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Amnesty International's General Recommendations on the draft European Convention against Trafficking in Human Beings

Introduction:

As the number of people in the Council of Europe region who are affected by this contemporary form of slavery has dramatically increased over the last decade, Amnesty International welcomes the Council of Europe's focus on trafficking of human beings.

Trafficking is an abuse of human rights. It results in the abuse of the human rights of trafficked persons including the rights to: physical and mental integrity; life; liberty; security of the person; dignity; freedom from slavery, slavery-like practices, torture and other inhuman or degrading treatment; family life; freedom of movement; privacy; the highest attainable standard of health; and safe and secure housing. Measures addressing trafficking must place the protection and respect of these rights at their core, as well as the right of trafficked persons to effective redress, including reparation, for the human rights abuses to which they have been subjected.

Amnesty International has welcomed the recognition by the Council of Europe's Committee of Ministers that there is a need to develop additional standards which improve the protection of the rights of trafficked persons. We therefore welcome the Committee of Minister's mandate to the *Ad Hoc Committee on Action against Trafficking* (CAHTEH) to draft a European Convention against Trafficking in Human Beings which designs a comprehensive, gender-sensitive framework for the protection of the human rights of trafficked persons focusing on prevention, investigation, prosecution and international cooperation.

In order to fulfil this mandate, the Council of Europe and its Member States must ensure that the provisions of the treaty which it proposes *enhance* the protection of the rights of trafficked persons. This will require a text which *improves* on the provisions set out in existing international treaties and many existing state laws, as well as principles and guidelines issues by specialised international agencies. It will require states to take particular measures to protect and respect the rights of trafficked persons.

If it succeeds in doing this, the Council of Europe will fill a significant gap, as today there are no international treaties on trafficking that comprehensively address states' obligations to respect and protect the rights of trafficked persons.

Consultation with Civil Society

Amnesty International considers that to meet these aims, it is of vital importance that, throughout the drafting process and before the adoption of this treaty, each of the governments of the 45 Council of Europe Member States and the CAHTEH consult with trafficked persons and civil society,

in particular those individuals and organizations that work with or on behalf of trafficked persons. We regret that to date, most states have not held such consultations. We therefore call on the 45 Council of Europe Member States to consult such persons, without further delay, and to inform their views on the provisions of this treaty on the basis of such consultations.

Identification of Trafficking as a Human Rights Violation:

Amnesty International considers that it is important that this treaty identifies trafficking in human beings as a violation of human rights, 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 would be consistent with other instruments previously adopted by the Council of Europe, the European Union, the Organization for Security and Cooperation in Europe and the United Nations.

Trafficked Children

The European Convention against Trafficking in Human Beings must address the fact that many victims of trafficking are children. Amnesty International considers that the provisions of this draft treaty should be reviewed to ensure that they are consistent with international standards for the protection of the rights of children. The treaty must address the specific forms of exploitation to which children are subjected and the dependency of children on adults. The Convention should ensure that a child rights-based approach is adopted in relation to anyone aged under 18 who is suspected of having been trafficked. In defining the specific ways in which children are to be protected, we urge that this convention be explicit rather than referring in a generic way to the "special needs of children". Among others, there should be express provisions which require states to ensure that: actions taken with regard to trafficked children must be taken in the best interests of the child; a legal guardian is appointed to represent the interests of the child; that the child is afforded the right to make his or her wishes known and, that such wishes are given due weight, in accordance with the child's age and maturity.

Identification

The protection and respect for the rights of trafficked persons requires states to ensure that trafficked persons are promptly and accurately identified. Given the importance and difficulties of accurately identifying individuals as trafficked persons, as well as the risks of a failure to do so to their lives and safety and law enforcement efforts against perpetrators, Amnesty International urges that the Convention against Trafficking in Human Beings require states to ensure that the authorities who have the responsibility of identifying trafficked persons, are adequately trained and qualified to carry out this task in a gender-and-culturally, and where applicable, child rights-sensitive manner. We also recommend that persons not so identified be granted access to appeal to an independent, impartial and competent body.

Protection and Assistance Measures; Training; Information

Amnesty International considers that the European Convention against Trafficking in Human Beings should require states to ensure the availability and accessibility of a full range of measures to assist trafficked persons and respect and protect their rights and persons. Such measures should be provided on a fully informed and consensual basis, based on a periodic individualized assessment of their needs, undertaken by appropriately trained persons

All such measures should respect the dignity and privacy of the trafficked person. Such protection, services and assistance, as well as preventative measures, must respect the right to seek and enjoy asylum and other forms of international protection. Where effective protection in a country is not available, states must ensure protection in another country. Protection measures must also be available

to, and when appropriate, extended to the families of trafficked persons and others, including those who cooperate with law enforcement authorities or judicial authorities and those who provide services to trafficked persons.

The European Convention against Trafficking in Human Beings should require states to ensure that all authorities who are likely to come into contact with trafficked persons, (including police, immigration officials, officials who determine asylum claims, members of judiciary, lawyers (including prosecutors), NGOs, doctors, social service professionals, labour inspectors), are adequately trained and sensitized about the status and needs and rights of trafficked persons as victims of human rights abuses and crime. Particular attention should be paid to women, children and other vulnerable groups.

