

TABLE OF CONTENTS

1. Introduction.....	1
2. Classification and Definition	3
a) Preamble: Characterize Trafficking as a Human Rights Violation	3
b) Article 4(e): Amend Definition of Victim	4
3. Article 1: Purpose	5
4. Strengthen Support, Assistance and Protection Measures	6
a) Article 10: Identification.....	6
b) Article 12: Assistance for Victims of Trafficking	9
c) Article 13: Recovery and Reflection Period	13
d) Article 14: Residence Permit	15
e) Article 15: Compensation and Legal Redress.....	17
f) Article 16: Repatriation of Victims	18
g) Article 16 bis: Review Mechanism	20
h) Article 25: Non-Punishment Provision.....	21
i) Article 27: Protection of Victims, Witnesses and those that cooperate with Judicial Authorities	23
5. Prevention and Criminalization	25
a) Article 7: Border Controls	25
b) Article 30: Jurisdiction	26
6. Monitoring Implementation of the Convention	30
a) Articles 35 and 36: Monitoring Mechanism	30
7. Conclusion	34
Appendix.....	35



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

1. Introduction:

Amnesty International and Anti-Slavery International welcome the Council of Europe's focus on Trafficking in Human Beings. In particular, the organizations welcome that the Council of Europe's Committee of Ministers has mandated a body of representatives of the Member States, the *Ad Hoc Committee on Action against Trafficking in Human Beings*, (known as CAHTEH) to draft a European Convention on Action against Trafficking in Human Beings which enhances the protection of the rights of trafficked persons. The CAHTEH has been instructed to submit a draft of this treaty to the Committee of Ministers in December 2004.

Trafficking of human beings is in itself a serious violation of human rights. Its incidence has increased significantly in the Council of Europe region over the last ten years.

In the course of this crime, trafficked persons are subjected to a range of violations of their rights which are guaranteed within the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter and Revised Social Charter. These rights include: the rights to life, liberty and security of the person; freedom from discrimination, gender-based violence, slavery,

forced servitude, forced labour and torture and other inhuman or degrading treatment; access to the courts, equality before the law and courts; freedom of movement; the highest attainable standard of health; just and favourable conditions of work; social security and freedom; and family life.

There is a widely recognized need to ensure that the protection and respect for the rights of trafficked persons lies at the core of states' policies on trafficking. The very instructions of the Council of Europe's Committee of Ministers to the CAHTEH, to take into account existing standards dealing with trafficking, with a view to developing these standards so as *to improve the protection afforded by them to trafficked persons*, highlights this need.¹

This aim is reflected in Article 1 of the draft European Convention on Action against Trafficking in Human Beings which states that:

"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."

While Amnesty International and Anti-Slavery International welcome Article 1 and some of the other provisions of the October 2004 draft of the European Convention on Action against Trafficking in Human Beings, the organizations consider that several provisions, set out in CAHTEH (2004) INFO 6 of 11 October 2004, do not meet the aims set out in Article 1, and must be amended. (A copy of the October draft is attached hereto as an Appendix)

¹ See, e.g. the Statement of the newly appointed *Special Rapporteur of the UN Commission on Human Rights on Trafficking in Persons, especially women and children*, to the Third Committee of the UN General Assembly on 29 October 2004 "... the human rights of trafficked persons shall be at the centre of all efforts to combat trafficking and to protect, assist and provide redress to those affected by trafficking, and that anti-trafficking measures should not adversely affect the human rights and dignity of the persons concerned."; Principle 1 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking (UN Doc: E/2002/68.Add.1).

The following document sets out recommendations of Amnesty International and Anti-Slavery International to strengthen the October draft of the European Convention on Action against Trafficking in Human Beings (hereafter European Convention against Trafficking) in order to ensure that the treaty delivered by the CAHTEH to the Committee of Ministers in December 2004 for their consideration, does indeed meet the mandated aims of enhancing the protection of the rights of trafficked persons and creating a comprehensive, gender-sensitive framework for the protection of trafficked persons. Under Article headings, the document both summarizes the rationale for strengthening specific provisions and sets forth illustrative wording to do so - in the form of strike-outs of draft provisions or additional suggested wording in bold type-face.

Meeting the promised aims set out in Article 1 will require, in many cases, that the Council of Europe Member States agree to adopt provisions which go beyond the protections set out in their national law, European Union standards and in existing international standards, including the Palermo Protocol².

If the Council of Europe succeeds in adopting a treaty which indeed does meet the aims set out in Article 1, it will be filling a significant gap, as today there are no international treaties which specifically and comprehensively address states' obligations to respect and protect the rights of trafficked persons.³

2. Classification and Definition

a) Preamble: Characterize Trafficking as a Human Rights Violation

Amnesty International and Anti-Slavery International urge the CAHTEH to ensure that the Preamble to the European Convention against Trafficking expressly identifies trafficking, in itself, as a human rights violation and as an offence to the dignity and integrity of the human being. Doing so will not only accurately characterize trafficking in human beings, but also will ensure consistency with instruments

² The full title of this treaty is the Protocol to Prevent Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime.

