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Identification of victims of trafficking in human beings in international protection and forced return procedures

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PRESENTATION OF THE FRENCH NATIONAL CONTACT POINT

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IDENTIFICATION OF VICTIMS OF TRAFFICKING IN HUMAN BEINGS IN INTERNATIONAL PROTECTION AND FORCED RETURN PROCEDURES

*Study conducted by the National Contact Point
for France of the European Migration Network (EMN)*

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LIST OF ACRONYMS

- AFJ: Association Foyer Jorbalan
- ALC: Accompagnement, lieux d'accueil, carrefour éducatif et social
- CADA: Reception centre for asylum seekers (*Centre d'accueil pour demandeurs d'asile*)
- CESEDA: Code on Entry and Residence of Foreigners and Right of Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*)
- CNCDH: National Consultative Committee on Human Rights (*Commission nationale consultative des droits de l'homme*)
- CNDA: National Court of Asylum (*Cour national du droit d'asile*)
- CRA: Administrative detention centre (*Centre de rétention administrative*)
- ERF: European Refugee Fund
- FTDA: France Terre d'Asile
- GRETA: Group of Experts on Action against Trafficking in Human Beings
- HCR: United Nations High Commissioner for Refugees
- IPPO: Information Prévention Proximité Orientation
- MIPROF: Interdepartmental Taskforce for Protecting Women Victims of Violence and Combating Trafficking in Human Beings (*Mission interministérielle pour la protection des femmes victimes de violences et la lutte contre la traite des êtres humains*)
- OCRTEH: Central Office for the Suppression of Trafficking in Human Beings (*Office central pour la répression de la traite des êtres humains*)
- OFPRA: French Office for the Protection of Refugees and Stateless Persons (*Office français de protection des réfugiés et apatrides*)
- PADA: reception platform for asylum seekers (*plateforme d'accueil pour demandeurs d'asile*)
- THB: Trafficking in human beings

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EXECUTIVE SUMMARY

The number of identified or presumed victims of trafficking in human beings (THB) in the European Union (EU) was 23,632 over the 2008-2010 period. This most alarming figure is drawn from the first report on action against trafficking in human beings in the EU, published on 15 April 2013 by the European Commission.¹

The European Union has been strongly committed to the fight against THB for several years. It initially developed a range of **legislative instruments** on the subject, which enabled the criminal organisers of this type of activity to be prosecuted, and at the same time, facilitated better protection for victims.² More concrete and practical measures were then agreed, particularly in the context of the **EU Strategy towards the Eradication of Trafficking in Human Beings** (2012-2016).

In France, the authorities have examined the issue of THB over the past ten years. The offence of THB was first integrated into national law by the Law of 18 March 2003 on internal security.³ The definition of THB was then modified in order to adapt French legislation to EU law. Since the entry into force of the Law of 5 August 2013,⁴ the Code of Criminal Procedure defined the phenomenon of THB as:

'the recruitment, transport, transfer, accommodation, or reception of a person for the purposes of exploitation in one of the following circumstances:

- 1. the use of threats, force, violence, or fraudulent behaviour against the person concerned, his or her family or someone who has a regular relationship with him or her;*
- 2. by a legal, natural or adoptive parent of the victim [...] or by a person who has authority over the victim and who misuses the authority conferred on them by this position;*
- 3. against a person whose particular vulnerability due to age, sickness, infirmity, to a physical or psychological disability, or to pregnancy, is apparent or known to the perpetrator;*
- 4. in exchange for remuneration or any other benefit or for the promise of remuneration or any other benefit.*

The above-mentioned exploitation involves putting the victim at the disposal of a third party, whether identified or not, so as to permit the commission against that person of offences of procurement, sexual assault or aggression, reduction to slavery, submission to forced work or

¹ This report is available at the following address: http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2013/docs/20130415_thb_stats_report_en.pdf

² Currently, two legal texts on procedures for victims of THB exist on the European level: Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:HTML>;

and Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims,

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>.

³ Law No. 2003-239 of 18 March 2003 on internal security:

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000412199>.

⁴ Law No. 2013-711 of 5 August 2013 introducing various provisions to bring French law in line with European Union law and France's international commitments:

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027805521&dateTexte=&categorieLien=id>.

In particular, this law transposes Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

*services, reduction to servitude, removal of organs, exploitation for begging, or the imposition of living or working conditions inconsistent with human dignity, or to force this person to commit any felony or misdemeanour.*⁵

The right of residence for foreign victims of THB has developed progressively in line with France's European commitments.

Attention to THB was rekindled with the publication in January 2013 of the **evaluation report** by the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA). This document addresses **France's implementation of the Council of Europe Convention on Action against THB**. GRETA's recommendations contributed towards revitalising discussion on the fight against THB in France.

The EMN study on the 'Identification of victims of trafficking in human beings in international protection and forced return procedures' falls within the context of examination of THB which is being conducted in the European and national levels. The objective of this study is initially to evaluate whether, and how, (potential) victims of THB are **detected** and **identified** in procedures for **international protection and forced return**. This study then aims to determine whether and how, once identified, these victims are **referred** towards **specific procedures** for people who are victims of exploitation.

The study focuses on identification of victims of THB because detection of exploitative situations constitutes the **first stage in the process of referring victims** towards assistance and protection services. Without this decisive stage, victims of THB would be unable to access the assistance and protection to which they are entitled. International protection procedures can be used by criminal networks to regularise, for a certain time, the situation of the third-country nationals whom they are exploiting. Victims of THB may also request asylum on their own initiative. Those who are not detected during the international protection procedure may then find themselves in an irregular situation in France and as a result may risk being exposed to forced return procedures. They thus risk being removed to a country in which they may be subject to reprisals from the criminal networks which exploited them. Attempts to detect victims during international protection and forced return procedures are therefore very important. In France, the most visible and widespread form of THB is THB for the purposes of **sexual exploitation**. This is why this study makes particular reference to this form of exploitation.

Currently, there are no **official mechanisms for detecting** victims of THB in France's international protection and forced return procedures. The lack of a standard mechanism across the whole country may strongly impede identification of victims of THB and prevent them from accessing protection. Although there are no official mechanisms to identify victims of THB, it is still possible to identify them when they apply for asylum as the result of social support work carried out in reception centres for asylum seekers.⁶ Various initiatives, particularly those led by **specialised NGOs**, can also help to detect victims of THB, inform them of their rights and help them, if they so wish, to assert these rights before the competent bodies.

⁵ Article 225-4-1 of the Code on Criminal Procedure.

⁶ The facilities used for receiving asylum seekers in France are known as reception centres and reception platforms.

The ways in which victims of THB are identified and referred are expected to change significantly on the national scale in the coming months.

In relation to asylum, transposition of provisions of the 'Reception'⁷ and 'Procedure'⁸ Directives of 26 June 2013 should contribute to a better understanding of the **specific needs of vulnerable people** applying for asylum, in terms of how they are received and how their applications are processed.

In addition, a **national action plan against TBH** is currently being drafted and will be implemented by a **National Coordinator for Combating Trafficking in Human Beings** within the Interdepartmental Taskforce for Protecting Women Victims of Violence and Combating Trafficking in Human Beings (MIPROF).⁹ Within the framework of this strategic plan, a certain number of measures will complement existing efforts. These will mainly aim at **strengthening cooperation** between stakeholders who are likely to enter into contact with victims of THB. These measures also consist of **establishing standardised training** on the national level in order to **harmonise measures to identify** victims of THB and their access to the law.

The study first examines THB victims' right of residence in France (**introductory section**). It then presents the ways in which victims of THB are detected during the international protection procedure, and how they are referred towards appropriate support and specific procedures (**section 1**). The process of how victims of THB are identified and referred is then studied in the context of forced return procedures (**section 2**). The document highlights the role of other stakeholders in detecting exploitative situations (**section 3**). The study takes a look at the various training programmes available for stakeholders who are in contact with victims of THB (**section 4**). Finally, it highlights available statistics relating to victims of THB (**section 5**).

* * *

⁷ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0096:0116:EN:PDF>.

⁸ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0060:0095:EN:PDF>.

⁹ MIPROF was created by Decree No. 2013-7 of 3 January 2013 which established an interdepartmental taskforce for protecting women victims of violence and combating trafficking in human beings:

<http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026894612&categorieLien=id>.

Introductory section - Right of residence for victims of THB in France

This introductory section presents the residence permit for which victims of THB may be eligible, and underlines the extent to which they may also obtain international protection in France.

- **Residence permits issued to victims of THB (Q1)**

In France, protection for victims of THB goes back to the **law on internal security of 18 March 2003**.¹⁰ This law introduced the possibility for victims who have **lodged a complaint or made a witness statement**, in the context of criminal proceedings against a person likely to have committed trafficking offences, to benefit from a residence permit. Prior to 24 July 2006, this residence permit was temporary, ranging from between one and six months. Since adoption of the **Law of 24 July 2006** on immigration¹¹, this has been a **temporary residence permit** with minimum validity of **six months**, providing the right to work. The temporary residence permit is renewable for the duration of the legal procedure initiated by the victim's complaint and/or witness statement. This residence permit may be withdrawn if the victim does not sever all relations with the assumed perpetrator of the crime, if the witness statement turns out to be unfounded or if, generally speaking, the victim ceases to cooperate with the relevant authorities (**Article L.316-1 of the Code on Entry and Residence of Foreigners and Right of Asylum (CESEDA)**).

