however, its success highlights the interest of training staff in general and multipurpose accommodation facilities in provision of the special care required by human trafficking victims. Nonetheless, it is still very much under-dimensioned in terms of reception capacity, only concerns a certain percentage of victims of trafficking for sexual exploitation purposes, and only takes in adults. It is also extremely difficult for foreign human trafficking victims without residence permits to access.

As provided for in the Second National Action Plan, 300 places in the national reception scheme for asylum seekers have recently been set aside for women victims of human trafficking. Despite the usefulness of turning existing accommodation schemes into specialised initiatives, success depends on their reception capacities being increased; otherwise other vulnerable sectors of the public risk being deprived of accommodation equally essential to their wellbeing<sup>22</sup>.

**Recommendation no.18:** The CNCDH recommends that the assessment to be carried out prior to making a start on the mechanism's design include a quantitative and qualitative analysis of the accommodation solutions available to human trafficking victims up until now, with a view to best adapting them to present realities. In most cases this may involve training staff at non-specialised accommodation facilities, but may also require creation of specialised facilities catering for specific needs.

**Recommendation no.19:** The CNCDH recommends that, when the accommodation offer for human trafficking victims is extended, special attention be paid to ensuring its existence throughout the territory and for all forms of exploitation, that it is not conditioned by legal residence, that adults are kept separate from children except for parents with children, and that trained professionals are present in all facilities, whether general, multipurpose or specialised.

**Recommendation no.20:** The CNCDH recommends that choices of accommodation for

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22. For more details, see: CNCDH, *Opinion on the Second National Action Plan (2019-2021)*, 19 November 2019. Accessible online: [https://www.cncdh.fr/sites/default/files/191119\\_avis\\_2e\\_plan\\_contre\\_la\\_teh.pdf](https://www.cncdh.fr/sites/default/files/191119_avis_2e_plan_contre_la_teh.pdf)

victims be made on the basis of their specific situations and with their consent. For example, depending on the situation, such accommodation may or may not need to be for human trafficking victims only; it may need to ensure geographical distancing or, on the contrary, that an individual remains in familiar surroundings.

**Recommendation no.21:** The CNCDH recommends that human trafficking victims' access to accommodation not be conditioned by their cooperation with the authorities: provision of accommodation is essential to the protection that numerous victims require and cannot be postponed until they are formally identified.

### **C. Right of residence: necessary application of existing provisions in order to remove obstacles to access to rights**

Delivery of residence permits on the basis of the provisions of Article L.316-1<sup>23</sup> and compliance with the conditions of such delivery are among the requirements on which reinforcement of contact persons' roles in prefectures might have a positive impact. The *Second National Action Plan* provides for such contact persons being able to obtain "assistance from officials in foreign departments in examination of applications for residence permits on the basis of the provisions of Articles L.316-1 and L.316-1-1 or for exceptional permission to reside".

At present, however, it would seem necessary to remind prefectures of these delivery conditions in order to harmonise their practices and ensure strict application of the law. First of all, it is worth noting that there continue to be very few residence permits delivered on the basis of Article L.316-1<sup>24</sup>, with only 89 issued in 2018. Moreover, the hearings conducted by the CNCDH revealed the existence of inappropriate practices including refusal to deliver residence permits to recognised human trafficking victims who had cooperated in a criminal investigation, on the pretext that their exploitation had taken place in Italy. Likewise, the fact that the offences listed on receipts for complaints lodged at police stations are not always accurate or not always adequately characterised legally hampers obtainment of residence permits inasmuch as prefectures' decisions are largely based on these receipts. Nor is the observation that a reminder of delivery conditions is required original, as the *Second National Action Plan* provided for it.

**Recommendation no.22:** The CNCDH recommends that the assessment to be carried out

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23. Code for Entry and Residence of Foreigners and Right of Asylum (CESEDA), Article L.316-1. Accessible online: <https://www.legifrance.gouv.fr/affichCodeArticle.do?dArticle=LEGIARTI000032171485&cidTexte=LEGITEXTO00006070158&dateTexte=20161101>

24. CESEDA, Article L.316-1, *op.cit.*

include an in-depth analysis of these obstacles to delivery of residence permits on the basis of Articles L.316-1 and L.316-1-1<sup>25</sup> in order to guarantee harmonisation of practices and respect of human trafficking victims' rights. It also recommends that the role of contact persons be reinforced in this respect and made explicit in the mechanism.

#### **D. Necessary reinforcement of the application of the principle of non-punishment of human trafficking victims forced to commit offences**

The Warsaw Convention and Directive 2011/36/EU both provide for non-punishment of human trafficking victims<sup>26</sup> for offences they committed under duress while being exploited. This principle, which aims to protect victims and create the conditions necessary to their possible cooperation with criminal investigation departments, and consequently to prosecution of perpetrators, should be applied to all victims forced to commit offences, adults and children alike. Its application is all the more pertinent for children, as they are prime targets for human traffickers, when it comes to forms of exploitation for criminal activities. In cases of human trafficking for the purpose of getting its victims to commit crimes or offences, identification of the victims concerned and recognition of this particular reason for exploitation make the duress they were under clear enough, and should therefore enable application of the non-punishment principle and prevent their prosecution. Members of criminal investigation departments, judicial police officers and judges should be trained in identification of victims of this form of exploitation, so that they have no trouble acknowledging their criminal non-responsibility.