³ For example key provisions of the Palermo Protocol addressing protection and assistance of trafficked persons require states only to *consider* taking such measures (e.g. Article 6(3); Article 7) rather than requiring them to do so. The SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, as the title suggests, is limited in scope to only trafficking of women and children for prostitution; and, while the protection provisions in Article IX are welcome they do not comprehensively address the protection and assistance needs of trafficked persons.

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 and the South Asian Association for Regional Cooperation (SAARC).⁴

To this end, Amnesty International and Anti-Slavery International recommend that the second paragraph of the Preamble be amended as follows:

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;

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 identification, 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 25 and 27 of the October, 2004 draft of the European Convention against Trafficking.

⁴ 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. *See also*, the second paragraph of the Preamble to the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution.

We therefore urge that Article 4(e) of the draft Convention against Trafficking be amended as follows:

4(e) “Victim” shall mean any person who has been subject to any act set forth in this Article. **In applying Articles 10-16 , 25 and 27 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.**

3. Article 1: Purpose

Include the Protection of the Rights of Child Victims of Trafficking as a Purpose

As CAHTEH has recognised, the victims of trafficking are frequently children - persons under the age of 18. In recognition of the special rights and needs of trafficked children, CAHTEH has included special provisions relating to children in some of the Articles of the draft European Convention against Trafficking. Notably, there are child-specific provisions in Articles related to:

- prevention of trafficking;
- identification, protection of private life and assistance of trafficked persons;
- residence permits for and repatriation and return of victims of trafficking;
- aggravating circumstances of trafficking crimes; and
- protection of victims, witnesses and collaborators with the judicial authorities.

These are set out in Articles 5(3) and 5(5); 10(3) and 10(4); 11(2); 12(6); 15(2); 16(7); 23(b); 27(3), respectively.

In order to reflect the clear intention of the CAHTEH to enhance the protection of the rights of trafficked children, as evidenced by the above-cited provisions, Amnesty International and Anti-Slavery International urge the CAHTEH to amend Article 1 so that it clearly identifies the protection of and respect for the rights of trafficked children as one of the purposes of the European Convention against Trafficking.

In particular, Amnesty International and Anti-Slavery International urge amendment of paragraph (b) of Article 1 along the following lines:

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 **and the rights of the child** into consideration, as well as to ensure effective investigation and prosecution;

....

4. Strengthen Support, Assistance and Protection Measures

Protection, support, assistance and protection measures aimed at ensuring respect for the rights of trafficked persons are set out in Articles 10-16 and 25 and 27 of the October 2004 draft European Convention against Trafficking.

Amnesty International and Anti-Slavery International consider that some of these provisions require amendment in order to ensure the respect for and protection of the rights of trafficked persons, aid recovery and facilitate trafficked persons' ability to break the trafficking cycle. Amendment of the provisions as set out below, and their implementation by States Parties 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.

a) Article 10: Identification

Ensure that the authorities responsible for Identification are experienced in assisting trafficked persons and strengthen provisions relating to children

Accurate identification of trafficked persons is key to ensuring respect for their human rights and to the prosecution of those responsible for trafficking. Given the

difficulties in ensuring accurate identification of trafficked persons and the risks to their lives and decrease of the likelihood of successful prosecutions attendant to the failure to do so, Amnesty International and Anti-Slavery International urge that the CAHTEH strengthen Article 10 on identification.

In particular, Amnesty International and Anti-Slavery International consider that persons experienced in working with and assisting trafficked persons should be involved in the identification process. In addition, the Article should refer back to the definition of a victim set out in Article 4, rather than refer to Article 17, which requires the criminalization of trafficking.

The provisions specifically related to children should be expanded to protect children who are not “unaccompanied”, including internally trafficked children. Consistent with the *UNICEF Guidelines For Protection of the Rights of Children Victims of Trafficking in Southeastern Europe, May 2003*, a qualified guardian and a suitably-experienced lawyer should be appointed to represent every child reasonably believed to have been trafficked. The Article should also require that all actions taken with respect to such children are in their best interests and that the child’s views are elicited and considered.

Accordingly, Amnesty International and Anti-Slavery International urge the CAHTEH to amend Article 10 along the following lines:

Article 10- Identification of the victims

1. Each Party shall provide its competent authorities with persons who are trained and qualified in identifying **and assisting trafficked persons and** preventing and combating trafficking in human beings and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, with a view to ~~enabling an~~ **ensuring the** identification of victims; **their assistance and protection**; and, in appropriate cases, issuing residence permits under the conditions provided for in article 14 of the present Convention. **The identification of victims shall be entrusted to these trained and qualified persons.**

2. 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~~ **as defined** in article 4 ~~17~~ of this Convention has been completed by the competent authorities **and the person has received** the assistance provided for in Article 12, paragraphs 1 and 2, **and where appropriate, 6.**

3. 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.