By Decree of 13 September 2007¹² and with a view to conforming with European Directive 2004/81/EC,¹³ France introduced the possibility for those likely to have been victims of THB to benefit from a **reflection period of 30 days** before making a decision relating to their witness statement or complaint against their trafficker or procurer (**Article R. 316-1 of CESEDA**). During this time, these people cannot be expelled.

When the person being prosecuted is definitively sentenced, the Prefecture may also issue a **ten-year residence permit (Article L. 316-1 of CESEDA)**. If the person being prosecuted is not sentenced, the prefectural authority may consider the possibility of maintaining the right of residence of the victim of THB, either on the basis of paragraph 7 of Article L. 313-11 of CESEDA for reasons relating to private or family life, or on the basis of Article L. 313-14 for exceptional or humanitarian reasons.

¹⁰ Law No. 2003-239 of 18 March 2003 on internal security:

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000412199>.

¹¹ Law No. 2006-911 of 24 July 2006 on immigration and integration:

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000266495&dateTexte=&categorieLien=id>.

¹² Decree No. 2007-1352 of 13 September 2007 on the admission for residence, protection, reception and accommodation of foreign victims of trafficking and pimping and the modification of the Code on Entry and Residence of Foreigners and the Right to Asylum:

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000465136&dateTexte=&categorieLien=id>.

¹³ Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:HTML>.

Third-country nationals who are identified as victims of THB and who do not cooperate with the authorities (for fear of reprisals for example), do not meet the conditions for having a residence permit issued on the grounds of Article L. 316-1 of CESEDA. In such situations, the Prefecture may issue these third-country nationals with a **temporary 'private and family life' residence permit**, on the grounds of **Article L. 313-14 of the CESEDA**, if these persons can justify **specific exceptional circumstances**.

- **Right to asylum for victims of THB (Q2)**

Victims of THB may decide to apply for international protection in the form of asylum in a number of different cases:

- when victims of THB in a foreign country escape the traffickers and request protection from the State of the country in which they find themselves;
- when individuals who have been victims of THB in their own country escape the trafficker and take refuge in a foreign country to seek international protection;
- where the individuals in question have fled their country to seek international protection because they fear falling victim to trafficking.

Previously in France, the authorities responsible for examining asylum applications considered whether victims of THB were covered by **subsidiary protection**, considering that they may have been subject to inhuman or degrading treatment.

However, in 2011 and 2012, three decisions by the National Court of Asylum (CNDA), the court responsible for examining applications for asylum in the second instance, annulled decisions made by the French Office for the Protection of Refugees and Stateless Persons (OFPRA), the body which makes decisions in the first instance. These decisions granted **refugee status** to victims of THB of **Nigerian, Kosovar and Ukrainian nationality** on the basis of their well-founded fear of persecution as a result of their **'membership of a particular social group'**.¹⁴ This is one of the five reasons set out in Article 1A(2) of the Geneva Convention.¹⁵ A recent decision by the CNDA, issued on 12 July 2013, confirmed this once again.¹⁶

In June 2012, the UNHCR also recommended that France confirm this position and continue to grant refugee status to victims of THB.¹⁷

However, in light of these decisions, OFPRA referred the matter to the Conseil d'Etat. OFPRA considers that victims of THB may benefit from subsidiary protection, because they may fear inhuman or degrading treatment. However, according to OFPRA, the CNDA cannot extend conventional protection to victims of THB because they cannot be considered as a social group.

¹⁴ CNDA, 29 April 2011, n°10012810 / CNDA, 21 June 2012, n°11026228 / CNDA, 15 March 2012, n°11017758.

¹⁵ Convention of 28 July 1951 relating to the Status of Refugees.

¹⁶ CNDA, 12 July 2013, n°13003859.

¹⁷ The UNHCR's position on application of Article 1A(2) of the 1951 Convention and the 1967 Protocol to victims of trafficking in France.

On 25 July 2013, the Litigation Section of the Conseil d'Etat examined the appeal made by OFPRA against the CNDA's decision of 29 April 2011.¹⁸ The Supreme Court thus **annulled the decision and referred it to the CNDA**. In ruling against the CNDA's decision, the Conseil d'Etat considered that the Court had made an error in law *'in ruling that women who were victims of human trafficking networks and who actively sought to escape their control were a social group, without seeking to find out whether, beyond the procurement networks which threatened them, the surrounding society or institutions saw them as having a distinct identity, making up a social group in the sense of the Geneva Convention of 28 July 1951.'*¹⁹ In its decision, the Conseil d'Etat did not rule out the possibility of refugee status being granted to victims of THB. Indeed, the administrative judges considered that while the grounds of belonging to a social group must be upheld, this should be principally with regard to the **social perception of this group in the asylum seekers' country of origin**. The case was referred to the CNDA, and it will be down to this court to prove that victims of THB in Nigeria who wish to actively escape their traffickers are subject to, or risk being subject to, persecution due to the fact that they are perceived to form a particular social group by Nigerian society.

- **National referral mechanisms for victims of THB (Q3)**

To date, no national referral mechanisms have been established in France. However, a certain number of initiatives led by public sector and NGO stakeholders have led to improvements in identifying victims of THB and referring them to appropriate assistance and specific procedures, in particular those set out in Article L.316-1 of the CESEDA.

* * *

This introductory section has highlighted the gradual development of the right of residence for third-country nationals who are victims of THB in France. It also specifies the extent to which victims of THB can benefit from international protection. Access to these rights cannot, however, be effective if victims are not identified.

¹⁸ Conseil d'État, 25 July 2013, n°350661.

¹⁹ Ibid.

Section 1 – Detection, identification and referral of victims of THB in international protection procedures

This section first gives examples of the mechanisms that are used to detect and identify victims in the procedure for international protection. It then explores how identified victims are given access to appropriate assistance and support throughout the international protection procedure and specifically looks at mechanisms for coordination and referral between procedures, particularly those set out in Article 316-1.

1.1 Legislative framework (Q4/Q5/Q6)

It is only recently that THB has been cited as grounds for an application for asylum in France, with the establishment on 1 January 2004 of subsidiary protection. Currently, there are **no formal mechanisms for identifying victims of THB in France**.

In terms of international protection, specific protocols may apply, depending on the age and sex of the applicant, **regardless of whether they are a victim of THB**.

Monitoring and examination of asylum applications made by unaccompanied minors are the subject of particular attention. Specific provisions are applicable, including, in particular, nomination of an *ad hoc* administrator responsible for the legal representation of any foreign unaccompanied minor seeking asylum.

Moreover, the authorities responsible for examining asylum applications are aware of gender-related issues, which they have addressed for several years. For example, if a female asylum seeker wishes to be interviewed only by female protection officers, OFPRA examines this request on a case-by-case basis and can, as far as is possible, try to meet this request. This is sometimes possible, given that currently the majority of OFPRA protection officers are women.²⁰

1.2 Detection and identification of victims of THB applying for asylum

1.2.1 Mechanisms for detecting victims of THB (Q7/Q8)

➤ Detection by the authorities examining applications for international protection

The authorities responsible for examining asylum applications may encounter difficulties in detecting victims of THB requesting asylum.

First of all, few asylum seekers self-report as victims of THB during their first asylum application to OFPRA. They tend to cite other reasons for requesting protection. This is explained by a number of factors. On one hand, people may be **unaware of their rights** as victims of THB because they have not had the appropriate support. The psychological fragility of victims of THB and their fear of the authorities may also sometimes prevent them from self-reporting. On the other hand, **trafficking networks often use the asylum procedure** to regularise those whom they exploit for a short time, in order to make it easier to continue to exploit them. Such requests made by the victims are made under duress, often using a **false identity**, and the facts cited rarely reflect the real situation. The account which

²⁰ Extract from an interview with Rachel Morin, Mission Chief for European and International Affairs at OFPRA and Coralie Capdeboscq, Section Head within the African Division of OFPRA, 25 July 2013.

victims are told by the traffickers to use is often incomplete, because it systematically ignores the exploitation which is taking place. Asylum applications are therefore often rejected based on these accounts, because the applicant's statements are not considered to be **credible and convincing**. It is important to stress that protection officers are not able to determine whether an asylum seeker is or is not (potentially) a victim of THB if they do not self-report as such.

