

Council of Europe Convention against Trafficking:

14 Recommendations to ensure the election of independent experts of the highest calibre to monitor implementation

1. Introduction.....	3
2. The Group of experts on action against trafficking in human beings (GRETA) – functions, responsibilities and composition.....	4
<i>Mandate and working methods</i>	5
<i>Composition and criteria for membership</i>	6
<i>The election procedure and the processes of selection and nomination of candidates</i>	6
3. Recommendations on the election of members and the selection of candidates	7
a) <i>First steps: Clarification of requirements and modalities of the election procedure</i>	7
b) <i>Selection and nomination of candidates</i>	10
c) <i>Election procedure</i>	15
4. Conclusion	18
1. Introduction.....	2
2. The Group of experts on action against trafficking in human beings (GRETA) – functions, responsibilities and composition.....	3
 <i>Mandate and working methods</i>	4
 <i>Composition and criteria for membership</i>	5
 <i>The election procedure and the processes of selection and nomination of candidates</i>	5
3. Recommendations on the election of members and the selection of candidates	6

<i>a) First steps: Clarification of requirements and modalities of the election procedure</i>	6
<i>b) Selection and nomination of candidates</i>	10
<i>c) Election procedure</i>	14
<u>4. Conclusion</u>	18

1. Introduction

The coming into force of the Council of Europe Convention on Action against Trafficking in Human Beings¹ on 1 February 2008 holds out promise to the untold numbers of persons in Europe who are being bought and sold for the purposes of exploitation. Trafficked persons are typically used to do “dirty, dangerous and degrading” work such as domestic labour, farming, manufacturing construction, hospitality and forced sex work.

In the course of their ordeal, the very human dignity of persons who are trafficked is violated. In the trafficking process trafficked persons are typically subjected to myriad violations of their human rights. Some do not survive.

For those that do, when they come to the attention of the authorities, rather than being recognized as victims of a heinous crime, whose rights have been abused, typically trafficked persons are treated as criminals and/or unlawful migrants to be deported as soon as possible. In cases in which the authorities pursue their trafficker, trafficked persons are regarded only as useful tools of the criminal justice system. The psychological, medical and social consequences of the ordeal to which they have been subjected and the underlying root causes (including the “push” and “pull” factors) are rarely addressed. Assistance, when offered to trafficked people to recover, is frequently made conditional on their agreement to cooperate in prosecutions against their traffickers. Such cooperation frequently places trafficked persons and members of their families in further danger at the hands of the traffickers. Access to justice including redress, compensation, restitution and rehabilitation, for the abuses that they have suffered is rare. Non-nationals without rights to residence in the country in which they are found are frequently deported without consideration of the risks that they may face on return, be that re-trafficking or other violence at the hands of their traffickers or others.

However, the states that have become parties to the Council of Europe Convention against Trafficking, have taken an important step towards changing this. They have committed themselves not only to taking individual and collective action to prevent and criminalize trafficking and to bring those responsible to justice, but also to taking a range of minimum steps necessary to respect and protect the rights of trafficked persons.

In order for the promises of the Convention to be realised, however, it is important that also the other member and observer states of the Council of Europe (CoE) and the European Community become parties to the treaty; and that they fully implement the provisions of the Convention.²

¹ Hereafter the Council of Europe Convention against Trafficking or just the Convention.

² According to Article 42 of the Convention, the treaty is open to ratification by all CoE member states and non-member states that have participated in its elaboration as well as to the European Community. Other states can also be invited to accede to the Convention. The full text of the Convention and the list of signatories and parties to this treaty are available at:

<http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG> (CETS No.: 197).

The establishment by 1 February 2009 of the Convention's monitoring mechanism – the *Group of Experts on action against Trafficking in Human Beings* (known as GRETA) – is intended to ensure the full and effective implementation of the Convention by each of the parties. In order for this body to fulfil its mandated role, however, each person elected to it must be independent, truly expert in the range of relevant fields and possess the necessary skills and competencies to carry out the work required of a member of GRETA. In addition, GRETA must be provided with the necessary financial and human resources to carry out its work.

To this end, Amnesty International makes the following 14 recommendations to the parties to the Convention and the Committee of Ministers, who will nominate, elect and ensure the resources for this body. These recommendations are based on Amnesty International's extensive experience of observing a variety of international and regional treaty monitoring and implementation mechanisms.