4. As soon as a child is identified as a victim ~~and is unaccompanied~~, each Party shall.⁵

- (a) provide for representation of the child by a legal guardian, organisation or authority, **with relevant appropriate training, experience and skills**, which is responsible to act in the best interests of that child;
- (b) take the necessary steps to establish his/her identity and nationality;
- (c) make every effort to locate his/her family, when this is in the best interests of the child;
- (d) **appoint a relevantly-experienced lawyer to represent the child;**
- (e) **ensure that, in all actions concerning child victims, whether undertaken by public or private social welfare institutions, police, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be the primary consideration;**
- (f) **ensure that child victims are, as soon as possible after their identification, informed of their rights and the assistance and services available to them in a language that they understand and are placed in safe and suitable accommodation (i.e. temporary shelter or location of alternative care arrangement).**

⁵ The recommended modifications to this provision are consistent with the UNICEF Guidelines For Protection of the Rights of Children Victims of Trafficking in Southeastern Europe, May 2003.

b) Article 12: Assistance for Victims of Trafficking

Ensure adequate assistance and protection on a consensual basis to trafficked victims, including necessary medical care, education, access to vocational training and work

Article 12 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, in particular about legal rights; translation and interpretation assistance, when appropriate; and assistance to enable their rights and interests to be represented in criminal proceedings against those responsible for their trafficking.

It also requires State Parties to cooperate with relevant organizations and civil society committed to assisting victims, when appropriate, though only as provided for by national law.

Notably and regrettably, however, provisions on medical assistance are very restrictive. The current draft of Article 12(1)(b) requires State Parties only to ensure that *emergency* medical treatment is available for all trafficking victims. Article 12(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.”

Similarly, under Article 12(4), State Parties are 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*.

Paragraphs 12(1)(b), 12(3) and 12(4) leave those trafficked persons, whose presence has not (yet) been regularized by the authorities, without access to key services and assistance which, experience has shown, is vital to the respect of their rights and their recovery. Articles 12(3) and 12(4), as drafted, also risk creating confusion and litigation about whether a trafficked person is “lawfully on the territory of a state party” and thus entitled to such services and assistance.

In addition, Amnesty International and Anti-Slavery International consider that the wording of Article 12 (6) related assistance of trafficked children - which

states that assistance to trafficked children shall not be conditioned on their willingness to act as a witness - may lead to misunderstanding about whether States Parties may condition assistance to trafficked adults on the basis of such cooperation. This indeed would be a regrettable (and hopefully unintended) result. Amnesty International and Anti-Slavery International consider, therefore, that Article 12 must be amended to clarify that the assistance measures set out therein are not conditioned on the willingness of any victim (adult or child) to act as a witness in proceedings against those responsible for their trafficking.

Finally, Amnesty International and Anti-Slavery International are concerned that Article 12(2), related to *protection* of the safety of trafficked persons, is weakly worded. It does not *require* States Parties to take such (other) measures as may be necessary to *protect victims of trafficking*. Rather it merely requires them “to take due account the safety and protection needs of victims.”

In order to facilitate the creation of a comprehensive framework to ensure respect and protection of the internationally recognized rights of trafficked persons, including the rights to dignity, health, and an adequate standard of living, and to protect trafficked persons from further exploitation and harm, Amnesty International and Anti-Slavery International urge CAHTEH to amend Article 12 along the following lines:

Article 12 – Assistance to victims⁶

⁶ These amendments are consistent with international standards and with the Opinion of the *European Commission's Experts Group on Trafficking in Human Beings* to the Council of Europe, dated 10 May 2004, which states that during reflection and residence periods trafficked persons should be given access to full support services including medical, housing, legal, psychological, social and financial, and access to employment, vocational and education opportunities.

See also, For example, the **EU's Brussels Declaration on Preventing and Combating Trafficking in Human Beings**, states at paragraph 13 that “victims of trafficking must be granted access to a full range of support measures that should include access to shelter accommodation, physical, sexual and psychological health care and support and independent health, legal and social counseling. The provision of such treatment must be on a consensual and fully informed basis and victims should not be subjected to mandatory testing for HIV-AIDS or other forms of sexually transmitted diseases.”

The Council of Europe's Recommendation R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation at para.s 3, 26, 27, 29, 30, 32 invites the Council of Europe's member states to: give absolute priority to assisting victims of trafficking through rehabilitation programs and to protect them from traffickers; establish or develop facilities where victims of trafficking can benefit from information about their rights, and from psychological and medical care, social, and administrative support and legal assistance in their own language; establish

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 be provided on a fully informed and consensual basis and shall not be conditioned on a victim's agreement to participate in criminal investigations or proceedings against those responsible for their trafficking.**⁷ 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 **and other necessary** medical and **psychological care and** treatment;⁸

protection systems which offer effective means to combat intimidation and threats to the security of victims and their families, and to extend protection, where appropriate, to members of associations or organizations assisting victims. *Council of Europe Recommendation Rec (2002) 5 on the protection of women against violence* (including trafficking) states that “member states should ensure that victims, without discrimination, receive immediate and comprehensive services, provided by a co-ordinated, multidisciplinary and professional effort, whether or not they lodge a complaint, including *medical and forensic medical examination and treatment, together with post-traumatic psychological and social support as well as legal assistance...*” on a confidential basis, free of charge and available around the clock.

