



NATIONAL CONSULTATIVE COMMISSION ON HUMAN RIGHTS

Opinion on combating the trafficking and exploitation of human beings in France

(Recommendations adopted by the Plenary Assembly on 18 December 2009)

Human trafficking constitutes a grave violation of human rights. At the turn of the 21st century, the United Nations, the European Union and the Council of Europe reaffirmed this principle in a series of binding texts specific to trafficking: the so-called Palermo Protocol, adopted in 2000; the 19 July 2002 Framework Decision; and the European Convention of 2005.¹ These instruments supplement the 1926 and 1956 conventions on slave trafficking and the 1949 Convention on trafficking for prostitution².

The most recent texts contain a definition of trafficking that covers the act of helping exploit another by, for example, recruiting, transporting or housing that person. Trafficking is therefore not exploitation. However, for ease of expression, the phrase “trafficking of human beings” is often used to refer to both trafficking, strictly speaking, and acts constituting exploitation. This linguistic reduction can lead to confusion.

The Palermo Protocol provides that “*exploitation shall include, 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*” (article 3a), but the list of acts constituting exploitation varies from one instrument to another. Moreover, only slavery, analogous practices and forced labour are clearly defined at the international level (slavery and analogous practices having been defined in 1926 and 1956, and forced labour in 1930³).

Pursuant to these instruments, France must effectively combat trafficking and exploitation by punishing perpetrators, protecting victims, and preventing the offence (the so-called three “Ps” policy). Initially, and in accordance with the Palermo Protocol, France’s efforts essentially consisted of improving the repression of trafficking and exploitation, which are treated as a form of transnational organised crime. Under the impetus of the 2005 Convention, France must now focus on protecting the fundamental rights of victims.

At this important juncture in protecting the rights of victims of trafficking or exploitation, the French National Consultative Commission on Human Rights (*Commission nationale consultative des droits de l’homme*, CNCDH) considers it timely to assess France’s approach. The CNCDH has identified the failures of this approach and ways to remedy them.

¹ See Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted by the United Nations on 15 November 2000 in Palermo and ratified by France on 6 August 2002; Framework Decision 2002/629/JHA on Preventing and Combating Trafficking in Human Beings, adopted 19 July 2002, which applies to all European Union Member States; and Council of Europe Convention on Action against Trafficking in Human Beings, adopted 16 May 2005 in Warsaw and ratified by France on January 9, 2008.

² See Slavery Convention, adopted 25 September 1926, supplemented by the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, adopted 7 September 1956; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, adopted 2 December 1949.

³ See Forced Labour Convention, 1930 (No. 29), adopted 28 June 1930.

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Preliminary Chapter

A – Clearly define both trafficking and exploitation

Adopting clear definitions of trafficking and exploitation is the necessary pre-requisite to implementing a coherent policy in this area and, if they are accepted by all, the means to strengthen international cooperation. This is why the United Nations established a new definition of trafficking in 2000: to provide a global reference. However, this definition coexists with other binding and sometimes contradictory international definitions. In certain circumstances, it also blends with the definition of the smuggling of migrants adopted by the United Nations the same year⁴. Such overlap would not be prejudicial if it were not for the fact that aliens who constitute victims under the Palermo Protocol are considered, above all, offenders under the protocol against the smuggling of migrants.

As for the concept of exploitation upon which the trafficking definition is based, its definition is largely left up to the states. At best, the Palermo Protocol suggests a non-exhaustive list of the different forms of exploitation a trafficker might facilitate. Sexual exploitation, servitude and organ removal are included on this list, but have no internationally agreed definitions. Moreover, the phrase “at a minimum” indicates that other forms of exploitation must be taken into account, even if they do not constitute forced labour, servitude or slavery. While the concept of exploitation as used in the Protocol refers a priori to a grave violation of human rights warranting criminalization⁵, the issue of what it must include is still unresolved. The definition of trafficking thus varies from one state to another depending on the approach each takes to exploitation.

- 1. To determine the scope of application of binding international texts relative to the trafficking of human beings, such as the Framework Decision on Preventing and Combating Trafficking in Human Beings⁶, the CNCDH recommends that France invite its European partners to agree on a common definition of exploitation.**
- 2. To guarantee the respect of the rights of foreign victims of human trafficking, the CNCDH recalls that France must apply the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, not the Protocol against the Smuggling of Migrants, to the act of facilitating, for purposes of exploitation, an alien’s illegal entry into or residence within French territory⁷.**

B – Clarify domestic criminal law provisions

For over a century, whenever an international text relating to trafficking or exploitation has been adopted, France has tried to bring its domestic law into compliance by modifying pre-existing offences and defining new ones. The French provisions applicable to these offences today therefore include numerous provisions that, like international law, form a complex body of law. The clarity of this law determines the effectiveness of perpetrators’ punishment, victims’ protection, and the efforts to prevent both trafficking and exploitation. The CNCDH therefore believes it is essential to clarify, in the light of the international law applicable in France, the French provisions covering both trafficking and exploitation.

⁴ The Protocol against the Smuggling of Migrants by Land, Air and Sea, adopted 15 November 2000, provides for increasing the penalty for facilitating, for financial or material benefit, the illegal entry of an alien or enabling such alien, by any illegal means, to remain illegally within the territory of a state party, when such procurement or enabling “entail[s] inhuman or degrading treatment, including for exploitation, of such migrants.”

⁵ Some international organizations include any labour law violation under the term “exploitation.” See e.g. ILO and the European Commission, *Operational indicators of trafficking in human beings*, March 2009.

⁶ See Framework Decision 2002/629/JHA on Preventing and Combating Trafficking in Human Beings, 2002.

⁷ See Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000; Protocol against the Smuggling of Migrants by Land, Air and Sea, 2000.

1 – For a clear, precise definition of trafficking

Pursuant to the Palermo Protocol, a general provision on trafficking was inserted into the Penal Code in 2003 (article 225-4-1). However, this provision does not enable France to comply with its international commitments, because article 225-4-1 punishes neither trafficking without gain, nor trafficking for purposes of certain forms of exploitation targeted by the Protocol⁸.

Another major problem is that article 225-4-1 competes with other offences, making it impossible to evaluate repressive measures in this area. Not only do special provisions other than article 225-4-1 cover trafficking for purposes of prostitution or begging⁹, but article L. 622-5 of the Code of Alien Entry and Residence and Asylum Law (CESEDA) specifically targets the act of facilitating the illegal entry, circulation or residence of an alien when such facilitation results in subjecting the alien “to conditions of life, transportation, work or housing that are incompatible with human dignity”. In addition, trafficking occurs before or alongside exploitation; it is rarely established unless exploitation is. And once exploitation has been established, traffickers are generally apprehended as either perpetrators of, or accomplices to, acts of exploitation, rather than as perpetrators under article 225-4-1.

- 3. To bring article 225-4-1 into compliance with the Palermo Protocol and make it the only offence applicable in the case of trafficking, the CNCDH recommends the following:**
- a. abrogate the special provisions relating to trafficking, keeping only article 225-4-1 of the Penal Code and simplifying its wording;**
 - b. do not make seeking financial or material gain a constituent element of the offence of trafficking;**
 - c. make trafficking punishable in all cases of forced labour or servitude;**
 - d. incriminate trafficking for purposes of slavery and illicit organ removal as well.**

2 – For a clear, precise definition of exploitation

The French law applicable to exploitation includes a wide variety of offences that do not cover specifically, or at least not only, such acts¹⁰. It is therefore impossible to evaluate repressive efforts in this area as well.

Moreover, while current law provides for punishing the exploitation of others, the consequent repression is particularly unsatisfactory. On the one hand, its scope varies depending on the constituent elements of each intermediate offence used. On the other, because the Penal Code does not define “forced labour,” “servitude” or “slavery,” when sexual exploitation is not involved, perpetrators may be found guilty only of “violence,” “working conditions incompatible with human dignity,” or “unlawful employment.” They therefore tend to receive only suspended sentences of a few months imprisonment. One can say there is a semantic barrier here.

⁸ Penal Code article 225-4-1 incriminates “the act, in exchange for remuneration or any other advantage or promise of remuneration or advantage, of recruiting a person, of transporting, transferring, housing or receiving said person, to place said person at his/her disposal or at the disposal of a third party, even unidentified, either to enable the commission against said person of offences of procuring, sexual aggression or assault, exploitation of begging, working or living conditions incompatible with human dignity, or to constrain said person to commit any crime or misdemeanour”.

⁹ See Penal Code, article 225-5, 3 (hire, train or lead astray for prostitution), article 225-6,1° (act as intermediary between a prostituted person and another who exploits her/him) and article 225-12-5, 3° and 4° (hire, train or lead astray a person for begging or to deliver her/him, for one’s personal enrichment, into providing a service in exchange for a donation in public).