Amnesty International considers that the establishment by the parties and the Committee of Ministers of open and transparent procedures for the nomination and the election of the most highly qualified and independent candidates to serve as experts on GRETA, and providing it with adequate resources will go a long way to ensuring that the GRETA will effectively fulfil its role of assisting parties in implementing the Convention through authoritative analysis of the incidence of trafficking and implementation of the Convention by each party and insightful recommendations.

2. The Group of experts on action against trafficking in human beings (GRETA) – functions, responsibilities and composition

The Council of Europe Convention against Trafficking establishes a two pillar system for monitoring implementation of the Convention. One pillar is an inter-governmental political body, the *Committee of the Parties*. As its name suggests, this body is composed of representatives of the parties to the Convention.³ The other body is a body of independent experts called *the Group of Experts on action against trafficking in human beings (GRETA)*. The members of GRETA are elected by the Committee of the Parties.

³ In particular, in accordance with Article 37(1) of the Convention, parties that are CoE member states will be represented on the Committee by the party's representative to the CoE's Committee of Ministers; those parties which are not members of the Council of Europe may choose their representatives.

Mandate and working methods

GRETA is mandated to monitor the implementation of the Council of Europe Convention against Trafficking by parties to this treaty.⁴

While the Convention empowers GRETA to define the means to carry out its evaluation of the parties' implementation of the Convention, and to adopt its own rules of procedure,⁵ Article 38 sets out a framework for GRETA's work. It is to evaluate the implementation of the Convention in cycles. In each cycle, the GRETA will focus on evaluating the implementation by each of the parties of a number of specific provisions of the treaty. The GRETA is empowered to determine both the length of the cycles and the specific provisions which it will review in each cycle.⁶ The Convention specifies that GRETA may adopt a questionnaire for each cycle as a basis for its evaluation. Parties to the Convention against Trafficking are required to respond to any such questionnaire as well as any other requests for information by GRETA, in order to enable GRETA to evaluate their implementation of the Convention.⁷ GRETA may also request information from civil society.⁸ In addition, in co-operation with national authorities and with the party's "contact person", the GRETA may carry out country visits; during these visits it may be assisted by independent national experts or other specialists.⁹

The conclusions of the evaluation of the measures taken by each party to implement the provisions of the Convention, which are reviewed during the cycle, will be set out in a report containing GRETA's analysis and recommendations to rectify gaps in implementation identified. The reports and conclusions of GRETA are to be made public after their adoption by GRETA. Comments by the party concerned are also to be made public.¹⁰

On the basis of the report and conclusions of GRETA, the Committee of the Parties may also adopt recommendations on measures to be taken by a party to implement GRETA's conclusions. The Committee of the Parties may fix a time frame within which the party is to submit information on measures taken to implement GRETA's conclusions. The Committee of Parties may also make recommendations "aiming at promoting cooperation with that Party" to ensure proper implementation of the Convention.¹¹

⁴ Article 36(1) of the Council of Europe Convention against Trafficking.

⁵ Articles 36(4) and 38(2) of the Council of Europe Convention against Trafficking.

⁶ Article 38(1) of the Council of Europe Convention against Trafficking.

⁷ Article 38(2) of the Council of Europe Convention against Trafficking.

⁸ Article 38 (3) of the Council of Europe Convention against Trafficking.

⁹ Article 38(4) of the Council of Europe Convention against Trafficking.

¹⁰ Article 38 (5) of the Convention requires GRETA to submit a draft of the report to the party for comments. Any comments of the party are to be "taken into account by GRETA when establishing its report."

¹¹ Article 38(7) of the Council of Europe Convention against Trafficking.

Composition and criteria for membership

The composition of the GRETA, the minimum criteria for membership, as well as the main principles for the election of experts to serve on GRETA, are set out in Article 36 of the Convention.

GRETA shall be composed of 10 to 15 members. The Convention requires that its composition “tak[e] into account a gender and geographical balance, as well as multidisciplinary expertise” among the members.¹² Its members should represent the “main legal systems”.¹³

The Convention requires that those elected to GRETA:

- be of “high moral character”;
- possess “recognised competence in the field of Human Rights, assistance and protection of victims and of action against trafficking in human beings”;
- have “professional experience in the areas covered by this Convention”;
- perform their functions in their “individual capacity”;
- be “independent and impartial in the exercise of their functions”; and
- be “available to carry out their duties in an effective manner”.

Furthermore, members must be nationals of the states parties to the Convention and no two members of GRETA shall be nationals of the same state. The term of office of members of GRETA is four years, renewable only once.¹⁴

The election procedure and the processes of selection and nomination of candidates

The Convention does not specify a procedure for the selection and nomination of candidates for the election to GRETA.