The Stability Pact for South East Europe, Task Force on Trafficking, Statement of commitments, Tirana 2002 (hereafter the Tirana Declaration) agreed, among other things to refer possible victims of trafficking to shelters, providing them with social assistance, health care, counseling and legal advice as to their situation and options.

See, *Principle 7 and Guideline 6 of the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking and Article 9(1)(b) of the Palermo Protocol*.

⁷ See, Council of Europe's Committee of Ministers Recommendation Rec (2002) 5 at para 23; Guidelines 6 and 8 of the (UN) Recommended Principles and Guidelines on Human Rights and Human Trafficking; Report of the Committee on the Elimination of Discrimination Against Women, twenty-eighth session (13-21 January 2003) and twenty-ninth session (30 June-18 July 2003), A/58/38, Supplement No 38, part two, para 273 -274 re: France.

⁸ IBID and See Paragraph 4 of Council of Europe's Committee of Ministers Recommendation No. R (87) 21 to member States on assistance to victims and the prevention of victimization which recommends that governments of member States “ensure that victims and their families, especially those who are most vulnerable, receive in particular (...) continuing medical, psychological, social and material help”, and Paragraph 14 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power which states that “Victims should receive the necessary material medical,

- (c) translation and interpretation services, **when necessary** ~~appropriate~~;
- (d) counselling and information, in particular as regards their legal rights **and assistance, protection and services available**, 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~~ **legal and administrative** proceedings, including against offenders **and for compensation**;⁹
- (f) access to education, in particular for children.¹⁰

2. Each Party shall take ~~due account of~~ **such other measures as may be necessary to ensure** the safety and **other** protection needs of victims **and, where appropriate, their families**.¹¹

~~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.~~

~~3.4. 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, and to vocational training and education.~~

~~5. 4. Each Party shall take measures, where appropriate, and under the conditions provided for by its national law, to co-operate with non-governmental organisations,~~

psychological and social assistance through governmental, voluntary, community-based and indigenous means.”

⁹ See, Guideline 6(5) of the (UN) Recommended Principles and Guidelines on Human Rights and Human Trafficking.

¹⁰ See Guideline 3.5.1 of the UNICEF Guidelines For Protection of the Rights of Children Victims of Trafficking in Southeastern Europe, May 2003 and Guideline 8 (7) of the (UN) Recommended Principles and Guidelines on Human Rights and Human Trafficking and footnote 7.

¹¹ See Guideline 6(6) of the (UN) Recommended Principles and Guidelines on Human Rights and Human Trafficking.

other relevant organisations or other elements of civil society engaged in victim assistance.

5. Each Party shall ensure regular and periodic assessments of the needs of the trafficked person and shall take appropriate measures to ensure appropriate assistance to address such needs.

6. Each Party shall adopt such legislative or other measures as may be necessary to ensure that such assistance to a child victim, **as is necessary to protect their rights and best interests, is provided without delay. Full account shall be taken of their special rights and needs.** ~~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 assistance provided and any procedure(s) related thereto are~~ is appropriate to the age and maturity of the child.¹² **Each Party shall ensure the right of a child victim, who is capable of forming his or her views, to express those views freely in all matters affecting him or her, and ensure that such views are given due weight in accordance with his or her age and maturity.**

c) Article 13: Recovery and Reflection Period

Require a minimum of three months for recovery and/or reflection and regularization of the person's stay

Amnesty International and Anti-Slavery International welcome the aim of Article 13, requiring State Parties to ensure that their laws permit persons reasonably believed to have been trafficked to remain in the territory for a sufficient period for them to recover and escape the influence of their traffickers and/or for the purpose of taking an informed decision about assisting the competent law authorities.

¹² See Guidelines 2.7 and 3.5 of the UNICEF Guidelines For Protection of the Rights of Children Victims of Trafficking in Southeastern Europe, May 2003; Guideline 8 of the (UN) Recommended Principles and Guidelines on Human Rights and Human Trafficking.

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, which should not be less than three months.

Amnesty International and Anti-Slavery International therefore urge the CAHTEH to amend Article 13 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.¹³

The organization also calls on CAHTEH to ensure that Article 13 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.

Accordingly, Amnesty International and Anti-Slavery International urge CAHTEH to amend the provisions of Article 13 along the following lines:

Article 13 – Recovery and reflection period

1. Each Party shall provide in its internal law a recovery and reflection period, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be a sufficient period, **of at least three months in length**, for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on co-operating with the competent authorities. During this period it shall not be possible to **involuntarily remove a victim. enforce any expulsion order against him or her**. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and

¹³ http://europa.eu.int/comm/justice_home/fsj/crime/trafficking/fsj_crime_human_trafficking_en.htm#

prosecuting the offences concerned.

2. During this period, the persons referred to in paragraph 1 of this Article shall be entitled to the measures contained in Article 12, paragraphs 1 and 2, **and where relevant, 6.**
3. **A person's stay in the country during this period shall be recognized and regularized by the authorities.**

d) Article 14: Residence Permit

Ensure a minimum of 6 months-renewable and permanent residence permits, and the possibility of family reunification

Amnesty International and Anti-Slavery International welcome provisions of the current draft of Article 14 which require State Parties to provide for the possibility of granting trafficked persons renewable residence permits and permanent residence.