Once free of the influence of the trafficking networks and informed of their rights, victims of THB can decide to **appeal** to the CNDA against OFPRA's decision if their first application for asylum has been rejected, or can present a **new asylum application**. This time, victims of THB make their request using their **true identity** and explaining the **exploitative situation** which they experienced.²¹ Self-reporting to the examining authorities often follows lengthy support from organisations specialising in helping victims of THB. Support from these specialised organisations mean that supplementary accounts can be prepared in which it is explained why the first account was false and the conditions under which it was given by the victim. During this stage, **NGOs may also draw the authorities' attention to potential victimisation** through a **support certificate**, attached to the request for asylum.²²

Information relating to the motivating grounds for asylum may be communicated to the authorities responsible for examining the asylum applications throughout the procedure, up to the point where the applicant is interviewed by the examining authorities. Often they may delay the interview with the asylum seeker when the organisation supporting them, or the lawyer representing them during an appeal, draws their attention to **potential victimisation**. This delay ensures that the elements justifying the exploitative situation can be collated.²³

When the grounds given during an asylum application relate to THB, the examining authorities' role is to determine whether the applicant's statements are credible and to what extent protection may be granted to them on the basis of the grounds cited. The authorities thus examine whether the asylum seeker who is a victim of THB meets the conditions set out in the Geneva Convention to obtain the status of refugee or those set out in Article L.712-1 of the CESEDA to benefit from subsidiary protection.

- **Detection by stakeholders working in asylum seekers' reception centres (see sub-section 3.1)**

1.2.2 Evaluation of methods for detecting and identifying victims of THB (Q9)

The fact that there are currently no official mechanisms for identifying victims of THB means that the authorities responsible for detection cannot systematically identify victims of THB. This observation is reinforced by the fact that if asylum seekers do not self-report as victims of THB, they cannot be recognised as such by the instructing authorities. The reasons why victims of THB may not self-report have been set out above. Detecting victims of THB during

²¹ National Consultative Committee on Human Rights (CNCDH), *La traite et l'exploitation des êtres humains en France*, La documentation française, 2010, p.248:

http://www.cncdh.fr/sites/default/files/etude_traite_et_exploitation_des_etres_humains_en_france.pdf.

²² Extracts from interviews with Anne-Marie Pichon, Director of IPPO, 19 September 2013 and Vanessa Simoni, THB project manager for Les Amis du Bus des Femmes, 23 September 2013.

²³ Extract from an interview with Vanessa Simoni, THB project manager for Les Amis du Bus des Femmes, 23 September 2013.

the international protection procedure is nonetheless possible, as the result of social work carried out in the facilities which receive asylum seekers.²⁴

In addition, in a report published in 2010, the National Consultative Committee on Human Rights (CNCDH) considered that some procedural methods of examining asylum applications make it more difficult to effectively identify victims of THB. The CNCDH made particular reference to the fact that victims of THB may be moved to the priority procedure when they make a new asylum application using their **real identity** and giving an **account of the exploitative situation which they have experienced**. This prioritisation is driven particularly by the fact that victims of THB have presented an initial request for asylum using false information or hiding information about their identity, nationality or how they entered into France, in order to mislead the authorities.²⁵

Identifying victims of THB within international protection procedures is made more difficult by lack of training about THB at this stage, for those responsible for examining asylum requests. This is why OFPRA has begun a process of improving training for its officers on this issue.

1.3 Referring victims of THB during the international protection procedure

1.3.1 Supporting victims of THB during the international protection procedure (Q10)

In France, victims of THB requesting asylum may receive special assistance without being **formally identified by the authorities**. In most cases, NGOs specialising in assisting victims of THB offer this support. In particular, this support may take the form of **medical, psychosocial and legal help** and the provision of **safe and appropriate accommodation**. Some of these initiatives are highlighted in this study.

²⁴ See sub-section 3.1.

²⁵ Article L.741-4-4 of CESEDA

National Network Ac.Sé

The National Network for the Assistance and Protection of Human Trafficking Victims (Ac.Sé) is a national mechanism to protect victims of THB. This mechanism, funded by the European Refugee Fund (ERF), was created in 2001 by the NGO 'Accompagnement, lieux d'accueil, carrefour éducatif et social' (ALC), which coordinates its work. Today it forms an integral part of measures to protect victims of trafficking in France, as cited in the **Decree of 13 September 2007**.²⁶

The Ac.Sé Network includes 70 partners throughout France, including 20 NGOs and **50 publicly-funded accommodation centres, whose staff are regularly trained in issues relating to THB**. The aim of this network is to offer a **safe haven and accommodation** for adult victims of THB for the purposes of exploitation who are in danger in the local area and need to be relocated.

In 2012, the Ac.Sé Network received **76 requests for referral**, from 23 different towns. **81%** of referral requests were made by Ac.Sé partners; other requests came from public authorities, NGOs specialising in supporting victims of THB and other organisations outside the Network. Based on these 76 referral requests, the Network offered care solutions to **66** people. Those helped were generally young, with an average age of 25. They represented 14 different nationalities: **53%** of them were of Nigerian origin.²⁷

In 2012, **15 people were going through the asylum procedure** when they were referred, either in relation to a first request, or an appeal to CNDA, or a request for re-examination.²⁸ In the accommodation centres, victims of THB requesting asylum can benefit from **legal, social and medical support**. They can also follow classes in French as a foreign language (FLE) and other professional training courses.

The Ac.Sé Network also manages a resource centre for all stakeholders who are in regular or occasional contact with victims of THB. A national helpline provides legal, administrative and social information to better support victims of THB, as well as help with assessing and identifying these individuals.

²⁶ Decree No. 2007-1352 of 13 September 2007 on the admission for residence, protection, reception and accommodation of foreign victims of trafficking in human beings or pimping and the modification of the Code on Entry and Residence of Foreigners and the Right to Asylum.

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000465136&dateTexte=&categorieLien=i>

²⁷ Ac.Sé Network, *Rapport d'activités*, 2012, p.8.

²⁸ Ac.Sé Network, *Rapport d'activités*, op.cit., p.14.

Les Amis du Bus des Femmes²⁹

The NGO **Les Amis du Bus des Femmes**, created in 1994, conducts outreach work in Paris with prostitutes. It is a community organisation with funding from a variety of sources, created by prostitutes working for and with prostitutes. The organisation is divided into several sections, with one specialising in '**human trafficking for sexual exploitation**'. This section provides **support** to victims of THB. Other sections are devoted to social, health, employment and training issues.

Support is provided to victims of THB applying for asylum through programmes established by the THB section. One of these programmes in particular provides victims with the possibility of receiving **legal support**. An expert in THB helps victims draft an account of their life, explaining in detail the reasons why they are applying for asylum in France. If they are lodging an appeal with the CNDA, they are represented by a lawyer who works with the organisation. Meetings with the victims are planned at least once a week, but victims can come as often as they feel the need. Victims of THB requesting asylum can also request help from other sections of the organisation, such as those specialising in health or training. Currently, 200 women are receiving support from the THB section, including 100 who have been introduced to the service since January 2013. Of these 200 women, 135 receive help accessing specific rights for victims of THB in terms of social, criminal and/or administrative protection and **54** are applying for asylum on these grounds.

Les Amis du Bus des Femmes also offers victims of THB **safe accommodation** when they feel in danger and need to relocate by referring them towards the Ac.Sé Network. However, the organisation maintains contact with victims of THB requesting asylum and being supported by them. This enables the victim to receive support during the process of requesting protection in France.

²⁹ Extract from an interview with Vanessa Simoni, THB project manager with the Les Amis du Bus des Femmes, 23 September 2013.

Association Foyer Jorbalan³⁰

In Paris, victims of THB applying for asylum may also be referred to the **Association Foyer Jorbalan (AFJ)**, a centre belonging to a religious congregation and managed by a multidisciplinary team of professionals. The organisation consists of 12 accommodation places (emergency and medium term). Victims of THB are referred to AFJ by NGOs or by law enforcement authorities. Unless the victim is referred by law enforcement authorities, an assessment of the victim is conducted by experts from the centre before they accept the victim.

Since 2007, a multidisciplinary team has offered an overarching service which includes **educational, social and psychological support, medical assistance and access to medical care, help with regularisation, material assistance** as well as **therapy and integration workshops**.

A significant number of victims of THB managed by the AFJ are involved in the asylum process. They are generally referred to the AFJ by NGOs specialising in supporting asylum seekers. Experts working in the centre help them to draft an account of their life. Legal support is an increasingly important part of the organisation's activities, and the AFJ plans on creating a legal advice service within the centre.

Between 2007 and 2012, the centre received 212 women. Since January 2013, **79** cases of THB have been reported to the AFJ.

Women supported by the association are more likely to apply for asylum. Between January and September 2013, 69% of women supported by the AFJ applied for asylum compared to 53% in 2012 and 32% in 2011.

³⁰ Extract from an interview with Céline Huard, AFJ psychologist, 16 September 2013.

Information, Prévention, Proximité, Orientation (IPPO)³¹

Created in October 2001, IPPO is a Bordeaux NGO specialising in supporting people in situations of prostitution and/or victims of THB for the purposes of sexual exploitation. The main aim of the organisation is to facilitate access to care for these people and to provide social and legal support.