The Convention does, however, state that GRETA’s members are to be elected by the Committee of the Parties at their first meeting within a year of the entry into force of the Convention.

The Committee of Ministers is tasked with determining the procedure for the election of the members of GRETA. In doing so they are required to consult and obtain the unanimous consent of all parties to the Convention.¹⁵

Thus the elections should take place by 1 February 2009. The election procedure must therefore be agreed well in advance of that date.

¹² Article 36(2) of the Council of Europe Convention against Trafficking.

¹³ Article 36(3)(d) of the Council of Europe Convention against Trafficking.

¹⁴ Articles 36(2) and 36(3) of the Council of Europe Convention against Trafficking.

¹⁵ Article 36(4) of the Council of Europe Convention against Trafficking.

3. Recommendations on the election of members and the selection of candidates

Amnesty International makes the following set of recommendations to ensure fair and transparent procedures for the selection and nomination of candidates and the election of members to be held by 1 February 2009. Putting in place such procedures will contribute to the election of a gender-balanced, multi-disciplinary group of independent and impartial experts, who possess the highest levels of the requisite competences and experience, to discharge GRETA's mandate in a way that will assist parties in fulfilling their obligations under the Convention in a manner which protects and affords enhanced human rights protection.

a) First steps: Clarification of requirements and modalities of the election procedure

<p>Recommendation 1: The Committee of Ministers should adopt, publish and disseminate a <i>Decision</i>, which includes the deadline, modalities and requirements for the nomination of candidates for the election of GRETA without delay.</p>
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Given that no procedures for the nomination of candidates for the election to GRETA are spelled out in the Convention, as a first step in determining the procedure for election, the Committee of Ministers and the parties should promptly agree a timeframe and the modalities and requirements for the submission of nominations for the election. The formulation of this information in an official document, such as a *Decision*, will ensure that it is taken into account by the relevant officials in states which are parties, and that it is made public without delay.

Amnesty International urges that the deadline set for submission of nominations leave sufficient time for the careful examination of the qualifications of each of the candidates prior to the election. As noted below, in addition to the consideration of the nominations by the Committee of the Parties, the organization considers that a consultative body established by the Committee of Ministers and the Parliamentary Assembly of the Council of Europe (PACE) should be involved in and provided with sufficient time to review and form an opinion on the candidates put forward by nominating states, and whether the selection and nomination procedure at the national level was carried out in a satisfactory manner and (see Recommendations 10 and 11 below).

In view of the Convention's requirements that the GRETA be a multidisciplinary, geographically balanced group that represents the main legal systems, composed of nationals of the parties to the Convention, and that no two members of GRETA may be nationals of the same state¹⁶, Amnesty International urges the Committee of Ministers to recommend that each

¹⁶ Article 36(2), 36(3)(d) and 36(3)(c) of the Council of Europe Convention on Action against Trafficking in Human Beings, respectively.

of the parties to the Convention submit a list of a minimum of 2 to 4 nominees as candidates for the election.

Given the requirement within the Convention that GRETA be gender balanced, Amnesty International considers that nomination lists must also be gender-balanced. Doing so, would be consistent with Recommendation No. R (81) 6 of the Committee of Ministers, (of 30 April 1981), which calls on Council of Europe member states to “nominate candidates of both sexes for committees and other bodies set up by election in the Council of Europe”.¹⁷ Council of Europe bodies and organs have not achieved this gender balance. For example, out of 45 judges at the European Court of Human Rights currently only 15 are women; and among the 45 members of the Committee for the Prevention of Torture (CPT) there are at the moment only 13 women.¹⁸ The requirement for states to submit gender-balanced nomination lists should therefore be set out in the *Decision* of the Committee of Ministers relating to the modalities for the nomination of candidates for the election to GRETA; and it should be strictly adhered to.

Also, Amnesty International considers that the adoption of requirements that all nominations and the dossiers of each candidate be submitted in a standardized format (including e.g. a standardized format for CVs and documentation to support nominations), would facilitate the comparative assessment of their credentials. At a minimum the dossier should include detailed information on the qualifications; relevant experience, established competence, as well as proof of the commitment of the candidates to the principles of the Council of Europe and their availability and flexibility to carry out the functions as members of GRETA. Furthermore, it should contain a formal statement of the nominating state setting out the reasons for the appointment of each candidate it nominates¹⁹; and candidates should make a written declaration explaining how they could contribute to the work of GRETA. The names of the nominees and their dossiers should be made public by the Committee of Ministers, immediately following the closing date for the submission of nominations and posted on the CoE website.