¹⁰ See Penal Code articles 225-5 et seq. (procuring); 222-22 et seq. (sexual aggression and assault); 225-12-5 et seq. (exploiting begging); 225-13 et seq. (working or living conditions incompatible with human dignity); 121-7 and 122-2 (forced criminality); 212-1 (reducing into slavery); 511-3 and 511-5 (illicit removal of organs, tissue, cells or a product of the human body).

4. **The CNCDH recommends developing a coherent criminal justice policy covering all acts of exploitation committed within French territory. This requires clarifying both the legal and symbolic scope of existing provisions.**
5. **The CNCDH therefore firstly recommends placing all the provisions specific to exploitation in the same section of the Penal Code as the offence of trafficking.**
6. **Secondly, the CNCDH recommends clarifying and completing the provisions specific to exploitation such that the Penal Code incriminates the following acts, no matter what the activity exercised or service provided:**
 - a. **Leading a person to exercise an activity or provide a service when:**
 - i. **either the person concerned cannot validly consent due to her/his vulnerability or state of dependency, which the perpetrator knows of or cannot be unaware of;**
 - ii. **or the perpetrator uses threats, constraint, violence, or fraudulent manoeuvres including placing in debt, targeting the person concerned, her/his family, or a person in a stable relation with her/him¹¹.**
 - b. **Imposing on a person conditions of activity or housing that manifestly violate the norms in force and constituting an attack on her/his integrity, liberty or dignity when:**
 - i. **either the person concerned has no other real and acceptable alternative but to submit to such conditions;**
 - ii. **or the perpetrator uses the means set out in point 6(a)(ii) above.**
 - c. **Stopping a person from ceasing to exercise an activity or provide a service when:**
 - i. **either the person concerned cannot validly consent due to her/his vulnerability or state of dependency, which the perpetrator knows of or cannot be unaware of;**
 - ii. **or the perpetrator uses the means set out in point 6(a)(ii) above.**
 - d. **Exercising over a person at least one of the powers attaching to the right of ownership, in accordance with the 1926 Slavery Convention. A person's status or condition as a slave can be manifested by the sale, purchase, exchange, donation, or lending of such person.**
7. **Lastly, the CNCDH recommends considering the possibility of maintaining the Penal Code provisions enabling the punishment of flagrant violations of labour or housing norms involving vulnerable or dependent persons, without such violations constituting a form of exploitation.**

3 – For a comprehensive concept of trafficking and exploitation

The French legal conception of the chain of acts involved in exploiting a person has at least two weaknesses. First, whereas Penal Code article 225-4-1 provides for prosecuting one who plans to exploit a person or facilitate a person's exploitation by a third party even before such exploitation has begun, those who attempt to exploit others do not systematically incur punishment. Second, the Penal Code does not provide for intervening, after exploitation occurs, with respect to those who use the services provided by a person they know to be exploited by a third person, whereas article 225-4-1 provides for prosecuting, prior to exploitation, the act of housing a person while knowing that this will facilitate such person's exploitation.

8. **For the chain of acts involved in exploiting a person to be understood in its entirety, the CNCDH recommends eliminating all pockets of impunity by:**
 - a. **criminalizing attempted exploitation, for all forms of exploitation;**
 - b. **considering criminalizing using the services or benefiting from the activity of a person known to be, or that one cannot be unaware is, exploited by a third party.**

¹¹ Phrasing similar to that usually used in the Penal Code. See, for example, Penal Code article 225-4-2(7).

I – Ensure effective, adequate repression of trafficking and exploitation

Even once clearly defined and criminalized, neither trafficking nor exploitation may be considered combated unless effective, adequate repressive measures are implemented. It is therefore necessary to ensure that every effort is made to identify, prosecute and convict perpetrators, bearing in mind that the primary goal of repressing trafficking and exploitation is to protect people from such offences¹².

A – For a coherent penalty scale

French penalties for trafficking or exploitation do not respect the principles of legality or equality. Punishment for both trafficking and exploitation is particularly unforeseeable because recourse to intermediate offences means perpetrators may be sentenced to anywhere from two months to life in prison. In addition, even when similar acts are committed, punishment for these crimes may vary from one perpetrator to another depending on the offence finally charged. The CNCDH therefore considers it essential to ensure that punishment corresponds to the gravity of the act(s) committed.

9. To guarantee the overall consistency of the repression of both trafficking and exploitation, the CNCDH recommends applying the following principles to punishments:

- a. exploiting a person must in theory lead to a more severe punishment than acts designed to facilitate or, if criminalized, benefit, from exploitation;**
- b. all forms of exploitation must lead to the same punishment, with the exception of sexual exploitation and slavery;**
- c. the sexual nature of acts committed against an exploited person must constitute an aggravating circumstance, due to the additional physical and moral prejudice this form of exploitation involves;**
- d. reduction into or maintaining in slavery (without aggravating circumstances) must lead to a more severe punishment than that incurred for any other form of exploitation.**

10. To comply with the principle of equality, the CNCDH recommends harmonizing the aggravating circumstances taken into account in cases of trafficking or exploitation, taking Penal Code article 225-4-2 et seq. as a model. In the case of exploitation, however, increased punishment must also be provided for when:

- a. the acts committed are of a sexual nature;**
- b. the perpetrator of the exploitation has also trafficked the person concerned.**

11. The CNCDH recommends harmonizing the complementary sanctions physical or moral persons may incur for committing acts of trafficking or exploitation, taking unlawful employment as a model, to supplement those set out in Penal Code article 131-39.

B – For an effective implementation of domestic penal provisions

To cope with a complex, poorly defined phenomenon, it is important to train agents in detection and repression services¹³, as well as the representatives of judicial authority. Indeed, one of the goals of the French Interministerial Working Group on Human Trafficking established in 2008 is to develop training tools.

The hearings conducted by the CNCDH have enabled it to identify practices that should be encouraged, and others that must absolutely be abandoned. For example, in the area of sexual exploitation, the central offices of detection and repression may open an investigation without being

¹² See Recommended Principles and Guidelines on Human Rights and Human Trafficking, adopted by the United Nations High Commissioner for Human Rights in 2002, E/2002/68/Add.1, guideline 5(1).

¹³ “Detection and repression services” include, at a minimum, the police, gendarmerie, and labour inspection services.

dependent on victims' statements. Adopting such a proactive approach seems essential to dealing with victims who do not necessarily consider themselves as such, whether they are ignorant of their rights or are subject to subtle forms of constraint (debt, maintenance of their fear of police, manipulation of accepted cultural practices, etc.). However, a criminal justice policy relative to trafficking and exploitation must be developed as quickly as possible. Without one, only unlawful employment and residence tend to be repressed, whereas they may be considered a possible symptom of trafficking or exploitation.

In the light of the recommendations made by the United Nations High Commissioner for Human Rights in 2002 or the Special Rapporteur on trafficking in persons¹⁴, the CNCDH invites the administration to create new tools to more effectively combat this offence.

On identifying situations of trafficking and exploitation

- 12. As workplace inspections constitute one of the main methods for detecting situations of trafficking or exploitation, the CNCDH recommends separating operations designed to detect employer violations of labour law with regard to employees from those designed to detect violations of the law relative to alien entry and residence.**
- 13. The CNCDH recommends that detection and repression services be encouraged to adopt a proactive approach to ascertaining the existence of trafficking or exploitation, without waiting for victims of trafficking or exploitation to make themselves known to them.**
- 14. In addition, the CNCDH recommends the increased involvement in detecting situations of trafficking or exploitation of all public servants and state representatives, particularly those working in embassies, consulates and hospitals.**

On detection and repression services

- 15. To guarantee the effective repression of both trafficking and exploitation in the most affected regions or when they take on an international dimension, the CNCDH recommends expanding the mandate of specialized brigades and central offices such that all forms of both trafficking and exploitation may be apprehended by agents trained specifically for this purpose.**
- 16. To guarantee the effective repression of both trafficking and exploitation throughout the territory, the CNCDH also recommends that more non-specialized agents of the detection and repression services be trained to identify situations of trafficking and exploitation.**
- 17. The CNCDH further recommends providing labour inspection services with the material and human resources necessary to increase workplace inspections, in tandem with the public services, NGOs and trade unions likely to inform injured workers of their rights and take charge of them if necessary.**

On gathering evidence

- 18. To facilitate the gathering of evidence in cases of trafficking or exploitation, the CNCDH recommends:**
 - a. strengthening cooperation between the various French services concerned (police, gendarmerie, customs, tax, social security, labour inspection, etc.) to avoid being dependent on victims' statements;**

¹⁴ See Recommended Principles and Guidelines on Human Rights and Human Trafficking, adopted by the United Nations High Commissioner for Human Rights in 2002, E/2002/68/Add.1; annual reports of the Special Rapporteur on Trafficking in Persons, especially in Women and Children.

- b. systematically calling for international cooperation (Europol, Interpol, Eurojust, European arrest warrant, common or joint investigation teams, etc.) when the acts involved are of a transnational nature;
- c. involving victims, if they agree, in preparing and executing operations to combat trafficking and exploitation¹⁵, including accepting their anonymous testimony (Code of Criminal Procedure article 706-58).