In 2011, IPPO established a project funded by the European Refugee Fund (EFR). This project consists of receiving and supporting women originating from sub-Saharan Africa requesting asylum and who are victims of THB for sexual exploitation. This support particularly aims to identify victims of THB and to enable them to be recognised as such. IPPO staff can then provide information and explanations to them and refer them to the asylum procedure. In this context, legal support consists mainly of drafting accounts of these victims' lives and supporting them throughout the international protection process. In the event of an appeal to the CNDA, IPPO can also put victims of THB in contact with a specialist Parisian lawyer who can represent them once their appeal has been drafted by the IPPO lawyer. Psychological, socio-aesthetic, medical and social support is provided to victims alongside this legal assistance. The organisation also offers emergency accommodation and shelter through the Ac.Sé Network if the victims of THB feel they are in danger. **Eleven** people were supported through this project in 2012.³²

These activities were conducted through a day centre and a mobile unit, which visits places known for prostitution and refers victims of THB to the day centre.

There is currently no formal national mechanism enabling victims of THB to be referred to appropriate assistance, as provided by the NGOs mentioned above. However, it should be noted that coordination between NGOs specialising in supporting victims of THB and the authorities responsible for examining asylum applications is developing. OFPRA has welcomed the proposition by the Ac.Sé Network to distribute information leaflets about the National Network for the Assistance and Protection of Human Trafficking Victims so that examining officers can inform (potential) victims of THB about this service.

1.3.2 Access for victims of THB applying for asylum to the procedure set out in Article L. 316-1 of CESEDA (Q11)

An asylum seeker who is a victim of THB may, at any time, access the procedure set out in Article L.316-1, without being required to withdraw from the international protection procedure. Indeed, the fact of accessing the procedure set out in Article L.316-1 of the CESEDA has no effect on their right to apply for asylum and to receive the information necessary to do so.

However, prior to any request for a residence permit under the provisions of Article L.316-1 of CESEDA, the applicant must meet with the law enforcement services. This is because identification of victims of THB, strictly speaking, falls within the **unique competence of the law enforcement authorities**. Indeed, they alone are competent to invoke the mechanism set out in this Article and in particular have sole responsibility for assessing the probability of a

³¹ Extract from an interview with Anne-Marie Pichon, Director of IPPO, 19 September 2013.

³² IPPO, *Rapport d'activités*, 2012, p. 76

third-country national being a victim of THB. NGOs which are recognised for their work in assisting victims are therefore not qualified to identify those who are eligible for the provisions of this Article.

The authorities responsible for examining asylum applications are trained in the legal measures against trafficking in human beings. They are aware of the provisions set out in Articles L.316-1 and R.316-1 of the CESEDA and can also provide (potential) victims of THB detected during the international protection procedure with **information** on their rights and options. There is however, at this stage, **no legal obligation** to provide this information. The examining authorities can, however, apply the provisions of Article 40 of the Code of Criminal Procedure.³³ This Article obliges any public servant who becomes aware, during the course of their work, that an offence has taken place, to report it to the legal authorities. **Only one** case of human trafficking has been reported through this mechanism to date. Transferring the asylum seeker's case and all the elements of proof collated during the asylum procedure is complex, given respect for the principle of confidentiality in asylum applications. The asylum application may, however, be sent upon request of the victim.

1.3.3 Access for victims of THB requesting international protection to other types of protection (Q12)

Alongside their application for international protection, in theory it is entirely possible for victims of THB to request a residence permit which is not specific to victims of THB. Notably, this may take the form of a request for **admission for residence for humanitarian or exceptional reasons**.

1.3.4 Assessing referral systems for victims of THB requesting international protection (Q13)

Currently there is no formal mechanism for referring victims of THB applying for international protection towards other types of procedure. Better coordination between the various actors involved should enable victims of THB to be better informed about the possibility of submitting another application for residence, particularly under the provisions of Article L.316-1 of CESEDA.

1.4 Detection, identification and referral in relation to 'Dublin' procedures

1.4.1 How are 'Dublin' procedures suspended in the event of victims of THB being identified? (Q14)

The concept of 'victim of THB' does not appear in Regulation 343/2003/EC, known as 'Dublin II'. However, if a person subject to a Dublin transfer is **detected** or **reported** as being a victim of THB, Dublin procedures can be **suspended**.

On the one hand, Dublin procedures can be suspended when a victim of THB subject to Dublin procedures has been **formally identified by the law enforcement services** and a

³³ Article 40 of the Code of Criminal Procedure: *'Every constituted authority, every public officer or civil servant who, in the performance of his duties, has gained knowledge of the existence of a felony or of a misdemeanour is obliged to notify forthwith the district prosecutor of the offence and to transmit to this prosecutor any relevant information, official reports or documents.'*

criminal procedure against the perpetrators has begun. Dublin procedures begin once more if the person does not receive a residence permit on the grounds of being a victim of THB. However, in line with the provisions of the Dublin II regulation, if they are issued with this residence permit, France becomes responsible for the asylum application.

On the other hand, **NGOs specialising** in helping asylum seekers and/or victims of THB can draw the attention of the Prefecture to **potential victimisation**. If the Prefecture believes that the proof provided by the organisation demonstrates sufficiently that the person subject to Dublin procedures is a victim of THB, it may agree to process the asylum application. The decision to process the application is taken particularly on the basis of the responsibility clause set out in the Dublin II Regulation. In this case, formal identification of the victim by the law enforcement services is not required to suspend the Dublin transfer. The NGOs consulted indicated that the authorities regularly agree to process the asylum applications of (potential) victims of THB when sufficient proof demonstrating possible victimisation is provided.³⁴

It is possible that asylum seekers subject to Dublin procedures and supported by specialist NGOs may have previously received support from reception platforms for asylum seekers. In this context, social workers can identify cases of victims of THB.³⁵

1.4.2 Information for asylum seekers involved in Dublin procedures about the legal framework for protecting victims of THB (Q16)

Prefectures are not obliged to inform asylum seekers subject to Dublin procedures of their rights as victims of THB. They are, however, required to provide this information when an individual self-reports as a victim of THB with their services.

1.5 Future measures (Q17)

The authorities responsible for examining asylum applications are increasingly concerned by the issue of THB. They are conscious of the need to **raise awareness** among staff responsible for examining asylum applications and to ensure **better coordination** with stakeholders in this field.

This was initially illustrated by the establishment in 2013, of a **harmonisation committee** within OFPRA aiming to bring the practices of various departments of the organisation on cross-cutting themes such as THB into line.³⁶ A group of THB contact persons were subsequently appointed within OFPRA whose role, among other things, is to distribute information collected in connection with THB, particularly information from training on the subject.³⁷

OFPRA has also launched a consultation on the theme of **vulnerable persons**. Among the measures proposed is the establishment of an early referral mechanism for asylum applications, notably with a view to identifying those who are particularly vulnerable, such as

³⁴ Extracts from interviews with Anne-Marie Pichon, Director of IPPO, 19 September 2013 and Vanessa Simoni, THB project manager for Les Amis du Bus des Femmes, 23 September 2013.

³⁵ See sub-section 3.1.

³⁶ Extract from an interview with Rachel Morin, Mission Chief for European and International Affairs at OFPRA and Coralie Capdeboscq, Section Head within the African Division of OFPRA, 25 July 2013.

³⁷ Ibid.

victims of THB or unaccompanied foreign minors. Thought is being given, among other things, to drafting a protocol for (potential) victims of THB.³⁸

In addition, since 2013, OFPRA has initiated **regular contact** with stakeholders involved in the issue of THB. These include **public sector partners**, for example the criminal investigation authorities, and **NGOs** such as Les Amis du Bus des Femmes, IPPO, Forum Réfugiés and ALC. According to the NGOs consulted, this coordination with OFPRA has already discussed the issue of **false accounts** provided by victims of THB during their first application for asylum.³⁹ It is crucial that OFPRA's examining officers understand why this account is often false, and the conditions under which the applicant gave it. Difficulties relating to **identification** of victims of THB have also already been discussed by OFPRA and NGOs. During these sessions, the coordinator of the Ac.Sé Network proposed that OFPRA protection officers participate in one or more training sessions on victim identification.

Contact with the Anti-Procurement Squad (*la Brigade de Répression du Proxénétisme*) is also planned. Finally, OFPRA intends to work with the MIPROF **National Coordinator for Combating Trafficking in Human Beings, the General Secretary of which is a magistrate.**

MIPROF was created by a Decree of 3 January 2013.⁴⁰ This unit is responsible for the **national coordination** of action against THB in line with the provisions of the Council of Europe Convention of 2005. It is also responsible for drafting and implementing a **national action plan against THB.**

The role of the National Coordinator for Combating Trafficking in Human Beings consists initially of **mapping** and then **making contact** with all stakeholders likely to enter into contact with victims of THB. Simultaneously, a **strategic action plan** has been prepared.⁴¹ This document is based on a report drafted in 2010 by an **interministerial working group** consisting of Ministers, NGOs (Amnesty International, ALC, les Amis du Bus des Femmes, the Secours Catholique, the CCEM) and international organisations involved in combating THB. However, no official action has yet taken place following this initiative.⁴² The new national action plan against THB will shortly be presented by the Minister of Women's Rights. It is the responsibility of the National Coordinator to implement this on the **local and national level.**⁴³

The National Coordinator for Combating Trafficking in Human Beings believes that stakeholders involved in the issue of THB must **work together.** Moreover, he believes that it is essential to **harmonise methods for identifying victims of THB and their access to the law,** particularly through creating **unified training programmes on the national level.**⁴⁴ To this end, the National Coordinator for Combating Trafficking in Human Beings led the development of a **European project** entitled **EuroTrafGuID,** with the aim of strengthening and harmonising relevant stakeholders' knowledge of issues relating to **identification** of victims of THB.