Moreover, the organization urges the Committee of Ministers and the parties to require the nominating parties to submit, along with any nomination, an explanation of the procedure that has been used for the identification, selection and nomination of the candidates. Such

¹⁷ Recommendation No. R (81) 6: On the Participation of Women and Men in An Equitable Proportion In Committees and Other Bodies Set Up in the Council of Europe, Adopted by the Committee of Ministers on 30 April 1981, at the 333rd meeting of the Ministers' Deputies.

¹⁸ NB: The Court as well as the CPT have 47 seats each – one per member state of the Council of Europe. However, at both institutions two seats are currently vacant. The proportion between male and female members of the Advisory Committee on the Framework Convention for the Protection of National Minorities (11 men, 7 women) and of the European Committee of Social Rights (9 men and 6 women) is only marginally better.

¹⁹ A similar practice is established, for example, under Article 36.4.(a) of the Rome Statute of the International Criminal Court, which requires that for the purposes of the election of judges nominations “shall be accompanied by a statement in the necessary detail specifying how the candidate fulfils the requirements ...”

explanation should be made public, upon its submission. The inclusion of this requirement may encourage states to ensure fair, open and transparent nomination and selection processes.

Given the importance that procedures for nomination and selection of candidates for election are and are perceived to be open, inclusive, fair and transparent the organization also urges the Committee of Ministers and the parties to include in such a decision, recommendations to parties for the conduct of the nomination and selection process. Amnesty International believes that Recommendations 3 to 8 set out below may provide a useful model.

Recommendation 2: To clarify the content of the criteria set out in the Convention, the Committee of Ministers should develop and publish a list of the technical and objective requirements candidates for the election of GRETA must meet. The technical and objective requirements should be published together with a document which summarizes the mandate, functions and working methods of GRETA as set out in the Convention. This would ensure that selection and nomination processes at the national level will start as soon as possible and also ensure that all persons nominated meet the requisite criteria for election to GRETA.

Publication by the Committee of Ministers of a list of the technical and objective requirements for the election of individuals to the GRETA and an explanation of the function, mandate and framework of working methods of GRETA, would provide useful information for officials in member states, potential candidates and the public. It would facilitate the swift opening of national processes for the identification and selection of individuals eligible for nomination as candidates and election to GRETA.

Such a publication should contain: the requirements set out in the Convention, guidelines to assist in the interpretation of these requirements, and any additional competencies – such as proficiency in one of the two Council of Europe official languages; experience in analyzing legal provisions; research skills; communication skills etc. – which the Committee of Ministers and the parties consider would be key to facilitating and ensuring the quality of the work of GRETA.

The Convention against Trafficking requires that each member be a national of a party to the Convention, and that the person be of high moral character; have recognized competence in the fields of human rights, assistance and protection of trafficked persons or professional experience in the areas covered by the Convention.

In addition, the Council of Europe Convention against Trafficking in Human Beings, like many other international and regional human rights treaties²⁰, requires that each expert be

²⁰ Articles 28 and 31 of the International Covenant on Civil and Political Rights (ICCPR), Article 17 the Convention Against Torture (CAT), and Article 17 of the Convention on the Elimination of Discrimination Against Women (CEDAW) – stipulate that experts of the monitoring bodies established by each of those treaties shall be chosen from among individuals of high moral character, recognised competence in the areas covered by the treaty, who should serve in their personal capacity, and that consideration should be given to equitable geographical distribution and to the representation of different legal traditions.

independent and impartial in the exercise of their functions and that they sit in their individual capacity.²¹ Experience has shown that the mere listing of these criteria as requirement for membership in a treaty monitoring body have been insufficient to guarantee their fulfilment. Therefore, in addition to listing of these requirements, the Committee of Ministers should include guidelines for meeting them.

In particular with regard to requirements of independence, impartiality and serving in one's personal capacity, Amnesty International urges the Committee of Ministers to adopt an operational definition along the lines agreed by consensus by the UN Human Rights Council in June 2007 which states that "Individuals holding decision making positions in Government or in any other organization or entity which may give rise to a conflict of interest with the responsibilities inherent to the mandate shall be excluded."²² Such a guideline would reinforce the importance of both substantive independence and the appearance of independence of the members, which have proven crucial to the impartiality and objectivity of the work of such bodies.

In addition, such guidelines could for example specify some of the relevant fields or areas "covered by the Convention" – such as experience in provision of medical assistance, protection or treatment of trafficked persons; expertise in labour rights, the rights of migrants; women's, children's or victims' rights; mutual legal assistance; criminal law and so on.