On defining a trafficking and exploitation penal policy

- 19. Given the severity of this phenomenon, the CNCDH recommends ensuring that investigations into both trafficking and exploitation be opened immediately and systematically, without waiting for a victim's statement or complaint, in particular when the victim is a minor. Moreover, provided the principle of prosecutorial discretion is respected, prosecution must be forcefully recommended.
- 20. To harmonize repression of both trafficking and exploitation throughout the territory, the CNCDH recommends defining a penal policy specific to these offences, emphasizing its priority, and training prosecutors and judges accordingly.

On expanding French jurisdiction

- 21. As trafficking and exploitation constitute particularly grave infringements of human rights, the CNCDH recommends:
 - a. extending the provisions on "sex tourism" (Penal Code article 227-27-1) to cover all acts of trafficking and exploitation, whether the victim in question is a minor or an adult¹⁶;
 - b. systematically lift the civil and criminal immunity some perpetrators enjoy based on the 1961 Convention on Consular Relations.¹⁷

On evaluating the efforts of detention and repression services and the judiciary

- 22. To evaluate the efforts of detection and repression services, as well as of the judiciary, to combat trafficking and exploitation and to enable them to adapt as these offences evolve, the CNCDH recommends completing every year:
 - an inventory of acts established, prosecuted and punished, whatever the form of trafficking or exploitation involved;
 - a compilation of information regarding perpetrators' profiles (sex, age, national origin, etc.) and methods;
 - a quantitative and qualitative analysis of all such data.

¹⁵ Recommended Principles and Guidelines on Human Rights and Human Trafficking, E/2002/68/Add.1, guideline 3(6).

¹⁶ Penal Code article 227-27-1 provides: "Where the misdemeanours under articles 227-22, 227-23 or 227-25 to 227-27 are committed abroad by a French national or a person habitually residing on French territory, French law shall apply notwithstanding the second paragraph of article 113-6 and the provisions of the second sentence of article 113-8 do not apply."

¹⁷ See Vienna Convention on Consular Relations, adopted 18 April 1961.

II – Guarantee the effective respect of victims’ rights

International human rights norms apply to victims of trafficking and exploitation. France must therefore, without discrimination, guarantee the effectiveness of all such victims’ fundamental rights, in addition to those arising from instruments specific to trafficking or exploitation. Beyond the right to access to justice, one who has the standing of victim of trafficking or exploitation has a right to effective economic and social rights. Comprehensive assistance of victims of trafficking or exploitation is therefore essential, as “partial . . . solutions” may lead to “secondary victimisation”¹⁸.

Even once recognized, the rights to access to justice and to effective economic and social rights cannot be effectively exercised unless victims of trafficking or exploitation are so identified. Such identification is never certain, as it results from a judicial determination. The 2005 Convention therefore requires Member States to consider all persons as victims as soon as there are “reasonable grounds to believe”¹⁹ they are.

- 23. The CNCDH recommends that the provisions on victims of trafficking or exploitation be applied to all persons once corroborating evidence (alleged victim’s detailed account, follow-up by a specialised non-governmental organisation (NGO) or trade union, evidence gathered by detection and repression services or any other available evidentiary element) supports a presumption that the person is a victim of trafficking or exploitation.**
- 24. The fact that a victim of trafficking or exploitation does not claim to be one, is not lawfully within the territory, or repeatedly commits offences must not be an obstacle to respecting her/his rights. The CNCDH therefore recommends that all public servants who may enter into contact with victims of trafficking or exploitation be trained to recognize the signs supporting a presumption that a person is such a victim.**
- 25. The CNCDH recommends taking care that all victims of trafficking or exploitation have effective access to justice and economic and social rights, whatever their age, gender, nationality, immigration status, the form of trafficking or exploitation to which they were subjected, their willingness or ability to usefully cooperate with detection and repression services, their behaviour or any other situation.**

A - Guarantee victims’ access to justice

The right of victims of trafficking or exploitation to have access to justice involves, inter alia, the ability to file a complaint, demand reparation of the prejudice suffered and to be heard during proceedings. But this right is not effective unless certain other rights are respected, because their violation hinders its exercise, sometimes irreparably. For example, victims of trafficking or exploitation must be informed of their rights, and they must not be dissuaded from using them. In this regard, the CNCDH is particularly concerned with the counterproductive effects of certain measures that, though adopted to combat trafficking and exploitation, contribute to punishing those who should be protected.

1 – On the right to access to justice and the execution of judicial decisions

The CNCDH has noted several obstacles to accessing justice encountered by victims of trafficking or exploitation. First, though the right to file a complaint²⁰ constitutes the principal way to access criminal justice, the danger of being removed from the territory or being criminally punished contributes to dissuading victims of trafficking or exploitation from filing complaints when they are

¹⁸ Framework Decision 2001/220/JHA on the Standing of Victims in Criminal Proceedings, 15 March 2001, preamble (5).

¹⁹ Council of Europe Convention on Action against Trafficking in Human Beings, 2005, articles 10(2) and 13(1).

²⁰ See Code of Criminal Procedure article, 15-3.

aliens residing in France with irregular immigrant status*²¹. Second, whether they have filed a complaint or not, not all victims of trafficking or exploitation are able to play “a real and appropriate role”²² during proceedings unless their individual situation (the trauma they have suffered, their age, or place of residence) is taken into account. Third, not all victims of trafficking or exploitation can obtain fair and appropriate compensation for the prejudice suffered. Some, particularly aliens residing in France with irregular immigrant status, are refused access to the Crime Victim Compensation Commission (CIVI)²³, the only body that can compensate them when the perpetrators cannot be located, are insolvable, or enjoy immunity. Others, despite a favourable court decision, are not paid by the perpetrators and must begin long and costly collection proceedings.

On the right to file a complaint

- 26. Recalling the priority of the penal policy concerning trafficking and exploitation, the CNCDDH recommends that alien victims of trafficking or exploitation residing in France with irregular immigrant status not be subject to criminal prosecution or removal proceedings**²⁴.
- 27. The CNCDDH recalls that police officers and gendarmes must systematically record complaints made by persons alleging acts of trafficking or exploitation**²⁵ and recommends that, by derogation from Code of Criminal Procedure article 15-3(2)²⁶, such persons be systematically given a copy of the complaint on which the offences concerned are clearly indicated.
- 28. The CNCDDH recommends that, for all acts of trafficking or exploitation, the statute of limitations not begin to run until the victim, if a minor at the time, reaches the age of majority.**²⁷
- 29. The CNCDDH recommends providing that NGOs and trade unions defending the rights of children, women, migrants, workers, crime victims in general, or victims of trafficking or exploitation in particular, be allowed to join proceedings as *partie civile*, either in place of trafficking or exploitation victims or to support their complaint**²⁸.

On the right to be heard

- 30. To avoid unnecessarily interviewing victims of trafficking or exploitation repeatedly, the CNCDDH recommends:**
 - a. recording the first statements made by victims of trafficking or exploitation, whatever their age;**
 - b. allowing them to complete their statements;**
 - c. training agents of detection and repression services to interview such victims, particularly those who are minors.**

* Translator’s note: “France” is used throughout to denote metropolitan France and all French territories.

²¹ In its Recommendation 2008-51, the National Commission of Security Ethics (CNDS) remarked “that . . . giving priority to the illegal resident status of persons who are victims of [marital] violence and lack residence papers in fact prohibits such persons from filing complaints and having the perpetrators of such violence punished, thus enabling their impunity.”

²² Framework Decision 2001/220/JHA on the Standing of Victims in Criminal Proceedings, article 2.

²³ See Code of Criminal Procedure article 706-3.

²⁴ See Response of the Justice Minister to CNDS Recommendation 2008-51, published in her 2008 report, p. 32: “Identifying perpetrators of offences and the effectiveness of the right recognized to all persons to file a complaint requires that an illegal resident alien who is the victim of a criminal offence be able to file a complaint in a service or unit of the judicial police without being in danger of being investigated or prosecuted due to their immigration status.”

²⁵ See Code of Criminal Procedure, article 15-3(1).

²⁶ Code of Criminal Procedure, article 15-3(2) stipulates: “Every complaint filed shall be the subject of a report. The victim shall immediately receive a receipt and, if s/he so requests, shall immediately be given a copy of the report.”

²⁷ See Code of Criminal Procedure, article 7(3).

²⁸ See Code of Criminal Procedure, article 2 et seq.; Law 75-229 of 9 April 1975.

31. To enable foreign victims of trafficking or exploitation residing abroad to effectively exercise their rights in the French judicial system, the CNCDH recommends allowing them to come to France to accomplish or participate in procedures requiring their presence by authorising their entry and stay within the territory for the time necessary and by paying the costs of their travel and stay. If this is not possible, the CNCDH recommends guaranteeing their effective participation in the proceedings via teleconferencing or videoconferencing.