Amnesty International and Anti-Slavery International urge that Article 14(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*. Doing so would be consistent with 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 or have been subject to an action to facilitate illegal immigration, who cooperate with the competent authorities*.

Article 14 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. In addition, the provision for family reunification, which appeared in previous drafts, should be restored.

Accordingly, Amnesty International and Anti-Slavery International urge the CAHTEH to amend Article 14 along the following lines:

Article 14 – Residence permit

1. Each Party shall provide ~~for the possibility to issue~~ a renewable residence

permit, of at least six-months in length, to victims, either in one of the two following situations or in both:

- (a) the competent authority considers that their stay is necessary owing to their personal situation;
- (b) the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings, **and/or for the duration of any proceedings related to their compensation.**

2. The residence permit related to child victims, when this is legally necessary, shall be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions.

3. The residence permit shall be renewed if either of the conditions set out in paragraph 1 still apply, and/or other on the basis of other criteria provided for by national or international law. The non-renewal or withdrawal of a residence permit is subject to the conditions provided for by the internal law of the State Party.

4. If a victim submits an application for another kind of residence permit, the Party concerned shall take account of the fact that the victim has benefited or benefits from a residence permit in conformity with paragraph 1, **when examining the possibility of granting to the victim a permanent or a long-term residence permit**

5. Having regard to the obligations of States Parties to which Article 39 of this Convention refers, each Party shall ensure that granting of a permit according to this provision shall be without prejudice to the right to seek and enjoy asylum.

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

e) Article 15: Compensation and Legal Redress

Ensure legal aid and reparation

Amnesty International and Anti-Slavery International urge that Article 15 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 for all persons and is incorporated in previously adopted Council of Europe instruments.¹⁴

The provisions of Article 15(3) and (4) should also be strengthened to require State Parties to ensure the rights of victims of trafficking to internationally recognized elements of reparation – which include, among others, compensation, restitution, rehabilitation - regardless of the identification, arrest, charge, prosecution or punishment of those responsible. 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.

Accordingly, Amnesty International and Anti-Slavery International recommend that Article 15 be amended along the following lines:

Article 15 – 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, **in a language that they understand**.
2. Each Party shall provide, in its internal law, for the right to **free** legal assistance for victims, **including in the context of legal and administrative proceedings** and ~~for the conditions under which the victim may benefit from free legal aid.~~
3. Each Party shall provide, in its internal law, for the right to **reparation, including compensation**, for victims from the perpetrators.

¹⁴ See, e.g., Committee of Ministers' Recommendation R (83) 7, on Participation of the Public in Crime Policy, at para 29, which provides that the governments of member States should assist victims by "establishing an efficient system of legal aid for victims so that they may have access to justice in all circumstances".

4. Each Party shall adopt such legislative or other measures as may be necessary to guarantee **reparation, including compensation, restitution and rehabilitation**, for victims in accordance with the conditions under its national law, **regardless of the identification, arrest, prosecution or conviction of the perpetrator(s)**.¹⁵ 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 22.

f) Article 16: Repatriation of Victims

Require a risk assessment prior to the repatriation of each trafficked person

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 should be made with due regard for the rights, safety and dignity of the victim.

Given that many of the provisions of this Article deal with the resettlement of the victim, the organizations urge the CAHTEH to consider renaming this Article: Repatriation and Resettlement

The organizations urge the CAHTEH to amend Article 16 so as to ensure that: returns of *any* trafficked person are only made following a risk assessment - carried out by suitably trained professionals - which indicates that such return is safe and durable. (The current draft requires such risk assessment only for children.)

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 prohibiting refoulement.

¹⁵ Article 2(2) of the European Convention on Compensation of Victims of Violent Crimes which states: "Compensation shall be awarded in the above cases even if the offender cannot be prosecuted or punished". See also Paragraph 2 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34),): "A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted (...)". Article 75 of the Rome Statute of the International Criminal Court.

Amnesty International and Anti-Slavery International recommend amendment of Article 16 along the following lines:

Article 16 – Repatriation and ~~return~~ resettlement of victims

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 rights, safety, and dignity of that person, the return of that person without undue or unreasonable delay.

2. When a Party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary.

3. In no event shall a person be involuntarily returned to a State without a full assessment, by qualified experts of the risks involved. A person shall not be involuntarily returned if there is a risk to their life or safety, including risk of re-trafficking.

4. At the request of a receiving Party, a requested Party shall verify whether a person is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving Party.

5. 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 authorisation as may be necessary to enable the person to travel to and re-enter its territory.

6 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. These programmes aim at avoiding re-victimisation. Each Party should make its best effort to favour the reintegration of victims into the society of the State of return, including reintegration **in safety and dignity, including** into the education system and the labour market, in particular through the acquisition and improvement of their professional skills. With regard to children, these programmes should include enjoyment of the right to education and measures to secure adequate care or receipt by the family or appropriate care structures.