Likewise the publication of such a document would be an opportunity for the Committee of Ministers and the parties to specify any additional recommended competences, which would facilitate the work of GRETA. Such competences could, for example include among others: proficient skills in communicating in one of the two official Council of Europe languages (French or English); experience in critically analyzing quantitative and qualitative data, identifying trends and articulating recommendations; experience in conducting academic and field research, which would be valuable including during country visits.

Preparation and publication of the recommended documents, without delay would facilitate the creation of meaningful processes at the national level to identify and select suitable candidates, without delay.

b) Selection and nomination of candidates

<p>Recommendation 3: All states eligible to do so should nominate independent and relevantly qualified candidates for the election of GRETA members.</p>

In accordance with the election procedure that will be determined by the Committee of Ministers (in consultation with the parties to the Convention), states should nominate at least between 2 to 4 suitable and relevantly qualified and experienced persons as candidates. This

²¹ Article 36(3)(b) of the Council of Europe Convention against Trafficking.

²² UN Document HRC/Res/5/1, (18 June 2007), at para 46.

will among other things provide the largest possible pool of qualified candidates for the election.

Recommendation 4: Each party should develop procedures to ensure an open, inclusive transparent and fair process for the attraction and selection of a gender-balanced pool of highly qualified persons, from a range of backgrounds relevant to the work of GRETA. The processes should result in the submission of a list of candidates, all of whom possess the requisite independence, impartiality, commitment to ensuring respect for human rights, established competence, and professional experience.

An open, inclusive, transparent procedure for the selection at national level by each of the parties of suitable individuals as candidates for election to GRETA will enhance the independence, credibility and authority – and thus the effectiveness of GRETA as a whole. Lack of transparency will have the opposite effect.²³

Undue restrictions or limitations to the selection and nomination procedure would risk unfairly excluding highly qualified candidates. The failure to consult civil society, to openly and publicly advertise such opportunities and to nominate candidates on the basis of bilateral agreements between an individual candidate and a state (as have been practice in some states), undermine the actual or perceived independence and impartiality of the individuals put forward as candidates for the election. Ultimately the presentation of candidates for election who are not fairly chosen in transparent and inclusive procedures could jeopardize the capacity of GRETA to make a substantial contribution to the protection of the human rights of trafficked persons and effective action against trafficking in accordance with the Convention.

Recommendation 5: To ensure that the nomination process is open, inclusive and transparent, all parties should ensure that the call for nominations and potential candidates to apply is widely publicized (and advertised) throughout the country.

²³ A recent PACE-Resolution on possible improvements to the selection procedures for CPT members and the explanatory memorandum to this resolution contain an analysis of states' practices in this respect and some useful proposals on national selection procedures. See Resolution 1540 (23007): *Improving selection procedures for CPT-members*, adopted by the Standing Committee acting on behalf of the Assembly, on 16 March 2007, see:

<http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta07/ERES1540.htm>. On the appointment of judges to the European Court of Human Rights, for example, the UK-based non-governmental organization Interights published a report, which spells out the flaws in the current nomination and election system and makes recommendations for changes; see Interights, *Judicial Independence: Law and Practice of Appointments to the European Court of Human Rights*, May 2003, <http://www.interights.org/doc/English%20Report.pdf>.

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To ensure transparency, openness, inclusiveness and fairness, as well as to encourage applications from a broad range of people who meet the requirements of competence, expertise and independence, the nomination process must be widely publicised.

The description of the required competencies in the Convention covers persons with expertise in a range of areas; it could embrace legal professionals, academics, professionals working in the areas of human rights, social workers and others involved in assisting and protecting trafficked persons, medical professionals, labour rights advocates (including members of trade unions and persons carrying out labour inspections) among others. It is thus important that the call for nominations and potential candidates to apply be publicized and advertised widely through the media – national, regional and local as well as specialized media – and other communication channels, including relevant newsletters and mailing lists as well as websites that are easily accessible and frequently visited, so that it reaches the widest pool of potentially eligible applicants.

The call for nominations should clearly set out :

- the role, function and working methods of GRETA
- the requisite skills, qualifications and competencies required
- the procedure for applications
- the closing date for applications.

As set in Recommendation 2 above, the development of relevant materials by the Committee of Ministers would facilitate this process. Furthermore, parties should be encouraged to share amongst themselves any other materials and procedures developed to ensure the open, transparent and fair selection of suitable candidates at the national level.

Parties should allow a reasonable time between the announcement and advertisement of the opening and closing of the call for applications. Furthermore, the closing date for applications should be set so as to permit sufficient time for the impartial and thorough screening of all applications – keeping in mind the Council of Europe’s closing date for the receipt of nominations.