On the right to fair compensation

32. To guarantee the payment of amounts allocated to victims of trafficking or exploitation as compensation for prejudice suffered, the CNCDH recommends:

- a. conducting systematic financial investigations to facilitate identifying, localising, and freezing or seizing, as a conservatory measure, the property of persons implicated in the commission of acts of trafficking or exploitation;
- b. strengthening international cooperation for this purpose, in particular in the framework of the Convention against Transnational Organized Crime²⁹;
- c. provisionally executing, automatically upon suspensive appeal, the allocated compensation, which may be adjusted if necessary.

33. So that all victims of trafficking or exploitation are fully compensated for damages suffered, including when the perpetrators cannot be located, are insolvent, or enjoy immunity, the CNCDH recommends:

- a. allowing all victims to petition the Crime Victim Compensation Commission (CIVI), whatever their immigrant status³⁰;
- b. providing that seized property and fines recovered from perpetrators of acts of trafficking or exploitation shall be contributed to the Fund for victims of terrorist acts and other offences (FGTI).

34. The CNCDH recommends that all members of the competent French courts be informed of the elements for evaluating the amount of damages that should be allocated to victims of trafficking or exploitation in accordance with the gravity of the acts committed.

35. The CNCDH recommends that statistical tools be made available to determine:

- the number of victims identified in criminal proceedings related to acts of trafficking or exploitation;
- the number of such victims who requested and obtained compensation, and the amount allocated to each.

2 – On the means to guarantee effective access to justice

Guaranteeing effective access to justice for victims of trafficking or exploitation consists in respecting not only the rights discussed above but also the rights without which such access is illusory. The right of victims to be properly received, their right to information and to be assisted are, in this regard, fundamental³¹. However, some victims of trafficking or exploitation suffer, for example, secondary victimisation or undue pressure due to the disrespectful or inappropriate reception they receive. Others are not given, during their first contact with detection and repression services, information that would help them protect their interests.

On the right to be properly received

36. To gain the trust of victims of trafficking or exploitation as soon as they are received by detection and repression services, the CNCDH recommends:

²⁹ United Nations Convention against Transnational Organized Crime, adopted 15 November 2000.

³⁰ See Code of Criminal Procedure, article 706-3 et seq.

³¹ See Framework Decision 2001/220/JHA on the Standing of Victims in Criminal Proceedings.

- a. ensuring that all spontaneous statements of persons claiming to be victims of trafficking or exploitation are taken into consideration;
- b. entrusting their reception to an agent specially trained for this purpose;
- c. allowing them to speak with an agent of another sex when they so request;
- d. punishing any disrespectful behaviour exhibited towards them, paying particular attention to the situation of those who prostitute themselves or are foreigners.

37. The primary responsibility of detection and repression services being to guarantee the “safety and immediate well-being”³² of victims, the CNCDH recommends:
- a. treating as victims persons who are, on the one hand, victims of trafficking or exploitation, and on the other, perpetrators of less serious offences;
 - b. directing victims of trafficking or exploitation to specialised institutional services or, if necessary, NGOs assisting crime victims.

On the right to information

38. So that all victims of trafficking or exploitation receive, as early as possible in a language they understand (through an interpreter if necessary), the information required to exercise their rights, the CNCDH recommends providing the public services, NGOs and trade unions likely to come in contact with such victims the tools necessary to inform them of, at a minimum:
- the right to file a complaint concerning acts of trafficking or exploitation and to be informed of actions taken with respect to the complaint;
 - the right to petition a criminal or civil court to grant reparation of the prejudice suffered, the procedure to follow, and the right to be informed of its progress;
 - the possibility of obtaining legal aid (assistance with access to justice, provision of a lawyer);
 - the possibility for the victim and her/his family members to be placed under police protection in the event they risk reprisals, and the limits to this protection;
 - the right for the victim and her/his family members to request asylum when returning to their country of origin will place them in danger;
 - NGOs assisting crime victims, and NGOs and trade unions assisting victims of trafficking or exploitation in particular, and the medico-social services able to help them, including forensic services;
 - the requirements for obtaining a residence permit based on her/his situation.

On legal assistance and the right of minors to representation

39. As legal aid guarantees effective access to justice for victims of criminal offences, and the most serious offences in particular, the CNCDH recommends that victims of trafficking or exploitation be granted free legal aid no matter where they reside or what their immigration status or financial resources are.³³
40. As the primary responsibility of *ad hoc* administrators is to protect the best interests of unaccompanied minors, including when such minors are trafficked or exploited, the CNCDH recommends that all *ad hoc* administrators be informed of their mandate’s scope and trained accordingly.
41. The CNCDH recommends sensitising lawyers and interpreters with respect to trafficking and exploitation.

³² Recommended Principles and Guidelines on Human Rights and Human Trafficking, E/2002/68/Add.1, guideline 5(1).

³³ See Law 91-647 of 10 July 1991 concerning Legal Aid, articles 3 and 9-2.

3 – On not prosecuting or punishing victims

*Both the 2005 Convention and French criminal law provide that victims of trafficking or exploitation must be exonerated from criminal liability when they behave criminally under constraint. However, victims of trafficking or of exploitation of prostitution** are regularly considered offenders by detection and repression services, placed in police custody, removed from France, and even sentenced to criminal punishment, pursuant to the misdemeanour of public soliciting. Yet for those who, without being under irresistible constraint, commit offences in the context or as a consequence of their being trafficked or exploited, this context is taken into account during sentencing³⁴, except when a fine is paid.*

- 42. The CNCDH recalls that victims of trafficking or exploitation constrained to commit crimes or misdemeanours must be considered above all as victims of forced criminality and must be exonerated of criminal liability for having committed such acts (Penal Code article 122-2).**
- 43. To avoid victims of trafficking or of exploitation of prostitution being secondarily victimised and distrusting detection and repression services, the CNCDH recommends abrogating the misdemeanour of public soliciting, whether active or passive, and applying the general penal provisions to the corruption of morals or disturbance of public order that may result from the exercise of prostitution (disturbing the peace, indecent exposure, etc.).**
- 44. To avoid aggravating the situation of victims of trafficking or exploitation, the CNCDH recommends granting them at least a partial reduction of fines ordered for infractions committed in the context or as a consequence of their being trafficked or exploited.**

4 – On the right to reside of foreign victims with non-permanent or irregular immigrant status

A consequence of the need to guarantee effective access to justice to all victims of trafficking or exploitation is the prohibition on removing foreign victims who, on returning to their home countries, will not have such access³⁵. Such persons should therefore be granted a residence permit for the period of time necessary for them to access justice. French law, however, provides that residence permits may be granted only to victims of trafficking or of exploitation of prostitution, and only on the condition they cooperate with detection and repression services³⁶. In addition, granting such permits is within the discretion of each prefect, who sometimes require victims to fulfil additional, extra legem requirements, such as ceasing to exercise prostitution.

- 45. The CNCDH recommends automatically granting to every foreigner, including European Union nationals subject to a transitional regime³⁷, who begins or participates in a criminal or civil proceeding as a victim of trafficking or exploitation:**
 - a. a temporary residence and work permit of at least six months;**
 - b. followed by a temporary “private life” residence and work permit of one year, renewable automatically until the end of the proceeding concerned.**
- 46. With respect to the procedure for granting such residence permits, the CNCDH recommends:**

** Translator’s note: while passive and active soliciting are prohibited, prostitution itself is, in theory, authorised.

³⁴ See Constitutional Council decision 2003-467 DC (13 March 2003) concerning Law 2003-239 of 18 March 2003 on Domestic Security, para. 63; Circular presenting the criminal law provisions of Law 2003-239 of 18 March 2003 on Domestic Security, 3 June 2003, para. 2.3.2.

³⁵ See European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), articles 4, 6, 13, 14 and 15(2).

³⁶ See CESEDA, articles L. 316-1 and R.316-1.

³⁷ So that a state’s European Union membership status does not disadvantage its nationals, the Circular of 5 February 2009 encourages applying, to Bulgarians and Romanians (who are subject to transitional regimes), the provisions on granting residence permits with the right to work to foreign victims of trafficking or of exploitation of prostitution (para. 4.1).

- a. exempting foreign victims without financial resources from paying the fees associated with such permits, or at least deferring payment;
- b. reminding prefectural services that subordinating such permits to ceasing a legal activity (prostitution) constitutes discrimination, in violation of international instruments to which France is a state party.

47. In addition, the CNCDH recommends guaranteeing that the bonds between victims of trafficking or exploitation and their family members be maintained by authorising the latter to enter and reside in France after being granted, if necessary, a visa or residence permit.

5 – On the right to safety of victims and their family members

Accessing justice must not only not endanger trafficking or exploitation victims or their family members, it must include effective protection when danger exists. Such persons' private life must therefore be respected³⁸: protecting their identity and contact details and ensuring the confidentiality of their statements may be of vital importance. In addition, France must offer victims and their family members appropriate protection if there is a serious risk of reprisal³⁹. While French law provides for police protection, such protection is extended only to foreign victims of trafficking or of exploitation of prostitution who have received a residence permit in exchange for their cooperation.⁴⁰ Those who do not fulfil these requirements may at most benefit from a system coordinated by a NGO to facilitate their relocation within France.