7 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, non-governmental organisations, legal professions able to provide counselling and social welfare agencies.

8. Each Party shall encourage and facilitate cooperation between law enforcement agencies, legal professionals and non-governmental organizations in countries of origin, transit and destination in order to ensure that appropriate protection is available to trafficked persons during repatriation and that appropriate protection, support and assistance is immediately available to trafficked persons upon repatriation, so as to reduce the risks to repatriated persons, including to re- trafficking .

9. Child victims shall not be returned to a State, if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child.

g)Article 16 bis: Review Mechanism

Add a Provision Requiring Availability of a Review Mechanism

In view of the importance of ensuring accurate identification of trafficked persons, and ensuring that they receive the assistance and protection which they need and to which they are entitled, Amnesty International and Anti-Slavery International urge the CAHTEH to add a provision which requires States Parties to ensure that persons have a right to have the decisions of the competent authorities in relation to identification, assistance, recovery and reflection period, residence permit and repatriation reviewed within a reasonable time by an independent, impartial body.

To this end, Amnesty International and Anti-Slavery International urge the CAHTEH to adopt a new Article along the following lines:

Article 16 bis: Review

Each State Party shall take the necessary legislative or other measures to ensure that persons have the right to have the decisions of the competent authorities taken under Articles 10-16 reviewed by an independent, impartial body established by law.

Every victim shall have the right to have decisions made about them in

relation to the application of Articles 10-16 of this Convention, reviewed by an independent and impartial body, established by law.

h) Article 25: Non-Punishment Provision

Prohibit detention, charge, or prosecution of trafficked persons for illegal entry or residence and activities which are a direct consequence of their situation as trafficked persons

The principle that a trafficked person should not be detained, prosecuted or punished for their illegal entry or residence in a country or involvement in illegal activities to the extent that such involvement is directly related to their situation as a trafficked person has been incorporated into instruments and recommendations previously adopted by the Council of Europe, the United Nations, the OSCE and the EU.¹⁶

Such provisions are consistent with the recognition of the human rights abuses to which trafficked persons are subjected. They are also consistent with the treatment of trafficked persons as victims of crimes, whether or not the persons responsible for the trafficking are identified, arrested, charged prosecuted or convicted.

¹⁶ 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 General Assembly, the Committee on Economic Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women* have called on states to ensure that victims of trafficking are not penalized, UN Docs: GA res. 57/176, 30 January 2003 at para 8; 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.”

The principle on which these provisions are based incorporates two key elements of the internationally accepted definition of trafficking: that the purpose of this crime is exploitation and that the consent of the victim to the exploitation is not relevant.

The principle also takes into account the reality that, in many states the exploitative labour demanded of a trafficked person may be illegal.

Such provisions are likely to enhance the cooperation of trafficked persons with efforts to identify, find and prosecute traffickers - as a trafficked person will be more likely to contact the authorities if they do not have to fear arrest or prosecution for illegal activities directly connected to their situation as a trafficked person.

Such provisions do not give blanket immunity to trafficked persons. They may still be prosecuted for their involvement in unlawful activities to the extent that their involvement is not a direct consequence of their situation as a trafficked person.

Amnesty International and Anti-Slavery International recognize that, at the last meeting the members of CAHTEH worked hard to find wording that respects the principal of non-punishment in a manner that does not require states to prohibit prosecution and punishment for serious crimes that which are not committed as a direct consequence of a person's situation as trafficking.

The organizations are concerned however that the wording of the two Options for Article 25, set out in the October 2004 draft of the Convention against Trafficking, does not strike the proper balance. In particular, the organizations are concerned that both of these options introduce the concept of compulsion. Doing so, risks placing an almost impossible burden of proof on the trafficked person: that of proving that they were compelled to commit the particular crime. This is incompatible with the very definition of the crime of trafficking to which they are victims as set out in Article 4 of the draft European Convention against Trafficking as well as their status of victim of trafficking and reverses the burden of proof.

The organizations offer the following for the CAHTEH to consider, as possible wording, with a view to ensuring incorporation of: the existing standards of non-punishment; the presumption of innocence; the definition of trafficking and the concerns raised by some members of CAHTEH, that ordinary principles of criminal responsibility should apply to crimes committed by trafficked persons which are not direct consequence of their situation as having been trafficked:

Article 25 – Non-punishment provision (former article 26)**OPTION 1**

Each Party shall, in accordance with the basic principles of its national legal system, **prohibit** ~~provide for~~ the possibility of the detention, prosecution or punishment ~~not~~ or imposing penalties on victims for **the illegality of their entry or residence in a country** or their involvement in unlawful activities, ~~to the extent that they have been compelled to do so,~~ **unless it is demonstrated that such unlawful activity was not a direct** consequence of their situation as a victim.

i) Article 27: 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 resettlement in 3rd countries

The current draft text of Article 27 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;
- as, appropriate, 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,
- when necessary, family members of such persons.

Significantly the provision requires such protection measures, “in particular *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 protection, relocation, identity change and assistance in obtaining employment. It also requires State Parties to afford child-victims special protection measures taking into account their best interest. Finally it requires States 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 27 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 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.