The wide publication and dissemination of the above described information would also contribute to increasing public awareness about the Council of Europe Convention on Action against Trafficking in Human Beings and ultimately strengthen the acceptance and legitimacy of its treaty monitoring body. This could contribute significantly to GRETA gaining the credibility and authority it will require to effectively monitor compliance with the treaty and to strengthen implementation.

<p>Recommendation 6: States parties should actively encourage applications from qualified individuals from a wide range of geographical and professional backgrounds and in particular from women who meet the requisite criteria for election to GRETA.</p>

The Council of Europe Convention on Action against Trafficking in Human Beings requires that the composition of GRETA reflects multi-disciplinary expertise among its members as well as gender and geographical balance.

As it has already been emphasized in Recommendation 1 above, in order to gender-balance, the parties must ensure that the lists of qualified candidates they nominate for the election are also gender-balanced. The application and selection procedure should therefore ensure that a fair gender representation is accorded a high priority at every stage of the process. Experience indicates that this will require each of the parties to actively encourage applications from women who possess the relevant skills, experience, independence required for election to GRETA. To facilitate identification of potential candidates, women's professional organizations and women's rights groups that have access to relevant networks of women experts on trafficking in human beings and human rights should be consulted in the nomination, selection and election processes.

Similarly, nominating states should actively encourage applications from qualified individuals from a range of professional backgrounds and all regions within that state.

Recommendation 7: Each party should involve civil society in all stages of the nomination procedure – in particular in obtaining applications from and selecting highly qualified candidates.

States should consult civil society throughout the process of identifying and selecting candidates as well as of the actual election of the members to GRETA. Parties should consult with national organizations competent in the areas covered by the Convention.

Before issuing the advertisement, states should seek comments and input from civil society on the procedure and criteria for nomination and the selection of applicants, and the content and placement of the advertisement of the call for candidates. Those consulted should include professional associations, human rights organizations and other organizations actively working on issues covered by the Convention.

Civil society can help to identify and to encourage applications from highly qualified candidates. Parties should encourage civil society to circulate the advertisement as widely as possible and to request persons who meet the criteria to apply. Relevant professional associations and other organizations should be asked to take part in this process.

Members of civil society should also be consulted in the selection process. Professional organizations and others with relevant experience may be able to gather together the views of those of their members who are in a position to contribute to the evaluation of potential candidates, increasing the information base for the selection process.

States should also give due consideration to the setting up of a selection committee composed of representatives of the state party, relevant non-governmental organizations, professional associations and other organizations competent in the areas covered by the Convention. Such a selection committee should review and – if necessary – further specify the requirements

potential candidates must meet, review applications, solicit further information or conduct interviews with applicants if required, and make final recommendations for the appointment of nominees. The work of such a committee should be publicized. Their recommendations must be sufficiently substantiated and documented and made public in order to allow for independent scrutiny of the selection and nomination process.

After the state has nominated its candidates civil society could continue to contribute to the process by providing comments on the nominees of other states parties to ensure that their government can take an informed decision during the final election. Although Amnesty International takes no position on individual candidates, a number of organizations and individuals will be able to provide important information on the nominees put forward by states parties.

As has been stated before, the involvement of civil society in these processes would also contribute to raising public awareness about the Convention against Trafficking and ultimately strengthen the acceptance, legitimacy and authority of its treaty monitoring body.

Recommendation 8: Each party should ensure a transparent and fair process for the selection of a gender-balanced and multidisciplinary pool of individuals as candidates for the election of GRETA, each of whom meets the requisite criteria for election established in the Convention (and recommended by the Committee of Ministers).

The selection of candidates for the election to GRETA is a matter of public importance.

Following the closing date for applications, the state should make available for public inspection information provided by applicants that relate to their skills, experience and how they meet the criteria set out in the Convention.

Additional information about the candidates from credible sources should also be taken into account in the selection process.

As referred to already in Recommendation 7 above, each party should consider establishing a selection committee, composed of representatives of the state party, relevant non-governmental organizations, professional associations and other organizations competent in the areas covered by the Convention, in order to participate in the review of the applications and in the selection process.

The recommendations of such a committee or any other entity taking the final decision on the selection of candidates to be out forward by the nominating state should be sufficiently substantiated; and it should be made public, in order to allow for independent scrutiny of the outcome of the selection and nomination process.

Parties should only submit to the Council of Europe the names of individuals as nominated candidates for the election who meet the required criteria for competence, expertise and independence, who are available and committed to carrying out the work as a member of GRETA impartially, independently, professionally and conscientiously.

