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# **Enhancing the Protection of the Rights of Trafficked Persons: Amnesty International and Anti-Slavery International's Recommendations to strengthen provisions of the July 2004 draft European Convention against Trafficking in Human Beings**

## **1. Introduction**

The Council of Europe's Committee of Ministers has mandated the *Ad Hoc Committee on Action against Trafficking in Human Beings* (known as CAHTEH) to draft a European Convention against Trafficking in Human Beings by December 2004. The Committee of Ministers specifically requested the CAHTEH to focus "on the human rights of victims of trafficking" as well as focussing on prevention, investigation, prosecution and international cooperation and to "design a comprehensive framework for the protection and assistance of trafficked persons and witnesses".

The Committee of Ministers has instructed CAHTEH to take into account existing international and regional standards dealing with trafficking, with a view to developing these standards so as to *improve* the protection afforded by them to trafficked persons.

Amnesty International and Anti-Slavery International warmly welcome the Committee of Ministers' mandate to the CAHTEH. While we welcome many of the provisions set out in the July 2004 draft of the European Convention against Trafficking in Human Beings (European Convention against Trafficking) proposed by CAHTEH, (set out in CAHTEH (2004) INFO 4 of 5 July 2004), we urge the CAHTEH, the Council of Europe and its 45 Member States<sup>1</sup> to further strengthen some of the provisions.<sup>2</sup>

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<sup>1</sup> The current 45 Member States of the Council of Europe are: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia & Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, FYR Macedonia, Turkey, Ukraine, United Kingdom. Observer States are: Canada, Holy See, Japan, Mexico and the United States of America.

<sup>2</sup> Previous submissions of Amnesty International and Anti-Slavery International on the draft European Convention against Trafficking include: *Amnesty International and Anti-Slavery International: Comment on revised draft European Convention against Trafficking in Human Beings*, AI Index: IOR 61/014/2004, of June 2004), and *Memorandum on the Draft European Convention on Action against Trafficking in Human Beings: Protection of the Rights of Trafficked Persons*, AI Index: IOR 61/011/2004. These documents are available on Amnesty International's and Anti-Slavery International's websites: [www.amnesty.org](http://www.amnesty.org) and [www.antislavery.org](http://www.antislavery.org).

On the basis of our experience in working to ensure the protection and respect of human rights of trafficked persons, Amnesty International and Anti-Slavery International consider that incorporation of the following recommendations to amend provisions of the July draft of the European Convention against Trafficking will ensure that the treaty adopted by the Council of Europe does indeed fulfil its stated aim of enhancing the protection and respect for the rights of trafficked persons.

For ease of reference, a copy of CAHTEH's July 2004 draft of the European Convention against Trafficking is attached, in **Appendix I**.

## **2. Classification and Definition**

### **a) Preamble**

#### **Characterize Trafficking as a Human Rights Violation**

Amnesty International and Anti-Slavery International recommend that the CAHTEH ensure that the Preamble to the European Convention against Trafficking expressly identifies trafficking, in itself, as a human rights violation which results in a range of human rights violations and abuses, and is an offence to the dignity and integrity of the human being. Doing so will not only ensure the accurate characterization of trafficking but also will ensure consistency with instruments previously adopted by the Council of Europe, the European Union, the United Nations, the Organization for Security and Co-operation in Europe (OSCE) and the Organization of American States.<sup>3</sup>

### **b) Article 4(e): Amend Definition of Victim**

Amnesty International and Anti-Slavery International consider that it is key to the protection of their rights that, at the moment when there are reasonable grounds to believe that a person is or has been a victim of trafficking, they should benefit from the provisions relating to support, assistance, protection, recovery and reflection period, residence permit, protection of private life, non-criminalisation and compensation and repatriation set out in Articles 10-16 , and 26 and 28 of the July, 2004 draft of the European Convention against Trafficking.

We therefore urge that Article 4(e) of the draft Convention against Trafficking be amended as follows (amendments to current draft appear in italics):

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<sup>3</sup> see, e.g. The Council of Europe's Committee of Ministers' Recommendation (2000)11 on action against trafficking in human beings for the purpose of sexual exploitation, in the Preamble at paragraph 5; *see also*, Recommendation (2002)5 on violence against women, which defines violence against women as including trafficking and states that violence against women both violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms. The European Union (EU), in its Council Framework Decision on combating Trafficking in Human Beings of 19 July 2002 states that "trafficking in human beings comprises serious violations of fundamental human rights and human dignity..."(at para 3). Treaty monitoring bodies of the United Nations, including the Human Rights Committee and the Committee on the Elimination of Discrimination against Women, have also identified trafficking in human beings as a violation of human rights, *See, inter alia*, UN Docs: CCPR/CO/79/LVA, dated 06/11/2003 and A/53/38/rev.1, respectively. *See also*, The Permanent Council of the OSCE's Decision No 557: Action Plan to Combat Trafficking in Human Beings , 24 July 2003 and the Budapest Declaration on Public Health & Trafficking in Human Beings of 19-21 March 2003.

“Victim” shall mean any person who has been subject to any act set forth in this Article. *In applying Articles 10-16, 26 and 28 of this Convention, a person shall be considered a victim from the moment when there are reasonable grounds to believe that they are or have been a victim.*

This recommendation strengthens the proposal made by the European Commission<sup>4</sup> to amend this provision, by adding reference to Articles 26 and 28.

### **3. Strengthen Support, Assistance and Protection Measures**

Protection, support and assistance measures aimed at ensuring respect for the rights of trafficked persons are set out in Articles 10-16 and 26 and 28 of the draft Convention against Trafficking. Amnesty International and Anti-Slavery International consider that some of these provisions require amendment in order to ensure the respect and protection of the rights of trafficked persons, aid their recovery and facilitate their ability to break the trafficking cycle. Providing such enhanced support is also likely to create an environment in which trafficked persons will feel more confident that they will be protected from reprisals if they cooperate with the authorities in efforts to bring those responsible for trafficking to justice. Given that many of the support, assistance and protection services are provided by or in co-operation with non-governmental organizations, Amnesty International and Anti-Slavery International call on the CAHTEH to ensure that the provisions of the draft European Convention against Trafficking require State Parties to ensure co-operation with and support to qualified service providers.

#### **a) Article 10: Assistance for Victims of Trafficking**

##### **Ensure necessary consensual medical care, and access to education, vocational training and work**

Article 10 of the draft European Convention against Trafficking requires State Parties to take due account of the safety and protection needs of victims and to adopt legislative and other measures to assist victims of trafficking in their physical, psychological and social recovery. It stipulates that such assistance shall include at least: appropriate and secure housing; psychological and material assistance; counselling and information, including about legal rights; and, translation and interpretation assistance. It also requires State Parties to cooperate with relevant organizations and civil society committed to assisting victims, when appropriate and as provided for by national law.