In accordance with these recommendations, Amnesty International and Anti-Slavery International urge the CAHTEH to amend Article 27 in the following manner:

Article 27 – 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 ~~in particular~~ **including before**, during and after investigation and prosecution of perpetrators, for:
 - (a) Victims;
 - (b) ~~As appropriate~~, 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) when necessary, 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 and to offer various kinds of protection. This may include physical protection, relocation, **resettlement in another country**,

identity change and assistance in obtaining jobs.

3. A child victim shall be afforded special protection measures taking into account the best interests of the child.

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

5. Prevention and Criminalization

a) Article 7: Border Controls

Without prejudice to the right to seek and enjoy asylum

It is well settled that measures taken to prevent trafficking and to protect the rights of trafficked persons should not impede the enjoyment of human rights. Principle 1(3) of the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking states:

“Anti-Trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum seekers.”¹⁷

This principle should be clearly enshrined in the European Convention against Trafficking.

To this end, Amnesty International and Anti-Slavery International urges the CAHTEH to amend Article 7 - which sets 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, including to seek and enjoy asylum.

The organizations therefore urge the CAHTEH to amend provisions of Article 7 along the following lines:
Article 7 – Border measures

¹⁷ See Also Resolution 57/176, of 30 January 2003, of the General Assembly of the United Nations, which called on governments to ensure that the measures taken by States to prevent trafficking are consistent with respect for human rights. GA Res.57/176 at para 15.

1. Without prejudice to international commitments, **including** in relation to the free movement of persons **and the rights to seek and enjoy asylum**, 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, **in a manner that is consistent with the rights of individuals, including to seek and enjoy asylum.**

3. Where appropriate, and without prejudice to applicable international conventions **which guarantee, among other things, the right to seek and enjoy asylum**, such measures shall include establishing the obligation of commercial carriers, including any transportation company 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.

b) Article 30: Jurisdiction

Ensure there are no safe havens

Among the positive obligations of States with respect to human rights violations, including trafficking of human beings, is the duty to bring to justice those responsible for such crimes.

Amnesty International and Anti-Slavery International consider that Article 30 of the draft European Convention against Trafficking must be strengthened in order to ensure, as far as possible, that there are no safe havens for those who are responsible for trafficking.

In order to ensure that states fulfil their obligations to bring to justice those responsible for trafficking, the organizations consider that Article 30 of the current draft of the European Convention against Trafficking must be strengthened. It should incorporate the wording set out in other international treaties, such as Articles 6-8 of the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture).

Trafficking in human beings has thrived and even become characteristic in situations of internal and international armed conflict and in post-conflict situations - including notably those involving an international presence (such as peacekeepers, peace-builders, civilian policing). International law acknowledges state responsibility to ensure respect for human rights of those on territory within the effective control of the state,¹⁸ Amnesty International and Anti-Slavery International therefore urge the CAHTEH to ensure that Article 30 of the draft European Convention against Trafficking is also amended to require each State Party to take measures to ensure that they establish jurisdiction over trafficking and related offences committed in any state by persons carrying out functions as part of an international contingent on its behalf.

Making such amendments would ensure that the European Convention against Trafficking is consistent with Article 1 of the European Convention on Human Rights and Article 2 of the International Covenant on Civil and Political Rights, which require States Parties to ensure the rights set out in these treaties to all persons within the territory and subject to the state's jurisdiction.

Incorporation of provisions similar to Article 6 of the Convention against Torture into the European Convention against Trafficking will ensure that States Parties are required to make preliminary inquiries when there is sufficient evidence that a person who is alleged to have committed any offence established under the European Convention against Trafficking is in a territory under its jurisdiction and to ensure the continuing presence of such person during such time.

Incorporation of the principles set out Article 7 of the Convention against Torture and other international treaties,¹⁹ will fill a gap in draft the European Convention against Trafficking. It will require the State Party in whose territory a person alleged to have committed any offences set out in the Convention is found, to submit the case to its competent authorities for the purposes of prosecution, if it does not extradite such person.

¹⁸ 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.

¹⁹ See, among others, Articles 6 and 7 of the European Convention on the Suppression of Terrorism; Articles 5(2) and 8(1) of the 1979 International Convention against the Taking of Hostages; Article 10(1) of the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; Article 14 of the 1940 Montevideo Treaty of International Penal Law; Articles 6(4) and 8(1) of the 1997 Terrorist Bombings Convention; Article 36(2)(a) (iv) of the 1961 Single Convention on Narcotic Drugs.

The European Convention against Trafficking should also require that those suspected to be responsible for trafficking offences are brought to justice in proceedings which meet international standards of fairness and cannot result in the imposition of the death penalty.

Article 30 of the European Convention against Trafficking should also establish the offences set out in the treaty as extraditable offences between States Parties, in a manner consistent with international standards, including Article 8 of the Convention against Torture.

