



Council of Europe: Recommendations to Strengthen the October 2004 Draft of the European Convention on Action against Trafficking in Human Beings

Summary

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The Council of Europe's Committee of Ministers 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 design a comprehensive gender-sensitive framework for the protection of the human rights of victims of trafficking, as well as focusing on prevention, investigation, prosecution and international cooperation.

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 have assessed the October 2004 draft of the European Convention against Trafficking in Human Beings in relation to existing international standards and commitments. In the light of this analysis and our experience in working with and on behalf of trafficked persons, we recommend ways in which the current text can be amended to ensure that the treaty adopted will fulfil its stated aims. If it succeeds in doing this, the Council of Europe will fill a significant gap, since today there are no international treaties on trafficking which comprehensively address states' obligations to respect and protect the rights of trafficked persons.

In particular, Amnesty International and Anti-Slavery International recommend that the European Convention against Trafficking identify trafficking of human beings as a human rights violation and as an offence to the dignity and integrity of the human being.

Given the importance and difficulties of accurately identifying individuals as trafficked persons, as well as the risks of failure to do so (including to their lives and safety and successful law enforcement efforts), the organizations recommend strengthening draft Article 10 to ensure that the task of identification is carried out by persons who have been trained to do so and are experienced in assisting trafficked persons.

Amnesty International and Anti-Slavery International recommend strengthening Articles 10-16 and 25 and 27 of the draft treaty to ensure that states are required to ensure the availability and

accessibility of a full range of measures to respect and protect the rights of trafficked persons and to assist them. The Convention should require that such measures be provided on a fully informed and consensual basis. Legal assistance, including legal aid, should be available. Protection, services and assistance should be based on individualized periodic assessments of need, undertaken by appropriately trained persons. Amendment to the definition (set out in Article 4(e)) is necessary to ensure that such measures are offered and available as soon as there are reasonable grounds to believe that a person is or has been a victim of trafficking.

We recommend that Article 13 set out a minimum reflection period of three months, during which time trafficked persons should be allowed to remain in the country and have access to a full range of protection, assistance and services, so as to allow them to begin to recover and/or to make informed decisions about their future, in security.

We welcome the amended provisions of article 14 that require States Parties to provide for the possibility of granting trafficked persons residence permits, but recommend that it be strengthened by: setting out a minimum six-month length of temporary, renewable residence permits; and by expressly providing for the issuance of permanent residence permits and the possibility of family reunification .

With respect to Article 16, we recommend that repatriation to *any* state should occur only after a risk assessment, and only if such return is consistent with respect for the rights safety and dignity of the trafficked person. Involuntary return should be prohibited if there is a risk to their lives or safety, including a risk of re-trafficking.

We urge CAHTEH to adopt a formulation of Article 25 which 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.

Amnesty International and Anti-Slavery International urge the CAHTEH amend provisions of Articles 10 and 12 to ensure that they are consistent with internationally guaranteed rights of children.

Preventative measures, including border controls (Article 7) should be carried out in a manner that is consistent with human rights, including the right to seek and enjoy asylum. In relation to criminal measures, Article 33 on jurisdiction should be strengthened in a manner consistent with provisions of a number of international treaties, so as to ensure, as far as possible, that there are no safe havens for those responsible for trafficking.

Amnesty International and Anti-Slavery International also make recommendations about the proposed treaty monitoring body. Its members should be chosen in fair and transparent process, involving consultation with civil society. It should monitor the implementation by States Parties to the treaties through periodic reporting and the consideration of collective complaints. It should be able to receive and consider information from any source and make country visits.

In addition we call on the Council of Europe and its 45 member states to inform their views on this draft treaty through consultation with members of civil society, in particular those who work with and on behalf of trafficked persons.

This report summarizes a 34-page document: *Council of Europe: Recommendations to Strengthen the October 2004 draft of the European Convention on Action against Trafficking in Human Beings* (AI Index: IOR 61/024/2004) issued by Amnesty International and Anti-Slavery International November, 2004. Anyone wishing further details or to take action on this issue should consult the full document.