As noted above, candidates holding any paid or unpaid position within the government or another organization that could compromise or appear to compromise their independence and impartiality, or give rise to a conflict of interest with the responsibilities inherent in the mandate of GRETA should be disqualified as candidates for election to GRETA.

c) Election procedure

Recommendation 9: The date for the election by the Committee of the Parties of members of GRETA should be set to ensure sufficient time for review of the qualifications of each of the nominees.

The conduct of a fair and transparent election requires sufficient time between the closing of nominations and the vote for effective scrutiny of the candidates.

As early as possible following the close of nominations, the Committee of Ministers should ensure that the list of candidates and their dossiers are made available to the Committee of the Parties and to the public, including by making them easily accessible on the website of the Council of Europe.

The Committee of the Parties should put in place appropriate mechanisms for the request and receipt of additional information about the candidates that may have a bearing on their suitability for election to GRETA from any credible source (such as other parties and civil society organizations), including candidates nominated by other states.

Recommendation 10: The Committee of Ministers of the Council of Europe should establish a Consultative Group of independent persons with relevant experience mandated to review and provide an opinion in respect of each list of nominees on: whether the process for selection of candidates was open, transparent and fair; whether the pool of candidates submitted is gender-balanced; as well as their views on the individual candidates.

The establishment of a body of independent individuals, serving in their personal capacity mandated to review and issue an opinion on the measures taken by nominating states to ensure that the procedures for the selection and nomination of candidates were open, transparent and fair as well as on the suitability of nominated candidates would add further credibility to the election process as a whole. In recognition thereof, the Human Rights Council established a similarly mandated group in relation to the appointment of the Council's Special Procedures.²⁴

To ensure transparency, the opinions and recommendations of the consultative group must be substantiated and should be made public.

²⁴ See Resolution 5/1 of the (UN) Human Rights Council set out in UN document: HRC/Res/5/1 (adopted by consensus on 18 June 2007), paragraphs 47-52.

Recommendation 11: In determining the election procedure, the Committee of Ministers (in consultation with the parties to the Convention) should also request an opinion of the Parliamentary Assembly of the Council of Europe (PACE) in advance of the election. Its opinion should include: (a) an evaluation of the procedure for selection of nominees by each nominating party; (b) an analysis of whether the list of candidates submitted meets the criteria set out in the Convention and the established technical and objective requirements; and (c) recommendations for the election.

PACE elects the Council of Europe's Secretary General, Deputy Secretary General and Commissioner for Human Rights, as well as the judges of the European Court of Human Rights. The Assembly also plays a role in the process of the election of the members of the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).²⁵

Amnesty International considers that a similar role for the Assembly in the review of the nominations for the election of GRETA members would be appropriate.

The organization considers that the scope of the Assembly's opinion should include

- an evaluation of the procedure for selection of nominees by each nominating party;
- an analysis of whether the list of candidates submitted meets the criteria set out in the Convention and the established technical and objective requirements;
- and recommendations for the election.

The Assembly should also be mandated to advise the Committee of Ministers and/or the Committee of the Parties to reject the list of nominees of any nominating state which does not meet the technical and objective requirements or has not substantiated that its process for the selection of candidates was fair, open, transparent and inclusive.²⁶

²⁵ Furthermore, it was foreseen in the Amending Protocol of 1991 to the European Social Charter (the so-called Turin Protocol) that the members of the European Committee of Social Rights should also be elected by the Assembly. While most of this Protocol, which has yet to enter into force, is being applied on the basis of a decision taken by the Committee of Ministers, the members of the European Committee of Social Rights are still elected by the Committee of Ministers.

²⁶ According to PACE Resolution 1366 (2004) as modified by Resolution 1426 (2005) "Candidates for the European Court of Human Rights", the Assembly rejects lists of candidates where:

- i. the areas of competence of the candidates appear to be unduly restricted;
- ii. the list does not include at least one candidate of each sex, except when the candidates belong to the sex which is under-represented in the Court, i.e. the sex to which under 40% of the total number of judges belong;
- iii. the candidates:
 - a. do not appear to have sufficient knowledge of at least one of the two official languages, or
 - b. do not appear to be of the stature to meet the criteria in Article 21, paragraph 1, of the European Convention on Human Rights."

It should be noted that the Assembly itself has noted that there appears to be considerable scope for improvement of the Assembly's existing review processes and appointment procedures.²⁷ Amnesty International also considers that, among other things, the Assembly would benefit from the work of a consultative group referred to in Recommendation 10. In addition to, and particularly in the absence of such a consultative group, the Assembly's review could involve interviews with the candidates.