Notably and regrettably, however, provisions for medical assistance are very restrictive. The current draft of Article 10(1)(b) requires State Parties only to ensure that *emergency* medical treatment is available for all trafficking victims; Article 10(3) requires State Parties to provide additional necessary medical care and other assistance only to those victims “who are lawfully resident in the territory of the [State] Party concerned, who do not have adequate resources and need it.”

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<sup>4</sup> The European Commission has reportedly been mandated to negotiate the provisions of Articles 4, 13, 14 15 and 16 of the draft European Convention against Trafficking on behalf of 22 of the 25 European Union Member States (all but the United Kingdom, Ireland and Denmark).

Similarly, under Article 10(4), State Parties are only required to adopt rules which authorise access to education (including for children), vocational training and work only to trafficking victims who are *lawfully resident within the territory of a State Party*.

Such provisions leave those trafficked persons whose presence has not be regularized by the authorities without access to key services and assistance which is vital to the respect of their rights and their recovery, as well as risk raising legal questions about the conditions under which a trafficked person will be deemed to be “lawfully on the territory of a state party” and thus entitled to such services and assistance.

Amnesty International and Anti-Slavery International urge that Article 10 be strengthened to ensure all trafficked persons are provided with:

- access to necessary medical care and assistance;
- access to education, in particular for children;
- access to vocational training, and work.

Article 10 should also expressly state that protection, services and assistance should be provided on a fully informed and consensual basis, and on the basis of periodic individualized needs assessments carried out by suitably qualified experts.

The issuance of replacement identity documents should not be conditioned on an agreement to provide information about the trafficked persons experience or to cooperate with law enforcement efforts.

Such amendments will ensure respect and protection of the internationally recognized rights of trafficked persons, including the rights to dignity, health, and an adequate standard of living.

## **b) Article 11: Compensation and Legal Redress**

### **Ensure legal aid and reparation**

Amnesty International and Anti-Slavery International urge that Article 11 be strengthened to require states to ensure that legal aid is available to *all* trafficked persons. This is consistent with respect for the right to access to justice and is incorporated in previously adopted Council of Europe instruments.<sup>5</sup>

The provisions of Article 11(3) and (4) should also be strengthened to require State Parties to ensure the rights of victims of trafficking to all internationally recognized elements of reparation, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition. This recommendation is consistent with the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the European Convention on the Compensation of Victims of Violent Crimes.

## **c) Article 13: Identification**

### **Ensure the right to appeal and respect for the rights of children**

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<sup>5</sup> See, e.g., Committee of Ministers' Recommendation R (83) 7, on Participation of the Public in Crime Policy, at para 29.

Accurate identification of trafficked persons is key to ensuring respect for their human rights and the prosecution of those responsible for trafficking. Given the difficulties in ensuring accurate identification of trafficked persons and the risks to their lives and successful prosecutions attendant to the failure to do so, Amnesty International and Anti-Slavery International urge that the CAHTEH amend Article 13 to expressly provide for the right of a person to appeal a determination that they are not a victim of trafficking to an independent and impartial body.

Article 13 and other provisions of the treaty should also be reviewed to ensure consistency with and respect for internationally guaranteed rights of children. Consistent with such rights, Amnesty International and Anti-Slavery International urge that Article 13 be amended to ensure that: counsel is appointed to represent every child reasonably believed to have been trafficked; all actions taken with respect to such children are in their best interests; the child's views are considered; and, when appropriate, a qualified legal guardian is appointed.

The organizations also recommend that CAHTEH review other provisions of the treaty to ensure that they are consistent with and respect internationally guaranteed rights of children.

#### **d) Article 14: Recovery and Reflection Period**

##### **Require a minimum of three months for recovery and/or reflection**

Amnesty International and Anti-Slavery International welcome the aim of Article 14, requiring State Parties to ensure that their laws permit trafficked persons to remain in the territory while they recover and escape the influence of their traffickers. We welcome the proposal of the European Commission to amend Article 13(1) to ensure that the recovery and reflection period is afforded for these purposes *and/or* for the purpose of taking an informed decision about assisting the competent law enforcement and/or judicial authorities.

It is widely recognized that providing a trafficked person with a safe and secure environment will facilitate their recovery and aid them to make informed decisions about their future, including about whether to assist in law enforcement efforts to bring those responsible for their trafficking to justice, and /or to pursue claims for other forms of reparation. The length of the recovery and reflection period must be sufficient for these purposes; to provide security for trafficked persons, they must be informed of the minimum period that they will be allowed to remain in the country.

Amnesty International and Anti-Slavery International therefore urge the CAHTEH to amend Article 14 to expressly set out that the recovery and reflection period shall be *of sufficient time, of not less than three months*, while a trafficked person recovers, escapes the influence of their traffickers *and/or* makes an informed decision about their future, including whether to cooperate with law enforcement authorities in the investigation and prosecution of those responsible for violating their human rights and to pursue claims for compensation. This recommendation is consistent with the Opinion of the European Commission's Expert Group on Trafficking to the Council of Europe.<sup>6</sup>

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<sup>6</sup> [http://europa.eu.int/comm/justice\\_home/fsj/crime/trafficking/fsj\\_crime\\_human\\_trafficking\\_en.htm#](http://europa.eu.int/comm/justice_home/fsj/crime/trafficking/fsj_crime_human_trafficking_en.htm#)

The organization also calls on CAHTEH to ensure that Article 14 expressly requires states to regularize a person's presence in the country during the reflection and recovery period, including by the issuance of appropriate official identification and documentation.

**e) Article 15: Residence Permit**

**Ensure a minimum of 6 months-renewable and permanent residence permits**

Amnesty International and Anti-Slavery International welcome provisions of the current draft of Article 15 which require State Parties to provide for the possibility of granting trafficked persons a renewable residence permit, family reunification and permanent residence.

Amnesty International and Anti-Slavery International urge that Article 15(1) be strengthened to require states to ensure that renewable residence permits, of at least six months in length, are provided to trafficked persons if their stay is necessary owing to their personal situation *and/or* for the purpose of investigation or *legal or administrative proceedings, including criminal proceedings*.

Article 15 should also be strengthened to ensure renewal of residence permits based on the continuing existence of the conditions set out in the Article and/or other criteria provided for by national or international law, including the right to seek and enjoy asylum.

It should be noted that Article 8(3) of the EU 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...* requires such residence permits to be valid for a minimum of six months and renewable.

**f) Article 16: Repatriation of Victims**

**Require a risk assessment and prohibit returns to *any* state where there is a risk of further human rights abuse**

Amnesty International and Anti-Slavery International welcome the fact that the current draft of Article 16 provides that return of trafficked persons to another State Party should be made with due regard for the safety and the best interests of the victim. We urge the CAHTEH not to adopt the proposal of the EU Commission to remove these provisions.