³⁸ Ibid.

³⁹ Extract from an interview with Vanessa Simoni, THB project manager with the Les Amis du Bus des Femmes, 23 September 2013.

⁴⁰ Decree No. 2013-7 of 3 January 2013 on the creation of an Interministerial Mission for the Protection of Women Victims of Violence and the Fight against Trafficking in Human Beings:

<http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026894612&categorieLien=id>.

⁴¹ Extract from an interview with Eric Panloup, National Coordinator for Combating Trafficking in Human Beings, 18 September 2013.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

The EuroTrafGuID project

The **EuroTrafGuID** project is a European initiative which falls within the **new EU Strategy towards the Eradication of Trafficking in Human Beings** (2012-2016). The project aims to **strengthen and harmonise methods and procedures for identifying victims of THB** within participating Member States, through the development of **shared guidelines**.

France coordinates the EuroTrafGuID project. The French Minister for Foreign Affairs appointed **France Expertise Internationale** to implement the project. Five other Member States are also involved. These are **Bulgaria, Greece, the Netherlands, Romania and Spain**.

Several practical tools have been developed in the context of this project:

- **A compilation of good practice** in relation to identification of victims of THB in each of the six partner countries (published in six languages);
- **A practical guide** as well as **three booklets** for everyday use to identify victims of THB in the six countries, published in six languages. Three types of exploitation are mentioned in the booklets: **sexual exploitation, forced begging and exploitation for illicit activities, and exploitation for work**.

In terms of detecting victims of THB during international protection procedures, the compilation of good practices recommends **greater involvement** of case officers examining asylum applications in order to improve the early detection of (potential) victims of THB. It thus recommends making available to them **THB indicators and profiles of potential victims of THB**. The authors of the compilation also believe that questionnaires used by asylum case officers should contain **specific questions** enabling them to check for the presence of indicators of trafficking.⁴⁵

In France, certain professionals responsible for identifying victims of THB have already received **training** based on the guide and the practical booklets. In particular, **one OFPRA protection officer** has followed the training.⁴⁶ All practical documents mentioned above will be distributed to relevant public sector and NGO stakeholders across the country.

The issue of vulnerable people and particularly victims of THB is addressed by ongoing reflection on reform of the French asylum system, which is being conducted as part of the consultation being led by Senator Valérie Létard and Jean-Louis Touraine, MP, bringing together all stakeholders involved in asylum policy in France. All aspects of the issue are being addressed including identification, specific reception procedures, and procedural guarantees. More specifically, this consultation is based on the provisions set out by the new 'Reception' and 'Procedure' Directives of 26 June 2013 which oblige Member States to take into account the specific needs of vulnerable persons in terms of reception and procedure.

Currently, there are no official mechanisms for detecting victims of THB in France's asylum procedures. Identification of victims of THB remains, nonetheless, possible as the result of social work carried out in the facilities which receive asylum seekers. Various initiatives,

⁴⁵ France Expertise Internationale, *Identification of victims of Human Trafficking in Bulgaria, France, Greece, Romania, the Netherlands and Spain, Good Practices Report*, Projet EuroTrafGuID, 2012, p.25: <http://www.fei.gouv.fr/images/bonnepratique/Goodpracticesreport-ENG-01-29-13.pdf>.

⁴⁶ Extract from an interview with Eric Panloup, National Coordinator for Combating Trafficking in Human Beings, 18 September 2013.

particularly those led by specialised NGOs, also enable victims of THB applying for asylum to be identified and support to exercise their rights to be provided. Those who are not detected during international protection procedures may then find themselves in an irregular situation in France and as a result may risk being exposed to forced return procedures. It is still possible at this stage to identify victims of THB and to prevent their removal to a country in which they risk being subject to reprisals from the criminal networks who exploited them.

Section 2 – Detection, identification and referral of victims in forced return procedures

This section first examines the mechanisms that are used to detect and identify victims who are subject to a forced return procedure. It then explores how (potential) victims are given access to specific procedures for victims of exploitation.

When reference is made to forced return in this section, it refers to the forced return of rejected applicants for international protection and not to other categories of migrants.

2.1 Legislative framework (Q18 to 20)

Currently, there is **no formal mechanism for identifying victims of THB in France**, in the context of the forced return process.

2.2 Detection and identification of victims of THB subject to the forced return process

2.2.1 Mechanisms for detecting victims of THB (Q21 to 22)

In France, the Prefectures are responsible for implementing the removal of rejected applicants in an irregular situation. However, it is rare for Prefectures to detect (potential) victims of THB once the forced return process has begun. Information relating to an individual's experience of exploitation may, however, be collated by the **law enforcement services** during **administrative detention to verify residency status**. This administrative measure most often precedes removal. Administrative detention of a rejected applicant can take place as part of verification of residency status. It is decided upon when the third-country national no longer holds a residence permit. This measure, initiated by the criminal investigation services, enables verification of whether the third-country national does or does not hold residency rights in France.

The checks conducted during detention of a rejected applicant may indicate they are in an exploitative situation, either because **they report this to the authorities**, or because there are **visible traces of physical abuse**.⁴⁷ In such situations, the criminal investigation officers responsible for detention do not appear to use **any specific tool** to assess whether the third-country national is a (potential) victim of THB. It is largely during the **interview** with the detained person that the signs of THB may appear.

⁴⁷ Extract from an interview with Jean-Paul Berlan, Deputy Head of the Bureau for Detention and Removal at the Sub-Directorate for the Fight against Irregular Immigration within the General Directorate for Foreigners in France at the Ministry of the Interior, 11 September 2013.

2.2.2 Evaluation of methods for detecting and identifying victims of THB (Q23)

The NGOs consulted during this study and for the GRETA report⁴⁸ mentioned the strong probability that victims of THB are the subject of removal orders following administrative detention for the purposes of verification of residency status, **without ever having been identified** by the law enforcement services responsible for this procedure. This claim is substantiated by the fact that, currently, criminal investigation officers responsible for the administrative detention of third-country nationals for the purposes of checking residency status cannot use **specific indicators** to help them better assess situations of THB. Without such tools, these authorities do not have **sufficient knowledge** to detect victims of THB among the detained third-country national population. However, some projects targeting law enforcement personnel have been conducted with the aim of improving the identification of victims of THB. For example, an informative DVD on trafficking, aimed at professionals and containing messages for victims, was widely distributed among law enforcement personnel to raise awareness of the phenomenon of THB.⁴⁹ It appears that this tool remains, for the time being, underused by the law enforcement services responsible for administrative detentions.⁵⁰ Some law enforcement officers have in-depth experience of THB. This is particularly the case of the French Office for the Suppression of Trafficking in Human Beings (OCRTEH) in the Police Criminal Investigation Directorate of the Ministry of the Interior. OCRTEH aims to collate information on prostitution and procurement in France and abroad, to analyse how networks evolve and to coordinate action against THB for the purposes of sexual exploitation. In the context of its activities, OCRTEH published a model interview with victims of sexual exploitation on the Ministry of the Interior's website.⁵¹ Some interview techniques highlighted in this interview may be used by law enforcement services who initiate detention for the purposes of verifying residency status, when signs of THB are detected.

2.3 Referring victims of THB (Q24 to 25)

Article R. 316-1 of the CESEDA obliges law enforcement services who are in possession of information giving reason to believe that a third-country national is a victim of THB, **to inform them of their rights**. The information which must be provided includes in particular the possibility of residency open to the victim through Article L.316-1 as well as the period of reflection in order to take an informed decision as to whether to cooperate with the authorities.

It thus emerges from the law on foreign nationals that, in the event of administrative detention, the law enforcement services are responsible for delivering the aforementioned information to third-country nationals when indications provide reasonable grounds for believing them to be victim of THB. Upon the victim's request, the law enforcement services are then required to grant the victim a period of reflection or to refer them towards submitting a complaint in order to begin legal proceedings against the perpetrators.

⁴⁸ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by France*, January 2013, p.37.

⁴⁹ This refers to the 'Making Off' DVD, produced in 2009 by the Ac.Sé Network.

⁵⁰ Extract from an interview with Eric Panloup, National Coordinator for Combating Trafficking in Human Beings, 18 September 2013.

⁵¹ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by France*, op.cit., p.37.