Moreover, though the United Nations High Commissioner for refugees has encouraged granting refugee status to victims of trafficking who fear persecution if returned to their country of origin⁴¹, mere subsidiary protection is unfortunately preferred in France today.⁴²

On the right to respect for private life and physical protection

48. To ensure respect for the private life of victims of trafficking or exploitation, the CNCDH recommends:

- a. providing detection and repression services, prefectures and public services responsible for assisting victims of trafficking or exploitation the means necessary to receive such persons on premises guaranteeing confidentiality;
- b. provide for automatic closure of judicial proceedings upon the request of a victim of trafficking or exploitation;
- c. sensitise the media as to the dangers to which they may expose victims by revealing their identity or contact details.

49. To avoid exposing victims of trafficking or exploitation to undue pressure or avoidable danger, in the context of criminal proceedings, the CNCDH recommends taking all precautions necessary to guarantee their safety, namely by:

- a. training detection and repression services agents to evaluate the risks run by victims of trafficking or exploitation;
- b. apply, if necessary, measures to protect witnesses (Code of Criminal Procedure, article 706-57 et seq.);
- c. avoid their having to confront the perpetrator(s) and, when unavoidable, inform them of the date and ensure their safety in the immediate vicinity of the site of confrontation;

³⁸ See ECHR, article 8(1).

³⁹ See Framework Decision 2001/220/JHA on the Standing of Victims in Criminal Proceedings, article 8(1).

⁴⁰ See CESEDA, article R. 316-7, 4°.

⁴¹ See Guidelines on International Protection: 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, 2006.

⁴² See Circular on requirements for admission for residence of foreign victims of human trafficking and of procuring who cooperate with judicial authorities, 5 February 2009, para. 1(2).

- d. systematically investigate when they say they are victims of subornation (Penal Code, article 434-15);
 - e. inform victims of the release of suspects after the proceeding and of perpetrators after they have served their sentence(s), even when the victims live abroad.
- 50. To protect victims of trafficking or exploitation and their family members when they are certain to be exposed to pressure or reprisals, the CNCDH recommends:**
- a. extending the possibility of offering police protection to all trafficking or exploitation victims and their family members for as long as they are exposed to pressure or reprisals;
 - b. consider creating a national service, distinct from detention and repression services, specialised in protecting victims, witnesses, and their family members;
 - c. strengthening international cooperation to coordinate such protection, including when endangered persons live abroad.
- 51. At a minimum, victims of trafficking or exploitation must be able to relocate away from where they suffered the acts concerned. The CNCDH therefore recommends:**
- a. increasing the means of the national system for receiving and protecting endangered victims of trafficking or exploitation, currently coordinated by the ALC association⁴³;
 - b. providing equivalent measures for endangered minor victims by reserving space in youth shelters throughout the territory;
 - c. strengthening international cooperation so that, upon their request, trafficking or exploitation victims may be sheltered in another European Union Member State.

On the right to asylum

- 52. The CNCDH recalls that the request for or obtaining of a residence permit by a victim of trafficking or exploitation, including when granted on these grounds, must not prejudice such victim's right to request asylum and to receive information necessary to its exercise⁴⁴.**
- 53. The CNCDH recommends applying the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees to any foreign victim of trafficking or exploitation who fears persecution if returned to her/his country of origin. This requires:**
- a. training OFPRA (office for the protection of refugees and stateless persons) and CNDA (national asylum law court) agents in this regard, on the basis of the guiding principles set out by the United Nations High Commissioner for refugees in 2006;⁴⁵
 - b. stipulating directives within OFPRA, applicable to all agents responsible for examining asylum requests, to harmonise their practices with respect to victims of trafficking or exploitation.
- 54. Whether a first asylum request or a request for re-examination is at issue, the CNCDH recommends:**
- a. granting victims of trafficking or exploitation temporary residence and associated rights, in particular the right to introduce a suspensive appeal before

⁴³ In accordance with the Code of Social Action and Families, article L. 345-1, last paragraph, the Ac.Sé system makes about fifty places in centres for housing and social reintegration (CHRS) located throughout France available to endangered trafficking or exploitation victims.

⁴⁴ See Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000, article 14; Council of Europe Convention on Action against Trafficking in Human Beings, 2005, article 40(4).

⁴⁵ See Guidelines on International Protection: 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, 2006.

the CNDA, without provisions 1°, 2°, or 4° of CESEDA article L. 741-4 being applied to them;⁴⁶

- b. systematically examining requests from trafficking or exploitation victims, as permitted by the so-called Dublin II regulation.⁴⁷

55. The CNCDH recommends paying the greatest attention to “asylum visa” requests from abroad by family members of a trafficking or exploitation victim when, as such, they risk or suffer persecution.

B – Ensure victims’ economic and social rights

The 2005 Convention requires France to take the measures necessary to assist trafficking victims in their physical, psychological and social recovery, independently of their participation in judicial proceedings. Other international instruments insist more specifically on the physical and psychological recovery of minor victims of trafficking or exploitation, as well as their social reintegration.⁴⁸ French law provides measures to protect and assist any endangered minor, including those who are victims of trafficking or exploitation, but social support to help adult victims gain their autonomy is provided for only in cases of trafficking or exploitation of prostitution.⁴⁹ Such support is essential, because it contributes not only to guaranteeing their access to justice, but also to keeping them from becoming victims again.

1 – On the state’s commitment to guarantee victims’ economic and social rights

International law, in particular the Palermo Protocol and the 2005 Convention, requires France to offer trafficking victims, including when there are only reasonable grounds for believing an individual is such a victim, social assistance including, at a minimum: (1) appropriate, safe housing adapted to their specific needs when their situation requires and they agree thereto; (2) access to emergency medical treatment and psychological counselling; (3) access to the labour market, professional training, and education⁵⁰, and (4) material assistance to help them establish living conditions likely to ensure their subsistence or, for minors, “a standard of living adequate for the child’s physical, mental, spiritual, moral and social development”⁵¹. Care must be taken, however, to not simply return victims of trafficking or exploitation to a situation similar to the one that led to their becoming victims of such offences. The measures adopted must therefore provide the most vulnerable individuals the opportunity to build a life apt to keep them safe from trafficking and exploitation in the future.

French law specifies out to provide such assistance, but only to victims of trafficking or of exploitation of prostitution who have obtained a residence permit for having agreed to cooperate with detection and repression services⁵². Most victims of trafficking or exploitation therefore continue to face steep hurdles. For example, having precarious housing or being homeless keeps them in a vulnerable situation that makes it very difficult to exercise their rights.

⁴⁶ CESEDA article L. 741-4 provides that an asylum seeker may be denied permission to reside if examining the request falls within another state’s jurisdiction (1°), if the asylum seeker is a national of a country considered to be safe (2°) or if the request appears to be fraudulent, abusive or dilatory (4°).

⁴⁷ See Council Regulation (CE) 343/2003, article 3(2) establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Members States by a third-country national, 18 February 2003.

⁴⁸ See the Convention on the Rights of the Child, 1989, article 39; Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999, article 7(2)(b); Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000, article 9(3).

⁴⁹ See Law 2003-239 of 18 March 2003 for Domestic Security, article 42.

⁵⁰ On the right to education, see also the Convention on the Rights of the Child, 1989, article 28(1); Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999, article 7(2).

⁵¹ Convention on the Rights of the Child, 1989, article 27(1).

⁵² See Decree on Granting Residence, Protection, Reception and Housing of Foreign Victims of Human Trafficking and of Procuring, 13 September 2007.

On the right to housing

- 56. To guarantee appropriate and safe housing to the poorest victims of trafficking or exploitation, the CNCDH recommends:**
- a. recalling that their irregular resident status does not prevent their being housed in pre-existing common-law structures, in particular the centres for housing and social reintegration (CHRS)⁵³;
 - b. financially supporting initiatives designed to offer solutions adapted to their profile and needs.

On access to medical treatment

- 57. So that foreign victims of trafficking or exploitation may effectively recover physically and psychologically, the CNCDH recommends granting them state medical assistance (AME) without taking the length of their residence in France into account⁵⁴.**
- 58. The CNCDH recommends ensuring that victims of trafficking or exploitation and their family members, especially their children, may receive psychological counseling.**

On access to professional training and employment

- 59. So that victims of trafficking or exploitation do not remain vulnerable or dependent, the CNCDH recommends fostering their autonomy by guaranteeing their access to the labour market, to professional training and to education (particularly to learn French), taking the regime applicable to refugees as an example.**

On access to a subsistence allowance

- 60. The CNCDH recommends that the temporary waiting allowance (ATA) designed to lift people, including victims of trafficking or exploitation, out of a situation of distress be:**
- a. paid to all victims of trafficking or exploitation in such a situation;
 - b. paid immediately or, when not possible, paid retroactively;
 - c. re-evaluated to effectively offer such victims “standards of living capable of ensuring their subsistence,” in accordance with the 2005 Convention⁵⁵.
- 61. The CNCDH also recommends that victims of trafficking or exploitation be able to receive active solidarity income (RSA) without having to fulfil the requirements set out in Code of Social Action and Families article L. 262-4(2)⁵⁶.**

2 – On ways to guarantee victims’ effective economic and social rights

Like the ability to exercise one’s right to access to justice, the economic and social rights of victims of trafficking or exploitation depend on the information they receive. The Palermo Protocol and the 2005 Convention therefore set out the general principle of the right of all victims of trafficking to be informed of their rights and the services available to them. But under French law, only the police and gendarmerie services and certain organisations appointed to do so by the minister for Social Action have such an obligation. Moreover, they are required to inform only victims of trafficking or of

⁵³ See Code of Social Action and Families, article L.111-2(2).