The organizations also urge the CAHTEH to amend Article 16 so as to ensure that: returns to *any* state are only made following a risk assessment - carried out by suitably trained professionals - which indicates that such return is safe, durable and in the best interests of the trafficked person.

The provisions of Article 16(2) and (7) should be amended so that they apply to returns to *any* state- not only to other states which are a party to the Convention.

Amnesty International and Anti-Slavery International underscore that such amendments are key to ensuring consistency of this Article with the obligations of Council of Europe Member States not to return a person to any State where they risk human rights abuse.

**g) Article 26: Non-Punishment Provision****Prohibit detention, charge, or prosecution of trafficked persons for illegal entry or residence or activities which are a consequence of their situation as a trafficked person**

Amnesty International urges the CAHTEH to ensure that Article 26 prohibits the detention, charge or prosecution of a trafficked person for the illegality of their entry into or residence in a country or their involvement in unlawful activities that are a consequence of their situation as trafficked persons, as provided for in Option 3 of the three drafting options set out in the current draft of the European Convention against Trafficking. Adopting this Option is consistent with instruments and recommendations previously adopted by the Council of Europe, the UN the OSCE and the EU.<sup>7</sup>

**h) Article 28: Protection of Victims, Witnesses and those that cooperate with Judicial Authorities****Ensure protection *before* investigation and commencement of proceedings, and *in their absence*; expressly provide for asylum and resettlement in 3rd countries**

The current draft text of Article 28 requires State Parties to the European Convention against Trafficking to take legislative or other measures as may be necessary to provide appropriate protection from potential retaliation or intimidation to: victims of trafficking; those who report criminal offences related to trafficking or otherwise cooperate with the investigating or prosecuting authorities; witnesses who give testimony concerning criminal offences set out in the treaty; and, as appropriate, family members of such persons.

Significantly the provision requires such protection measures *during* and *after* the investigation and prosecution of perpetrators - but not *before* such investigation or prosecution or *in the absence of a prosecution*.

The Article goes on to require legislative or other necessary measures be taken by State Parties to ensure that there are various methods of protection available, including physical

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<sup>7</sup> Principle 7 of the *UN Recommended Principles and Guidelines on Human Rights and Human Trafficking* states: “trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in the countries of transit and destination or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.” The *EU’s Brussels Declaration on Preventing and Combating Trafficking in Human Beings* states: “Trafficked victims should be recognized as victims of serious crime. Therefore they should not be re-victimized, criminalized, prosecuted or held in detention centres for offences that may have been committed due to their situation as victims of trafficking.” See also, Part III, Article 1.8 of the *OSCE Action Plan to Combat Trafficking in Human Beings*. The *UN Committee on Economic Social and Cultural Rights and Committee on the Elimination of Discrimination against Women* have called on states to ensure that victims of trafficking are not penalized, UN Docs: E/2002/22 at para 510 and CEDAW/2004/I/CRP.3/Add.1/Rev.1, at para 28, respectively. See also, the *Council of Europe’s Committee of Ministers’ Recommendation R(2001) 16 on the protection of children against sexual exploitation*, at para 36, which recommends that the Council of Europe member States “ensure that children who have been victims of sexual exploitation cannot be prosecuted for any act connected with this exploitation.”

protection, relocation, identity change and assistance in obtaining employment. It also requires State Parties to consider entering into agreements or arrangements with other states for these purposes; but regrettably, there is no express reference to third country protection.

While welcoming the general intent of this article, Amnesty International and Anti-Slavery International consider that the Article requires strengthening to fill significant gaps in protection. In particular, the organizations urge CAHTEH to amend Article 28 in order to:

- ensure protection is available including *before* (as well as during and after ) the start of any formal investigation and prosecution as well as *in the absence of* a prosecution; and,
- expressly include asylum and resettlement in a third country in the list of the range of protection measures.

These amendments would ensure a comprehensive protection is available to those persons at risk, when and where they need it.

## 4. Prevention and Criminalization

### a) Article 7: Border Controls

#### **Without prejudice to the right to seek and enjoy asylum**

Amnesty International and Anti-Slavery International urge the CAHTEH to amend Article 7, setting out a range of measures for states to take in relation to border control, to ensure that it expressly provides that the measures taken are without prejudice to the internationally recognized and protected rights of individuals to seek and enjoy asylum.

### b) Article 33: Jurisdiction

#### **Ensure jurisdiction over persons and territory within the effective control of a state party**

Given the fact that trafficking in human beings has thrived and even become characteristic in situations of internal and international armed conflict as well as in post-conflict situations, including notably those involving an international presence (such as peacekeepers, peace-builders, civilian policing), and that international law acknowledges state responsibility to ensure respect for human rights of those on territory within the effective control of the state,<sup>8</sup> Amnesty International and Anti-Slavery International urge the CAHTEH to ensure that Article 33 (1) of the draft European Convention against Trafficking is amended to require each State Party to take measures to ensure that they establish jurisdiction over trafficking and related offences committed by a person or in territory over which the State Party exercises effective control.

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<sup>8</sup> See, Judgments of the European Court of Human Rights in the cases of *Loizidou v. Turkey* and *Cyprus v. Turkey*, and the Human Rights Committee's General Comment 31 on Article 2 of the International Covenant on Civil and Political Rights UN Doc CCPR/C/74/CPR.4/Rev.6 of 21 April 2004, at para 10.

## **5. Monitoring Implementation of the Convention**

### **a) Articles 42 and 43: Monitoring Mechanism**

#### **Ensure body of independent experts to monitor implementation, visit State Parties and consider collective complaints**

Amnesty International and Anti-Slavery International consider that an independent body of experts should be appointed, in an open transparent process which includes consultation with civil society, to monitor implementation of this treaty. The European Convention against Trafficking should require that this body include among its members, persons from countries of origin, destination and transit within the Council of Europe region who are expert in protecting the rights of trafficked persons.

Each State Party should be required to provide regular and comprehensive reports to the body about the measures taken to implement each of the provisions of the treaty. The body should be expressly empowered to seek and consider information from any source, including civil society, about a state's implementation of the treaty. It should be mandated to: review and analyze reports of the state; make recommendations to states to ensure better implementation of the treaty; visit State Parties; and, consider collective complaints alleging failures by State Parties to implement the treaty. The reports of its work (including recommendations to states and conclusions on collective complaints) should be made public upon their adoption by the group, and submitted to the Council of Europe's Committee of Ministers.

The Committee of Ministers should review and adopt the reports of this body and ensure implementation by States of the body's recommendations.