Article 122-2 of the Criminal Code would be applied to victims of human trafficking for other purposes who have also committed offences in the context of their exploitation. This Article, which provides for the criminal non-responsibility of "*persons who acted under the influence of a force or constraint which they could not resist*"<sup>27</sup>, does not, however, appear to ensure application of the principle of non-punishment of human trafficking victims who committed offence in the context of their exploitation, as is provided for in international and European law, as GRETA highlighted in 2017<sup>28</sup>.

25. CESEDA, Article L.316-1 and L.316-1-1, *op.cit.*

26. Council of Europe *Convention on Action against Trafficking in Human Beings*, Article 26. Accessible online: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680083731>; European Parliament and Council Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, Article 8. Accessible online:

<https://eur-lex.europa.eu/legal-content/FR/TXT/HTML/?uri=CELEX:32011L0036>

27. Criminal Code, Article 122-2. Accessible online: <https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIART000006417214&cidTexte=LEGITEX000006070719&dateTexte=19940301>

28. Council of Europe, Group of Experts on Action against Trafficking in Human Beings (GRETA), *Report on France's implementation of the Council of Europe Convention on Action against Trafficking in Human Beings (CATHB)*, 6 July 2017, pp. 64-65. Accessible online: <https://rm.coe.int/rapport-concernant-la-mise-en-oeuvre-de-la-convention-du-conseil-de-l-168073c728>

The concept of constraint as defined in Article 122-2 of the Criminal Code has become too limited to guarantee non-punishment of human trafficking victims. It is also up to the victim being prosecuted to provide proof of it. In addition, as regards asylum, it is worrying to note that jurisprudence sometimes tends to refuse international protection to recognised victims of human trafficking if they have participated in the exploitation of other individuals, even when they were forced to do so by the networks that exploited them<sup>29</sup>. The CNCDH recommends that the Criminal Code provide for simple, autonomous presumption of the non-responsibility of victims who have committed offences in the context of their exploitation.

In this regard, the CNCDH is worried about the special situation of children victims of human trafficking who are forced to commit offences, who, despite the non-punishment principle, are subject to coercive measures. As things stand, problems arising from some children's unwillingness to be taken into care due to their exploiters' hold over them lead juvenile courts and prosecutors to impose repressive and coercive measures. The growing number of juveniles in detention is particularly worrying in this regard<sup>30</sup>. Hearings conducted by the CNCDH have also revealed that children detained without being recognised as victims are being held in the same prisons as their parents, who have been convicted of trafficking in minors. The CNCDH points out that a measure that deprives someone of their liberty can in no case be regarded as a protective measure, even when alternatives are lacking.

**Recommendation no.23:** The CNCDH recommends reinforced application of the principle of non-punishment of human trafficking victims and asks the Ministers of Justice and the Interior to publish a Circular highlighting the factors likely to characterise a situation of "constraint" within the meaning of Article 225-4-1 of the Criminal Code (modus operandi, circumstances leading to the presumption that a human trafficking victim was actually forced to commit an offence, etc.), in order to identify victims trafficked for the purpose of committing crimes and offences and avoid their being subject to prosecution. For other forms of exploitation, the CNCDH asks the legislature to provide for simple autonomous presumption of non-responsibility for victims who have committed offences in the context of their exploitation. Training will have to be provided to criminal investigation departments, judicial police officers and judges to ensure that they are aware of such criminal non-responsibility mechanisms. Special attention must be paid to this in discussions on the national referral mechanism's

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29. CNDA, 25 June 2019, No. 18027385: in this ruling, the National Court of Asylum (CNDA), meeting in full session, made its position clear on how it would deal with requests for protection made by victims of human trafficking networks who were finally proved to be guilty of procuring.

30. See in particular: The Chief Inspector of Places of Deprivation of Liberty (CGLPL), Activity Report 2018, 27 March 2019. Accessible online: [https://www.cglpl.fr/wp-content/uploads/2019/05/CGLPL\\_Rapport-annuel-2018-web.pdf](https://www.cglpl.fr/wp-content/uploads/2019/05/CGLPL_Rapport-annuel-2018-web.pdf)



design.

**Recommendation no.24:** The CNCDH recommends that human trafficking victims forced to commit offences in the context of their exploitation not be punished by being denied international protection.

In conclusion, the CNCDH stresses that design and implementation of the national referral mechanism requires complex approaches due to the wide range of sectors and actors involved in provision of assistance to victims of trafficking in human beings. This is why its design and implementation must be perceived dynamically. The mechanism's formalisation should be gradual, with a certain number of procedures being initiated and reinforced, and then gradually complemented in line with the results of the assessment of context and needs. In this respect, monitoring of the mechanism's implementation and of all stakeholders will be of key importance.