⁵⁴ See Code of Social Action and Families, article L.251-1.

⁵⁵ Council of Europe Convention on Action against Trafficking in Human Beings, 2005, article 12(1)(a).

⁵⁶ To obtain the ATA, article L. 262-4(2) of the Code of Social Action and Families (CASF) requires that one be French or have had a residence permit with the right to work for at least five years. This requirement does not apply to refugees, those who benefit from subsidiary protection, or stateless persons.

exploitation of prostitution as to the measures for reception, housing and protection provided by law and the possibility of remedying their non-permanent or irregular immigrant status⁵⁷.

The Palermo Protocol and the 2005 Convention also emphasise the need to facilitate collaboration between various services and organisations responsible for trafficking victims' recovery. In France, NGOs try to coordinate the activities of the various services concerned in order to offer comprehensive assistance to victims of trafficking and exploitation. However, their ability to fulfil the needs of these victims depends on human, material and financial resources over which they have little control.

On informing victims

62. So that all victims of trafficking or exploitation receive, as soon as possible in a language they understand (through an interpreter if necessary), the information necessary to guarantee their economic and social rights, the CNCDH recommends providing all public services, NGOs and trade unions likely to be in contact with them the tools necessary to provide such information, which must include, at a minimum:

- **the right to appropriate and safe housing; the right to have access to medical care; the right to have access to the labour market, to professional training and to education; the right to a temporary waiting allowance;**
- **the right to access to justice;**
- **the ability to relocate away from the place where they suffered acts of trafficking or exploitation;**
- **the right for them and their family members to request asylum when returning to their country of origin will place them in danger;**
- **the public services, NGOs and trade unions likely to help them;**
- **the requirements for obtaining a residence permit based on their situation.**

63. For victims of trafficking or exploitation to know they have rights and to which public services, NGOs and trade unions they may turn, the CNCDH recommends:

- a. **using all possible methods to systematically distribute such information in places likely to be frequented by victims of trafficking or exploitation, including in detention centres, international transit zones, prefectures and hospitals;**
- b. **developing information campaigns partnering French and foreign media that broadcast or publish in France;**
- c. **providing Inavem**** the means to receive calls (on the national number 08-842-846-37) from victims of trafficking or exploitation or individuals in contact with them and to inform such persons of the law and direct them to public services or NGOs able to meet their needs.**

On the quality and continuity of assistance to victims

64. So that victims of trafficking or exploitation obtain appropriate assistance, the CNCDH recommends:

- a. **providing the material and financial means to the specialised organisations responsible by default for providing the public service of taking charge of victims of trafficking or exploitation, namely by coordinating their social assistance;**
- b. **training members of more generalised victims' assistance organisations throughout the territory in assisting victims of trafficking or exploitation.**

⁵⁷ See CESEDA Article R. 316-1.

**** The National Federation of Victims Assistance and Mediation, which is responsible for receiving calls on the national victims' assistance hotline.

- 65. To ensure that victims of trafficking or exploitation continue to receive social assistance abroad, the CNCDH recommends strengthening international cooperation between domestic assistance mechanisms.**

3 – On the right to reside of foreign victims with non-permanent or irregular immigrant status

The 2005 Convention encourages states parties to authorise victims of trafficking to reside in the country due to their personal situation⁵⁸. Once it has been established that victims of trafficking, including individuals who are only reasonably believed to be victims, have economic and social rights, it is discriminatory to allow only those who cooperate with detection and repression services to effectively exercise such rights.

A French circular of 5 February 2009 even encourages prefects to grant residence permits to victims of trafficking or of exploitation of prostitution who refuse or are unable to usefully cooperate with detection and repression services, taking into account their distress and social reintegration efforts⁵⁹. This encouragement does not constitute a binding obligation, however, and residence permits granted for humanitarian reasons are rare.

- 66. The CNCDH recommends automatically granting to every foreigner, including European Union nationals subject to a transitional regime⁶⁰, with respect to whom corroborating evidence (alleged victim’s detailed account, follow-up by a specialised NGO or trade union, evidence gathered by detection and repression services or any other available evidentiary element) supports a presumption that the individual is a victim of trafficking or exploitation:**

- a. a temporary residence and work permit of at least six months;**
- b. followed by a temporary “private life” residence and work permit of one year, renewable automatically until the individual has recovered their economic and social rights.**

- 67. With respect to the procedure for granting such residence permits, the CNCDH recommends:**

- a. establishing a simple procedure so that those concerned do not have to seek outside help;**
- b. exempting foreign victims without financial resources from paying the fees associated with such permits, or at least deferring payment;**
- c. reminding prefectural services that subordinating such permits to ceasing a legal activity (prostitution) constitutes discrimination, in violation of international instruments to which France is a state party.**

- 68. In addition, the CNCDH recommends guaranteeing that the bonds between victims of trafficking or exploitation and their family members be maintained by authorising the latter to enter and reside in France after being granted, if necessary, a visa or residence permit.**

4 – On taking charge of young foreign victims

The 1989 Convention on the Rights of the Child establishes the principle that “[a] child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided

⁵⁸ See Council of Europe Convention on Action against Trafficking in Human Beings, 2005, article 14(1)(a).

⁵⁹ See Circular on requirements for admission for residence of foreign victims of human trafficking and of procuring who cooperate with judicial authorities, 5 February 2009.

⁶⁰ So that a state’s European Union membership status does not disadvantage its nationals, the Circular of 5 February 2009 encourages applying, to Bulgarians and Romanians (who are subject to transitional regimes), the provisions on granting residence permits with the right to work to foreign victims of trafficking or of exploitation of prostitution (para. 4.1).

by the State” (article 20(1)). The 2005 Convention stipulates that “[w]hen the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age”⁶¹. In some French counties (*départements*), however, no protection is accorded victims of trafficking or exploitation until the services concerned have verified that such victims are minors.

The conventions of 1989 and 2005 also establish the principle that reuniting a minor with her/his family, including when the family is abroad, constitutes a priority if doing so is in her/his best interests⁶². France and Romania signed a bilateral agreement in 2002 providing for the return of minor Romanians who have no legal representative, including when they are victims of trafficking or exploitation; and ratification is pending on a replacement agreement signed in 2007. The precautionary measures contained in the first agreement – and unsatisfactorily implemented according to the NGOs interviewed by the CNCDDH – are not contained in the new one, which does not require, for example, that such return be preceded by a social investigation of the family.

In France

- 69. So that minor victims of trafficking or exploitation, whether accompanied or not, receive immediate and appropriate protection after petitioning the judge for children, if necessary, the CNCDDH recommends respecting the following principles:**
- a. victims of trafficking or exploitation must benefit from protective measures reserved to endangered minors if there are reasonable grounds for believing they are minors;
 - b. particular attention must be paid to minors who are repeat offenders to ensure they are not victims of forced criminality.
- 70. With respect, more particularly, to unaccompanied foreign minors who are victims of trafficking or exploitation, the CNCDDH recommends:**
- a. training professionals in childhood social services (ASE) and judicial child protective services (PJJ) to take charge of such minors;
 - b. adapting protective measures to the profile and needs of concerned minors (home visits from social workers [AEMO], schooling, professional training, youth centre accommodation, etc.);
 - c. creating an interdepartmental mechanism designed to help involved professionals establish the identities of concerned minors and locate their families abroad;
 - d. ensuring that after concerned minors have been temporarily sheltered in emergency facilities, ASE effectively takes charge of them.
- 71. In addition, the CNCDDH recommends considering establishing a protective system for young adults, aged 18 to 21 years, who are victims of trafficking or exploitation. This could consist of systematically signing a young-adult contract between such persons and the concerned Regional Council (*Conseil général*).**

In case of return

- 72. In accordance with the International Convention on the Rights of the Child, the CNCDDH recommends that returning unaccompanied foreign minors who are victims of trafficking or exploitation to their country of origin be, at a minimum:**
- a. in her/his best interest, which involves in particular not returning her/him to a country where s/he risks once again becoming a victim of trafficking or exploitation⁶³;

⁶¹ Council of Europe Convention on Action against Trafficking in Human Beings, 2005, article 10(3).