## **6. Conclusion**

### **Consult, and amend to strengthen protection of the rights of trafficked persons**

Amnesty International and Anti-Slavery International warmly welcome the aims of the Council of Europe to draft a European Convention against Trafficking in Human Beings which enhances the protection of and respect for the rights of trafficked persons. To achieve this aim the CAHTEH has been mandated to draft a treaty which obligates states to take measures – both individually and cooperatively - to establish and ensure a comprehensive, gender and child-sensitive framework for the protection and assistance of trafficked persons and witnesses, as well as to prevent trafficking and to investigate and prosecute those responsible for trafficking and related offences.

We consider that provisions of the July 2004, draft of the European Convention against Trafficking being discussed by CAHTEH must be amended to achieve these important aims.

To this end, Amnesty International and Anti-Slavery International urge the CAHTEH to incorporate the above-described amendments to the draft European Convention against Trafficking.

We call on the Council of Europe and each of the 45 member states of the Council of Europe to widely disseminate the drafts of the text of the European Convention against Trafficking and to hold consultations with members of civil society, including NGOs and other experts

who work with and on behalf trafficked persons throughout the drafting process. States should inform their views on the provisions of the draft Convention in the light of such consultations.

Amnesty International and Anti-Slavery International believe that doing so will increase the likelihood that the treaty adopted by the Council of Europe will improve and enhance existing international and regional standards. If it does so, the European Convention against Trafficking in Human Beings will fill a significant gap in existing standards by comprehensively addressing states' obligations to protect and respect the rights of trafficked persons.



Strasbourg, 5 July 2004

CAHTEH (2004) INFO 4

# **AD HOC COMMITTEE ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS (CAHTEH)**

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## **Revised draft Council of Europe Convention on action against trafficking in human beings**

FOLLOWING THE 5<sup>TH</sup> MEETING OF THE CAHTEH (29 JUNE – 2 JULY 2004)

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SECRETARIAT DOCUMENT PREPARED BY  
THE DIRECTORATE GENERAL II – HUMAN RIGHTS AND  
THE DIRECTORATE GENERAL I – LEGAL AFFAIRS



## FOREWORD

1. This document contains the draft Council of Europe Convention on Action against Trafficking in Human Beings as revised during the 5<sup>th</sup> meeting of the CAHTEH held from 29 June to 2 July 2004.

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## **REVISED DRAFT COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS**

### **PREAMBLE**

The member States of the Council of Europe and the other States signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that trafficking in human beings [constitutes a violation of][seriously undermines the enjoyment of] human rights and [constitutes] an offence to the dignity and the integrity of the human being;

Considering that trafficking in human beings may result in slavery for victims;

Considering that the respect of the rights and the protection of victims of trafficking in human beings must be the paramount objective;

Considering that all actions or initiatives on action against trafficking in human beings should have a gender perspective and a child-sensitive approach;

Recalling the declarations of the Foreign Affairs Ministers of the Member States during the 112<sup>th</sup> (14-15 May 2003) and the 114<sup>th</sup> (12-13 May 2004) Sessions of the Committee of Ministers calling for reinforced action by the Council of Europe in the field of trafficking in human beings;

Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and its protocols;

Bearing in mind the following recommendations of the Committee of Ministers to member states of the Council of Europe: Recommendation No. R (91) 11 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults; Recommendation No. R (97) 13 concerning intimidation of witnesses and the rights of the defence; Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation and Recommendation Rec (2001) 16 on the protection of children against sexual exploitation, Recommendation Rec (2002) 5 on the protection of women against violence;

Bearing in mind the following texts of the Parliamentary Assembly of the Council of Europe: Recommendation 1325 (1997) on traffic in women and forced prostitution in Council of Europe member states, Recommendation 1450 (2000) on violence against women in Europe, Recommendation 1545 (2002) on a campaign against trafficking in women, Recommendation 1610 (2003) on migration connected with trafficking in women and prostitution, Recommendation 1611(2003) on trafficking in organs in Europe; Recommendation 1663(2004) Domestic slavery: servitude, au pairs and mail-order brides;

Bearing in mind the European Union Council Framework Decision of 19 July 2002 on combating trafficking in human beings and the European Union Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings and the European Union Council Directive of 29 April 2004 on the residence permit issued to third-country nationals victims of trafficking in human beings or to third-country nationals who have been the subject of an action to facilitate illegal immigration who cooperate with the competent authorities;

Taking into due account the United Nations Convention Against Transnational Organized Crime and the Protocol thereto to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children with a view to improving the protection afforded by it and to developing the standards contained therein;

Taking into due account the other international legal instruments relevant in the field of action against trafficking in human beings;

Taking into account the need to prepare a comprehensive international legal instrument focusing on the human rights of victims of trafficking and setting up a specific monitoring mechanism,

Have agreed as follows:

## **CHAPTER I – PURPOSES, SCOPE, NON-DISCRIMINATION PRINCIPLE AND DEFINITIONS**

### **ARTICLE 1 – PURPOSES OF THE CONVENTION**

1. The purposes of this Convention are:

a. to prevent and combat trafficking in human beings, also taking gender equality aspects into consideration;

b. to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, also taking gender equality aspects into consideration, as well as to ensure effective investigation and prosecution;

c. to promote international cooperation on action against trafficking in human beings.

2. In order to ensure effective implementation of its provisions by the Parties, this Convention sets up a specific monitoring mechanism.

### **ARTICLE 2- SCOPE**

This Convention shall apply to all forms of trafficking in human beings, whether national or transnational, whether or not related to organised crime.

### **ARTICLE 3 – NON-DISCRIMINATION PRINCIPLE**

The implementation of the provisions of this Convention by Parties, in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

### **ARTICLE 4 – DEFINITIONS**

For the purposes of this Convention:

- (a) "Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) "Child" shall mean any person under eighteen years of age;

- (e) “Victim” shall mean [any person who is subject to any act set forth in this Article]<sup>1</sup>.

## **CHAPTER II – PREVENTION, CO-OPERATION AND OTHER MEASURES**

### **ARTICLE 5 – PREVENTION OF TRAFFICKING IN HUMAN BEINGS**

1. Each Party shall take measures to establish or strengthen national co-ordination between the various bodies responsible for preventing and combating trafficking in human beings.
2. Each Party shall establish and/or strengthen effective policies and programmes to prevent trafficking in human beings, by such means as: research, information, awareness raising and education campaigns, social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings.
3. Each Party shall promote a Human Rights-based approach and shall use gender mainstreaming and a child-sensitive approach in the development, implementation and assessment of all the policies and programmes referred to in paragraph 2.
4. Each Party shall take appropriate measures, as may be necessary, to enable migration to be carried out legally, in particular through dissemination of accurate information by relevant offices, on the conditions enabling the legal entry in and stay on its territory.
5. Each Party shall take specific measures to reduce the vulnerability of children to trafficking, notably by creating a protective environment for them.
6. Measures established in accordance with this article shall involve, where appropriate, non-governmental organisations, other relevant organisations and other elements of civil society committed to the prevention of trafficking in human beings, the protection of or assistance to victims.