Research and interviews have nonetheless demonstrated that information about rights relating to the condition of being a victim of THB are not always given to people in exploitative situations in the event of administrative detention. For example, in an Order of 15 June 2012,⁵² the Conseil d'Etat reported that the police had failed to issue the information set out in Article R.316-1 to a (potential) victim of THB apprehended in an irregular situation. In this case, the (potential) victim of THB had indicated to the police, during the interview process, that she had been victim of domestic exploitation. The police's failure was also highlighted by the Administrative Tribunal of Rouen in a decision of 12 March 2013.⁵³ The fact that victims of THB are not informed of their rights during administrative detention to verify residency status may be explained by the limited training of law enforcement services on THB.⁵⁴

Evidence collected by law enforcement services during administrative detention to verify residency status⁵⁵ must be transferred to the Prefecture responsible for examining the residency application under the provisions of Article L.316-1 of CESEDA.

2.4 Future measures (Q26)

The French authorities have indicated to GRETA experts that a **reminder of instructions** in terms of informing and orienting victims of THB will shortly be conducted with all relevant services.⁵⁶ They have also voiced their wish to establish unified **training** across the country aimed at law enforcement officers likely to enter into contact with (potential) victims of THB. In particular, these training modules may involve **magistrates** and **NGOs specialising** in THB.⁵⁷ These measures fall within the current national consultation being coordinated by the **National Coordinator for Combating Trafficking in Human Beings**.

* * *

This section shows that no formalised procedure has yet been developed to detect victims of THB in the context of the forced return procedure. Without the use of specific tools, the law enforcement services are unable to fulfil the requirement to provide victims of THB with information, as required under the law on foreign nationals.

Identification of victims of THB by the relevant authorities is essential for them to access appropriate protection. However, other stakeholders may contribute towards efforts to detect individuals in exploitative situations and to alert the relevant authorities if they see signs of THB.

⁵² Conseil d'Etat, 15 June 2012, n°339209.

⁵³ Administrative Tribunal of Rouen, 12 March 2013, no. 1300620.

⁵⁴ Extract from an interview with Eric Panloup, National Coordinator for Combating Trafficking in Human Beings, 18 September 2013.

⁵⁵ Minutes of the interview and copies of documents are, among other things, considered as evidence.

⁵⁶ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by France*, op.cit., p.37:

http://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2012_16_FGR_FRA_publication_en.pdf.

⁵⁷ Extract from an interview conducted with Corinne Bertoux, Police Commissioner and Head of OCRTEH, 11 September 2013.

Section 3 – Detection, identification and referral of victims of THB by other related actors

The aim of this section is to look at whether victims of THB may be initially identified and referred to the appropriate procedure by actors other than the authorities responsible for asylum and forced return procedures.

In particular, this involves observing how stakeholders who work in reception centres for asylum seekers and in detention centres for migrants in an irregular situation contribute to identifying victims of THB and referring them towards specific assistance or procedures.

3.1 Identification and referral of victims of THB in reception facilities for asylum seekers (Q27 to 31)

3.1.2 Identifying victims of THB in reception platforms for asylum seekers⁵⁸

The NGOs consulted highlighted the fact that **asylum seekers** who are in **obviously exploitative situations** are increasingly detected in **reception platforms for asylum seekers (PADA)**.⁵⁹ However, the staff of these facilities often do not have sufficient resources to carry out more detailed identification. At this stage, their detection process relies upon informal concepts such as **intuition, identification by nationality, current affairs, the person's involvement in the process, his or her physical appearance, the person mentioning the exploitative situation, isolation or obvious vulnerability**. Organisations responsible for PADAs increasingly cooperate with those specialising in helping victims of THB.⁶⁰ When (potential) victims of THB are identified by PADA officers, this means they can be referred to specialist organisations so that a more in-depth **evaluation** of their situation can be conducted, particularly through an **interview** with the (potential) victim. **Indicators of THB** generally form the outline of this interview.

⁵⁸ In France, reception platforms for asylum seekers (PADA) provide not only initial reception and referral services, but also guarantee administrative and social support for asylum seekers throughout the international protection procedure, when the asylum seeker is not housed in a reception centre for asylum seekers (CADA).

⁵⁹ Extracts from interviews conducted with Aude Lecouturier, Deputy Director for Support and Accommodation for Asylum Seekers at FTDA and Ronan Dantec, Deputy Manager for the Social and Administrative Assistance Service (PADA in Paris managed by FTDA), 30 July 2013 and Anne-Marie Pichon, IPPO Director, 19 September 2013.

⁶⁰ In Paris, FTDA, which manages the Parisian PADA for isolated adults, works closely with the AFJ and Les Amis du Bus des Femmes. In Bordeaux, the Centre d'Orientation Social (COS), which manages the PADA, is one of IPPO's key partners.

The partnership between France Terre d'Asile and Association Foyer Jorbalan⁶¹

Based on a partnership agreement, since February 2013 the AFJ has provided a **service staffed by volunteers** every two weeks at the Paris PADA for isolated adults managed by the NGO, FTDA, known as the Social and Administrative Assistance Service.

This service primarily aims to enable the AFJ psychologist **to assess situations of sexual exploitation** which have been identified by FTDA officers. If the victim's psychological state allows, an interview aiming to identify whether the person is in fact a victim of THB may be carried out by an AFJ expert. This is based on three points in the potential victim's account: **recruitment, transport and exploitation**.

Through this partnership work, the AFJ raises FTDA staff's **awareness** of THB in order to better detect possible cases in the future. This enables FTDA officials to learn about being attentive to certain **signs** during interviews with asylum seekers and to **communicate** with potential THB victims. In particular, the AFJ raises FTDA awareness of the group of victims formed by Nigerian women. According to AFJ, this awareness raising of FTDA teams has strengthened their **vigilance** and has improved the **early detection** of victims of THB in the asylum procedure, including in very complex situations.

Several projects are currently being considered to strengthen this cooperation between FTDA and the AFJ. In particular, one of these consists of the **distribution of information leaflets** within the platform in order to encourage the **self-identification** of THB victims.

Alongside the Parcours d'Exil organisation, the FTDA participates in a transnational ERF project from 2009 entitled **PROTECT (process of recognition and orientation for torture victims)**. Conducted in six European countries, this project aims to facilitate support and access to care for vulnerable people. It suggests an evaluation method using a questionnaire which identifies the vulnerability (including THB) of asylum seekers. Referring these asylum seekers towards specialist reception structures can then be planned. In addition to health professionals, this questionnaire is particularly aimed at reception centre staff who work with asylum seekers.

3.1.2 Identification of victims of THB in reception centres for asylum seekers

Few victims of THB are identified after their arrival at a reception centre for asylum seekers (CADA). This is particularly explained by the fact that those victims of THB who continue to be exploited by criminal networks are not housed in the CADA, as the traffickers prevent them from requesting a place in such a facility.⁶²

It remains possible to identify victims of THB in the CADAs through the social work conducted with asylum seekers, despite the fact that there is no prior official identification mechanism. Social workers in the reception platforms for asylum seekers conduct a social

⁶¹ Extract from interviews conducted with members of the Social and Administrative Assistance Service of FTDA, 30 July 2013 and Céline Huard, AFJ psychologist, 16 September 2013.

⁶² Extract from an interview conducted with Aude Lecouturier, Deputy Director for Support and Accommodation for Asylum Seekers at the FTDA and Ronan Dantec, Deputy Manager for the Social and Administrative Assistance Service (PADA in Paris managed by FTDA), 30 July 2013.

assessment which enables some cases to be identified and referred to specialised facilities. This social work is carried out in the CADAs. The general support provided in the centres does mean that people who may be victims of THB can be supported and, often, detected.⁶³

3.1.3 Referring victims of THB in reception facilities for asylum seekers to specific procedures (Q32 to 33)

Cooperation between associations which manage the PADAs and those specialising in helping victims of THB allow victims of THB to be referred to **appropriate support**. When the interview conducted by specialised NGOs reveals that the asylum seeker is a victim of THB, appropriate support and protection measures are offered. Information on rights as well as on the possibility of receiving legal, psychological and socio-medical support is provided. THB victims can thus choose to be supported by the organisation throughout the asylum process or that set out in Article L.316-1 of CESEDA. Protective measures may also be provided by specialist centres, such as that managed by the AFJ for victims of sexual exploitation or through the national Ac.Sé Network if geographical relocation is required. Sometimes victims of THB refuse any support, either because the criminal network continues to pressurise and constrain them, or because they are not yet ready to verbalise their experience.

3.2 Identification and referral of victims of THB in detention centres for irregular migrants

3.2.1 Identification of victims of THB in detention centres for irregular migrants (Q27 to 31)

Failed asylum seekers who have been victims of THB but who have not been identified as such may be arrested as irregular migrants and placed in administrative detention centres (CRA) while awaiting their removal. It is still possible at this stage to identify victims of THB and to prevent their removal. Efforts at identifying victims in the CRA are particularly important because victims of THB may be more inclined to speak out about the exploitation they have experienced when they are aware that their migration project has failed.