⁶² See Council of Europe Convention on Action against Trafficking in Human Beings, 2005, article 10(4)(c).

⁶³ See Concluding Observations, Committee on the rights of the child: France, adopted 12 June 2009, para. 86(d).

- b. subject to her/his consent, obtained by a judge for children in the presence of a previously appointed *ad hoc* administrator;
- c. preceded by a detailed investigation establishing that such return does not expose the concerned minor to any danger and that s/he will benefit from social assistance.

73. As the 2007 Franco-Romanian agreement on the protection of unaccompanied minor Romanians and their return to their country of origin does not comply with the rules set out above, the CNCDH therefore recommends not ratifying it. Developing a new agreement requires carefully evaluating the mechanism implemented pursuant to the 2002 agreement⁶⁴.

C – Coordinate the legal and social follow-up of victims

Providing social assistance to victims of trafficking or exploitation contributes to guaranteeing their access to justice. Without appropriate social assistance and access to justice, they risk becoming victims of trafficking or exploitation again, or even participating in the trafficking or exploitation of others. Unable to break with their traffickers or exploiters, some victims ally with them to improve their own situation. The CNCDH therefore believes it is essential to coordinate the legal and social follow-up of victims of trafficking or exploitation. In this regard, it notes the proposal of the French Interministerial Working Group on Human Trafficking to create, under the Prime Minister's authority, an inter-ministerial committee to define, coordinate and direct the policy and efforts of the concerned ministries, in particular concerning the protection of victims.

- 74. To coordinate the efforts of public services, NGOs and trade unions helping victims of trafficking or exploitation, the CNCDH recommends:**
- a. designating an intermediary in every concerned service to be contacted by victims of trafficking or exploitation, or by the professionals responsible for their cases;
 - b. creating county (*département*) follow-up committees to ensure that victim protection provisions are implemented and to produce annual reports on assistance to victims;
 - c. creating a national observatory to gather and analyse data provided by the county (*département*) committees and to organise the training of professionals working with victims throughout France.

⁶⁴ See Agreement between the governments of France and Romania on cooperating to protect minor Romanians in trouble in France and on their return to their country of origin, as well as on combating exploitation networks, signed 4 October 2002, published by decree 2003-220 of 7 march 2003.

III – Give France the means to prevent trafficking and exploitation

To be effective, the strategy for combating human trafficking must be based on a multidisciplinary approach that not only punishes those who commit acts of trafficking or exploitation and protects the victims, but also prevents such acts⁶⁵. The legal, social and economic factors structurally fostering trafficking and exploitation in certain activity sectors or with respect to certain persons must be identified, and consequent preventive measures must be adopted. Among other things, the 2005 Convention requires France to establish and/or support information, sensitisation and education campaigns. In the short term, such campaigns can prove very useful to dissuading those planning to commit acts of trafficking or exploitation, as well as to indicating to others how to resist such acts.

75. The CNCDH recommends informing citizens of:

- a. how to recognize acts of trafficking or exploitation and what to do about them;**
- b. the punishment for subjecting another to acts of trafficking or exploitation.**

76. The CNCDH recommends informing employers and intermediaries, especially travel agencies, recruiting and hiring agencies, dating services, escort services and modelling agencies, as well as their customers, of the status of legislation in the area of trafficking and exploitation.

A – Prevent trafficking and exploitation in particularly affected sectors

While trafficking and exploitation can affect all sectors of human activity, both formal and informal, certain sectors in France must be emphasised given the frequency with which such offences occur.

1 – Prevent trafficking and exploitation in the prostitution sector⁶⁶

*The 1949 Convention requires not only that states parties adopt protective measures with regard to persons engaged in or about to engage in prostitution, but also that they repeal or abolish any measure or practice by virtue of which such persons are “subject either to special registration . . . or to any exceptional requirements for supervision or notification”⁶⁷ In France, however, prostituted persons are subject to exceptional, discriminatory surveillance that stigmatises them, and they and their family members may even be punished. The repression of procuring^{***} has two purposes: to punish those who exploit the prostitution of another, and to hinder the exercise of prostitution, which is considered deviant behaviour. Numerous prostituted persons therefore do not trust repression and detection services, and their access to law and justice is difficult, even when they are victims of trafficking and exploitation.*

77. The CNCDH recommends, in the first place, opening the debate in France on preventing sexual exploitation.

78. The CNCDH recommends:

- a. punishing the exploitation of prostitution as an aggravated form of exploiting another (see recommendations 6 and 9(c));**
- b. effectively punishing resort to the prostitution of a minor (Penal Code article 225-12-1(1));**

⁶⁵ See Explanatory Report on the Council of Europe Convention on Action against Trafficking in Human Beings, 2005.

⁶⁶ Since 1996, the French Supreme Court (*Cour de cassation*) has considered prostitution to consist in being a party, in exchange for remuneration, to physical contact of any nature to satisfy the sexual needs of another (Crim. 27 March 1996: *Bull. crim.* n° 138; *Dr. pénal* 1996. 182, obs. Véron; *Revue de science criminelle* 1996. 853, obs. Mayaud).

⁶⁷ Convention for the Suppression of the Traffic in Persons and of the Exploitation of Others, 1949, art.6.

^{***} Translator’s note: French Penal Code article 225-5 et seq. defines procuring as, *inter alia*, “helping, assisting or protecting the prostitution of another” and may be applied to anyone knowingly in regular contact with a prostitute.

- c. establishing the specific offence of purposely causing another to prostitute her or himself;
- d. recalling that any employment contract calling for performing acts of a sexual nature is automatically void.

79. To guarantee and protect the fundamental rights of individuals exercising prostitution, the CNCDH recommends abrogating measures specific to them and applying common-law penal provisions in the event their rights are violated (discrimination, extortion of funds, violence, theft, sexual aggression or assault, etc.).

2 - Prevent trafficking and exploitation in the other particularly affected sectors

Ensuring that employers respect workers' rights is an efficient way to foster the prevention of exploitation. In France, labour inspectors are given the specific task of verifying workplaces and protecting workers' rights. They cannot, however, fully accomplish this task: their numbers are insufficient and they are required to report, for example, the irregular immigrant status of foreign employees even though this might be detrimental to these individuals' ability to exercise their rights.

In particular, domestic and seasonal labour warrants the authorities' close attention. The workers concerned are particularly susceptible to exploitation because of their isolation and dependence on their employers – circumstances that are directly related to the type of activity exercised or applicable laws. In this regard, the 2005 Convention requires states parties to establish and/or support social and economic initiatives designed to attack, in the long term, the deep, structural causes of trafficking⁶⁸.

On the trafficking and exploitation of workers

80. To guarantee the protection of all workers against violations of labour law in sectors particularly affected by trafficking or exploitation, the CNCDH recommends not requiring labour inspectors to verify and report, in performing their job, the irregular immigrant status of foreign employees or to participate in operations designed to combat irregular immigration⁶⁹.

81. Considering its Opinion of 23 June 2005, the CNCDH recalls the importance of ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁷⁰ and recommends the French authorities invite their European partners to become parties to this Convention.

On the trafficking and exploitation of domestic and seasonal workers in particular

82. The CNCDH recommends recognising the skilled nature of domestic and seasonal agricultural labour.

83. When domestic or agricultural workers are housed by their employer, the CNCDH recommends establishing a specific status or creating a mechanism to break such workers' isolation and reduce their vulnerability or dependence on their employer.

84. Concerning, more particularly, migrant seasonal workers, the CNCDH recalls that the generally applicable provisions of labour law apply to them. Such provisions require:

⁶⁸ See Council of Europe Convention on Action against Trafficking in Human Beings, 2005, article 5(2).

⁶⁹ In its March 2009 report addressed to France, the ILO Committee of Experts on the Application of Conventions and Recommendations “urges the Government to take measures to ensure that the powers of inspectors to enter workplaces liable to inspection are not misused for the implementation of joint operations to combat illegal immigration” (98th session).

⁷⁰ See International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted 18 December 1990.

- a. renewing their “employee” residence permit for one year when they terminate their employment contract due to a violation of their rights constituting a criminal offence;⁷¹
- b. prolonging their residence in the event of a workplace accident or a proceeding begun before the labour courts (*juridictions prud’homales*).
- c. transforming their short-term contracts (CDD) into permanent contracts (CDI) in accordance with general labour law requirements.

B – Prevent the trafficking and exploitation of vulnerable individuals

Any individual may become a victim of trafficking or exploitation, whether a man or woman, adult or minor, French citizen or foreigner, with irregular immigrant status or not. Some are more vulnerable, however, in particular the most marginalized and the poorest. Indeed, it is generally acknowledged that improving countries’ economic and social situation and combating extreme poverty constitute effective ways to prevent trafficking⁷².

85. The CNCDH recalls that France must pay particular attention to the poorest and the excluded, in accordance with the first Millenium Development Goal and the draft guiding principles concerning the rights of the poor.⁷³ As insecurity, exclusion and extreme poverty constitute factors in trafficking and exploitation, the CNCDH recommends guaranteeing the fundamental rights of the poor, thereby giving them the means to resist trafficking and exploitation.