### **ARTICLE 6 – MEASURES TO DISCOURAGE THE DEMAND**

To discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, each Party shall adopt or strengthen legislative, administrative, educational, social, cultural or other measures such as:

- a) research on best practices, methods and strategies;
- b) raising awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of trafficking in human beings;
- c) target information campaigns involving, as appropriate, inter alia, public authorities and policy makers;
- d) measures, including educational programmes for boys and girls during their schooling, which underline the ill-fated consequences of discrimination based on sex and the importance of gender equality, as well as of the dignity and integrity of every human being.

### **ARTICLE 7 – BORDER MEASURES**

1. Without prejudice to international commitments in relation to the free movement of persons, Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in human beings.
2. Each Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with this Convention.
3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company

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<sup>1</sup> The CAHTEH agreed to continue the examination of this provision at its next meeting.

or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each Party shall adopt such legislative or other measures as may be necessary to permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Convention.

6. Parties shall consider strengthening co-operation among border control agencies by, *inter alia*, establishing and maintaining direct channels of communication.

## **ARTICLE 8 – SECURITY AND CONTROL OF DOCUMENTS**

Each Party shall adopt such measures as may be necessary, within available means:

- (a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- (b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the Party and to prevent their unlawful creation, issuance and use.

## **ARTICLE 9 – LEGITIMACY AND VALIDITY OF DOCUMENTS**

At the request of another Party, a Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in human beings.

## **CHAPTER III – MEASURES TO PROTECT AND PROMOTE THE RIGHTS OF VICTIMS, TAKING GENDER EQUALITY ASPECTS INTO CONSIDERATION<sup>2</sup>**

### **ARTICLE 13- IDENTIFICATION OF THE VICTIMS**

Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings and that the different authorities concerned shall collaborate with each other as well as with relevant support organisations, with a view to enabling an identification of victims and in appropriate cases, issuing residence permits under the conditions provided for in article 15 of the present Convention.

Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, such a person shall not be removed from its territory until the identification process as victim of an offence provided for in article 17 of this Convention has been completed by the competent authorities and benefit from the assistance provided for in Article 10, paragraphs 1 and 2.

3. When it appears that a victim is an unaccompanied child, the Party shall take the necessary steps to establish his/her identity, age, nationality and the fact that he/she is unaccompanied. The Party shall make every effort to locate his/her family as quickly as possible and take the necessary steps to provide for the necessary representation of the child by legal guardianship or representation by a (national) organisation or authority which is responsible [to represent the best interest of the child], or other appropriate representation<sup>3</sup>.

<sup>2</sup> The article numbering of this Chapter will be reviewed at a later stage.

<sup>3</sup> The CAHTEH agreed to continue the examination of this provision at its next meeting.

4. When the age of the victim is uncertain and there are reasons to believe that the victim is a child, the presumption shall be that the victim is a child, and s/he will be accorded special protection measures pending verification of his/her age.

## **ARTICLE 12 – PROTECTION OF PRIVATE LIFE**

1. Each Party shall protect the private life and identity of victims. Personal data regarding them shall be stored and used in conformity with the conditions provided for by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS 108).

2. Each Party shall adopt measures to ensure, in particular, that the identity, or details enabling the identification, of a child victim of trafficking are not made publicly known, through the media or by any other means, save in exceptional circumstances designed to facilitate the tracing of family members or otherwise secure the well-being and protection of the child.

3. Each Party shall consider adopting, in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights, measures aimed at encouraging the media to protect the private life and identity of victims through self-regulation or through regulatory or co-regulatory measures.

## **ARTICLE 10 – ASSISTANCE FOR VICTIMS OF TRAFFICKING**

1. Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:

- (a) standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure housing, psychological and material assistance;
- (b) access to emergency medical treatment;
- (c) translation and interpretation services, when appropriate;
- (d) counselling and information, in particular as regards their legal rights, in a language that the victims can understand;
- (e) assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;

2. Each Party shall take due account of the safety and protection needs of victims.

3. In addition, each Party shall provide necessary medical or other assistance to the victims lawfully resident within the territory of the Party concerned who do not have adequate resources and need it.

4. Each Party shall adopt the rules under which victims lawfully resident within the territory of the Party concerned shall be authorised to have access to the labour market, to vocational training and education.

5. Each Party shall take measures, where appropriate and under the conditions provided for by its national law, to co-operate with non-governmental organisations, other relevant organisations or other elements of civil society committed to the assistance to victims.

6. Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a child victim is not made conditional on the child's willingness to act as a witness. This provision is without prejudice to the possibility for a child victim to benefit from a residence permit issued to victims who cooperate with the competent authorities, when the legislation of a Party provides for this possibility for minors. In this case, the Party concerned shall ensure that the procedure is appropriate to the age and maturity of the child.

## **ARTICLE 14 – RECOVERY AND REFLECTION PERIOD<sup>4</sup>**

1. Each Party shall provide in its internal law a [sufficient] recovery and reflection period allowing a person when there are reasonable grounds to believe that she or he is a victim, to remain in the country whilst she or he recovers, as well as to escape the influence of the traffickers so that she or he can take an informed decision on co-operating with the competent authorities. This provision is without

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<sup>4</sup> The CAHTEH agreed to continue the examination of this provision at its next meeting.

prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned.

During this period, the persons referred to in paragraph 1 of this Article shall be entitled to the measures contained in Article 10, paragraph 1 and 2.

#### **ARTICLE 15 – RESIDENCE PERMIT<sup>5</sup>**

1. Each Party shall provide, in conformity with its internal law, for the possibility to deliver a renewable residence permit to victims, including when this is legally necessary to children, to the extent that the competent authority considers that either

- (a) their stay is necessary owing to their personal situation; or, alternatively,
- (b) for the purpose of investigation or criminal procedure.

The residence permit related to child victims shall be issued in any case in accordance to the best interest of the child.

2. Each Party shall take account of the fact that the victim has benefited or benefits from a temporary residence permit in conformity with paragraph 1, when examining the possibility of granting to the victim a permanent or a long-term residence permit.

3. The non-renewal of a residence permit is subject to the conditions provided for by the internal law. However, the residence permit of a child victim shall be renewed until such time as a durable solution has been defined.

4. Each Party shall provide victims with the possibility of family reunification for the period of legal residence.

#### **ARTICLE 11 – COMPENSATION AND LEGAL REDRESS**

1. Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant court and administrative proceedings.