Very often, it is **specialised organisations**⁶⁴ working in the CRAs who alert the centre management to a **potential situation of victimisation**. The role of these organisations is to inform detained third-country nationals of their rights and, upon their request, to help them exercise their rights with the competent organisations. It is in this context that they may sometimes **detect signs of THB** or that **potential victims may self-report as such**. Most organisations working in detention centres do not use **specific tools** to detect (potential) victims of THB. Only the NGO, **CIMADE**, has created its own **identification tool** and also uses the identification tool developed by the national Ac.Sé Network.⁶⁵

⁶³ Extract from the contribution from the Department for Refugees and Reception of Asylum Seekers in the Asylum Service in the General Directorate for Foreigners in France within the Ministry of the Interior.

⁶⁴ In France, the five organisations which are authorised to work in the CRAs are Assfam, Cimade, Forum Réfugiés, France Terre d'Asile and l'Ordre de Malte.

⁶⁵ ALC, *Rapport national dans le cadre du projet européen SAFER PATH, Repérage et protection des victimes de la traite en demande d'asile*, op.cit., p.30

3.2.2 Referring victims of THB in detention centres for irregular migrants to specific procedures (Q32 to 33)

Article R. 316-1 of CESEDA obliges law enforcement services who manage CRAs and who have reasonable grounds to believe that a third-country national being detained is a (potential) victim of THB, **to inform him or her of their rights**. Upon the victim's request, the law enforcement services are then required to grant the victim a reflection period or to refer them to submitting a complaint in order to begin a legal procedure against the criminal network exploiting them.

When the law enforcement services managing the detention centre are not able to formally identify a (potential) victim of THB, they may rely upon the expertise of specialised liaison offices, such as that of OCRTEH.

In practice, it is staff of NGOs working in the detention centres who identify (potential) victims of THB. When this is the case, they most often alert NGOs specialising in helping THB victims. Through these bodies, the exploitative situation in which detained victims find themselves is reported to the **competent legal and administrative authorities**. On behalf of the victim, the NGOs also instigate procedures so that the **removal measures** which have been issued are suspended. If the (potential) victim of THB wishes to use the reflection period or to cooperate with the competent authorities in order to inform on the criminal network which is exploiting them, **formal identification** by the law enforcement services is, nonetheless, necessary.

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This section reveals that some non-governmental stakeholders working on the ground also have experience of assessing exploitative situations. However, they are not authorised to formally identify victims. Partnership working between the competent authorities and non-governmental stakeholders may, however, facilitate the process of detecting victims of THB. This coordination cannot be effective without sharing knowledge, particularly during joint training sessions.

Section 4 – Training stakeholders on the subject of THB (Q35 to 36)

This section aims to assess the extent to which not only the relevant authorities in terms of identifying victims of TBH but also other stakeholders likely to be in contact with victims of THB receive appropriate training.

Training relevant stakeholders is essential to identify victims of THB and to refer them towards appropriate support and specific procedures.

The authorities responsible for examining asylum applications are increasingly concerned by the issue of THB. To date, only one OFPRA protection officer has undertaken **specific** training on the subject within the context of the **EuroTrafGuID project**.⁶⁶ The examining authorities are aware of the broader dimension of the vulnerability of asylum seekers, one form of which may be THB. As such, they have modules entitled 'Interview techniques' and 'Interviewing vulnerable people' in the **EAC (European Asylum Curriculum) training programme** and provided in the form of e-learning and face-to-face sessions. Since autumn 2013, specific training on accounts of suffering has been given to OFPRA examining officers by the Forum Réfugiés-Cosi and Ulysse. To date, two sessions for twelve people, each lasting two days have been held. The training is based on:

- description of the context of the emergence of suffering and trauma: sources, definitions and symptoms;
- professionalism and taking accounts of suffering: professional risks and good practice.

New training sessions on this theme will be organised in 2014 and 2015.

The authorities responsible for implementing forced return procedures do not receive specific training on THB. Within the national police service, this issue is addressed more or less directly depending on whether the training is basic, promotional or continuous. Immersion placements with specialised offices such as OCRTEH are offered to police staff. However, some projects aimed at the police, such as the information DVD developed by the national Ac.Sé network, have been conducted with the aim of improving identification of victims of THB.⁶⁷ It is planned to distribute existing tools across the police service.⁶⁸

Organisations in civil society conduct a number of training initiatives on identification of victims of THB, including with the public sector, particularly the law enforcement services.

The ALC organisation, in its role as coordinator of the National Network for the Assistance and Protection of Human Trafficking Victims (Ac.Sé), provides a training module on the identification and protection of victims of trafficking for the purposes of exploitation. This training resulted from a European project coordinated by the International Migration Organization (IOM) which was adapted to the French context. Since 2012, six training sessions per year have been funded by the Ministry of Justice. Training takes place over one and half working days. The **theoretical parts** are supplemented by **case study-based** workshops.

⁶⁶ See the box on the EuroTrafGuID project, page 22.

⁶⁷ See paragraph 2.2.2.

⁶⁸ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by France*, op.cit., p.37.

Since 2006, 34 training sessions have been conducted by Ac.Sé coordinators in different regions of France. This has enabled nearly 1,050 professionals from the medical-social sector, law enforcement services and, to a lesser extent, representatives of the justice system to be trained.

The main aim of this training is to improve knowledge in terms of **identifying** and **protecting** victims of THB. In terms of identification in particular, these sessions cover the **international and national definitions of THB, the various form of exploitation relating to THB, victims' profiles, criminal networks and the process of identifying victims**. In terms of protecting victims, the training initially addresses questions relating to **risk assessment, mechanisms for dealing with and protecting victims in France, help with return to the country of origin and post-traumatic stress**. This training is not compulsory.

In addition, two seminars per year are organised by partners of the Ac.Sé Network, namely **specialised NGOs** and **accommodation centres** which reserve a number of places for victims of THB. The aim of these seminars is to offer Ac.Sé partners with ongoing training on different aspects of THB, such as the rights of foreign victims of THB, or the particularities of trafficking affecting victims originating from Nigeria.⁶⁹

Sharing experience between relevant stakeholders in terms of THB in Bordeaux

Since 2009, a **partnership agreement** to coordinate work relating to victims of THB for the purposes of sexual exploitation was signed by the Public Prosecutor of Bordeaux, the Mayor of Bordeaux, the Prefects from the regions of Aquitaine and la Gironde, and IPPO. Within the framework of this agreement, the partners agreed to **participate in joint training** on THB. They also agreed to **organise training** aimed at all organisations in contact with victims of THB.⁷⁰ In 2012, training on identification of victims of THB was conducted by Ac.Sé representatives, bringing together all these partners. In addition to these facilities, police units, specialist lawyers, representatives of the Conseil Général de la Gironde and other local organisations took part.⁷¹ These sessions enable **knowledge to be shared and local multidisciplinary networks** on the subject of THB to be strengthened.

The **FTDA training centre** organises an annual training day on identifying and supporting victims of THB for the purposes of sexual exploitation. This is provided by the **AFJ**. All professionals in contact with people likely to be victims of THB for the purposes of sexual exploitation have access to this training. In this context, particular attention is given to the **definition and presentation of trafficking, psychosocial treatment of the victim, ways of dealing with victims in France, and the right of residence for foreign victims of THB**.⁷²

Coordination between organisations specialising in helping victims of THB and those supporting asylum seekers mean that **ongoing and effective training** is regularly conducted based on practical examples.⁷³

⁶⁹ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by France*, op.cit., p.18.

⁷⁰ Extract from an interview with Anne-Marie Pichon, Director of IPPO, 19 September 2013.

⁷¹ Ac.Sé, *Rapport d'activités*, op.cit., p.30.

⁷² FTDA training centre, *Guide 2013-2014 des formations inter et intra-organismes*, p. 21.

⁷³ Extracts from interviews with Céline Huard, AFJ psychologist, 16 September 2013 and Vanessa Simoni, THB project manager for Les Amis du Bus des Femmes, 23 September 2013.

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The authorities responsible for asylum and return have limited training in the field of THB. Sharing expertise with other public sector and NGO stakeholders may contribute towards strengthening public sector knowledge. A good understanding of THB also requires an understanding of underlying trends. The collection and analysis of statistical data thus allows the evolution of THB to be monitored and the impact of public action on the future of victims of THB.

Section 5 – Statistics on victims of THB

This section provides the statistics which are available relating to the stay of victims of THB in France.

The French authorities only collect limited data on victims of THB. Of the data requested for this study, only those relating to the number of **third-country nationals who have received a residence permit under the provisions of Article L.316-1 of the CESEDA** are known. Victims of THB who cooperate with the competent authorities can obtain two types of residence permit under the provisions of this Article:

- **a temporary residence permit** with minimum validity of **six months** allowing access to the exercise of a professional activity. This residence permit is issued to victims of THB who have **lodged a complaint** or **made a witness statement** in the context of a criminal procedure against a person likely to have committed the offence of trafficking;
- **a ten year residence permit**. Victims of THB may obtain this residence permit when **the person being prosecuted is definitively sentenced**.