1 – Prevent the trafficking and exploitation of migrants

Like the Palermo Protocol, the 2005 Convention provides that better management of control and cooperation at borders will contribute to effectively preventing and detecting cases of transnational trafficking. It also requires states parties to enable migration to take place legally, in particular by disseminating accurate information to people wishing to emigrate on the options available, working conditions, and emigrants’ rights and duties⁷⁴. Taken together, these provisions indicate that while combating trafficking calls for strengthening border controls, it does not involve closing borders. People whose entry and stay in France is irregular due to a restrictive immigration policy are not only more apt to be victims of rights violations, including through trafficking and exploitation, they are also less well protected once such violations occur.

86. While immigration policy is within the state’s discretion, it must not lead to indirectly fostering the trafficking or exploitation of migrants, nor hinder the respect of their rights when they are victims of such offences. Concerned with the impact of closed borders on trafficking and exploitation, the CNCDH recommends ensuring that immigration policy guarantees respect for migrants’ fundamental rights, in particular their absolute right to be protected from inhuman or degrading treatment, forced labour, servitude and slavery.⁷⁵

⁷¹ CESEDA article L.313-10(1) currently provides for renewing the “employee” residence permits of migrant seasonal workers only when the employer terminates the contract in the three months preceding the permit’s renewal.

⁷² See Explanatory Report on the Council of Europe Convention on Action against Trafficking in Human Beings, 2005, para. 103.

⁷³ See the eight Millenium Development Goals (MDG), adopted at United Nations Headquarters during the Millenium Summit, 6-8 September 2000; Resolution 2006/9, *Implementation of existing human rights norms and standards in the context of the fight against extreme poverty*, adopted by the Sub-Commission on the Promotion and Protection of Human Rights, 24 August 2006, accompanied by draft guiding principles, *Extreme Poverty and Human Rights: the Rights of the Poor*; Opinion on human rights and extreme poverty adopted by the CNCDH 14 June 2007.

⁷⁴ See Council of Europe Convention on Action against Trafficking in Human Beings, 2005, article 5(4); Explanatory Report accompanying the 2005 Convention, para. 105.

⁷⁵ See European Convention on Human Rights, articles 3, 4, 14 and 15(2).

87. At a minimum the CNCDH recommends:

- a. reflecting on the link between trafficking and exploitation, immigration policies and regulation of the labour market;⁷⁶
- b. implementing the general recommendations set out in its Opinion of 29 June 2006 on the requirements for exercising the right to asylum in France;
- c. ensuring that strengthening border controls as advised by the Palermo Protocol and the 2005 Convention does not prejudice migrants who are victims of trafficking or exploitation;
- d. informing migrants of the rights of victims of trafficking or exploitation, whether they are at the border, in an embassy, a consulate, a port or international airport, or any vehicle transporting groups of migrants;
- e. simplifying the procedures for obtaining the documents necessary to legal migration and reduce their cost;
- f. widening the channels for legal migration, in particular in favour of migrants exercising an activity in any of the sectors most affected by trafficking and exploitation.⁷⁷

2 – Prevent the trafficking and exploitation of unaccompanied foreign minors in particular

The 2005 Convention requires France to take specific preventive measures with respect to minors.⁷⁸ In particular, it must establish a “protective environment,” as understood by UNICEF,⁷⁹ to reduce their vulnerability to trafficking and thereby enable them to grow up in dignity without being subject to violence.⁸⁰ However, on 22 June 2009, in its concluding observations addressed to France, the Committee on the rights of the child underscored the danger that exists, in the area of trafficking and exploitation, for unaccompanied foreign minors placed in international transit zones. They are particularly exposed to such acts there, namely because of the insufficient protection they are offered by the control of international transit-zone access and the unsatisfactory verification that their best interests are being served by returning them to their country of origin or to a third country.

88. Concerning all unaccompanied foreign minors arriving at French borders or transiting through French territory, the CNCDH recommends:

- a. ensuring they are in fact released to the persons under whose authority they have been placed after a social investigation;
- b. ensuring they receive social and educational assistance;
- c. lacking that, not keeping them in international transit zones and systematically accommodating them in France to implement educative assistance measures, under the control of the judge for children;
- d. informing them of their rights and the procedures applicable to them.

89. The CNCDH recalls the presumption of minority⁸¹ and recommends that border police systematically petition the judge for children when they have reasonable grounds for believing they are dealing with an unaccompanied minor, including when the individual is transiting through France.

⁷⁶ See European Union Group of Experts on Trafficking in Human Beings, *On the revision of the Council Framework Decision of 19 July 2002*, 2008.

⁷⁷ According to the European Union Group of Experts on Trafficking in Human Beings, “to prevent trafficking, the EU and Member States should review policies that may compel people to resort to irregular migration and consider increasing the opportunities for legal labour migration, along with the protection of the human rights of all migrants, regular or irregular, internal or across international borders.” Report submitted to the European Commission, 22 December 2004, p. 12.

⁷⁸ See Council of Europe Convention on Action against Trafficking in Human Beings, 2005, article 5(5).

⁷⁹ See UNICEF, *Progress for children: A Report Card on Child Protection*, September 2009.

⁸⁰ See Explanatory Report on the Council of Europe Convention on Action against Trafficking in Human Beings, 2005.

⁸¹ See CNCDH, Opinion of 29 June 2006 on the requirements for exercising the right to asylum in France.

90. Presumed to be minors, young unaccompanied foreigners must be immediately taken charge of and sheltered by childhood social services (ASE), before beginning the required social, police and preventive procedures.

91. When, despite the warnings of the National Consultative Committee on Ethics, a bone examination is used⁸², such examination must be undertaken with the agreement of a previously appointed *ad hoc* administrator.

92. So that *ad hoc* administrators are able to guarantee the respect of minors' best interests, the CNCDH recommends:

- a. appointing them immediately and systematically when a minor is unaccompanied;**
- b. naming a sufficient number of them and encouraging their professionalisation, namely by providing remuneration commensurate with the real amount of time they spend.**

⁸² See National Consultative Committee on Ethics, Recommendation n° 88 on methods for determining age for legal purposes, 23 June 2005.

IV – Evaluate the implemented policy

The 2005 Convention requires states parties to “consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements.”⁸³ This invitation is repeated in the new Framework Decision on human trafficking currently being drafted.⁸⁴ However, France has not established any mechanisms to regularly evaluate the implementation of laws and regulations in the areas of trafficking and exploitation. Government efforts in these areas are therefore hard to discern, and this low visibility is compounded by the previously underscored lack of clarity of its provisions. Staying alert to changes in these areas seems essential, however, to enable France to adapt its law accordingly and ensure that measures taken do not infringe the rights of those who should be protected. The CNCDH nonetheless notes the preliminary draft law produced by the French Interministerial Working Group on Human Trafficking, which creates an independent national rapporteur in charge of promoting both the rules on preventing and repressing trafficking, and the protection of victims.

93. The CNCDH recommends creating an independent national rapporteur on trafficking and exploitation to:

- a. evaluate the impact of the trafficking and exploitation policy implemented;**
- b. monitor implementation of trafficking and exploitation provisions to ensure it respects the rights of victims, migrants, asylum seekers, prostituted persons and children;⁸⁵**
- c. make recommendations to ensure the French approach complies with human rights and international standards for combating trafficking and exploitation (repression, protection, prevention);**
- d. make her/his conclusions and recommendations public every year;**
- e. cooperate with her/his foreign counterparts⁸⁶ and the concerned international bodies, such as the GRETA,⁸⁷ the special rapporteurs, and the convention committees addressing the issue within the United Nations framework.⁸⁸**

94. The CNCDH recommends encouraging the creation of an independent European rapporteur to evaluate the impact of European legislation with respect to trafficking or exploitation and address recommendations to European Union bodies.

(Results of the Plenary Assembly vote - for: 28 votes; against: 0; abstentions: 2)

⁸³ Council of Europe Convention on Action against Trafficking in Human Beings, 2005, article 29(4).

⁸⁴ See Proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA, 25 March 2009.

⁸⁵ See Global alliance against traffic in women (GAATW), *Collateral damage: The impact of anti-trafficking measures on human rights around the world*, 2007.

⁸⁶ There are already equivalent mechanisms in the United States, Finland, the Netherlands, Romania and Sweden.

⁸⁷ The Group of Experts on action against trafficking in human beings (GRETA) is responsible for monitoring states parties' implementation of the Council of Europe Convention on Action against Trafficking in Human Beings.

⁸⁸ See Special Rapporteur on Trafficking in Persons, especially Women and Children; Special Rapporteur on Contemporary Forms of Slavery; Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography; Special Rapporteur on Violence against Women; Special Rapporteur on the Human Rights of Migrants; Human Rights Committee; Committee on the Elimination of Discrimination against Women; Committee on the Rights of the Child; Committee on Migrant Workers; etc.