2. Each Party shall provide, in its internal law, for the right to legal assistance for victims and for the conditions under which the victim may benefit from free legal aid.

Each Party shall provide, in its internal law, for the right to compensation for victims from the perpetrators.

Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its national law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23.

#### **ARTICLE 16 – REPATRIATION OF VICTIMS<sup>6</sup>**

1. The Party of which a victim is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a Party returns a victim to another Party, of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving Party, the right of permanent residence, such return shall be with due regard for the safety of that person, for the status of any legal proceedings related to the fact that the person is a victim and for the best interests of the victim, and shall preferably be voluntary.

3. At the request of a receiving Party, a requested Party shall, without undue or unreasonable delay, verify whether a person who is a victim is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

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<sup>5</sup> This text has not been discussed at the time of distribution.

<sup>6</sup> This text has not been discussed at the time of distribution.

4. In order to facilitate the return of a victim who is without proper documentation, the Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes, involving relevant national or international institutions and NGOs. Such programmes shall include measures to favour reintegration of victims in the labour market and to prevent re-victimisation, [with initiatives to strengthen women's life skills and the mechanisms of child protection]. With regard to children, these programmes should include measures to secure adequate care or receipt by their family or other appropriate care structures.

6. Each Party shall adopt such legislative or other measures as may be necessary to make available to victims, where appropriate in co-operation with any other Party concerned, contact information of structures that can assist them in the country where they are returned or repatriated, such as law enforcement offices, NGOs, lawyers and social welfare agencies.

7. Child victims shall not be returned to the Party of which they are nationals or in which they had the right to permanent residence at the time of entry into the territory of the receiving Party, if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child.

## **CHAPTER IV – SUBSTANTIVE CRIMINAL LAW**

### **ARTICLE 17 – CRIMINALISATION OF TRAFFICKING IN HUMAN BEINGS**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct contained in article 4 of this Convention, when committed intentionally.

### **ARTICLE 18 – CRIMINALISATION OF THE USE OF SERVICES OF A VICTIM**

Each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, the use of services which are the object of exploitation foreseen in Article 4, paragraph a, with the knowledge that the person is a victim of trafficking in human beings.

### **ARTICLE 19- CRIMINALISATION OF CONDUCTS RELATED TO TRAVEL OR IDENTITY DOCUMENTS**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conducts, when committed intentionally and for the purpose of enabling the trafficking in human beings:

- a. producing a fraudulent travel or identity document;
- b. procuring or providing such a document;
- c. retaining, removing, concealing, damaging or destroying a travel or identity document of another person.

### **(ARTICLE 20 – DELETED)**

### **ARTICLE 21 – ATTEMPT AND AIDING OR ABETTING**

1. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences when committed intentionally, aiding or abetting the commission of any of the offences established in accordance with Articles 17 and 19 of the present Convention.

2. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences when committed intentionally, an attempt to commit the offences established in accordance with Articles 17 and 19, paragraph a, of this Convention.

## **ARTICLE 22 – CORPORATE LIABILITY**

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that a legal person can be held liable for a criminal offence established in accordance with this Convention, committed for its benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- a. a power of representation of the legal person;
- b. an authority to take decisions on behalf of the legal person;
- c. an authority to exercise control within the legal person.

2. Apart from the cases already provided for in paragraph 1, each Party shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of a criminal offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.

3. Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.

4. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.

## **ARTICLE 23 – SANCTIONS AND MEASURES**

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 17 – 21 are punishable by effective, proportionate and dissuasive sanctions. These sanctions shall include, for criminal offences established in accordance with Article 17 when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition

2. Each Party shall ensure that legal persons held liable in accordance with Article 22 shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary sanctions.

3. Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with Articles 17 and 19, paragraph a, of this Convention, or property the value of which corresponds to such proceeds.

4. Each Party shall adopt such legislative or other measures as may be necessary to enable the temporary or permanent closure of any establishment which was used to carry out trafficking in human beings, without prejudice to the rights of *bona fide* third parties or to deny the perpetrator, temporary or permanently, the exercise of the activity in the course of which this offence was committed.

## **ARTICLE 24 – AGGRAVATING CIRCUMSTANCES**

Each Party shall ensure that the following circumstances are regarded as aggravating circumstances in the determination of the penalty for offences established in accordance with Article 17 of this Convention:

- a. the offence has deliberately or by gross negligence endangered the life of the victim;
- b. the offence has been committed against a child;
- c. the offence has been committed by a public official in the exercise of her/his duties;
- d. the offence has been committed within the framework of a criminal organisation.

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## **ARTICLE 25- RECOGNITION OF PREVIOUS CONVICTION**

Each Party shall adopt such legislative and other measures as may be necessary to take into account final sentences passed by another Party in relation to offences established in accordance with this Convention when determining the penalty.

## **ARTICLE 26 – NON-PUNISHMENT PROVISION**

### **OPTION 1**

Each Party shall provide in its internal law for the possibility of not punishing victims for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as victims.

### **OPTION 2**

Each Party shall ensure in its internal law that victims are not punished for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as victims.

### **OPTION 3**

Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.

## **CHAPTER V – INVESTIGATION, PROSECUTION AND PROCEDURAL LAW**

### **ARTICLE 27- EX PARTE, EX OFFICIO AND INTERESTED THIRD PARTY APPLICATIONS**

1. Each Party shall ensure that investigations into or prosecution of offences established in accordance with this Convention shall not be exclusively subordinate to the report or accusation made by a victim.

2. Each Party shall ensure that victims of an offence in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their State of residence. The competent authority to which the complaint is made, insofar as it does not itself have competence in this respect, shall transmit it without delay to the competent authority of the Party in the territory in which the offence was committed. The complaint shall be dealt with in accordance with the national law of the Party in which the offence was committed.

[3. Each Party [shall grant][shall consider granting], in accordance with the conditions provided for by its national law, to any group, foundation, association or NGO which aims at fighting trafficking in human beings or protection of human rights, the right to institute proceeding and to participate as third party in criminal proceedings concerning the offence established in accordance with Article 17 of this Convention.]<sup>7</sup>

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<sup>7</sup> Alternative option 1:

3. Each Party if permitted by the basic principles of its domestic legal system, may consider granting in accordance with the conditions provided for by its national law, to any group, foundation, association or NGO, which aims at fighting trafficking in human beings or protection of human rights, the right to institute proceeding and to participate as third party in criminal proceedings concerning the offence established in accordance with Article 17 of this Convention.

Alternative option 2:

3. Each Party shall grant, in accordance with the conditions provided for by its national law, to any group, foundation, association or NGO which aims at fighting trafficking in human beings or protection of human rights, the right either to initiate, or to request the initiation of, investigation or prosecution concerning the offence established in accordance with Article 17 of this Convention. Each Party shall ensure that the above groups, foundations, association or NGOs have the right to participate as third parties in criminal proceedings concerning the offence established in accordance with Article 17 of this Convention.