Table 1: Number of third-country nationals having obtained a residence permit under the provisions of Article L.316-1 of the CESEDA between 2008-2012

	2008	2009	2010	2011	2012	Total
First request	20	60	70	36	42	228
Renewal	7	25	18	20	26	96
Total	27	85	88	56	68	324

Source: Ministry of the Interior, Directorate-General for Foreign Nationals in France, Department for Statistics, Studies and Documentation.

The number of third-country nationals having obtained a residence permit under the provisions of Article L.316-1 of the CESEDA was higher in 2012 than in 2008. However, it remains limited. No trends can be identified, given the variation in data over the five years of the reference period.

Of these people, the five nationalities which are most represented are, in decreasing order: **Nigeria, Morocco, the Democratic Republic of Congo, Côte d'Ivoire and Turkey.**

In terms of the sex of victims who have obtained residence permits under the provisions of Article L.316-1 of the CESEDA during the period in question, **80%** were **women**. The average age of these women is **31**.

87% of third-country nationals who obtained a residence permit under the provisions of Article L. 316-1 of the CESEDA obtained a **temporary residence permit**. Very few of them were issued with a **ten year residence permit**.

Of the 324 third-country nationals who received a residence permit under the provisions of Article L.316-1 of the CESEDA, **76** (nearly a quarter), had made an initial application for asylum which had been rejected.

Various theories can be given to explain the fact that only a limited number of third-country nationals obtained a residence permit under the provisions of Article L.316-1 of the CESEDA, between 2008 and 2012.

- few victims of THB are **identified** and **referred to** the criminal procedure;
- few victims of THB **agree** to cooperate with the competent authorities because this obliges them to make a complaint or act as a witness against the person exploiting them. Victims and their families thus risk **reprisals**, knowing that there is **no guaranteed protection** when a criminal procedure is initiated;
- some organisations consulted indicated that, despite the fact that they cooperate with the competent authorities, it is increasingly difficult for victims of THB to obtain a residence permit under the provisions of L.316-1 of the CESEDA. According to these organisations, this is explained by the fact that the decision to issue a residence permit to a victim of THB depends entirely upon the **discretionary powers of the Prefect**.

France does not collate statistics recording the **number of periods of reflection requested**. However, the French authorities have indicated to GRETA their intention to request the relevant services to enable statistical data to be collected in relation to the number of requests made for reflection periods.⁷⁴

In the field of asylum, the OFPRA database does not currently allow statistics to be established on the grounds for decisions made in terms of the granting of subsidiary protection or refugee status. The number of victims of THB having benefited from subsidiary protection in France can, therefore, not be calculated.

It is also **planned to recast the mechanisms for collecting statistics on THB**. The MIPROF plans to set up a working group to firstly gather all existing data in this field, and also improve the statistical system, differentiating the types of exploitation and making possible the determination of countries of origin and destination countries for trafficking.

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⁷⁴ GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by France, op.cit., p.27.

CONCLUSION

This study has highlighted several elements. Above all, identification of victims of THB in the international protection and forced return procedures remains **a major challenge**. Victims of THB who are not detected during the asylum process risk remaining in exploitative situations. Because they have not received the right to legally reside in France by means of asylum, they may then be subject to forced removal procedures. The consequences of this lack of identification are two-fold. On the one hand, victims of THB cannot access assistance and protection in France. On the other, they may be returned to a country where they may risk reprisals, particularly from members of the networks which exploited them. **Attempts at detection** in the context of these two procedures are therefore vital and will be implemented within the context of transposition of the 'Reception' and 'Procedure' Directives of 26 June 2013.

In France, the authorities responsible for examining asylum applications and for implementing forced return do not have **a formal procedure** for identifying victims of THB. Various initiatives, led in particular by **specialised NGOs**, however, enable identification of exploitative situations. It therefore seems important to involve all stakeholders likely to enter into contact with victims of THB in the identification process. Moreover, the authorities responsible for asylum and return have limited training in the field of THB. Sharing expertise with other public sector and NGO stakeholders may contribute towards strengthening public sector knowledge. Exchanging information is thus an effective way of improving the detection and identification of victims of THB as well as the assistance which is given to them.

This study falls within a specific national context. The appointment of a national coordinator against THB illustrates France's desire to pay greater attention to the issue of THB and in particular to victim protection. The future priorities of the national action plan against THB include strengthening **coordination** between relevant stakeholders and intensifying their **training** in terms of THB. In the field of asylum, several attempts to harmonise the practices of staff involved in examining asylum applications have been mentioned in terms of THB. These actions are covered by the new 'Asylum package' which recommends better consideration for the specific needs of vulnerable people in the asylum process.

The European analytical report based on the studies from national contact points will assess the mechanisms for identifying and orienting victims of THB being implemented across all EU Member States. The good practice identified will serve as the basis for developing common and harmonised European guidelines for the initial identification and referral of victims of THB.

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ANNEXES

ANNEX 1: LIST OF INTERVIEWS CONDUCTED

1. Ministry of the Interior, Directorate-General for Foreign Nationals in France

Asylum:

- Nicolas Péhau, Head of the Department for Refugees and Reception of Asylum Seekers
- Claire Behrouz, Deputy Head of the Legal and Asylum Procedures Section, Department for Asylum Law and Protection
- Magali Manse, Head of the Dublin Section, Department for Border Asylum and Admission for Residency

Immigration Department - Countering Irregular Immigration:

- Jean-Paul Berlan, Deputy Head of the Office for Detention and Removal (BRE)

2. Ministry of the Interior, National Police

Central Criminal Investigation Department, Fight against Organised Crime and Financial Fraud:

- Corinne Bertoux, Central Office for the Suppression of Trafficking in Human Beings (OCRTEH)

3. Ministry for Women

Interministerial Mission for the Protection of Women Victims of Violence and the Fight against Trafficking in Human Beings:

- Éric Panloup, National Coordinator for Combating Trafficking in Human Beings.

4. French Office for the Protection of Refugees and Stateless Persons (Office français de protection des réfugiés et apatrides)

- Rachel Morin, Head of the European and International Affairs Mission
- Coralie Capdeboscq, Section Head within the African Division

5. France Terre d'Asile

- Aude Lecouturier, Deputy Head of Support and Asylum Seeker Accommodation
- Ronan Dantec, Deputy Manager of the Social and Administrative Assistance Service (PADA Paris)

6. La Cimade

- Violaine Husson, officer responsible for issues relating to women and victims of violence

7. ALC/National Ac.Sé network

- Federica Marengo, Ac.Sé Coordinator

8. Association Foyer Jorbalan

- Céline Huard, psychologist

9. Les Amis du Bus des Femmes

- Vanessa Simoni, Project Head, 'Trafficking in human beings for the purposes of sexual exploitation' unit.

10. Information Prévention Proximité Orientation

- Anne-Marie Pichon, Director

ANNEX 2: BIBLIOGRAPHY

1. Reports and studies

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- France Expertise Internationale, *Identification des victimes de traite des êtres humains en Bulgarie, France, Grèce, Roumanie, Espagne, Pays-Bas, Recueil de bonnes pratiques*, Projet Euro TrafGuID, 2012, p.25
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http://www.cncdh.fr/sites/default/files/etude_traite_et_exploitation_des_etres_humains_en_france.pdf

- Institut national des hautes études de la sécurité et de la justice (INHESJ), *La traite des êtres humains, un défi mondial*, Cahiers de la Sécurité n°9, La Documentation française, July-September 2009

2. Legal texts

a) National legislation

- **Laws**

- Law No. 2003-239 of 18 March 2003 on internal security
<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000412199>

- Law No. 2006-911 of 24 July 2006 on immigration and integration.
<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000266495&dateTexte=&categorieLien=id>

Identification of victims of trafficking in human beings in international protection and forced return procedures

- **Codes**

- Code on Entry and Residence of Foreigners and Right of Asylum (Code de l'entrée et de séjour des étrangers et droit d'asile)(CESEDA)

<http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070158>

- Code on Criminal Procedure

<http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071154>

- **Decrees**

- Decree No. 2013-7 of 3 January 2013 on the creation of an interministerial mission for the protection of women against violence and action against trafficking in human beings.

<http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026894612&categorieLien=id>

- Decree No. 2007-1352 of 13 September 2007 on the admission for residence, protection, reception and accommodation of foreign victims of trafficking in human beings or procurement and modifying the Code on Entry and Residence of Foreigners and the Right to Asylum.

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000465136&dateTexte=&categorieLien=id>

b) European Directives

- Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

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Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

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ANNEX 3: TABLE OF CASE LAW

1. Conseil d'État

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2. National Court of Asylum(*Cour nationale du droit d'asile*)

- CNDA, 29 April 2011, n°10012810
- CNDA, 15 March 2012, n°11017758
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- CNDA, 12 July 2013, n°11017758

3. Administrative tribunals

- Administrative Tribunal of Rouen, 12 March 2013, no. 1300620