Finally, the CNCDH reiterates that, by making protection central to a dual, preliminary and formal identification system and reinforcing cooperation between stakeholders and victim support services, the national referral mechanism will not only ensure improvement of the effectiveness of individuals' rights: its production of robust data will also lead to increased prosecution of perpetrators and improve knowledge of the phenomenon. Together, these three factors will result in significant improvement in the fight against human trafficking and open the way to reinforcement of transnational cooperation. Once again, the CNCDH stresses the importance of creating such a mechanism in France and encourages MIPROF to continue with its efforts to increase dialogue in this respect. As emphasised in the introduction, the mechanism's implementation has been made all the more urgent and necessary by the ongoing Covid19 pandemic and its consequences on society as a whole.

## LIST OF RECOMMENDATIONS

**Recommendation no.1:** The CNCDH recommends that an awareness-raising campaign in support of implementation of the national referral mechanism be carried out among the general public and non-specialist professionals (international coach drivers, hotel managers, teachers, hospital professionals, housing rental professionals, etc.), developed in collaboration with the individuals concerned and stakeholders on the ground, in particular associations and trade unions involved in combating human trafficking. The campaign could draw on examples of specific situations connected with the various activity sectors concerned, with a view to familiarising the public with indications of human trafficking situations and informing them on what initial action they might take in order to protect potential victims, such as which organisations to contact.

**Recommendation no.2:** The CNCDH recommends that all institutional stakeholders likely to be in contact with potential victims are provided with training and the necessary tools to inform them of their rights, in order to improve the content and form of the information they deliver. This involves a wide range of professionals, including the border police, town hall officials, teachers, healthcare professionals, managers of accommodation centres and children's homes, labour inspectors, protection officers, judges and lawyers.

**Recommendation no.3:** The CNCDH recommends drawing up identification criteria for each type of exploitation, taking account of the differences there might be between children and adult victims and adapting such criteria to the competences of the professionals concerned. They will have to be drawn up in collaboration with organisations and stakeholders on the ground, which already possess expertise and tools that have proved their worth. It will require the involvement of the individuals concerned and use of already existing tools. Such identification criteria will have to be an integral component of the national referral mechanism.

**Recommendation no.4:** The CNCDH recommends that associations working with human trafficking victims, along with trade unions and all staff trained in detection and assessment, be made official stakeholders in the national referral mechanism at the preliminary identification stage and authorised to report presumed victims to the competent authorities with their consent. This official role, incumbent upon associations among other entities, should in no case be limited to major community operators but must also include associations with field expertise in this particular area.

**Recommendation no.5:** The CNCDH recommends creation of practical guides for use by professionals in all sectors concerned, presenting the various detection means and indicators along with the protocols for orientation and protection of presumed victims.

**Recommendation no.6:** The CNCDH recommends that the national referral mechanism to be created explicitly provides for a "dual identification" procedure, by formalising a preliminary identification phase prior to formal identification and initiating the protocol for provision of care and protection to presumed victims, on the basis of analysis of their immediate needs and, as the case may be, up until all doubt is dispelled.

**Recommendation no.7:** The CNCDH recommends that victims' formal identification be separated from their ability or desire to cooperate with the authorities, regardless of the type of exploitation they are victims of.

**Recommendation no.8:** The CNCDH recommends the creation of two distinct formal identification procedures, both recognising the same status of human trafficking victim and granting the same rights: a procedure in the context of judicial cooperation, and a procedure not including such cooperation for victims unable or unwilling to cooperate with the authorities. Both procedures must result in recognition of the same status and grant the same rights.

**Recommendation no.9:** The CNCDH recommends that design of the mechanism include creation of multi-actor platforms with an operational role, organised at départemental level and studying the cases of victims not cooperating with criminal investigations. Such platforms' decision-making members could include representatives of institutions and civil society (trade unions, associations, physicians, psychologists, etc.). Their composition will have to be specified when the mechanism is created, in cooperation with all actors concerned. Local coordinators of the fight against human trafficking might also be appointed, who would oversee platforms and be tasked with coordinating local actors in the fight against human trafficking in all its forms and receiving reports of cases of presumed victims from actors on the ground authorised to make them.

**Recommendation no.10:** The CNCDH recommends that the national referral mechanism's design take account of the intersectoral aspect of support to human trafficking victims and continue to include all relevant sectors in discussions. The justice system, for example, must ensure that human trafficking victims are compensated for all forms of harm they have suffered.

**Recommendation no.11:** The CNCDH recommends that the mechanism is provided

with a legal basis more binding than a circular alone. To this end, it considers that the fight against all forms of exploitation and trafficking in human beings should be made the subject of a law covering all its aspects (preventive and repressive, administrative and judicial, legal and social alike) and enabling full implementation of international and European instruments in its favour. In addition, there must be provision for coordination of the mechanism at national level in order to guarantee the protocol's consistency throughout the territory.

**Recommendation no.12:** The CNCDH recommends that work on design of the mechanism in France begin with an in-depth assessment of stakeholders, services and infrastructures, including an analysis of initiatives that have already been taken at local level. To do so, it will be necessary to call upon the expertise of specialised regional bodies such as the Organisation for Security and Cooperation in Europe's (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) in order to assist MIPROF in the initiatives it has already undertaken.

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