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**ARTICLE 28 – PROTECTION OF VICTIMS, WITNESSES AND COLLABORATORS WITH THE JUDICIAL AUTHORITIES**

1. Each Party shall adopt such legislative or other measures as may be necessary to provide effective and appropriate protection from potential retaliation or intimidation during and after investigation and prosecution of perpetrators, for:

- (a) Victims;
- (b) [those who report the criminal offences established in accordance with Article 17 of this Convention or otherwise co-operate with the investigating or prosecuting authorities;]
- (c) witnesses who give testimony concerning criminal offences established in accordance with Article 17 of this Convention;
- (d) as appropriate, members of the family of persons referred to in subparagraphs (a) and (c).

2. Each Party shall adopt such legislative or other measures as may be necessary to ensure that protection [programmes][measures] offer various methods of protection. Such measures may include physical protection, relocation, identity change and assistance in obtaining jobs.

3. Each Party shall consider entering into agreements or arrangements with other States for the implementation of this article.

**(ARTICLE 29 – DELETED)****ARTICLE 30 – SPECIALISED AUTHORITIES AND CO-ORDINATING BODIES<sup>8</sup>**

1. Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against trafficking and the protection of victims. Such persons or entities shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. [The Party shall ensure that] Such persons or the staffs of such entities have adequate training and financial resources for their tasks.

2. Each Party shall adopt such measures as may be necessary to ensure co-ordination of the policies and actions of their governments' departments and other public agencies against trafficking in human beings, where appropriate, through setting up co-ordinating bodies.

3. Each Party shall provide or strengthen training for law enforcement officials, [judicial authorities], immigration, social services and other relevant officials in the prevention of and fight against trafficking in human beings, including Human Rights training. The training shall focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers.

**OPTION 1**

4. Each Party considers appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements.

**OPTION 2**

4. Each Party considers appointing National Rapporteurs or other mechanisms for co-ordinating the anti-trafficking activities of State institutions, including the implementation of national legislation requirements.

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<sup>8</sup> The position of this Article will be discussed when examining Chapter II.

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**(ARTICLE 31 – THE FIRST PARAGRAPH WAS DELETED AND THE SECOND PARAGRAPH ADDED TO ARTICLE 30)****ARTICLE 32 – COURT PROCEEDINGS**

In accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular its Article 6, each Party shall adopt such legislative and other measures as may be necessary to ensure in the course of judicial proceedings:

- a. the protection of the private life of victims and, where appropriate, their identity;
- b. the security of victims and their protection from intimidation,

in accordance with the modalities defined by its internal law and, in the case of child victims, by taking special care of children's needs.

**ARTICLE 33 – JURISDICTION**

1. Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed :

- (a) in its territory; or
- (b) on board a ship flying the flag of that Party; or
- (c) on board an aircraft registered under the laws of that Party; or
- (d) by one of its nationals or by a stateless person who has his or her habitual residence in its territory, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State.

2. Each Party may reserve the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraph 1 (d) of this article or any part thereof.

3. Each Party shall adopt such measures as may be necessary to establish jurisdiction over the offences referred to in this Convention, in cases where an alleged offender is present in its territory and it does not extradite him/her to another Party, solely on the basis of his/her nationality, after a request for extradition.

4. When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.

5. Without prejudice to the norms of general international law, this Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with national law.

**CHAPTER VI – INTERNATIONAL CO-OPERATION****ARTICLE 34 – GENERAL PRINCIPLES AND MEASURES FOR INTERNATIONAL CO-OPERATION**

1. The Parties shall co-operate with each other, in accordance with the provisions of this Convention, and through application of relevant [applicable] international and regional instruments, arrangements agreed on the basis of uniform or reciprocal legislation, and domestic laws, to the widest extent possible, for the purposes of preventing and combating trafficking in human beings as well as protecting and assisting victims.

2. The Parties shall co-operate with each other and through application of relevant [applicable] international and regional instruments on international co-operation in criminal matters, arrangements agreed on the basis of uniform or reciprocal legislation, and domestic laws, to the widest extent possible for the purposes of investigations or proceedings concerning criminal offences established in accordance with this Convention.

**(ARTICLE 35 – DELETED)****(ARTICLE 36 – DELETED)****(ARTICLE 37 – MERGED WITH ARTICLE 41)****ARTICLE 38- MEASURES RELATING TO ENDANGERED PERSONS**

1. When a Party, on the basis of the information at its disposal has reasonable grounds to believe that the life, the freedom or the physical integrity of a person referred to in Article 28, paragraph 1, is in danger on the territory of another Party, the Party that has the information shall transmit it without delay to the latter so as to take the appropriate protection measures.

2. The Parties shall co-operate with each other, to the widest extent possible, for the purposes of re-location of persons referred to in the preceding paragraph, either within their territory or the one of another Party to this Convention, where it is necessary in order to provide them effective and appropriate protection.

**ARTICLE 38 Bis - .....**

All information requested concerning Articles 14, 15 and 16, necessary to provide the rights conferred by these Articles, shall be transmitted at the request of the Party concerned without delay with due respect to Article 12 of the present Convention.

**(ARTICLE 39 – DELETED)****(ARTICLE 40 – DELETED)****ARTICLE 41 – INFORMATION**

1. The requested Party shall promptly inform the requesting Party of the final result of the action taken under this chapter. The requested Party shall also promptly inform the requesting Party of any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly.

2. A Party may, within the limits of its domestic law, without prior request, forward to another Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request for co-operation by that Party under this chapter.

3. Prior to providing such information, the providing Party may request that it be kept confidential or used subject to conditions. If the receiving Party cannot comply with such request, it shall notify the providing Party, which shall then determine whether the information should nevertheless be provided. If the receiving Party accepts the information subject to the conditions, it shall be bound by them.

**CHAPTER VII – MONITORING MECHANISM****ARTICLE 42 – IMPLEMENTATION OF THE CONVENTION**

1. The [Committee of Ministers of the Council of Europe][Group of experts on action against trafficking in human beings (hereinafter referred to as “GRETA”)] shall monitor the implementation of this Convention by the Parties. [To this end, the Committee of Ministers shall be assisted in carrying out the procedure described in Article 43 by a Group of experts on action against trafficking in human beings (hereinafter referred to as “GRETA”),][GRETA shall be] composed of members with a recognized competence in the field of action against trafficking in human beings.

2. GRETA shall be composed of a minimum of [5] [10] members and a maximum of 15 members, taking into account a gender and geographical balance, as well as a multidisciplinary expertise. They shall be elected by the Committee of Ministers for a term of office of 4 years, renewable once.