The treaty should require states to provide information about the avenues of redress and services available to trafficked persons, and about how to access these in a language they understand. States should provide the following protection, assistance and services, among others: safe and secure housing, material assistance, medical and psychological care, legal services, translation and interpretation, and education (particularly for children), vocational guidance and training and access to the labour market. This will enable persons to begin to recover, take steps toward emotional and financial independence, permit them to avail themselves of available avenues of redress, and will render them less vulnerable to further human rights abuses, including re-trafficking. Such services must not be conditioned on the agreement of a person to cooperate with law enforcement efforts to bring the perpetrators to justice.

Recovery and Reflection Period

Amnesty International recommends that the treaty expressly require states to ensure a sufficient reflection and recovery period of a minimum of 3 months, during which time, any person reasonably believed to have been trafficked should be allowed to remain in the country, and have access to a full range of assistance, protection and services, so as to allow them to begin to recover *and/or* to make informed decisions about their future (including willingness to cooperate in law enforcement efforts against their traffickers), in security. The person's status in the country during this time must be regularized and recognized, including by the issuance of appropriate official documentation.

Cooperation with Organizations

The European Convention against Trafficking in Human Beings should require states to cooperate with, and, where relevant, provide support to qualified organizations who work with or on behalf of trafficked persons. Services should be provided to meet the individual's needs, as assessed by suitably qualified support personnel.

Renewable and Permanent Residence Permits

The European Convention against Trafficking in Human Beings should require State Parties to issue renewable residence permits, of a minimum length of six months, and permanent residence permits to trafficked persons, on the basis of periodic needs and risk assessments which are carried out by suitably trained and sensitized individuals; and such permits should not be conditioned on the agreement of the trafficked person to cooperate with law enforcement efforts. Renewal of residence permits should also occur in compliance with other national and international laws, including the right to seek and enjoy asylum. Family reunification should be available.

Repatriation and Resettlement

The European Convention against Trafficking in Human Beings should require that repatriation of a trafficked person to *any* state (including the country of origin) should be preferably voluntary, assisted and only take place after a needs and risk assessment is conducted. It must provide that all such returns must be consistent with respect for the rights of the trafficked person, including the rights to dignity and privacy. Consistent with international standards, the treaty should expressly prohibit repatriation to a country if there is a risk to the life or safety of the trafficked person, including a risk of re-trafficking. State Parties to this treaty must be required to ensure the provision of repatriation assistance and support. In the case of any trafficking victim under 18, states should be required to ensure that a legal guardian is available and appointed in the country to which a young person might be repatriated before proceeding with repatriation. If remaining in a country of destination or returning to the country of origin is not a safe and viable option for a trafficked person, states should be required to ensure their protection in a third country.

Reparation

This treaty should require State Parties to ensure the rights of trafficked persons to all internationally recognized forms of reparation, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition. To these ends, the treaty should ensure access to justice for trafficked persons. Trafficked persons should be permitted to remain in a country while they are pursuing avenues of redress, including claims for reparation. States should also be required to consider establishing a fund from trafficking proceeds for these purposes. However, the treaty should clarify that the absence of such a fund does not relieve a state of its obligations to ensure reparation to trafficked persons.

Non-Punishment of trafficked persons

The European Convention against Trafficking in Human Beings should expressly prohibit 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.

Preventative Measures

With regards to preventative measures, the European Convention against Trafficking in Human Beings should contain provisions that border controls and other such measures (including carrier regulations and sanctions) are carried out in a manner consistent with the rights to seek and enjoy asylum and to privacy. The European Convention against Trafficking in Human Beings should also require states to take specific and concerted individual and cooperative measures to address the root causes of trafficking and provide and increase avenues for safe, legal migration.

Criminal Measures

In relation to criminal measures, among others, Amnesty International welcomes the provisions that ensure that the intentional unauthorised retention, removal or destruction of the identity or travel documents of another person for the purpose of enabling trafficking is criminalized. The treaty should also require states to ensure that those without them are furnished with identity documents without delay, without being required to return to their country of origin or provide testimony to their embassy or authorities of such countries.

It is well established that trafficking flourishes in conflict and 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 in territory within the effective control of the state. The European Convention against Trafficking in Human Beings should require states to exercise jurisdiction over trafficking and related offences against or by persons or in territory within its effective control.

Monitoring Body

Amnesty International urges that this treaty establish an independent expert body to regularly and periodically monitor its implementation by State Parties. This body should be comprised of persons who are experts in the fields of trafficking and the protection of human rights of trafficked persons, and should include experts from countries of destination, transit and origin within the Council of Europe region who have worked with and on behalf of trafficked persons. State Parties should be required to submit regular reports on the implementation of each of the parts of the treaty. The body should seek and consider the views of civil society about the implementation of the treaty by a State Party. The body should be empowered to make on-site visits and to receive and consider collective complaints. Its reports (including recommendations) and the results of its consideration of collective complaints should be made public on adoption. Its recommendations should be reviewed and reinforced by the Council of Europe's Committee of Ministers, which should play a role in ensuring the implementation of such recommendations.