The opinion of the Assembly should be adopted in sufficient time in advance of the election, so as to allow for it to be considered thoroughly by the Committee of the Parties before the election. In addition to its transmission to the Committee of the Parties and the Committee of Ministers of the Council of Europe, the Assembly's opinion should be made public upon its adoption, including on the website of the Council of Europe.

Such a review by the Parliamentary Assembly would add an important layer of scrutiny of compliance of each of the candidates with the membership requirements set out in the Convention. In addition, it would increase the transparency of the overall election process. As such it could contribute positively to the overall quality and independence of GRETA – and thus to its effective functioning.

Recommendation 12: The Election procedure and its conduct should be fair, and aimed at ensuring the election of a gender-balanced, multidisciplinary group of independent experts from the range of legal systems.

The election of the GRETA by the Committee of the Parties should be based on merit, not politics. States should avoid political 'trade-offs' and bargaining that often enters into nomination and election processes. The nominees' credentials should speak for themselves.

In addition to taking account of the independence and requisite competence of the individual candidates, in casting their votes all states parties should consider the practical demands of membership. GRETA experts must be able to attend regular meetings in Strasbourg and devote extensive additional time to preparation for the evaluation of the implementation of the Convention by states parties, on-site visits and other activities as required. States must therefore only nominate and elect independent candidates who are qualified, committed and able to undertake their duties, in their personal capacity, impartially and conscientiously.

See: Resolution 1426 (2005) adopted by the Standing Committee, acting on behalf of the Assembly, on 18 March 2005: <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta05/ERES1426.htm>; and Resolution 1366 (2004), adopted by the Assembly on 30 January 2004:

<http://assembly.coe.int/Mainf.asp?link=http://assembly.coe.int/Documents/AdoptedText/TA04/ERES1366.htm>

²⁷ See PACE Resolution 1540 (2007): Improving the selection procedures for CPT members, adopted by the Standing Committee on behalf of the Assembly on 16 March 2007, which also sets out concrete proposals for improving the process by which PACE's Sub-Committee for Human Rights reviews CPT candidatures.

In accordance with the Convention, when electing GRETA, the Committee of Parties must give due consideration to maintaining gender, multidisciplinary and geographical balance in the composition of GRETA. With regard to geographical balance emphasis should be placed in particular on ensuring a balance of experts from origin, transit and destination countries.

The actual election by the 'Committee of the Parties' should be carried out in a transparent way. Votes should be recorded and the proceedings and results of the election should be made public without delay.

Recommendation 13: The election procedure agreed should also be applied in the event of casual vacancies on GRETA.

When filling a casual vacancy on GRETA (occasioned, for example, by the resignation of a member) the same nomination and election procedure should be followed. This would be consistent with the procedure for filling causal vacancies on the CPT.²⁸ This element should be included in the election procedure determined by the Committee of Ministers. All parties should be invited to submit nominations to fill the vacancy and to participate in the election of a person to fill the vacancy.

Particular attention should be paid to ensuring that such elections do not compromise the diversity of the Committee.

Recommendation 14: The Committee of Ministers must ensure that GRETA is provided with adequate human and financial resources necessary to carry out its work.

The tasks of reviewing the parties' implementation of the Council of Europe Convention on Action against Trafficking in Human Beings in regular cycles will be demanding.

In order to ensure that the GRETA is able to carry out its functions in a meaningful and comprehensive manner, the Committee of Ministers must ensure that GRETA is provided with adequate human and financial resources necessary to carry out its work.

4. Conclusion

The election of independent, impartial, competent and expert men and women from countries of origin, transit and destination countries, who provide a broad mix of multi-disciplinary expertise relevant to the areas covered by the Council of Europe Convention on Action against Trafficking, is key to the effective functioning of GRETA.

²⁸ Article 5(2) of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment provides that causal vacancies should be filled in accordance with the common election procedure that applies for other vacancies.

Amnesty International considers the implementation by the Committee of Ministers and the parties of the recommendations set out in this document would contribute significantly to achieving this objective.

In particular Amnesty International considers that the Committee of Ministers (in consultation with the parties to the Convention) must establish election procedures that ensure strict adherence to criteria set out in the Convention and all other necessary technical and objective requirements members of GRETA must meet.

Furthermore, nominating states should put in place procedures at the national level to ensure that all individuals nominated as candidates meet the highest standards of integrity, competence, expertise, professional experience independence and impartiality.