3. The election of the members of GRETA shall be based on the following principles:

- [(a) they shall be chosen from among persons of high moral character, known for their recognised competence in the field of the action against trafficking in human beings or having professional experience in the areas covered by this Convention;
- (b) they shall sit in their individual capacity and shall be independent and impartial in the exercise of their functions and shall be available to carry out their duties in an effective manner;
- (c) no two members of GRETA may be nationals of the same State;
- (d)
- (e)
- (f).....]<sup>9</sup>

4. The election procedure of the members of GRETA shall be determined by the Committee of Ministers within a period of one year following the entry into force of this Convention. GRETA shall establish its own rules of procedure which will be adopted by the Committee of Ministers.

### **ARTICLE 43 – PROCEDURE**

1. The evaluation procedure shall be divided in rounds, the length of which is determined by GRETA. At the beginning of each round GRETA shall select the specific provisions on which the evaluation procedure shall be based. During the first round, the evaluation shall concern Chapters II to VI of the present Convention.

2. GRETA shall adopt a questionnaire for each evaluation round, which will serve as a basis for the evaluation of the implementation by the Parties of the present Convention. This questionnaire shall be addressed to all Parties.

3. GRETA shall examine the answers to the questionnaire and may request, if necessary, additional information. GRETA may request information from the civil society.

4. GRETA may organize, in co-operation with the national authorities and the “contact person” appointed by the latter, and, if necessary, with the assistance of independent national experts, country visits. During these visits, GRETA may be assisted by specialists in specific fields.

5. GRETA shall prepare a draft report containing its analysis concerning the implementation of the provisions on which the evaluation is based, as well as its suggestions and proposals concerning the way in which the Party concerned may deal with the problems which have been identified. The draft report shall be transmitted for comments to the Party which undergoes the evaluation. Its comments are taken into account by GRETA when establishing its report.

6. [The reports of GRETA shall be transmitted to the Committee of Ministers.] On the basis of these reports, [the Committee of Ministers][GRETA] shall adopt its conclusions concerning the adequacy of the measures taken by the Party concerned to implement the provisions of the present Convention. It may also adopt recommendations to this Party and set a date for submitting information of their implementation.

#### **OPTION 1**

7. The conclusions and recommendations of the Committee of Ministers shall be made public as from their adoption. The report of GRETA shall be made public at the same time as the conclusions and recommendations of the Committee of Ministers. The eventual comments by the Parties on the report of GRETA shall be made public at the same time as the conclusions and recommendations of the Committee of Ministers and the report of GRETA.

#### **OPTION 2**

7. The report of GRETA, as well as its conclusions and recommendations, shall be made public as from their adoption, together with the eventual comments by the Parties.

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<sup>9</sup> This paragraph will be examined at the next meeting of the CAHTEH in the light of any proposals from delegations.

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**(ARTICLE 44 – PARTICIPATION IN THE COMMITTEE OF MINISTERS BY PARTIES WHICH ARE NOT MEMBERS OF THE COUNCIL OF EUROPE**

The Committee of Ministers shall invite a representative from each non-member Party to attend the meetings of the Committee of Ministers whenever it exercises its functions under this Convention, with the right to participate in the adoption of decisions in the context of the monitoring mechanism].

**CHAPTER VIII – RELATIONSHIP WITH OTHER INTERNATIONAL INSTRUMENTS****ARTICLE 45 – RELATIONSHIP WITH THE PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME**

This Convention shall not affect the rights and obligations derived from the provisions of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime, and is intended to **enhance** the protection afforded by it and develop the standards contained therein.

**ARTICLE 46 – RELATIONSHIP WITH OTHER INTERNATIONAL INSTRUMENTS**

1. This Convention shall not affect the rights and obligations derived from other international instruments to which Parties to the present Convention are Parties or shall become Parties and which contain provisions on matters governed by this Convention.
2. The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it or, without prejudice to the objectives and principles of this Convention, submit themselves to rules on this matter within the framework of a special system which is binding at the moment of the opening for signature of this Convention.
3. Nothing in this Convention shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

**CHAPTER IX – AMENDMENTS TO THE CONVENTION****ARTICLE 47 – AMENDMENTS**

1. Any proposal for an amendment to this Convention presented by a Party shall be communicated to the Secretary General of the Council of Europe and forwarded by him or her to the member States of the Council of Europe, any signatory, any State Party, the European Community, to any State invited to sign this Convention in accordance with the provisions of Article 48 and to any State invited to accede to this Convention in accordance with the provisions of Article 49.
2. Any amendment proposed by a Party shall be communicated to GRETA, which shall submit to the Committee of Ministers its opinion on that proposed amendment.
3. The Committee of Ministers shall consider the proposed amendment and the opinion submitted by GRETA and, following consultation of the non-member States Parties to this Convention, may adopt the amendment.
4. The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this Article shall be forwarded to the Parties for acceptance.
5. Any amendment adopted in accordance with paragraph 3 of this article shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

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## CHAPTER X – FINAL CLAUSES

### ARTICLE 48 – SIGNATURE AND ENTRY INTO FORCE

1. This Convention shall be open for signature by the member States of the Council of Europe, the non member States which have participated in its elaboration and the European Community.
2. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
3. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which [5][10] States, including at least [3][8] member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of the preceding paragraph.
4. In respect of any State mentioned in paragraph 1 or the European Community, which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

### ARTICLE 49 – ACCESSION TO THE CONVENTION

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties, invite any non-member State of the Council of Europe, which has not participated in the elaboration of the Convention, to accede to this Convention by a decision taken by the majority provided for in Article 20 *d.* of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.
2. In respect of any acceding State **or** the European Community, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

### ARTICLE 50 – TERRITORIAL APPLICATION

1. Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
2. Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

### (ARTICLE 51 – RESERVATIONS

No reservation may be made in respect of any provision of this Convention, with the exception of Article 33, paragraph 2.]<sup>10</sup>

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<sup>10</sup> A decision on this Article will be made once the text of draft Convention is finalised.

**ARTICLE 52 – DENUNCIATION**

1. Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

**ARTICLE 53 – NOTIFICATION**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, any State signatory, any State Party, the European Community, to any State invited to sign this Convention in accordance with the provisions of Article 48 and to any State invited to accede to this Convention in accordance with the provisions of Article 49 of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 48 and 49;
- d any amendment adopted in accordance with Article 47 and the date on which such an amendment enters into force;
- e any denunciation made in pursuance of the provisions of Article 52;
- g any other act, notification or communication relating to this Convention, in particular relating to Article 43, paragraph 4, of this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at ..., this ....., in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, to the European Community and to any State invited to accede to this Convention.