Accordingly, Amnesty International and Anti-Slavery International urge the CAHTEH to amend Article 30 on Jurisdiction along the following lines (most of the provisions added are adaptations of the above-cited provisions of the Convention against Torture):

Article 30 – 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 under its jurisdiction**; 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 **or other person who has his or her habitual residence present in its territory or subject to its jurisdiction**, 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;
- (e) against one of its nationals;
- (f) **by a member of its security forces or private contractors carrying out such functions, in any state, regardless of their nationality, and regardless if the offence is punishable under the law where it was committed.**

~~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 paragraphs 1 (d) and (e) of this article or any part thereof.~~

~~3.~~ **2.** 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.~~

3. 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.

4. 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.

Article 30 bis: *(NB the following provisions follow the wording of Articles 6 and 7 of the Convention against Torture with relevant modification)*

- 1.** Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in articles 17 -21 is present, shall take him or her into custody or take other legal measures to ensure his or her presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
- 2.** Such State shall immediately make a preliminary inquiry into the facts.
- 3.** Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he or she is a national, or, if he or she is a stateless person, to the representative of the State where he or she usually resides.
- 4.** When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 30, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said State and shall indicate whether it intends to exercise jurisdiction.
- 5.** The State Party in territory under whose jurisdiction a person alleged to have committed any offence referred to in articles 17-21 is found, shall in the cases contemplated in article 30, if it does not extradite

him or her, submit the case to its competent authorities for the purpose of prosecution.

6. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 30, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 30, paragraph 1.
7. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 17-21 shall be guaranteed fair treatment at all stages of the proceedings.
8. The offences referred to in article 17 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
9. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
10. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested state.

6. Monitoring Implementation of the Convention

a) Articles 35 and 36: Monitoring Mechanism

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

Amnesty International and Anti-Slavery International welcome the fact that the Committee of Ministers has instructed the CAHTEH to ensure that the European Convention against Trafficking establishes a monitoring body to ensure effective implementation of this treaty.

The organizations consider that an independent body of experts should be appointed for this purpose, in an open transparent process which includes consultation with civil society.

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 assisting and ensuring protection of 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.

The independent expert-body 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.

In accordance with these recommendations, Amnesty International and Anti-Slavery International urge the CAHTEH to amend Articles 35 and 36 as follows:

Article 35 – 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 36 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 fields of **human rights, assistance and protection of trafficked persons and** action against trafficking in human beings} ~~and the protection of victims.~~

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, chosen from amongst nationals of the States Parties to this Convention **in an open and transparent process, involving consultation with civil society.**

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 fields **of human rights, assistance to or protection of trafficked persons and** 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) they should represent the main legal systems, and **countries of origin, transit and destination.**

4. The election ~~procedure~~ of the members of GRETA ~~shall be determined~~ by the Committee of Ministers **shall take place no later than** ~~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 36 – 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 **the implementation of Chapters II to VI of the present Convention in Each State Party.**

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 by Each State Party

and may request, if necessary, additional information. GRETA may request **and consider** information **from any source, including** 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 **on each Party** 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 **to be** 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 GRETA and~~

7. On the basis of the reports of GRETA and their conclusions-the Committee of Ministers 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

8. The report of GRETA, as well as ~~it's~~ **the conclusions and recommendations of GRETA and the Committee of Ministers**, shall be made public as from their adoption; ~~together with~~ the eventual comments by the Parties shall also be made public.

9. GRETA shall also have the authority to consider and make findings on

the basis of collective complaints made by organizations approved by GRETA. The rules for this procedure will be established by GRETA and adopted by the Committee of Ministers.

7. 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 these aims 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-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 October 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 implement the above-described recommendations to the draft European Convention against Trafficking.

We also call on the Council of Europe and each of the 45 member states of the Council of Europe to widely disseminate the draft 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. 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 this will increase the likelihood that the treaty adopted by the Council of Europe will improve and enhance existing international and regional standards on trafficking in human beings. If it does so, the European Convention on Action 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.

Appendix:

**October 2004 Draft European Convention on Action
against Trafficking in Human Beings
CAHTEH (2004) Info 6-**



1.

Strasbourg, 11 October 2004

CAHTEH (2004) INFO 6

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

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

FOLLOWING THE 6TH MEETING OF THE CAHTEH (28 SEPTEMBER – 1 OCTOBER 2004)

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 6th meeting of the CAHTEH held from 28 September to 1 October 2004.

CONTENTS

Preamble.....	5
Chapter I – Purposes, scope, non-discrimination principle and definitions.....	6
Chapter II – Prevention, co-operation and other measures	7
Chapter III – Measures to protect and promote the rights of victims, taking gender equality aspects into consideration.....	8
Chapter IV – Substantive criminal law	11
Chapter V – Investigation, prosecution and procedural law	13
Chapter VI – International co-operation	14
Chapter VII – Monitoring mechanism	15
Chapter VIII – Relationship with other international instruments.....	17
Chapter IX – Amendments to the convention	17
Chapter X – Final clauses.....	18

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 respect for the rights and 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 112th (14-15 May 2003) and the 114th (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, 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 who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities;

Taking into due account the United Nations Convention Against Transnational Organised 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 natural person who is subject to trafficking in human beings as defined in this article.

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 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

Article 10- Identification of the victims (former article 13)

2. Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings and shall ensure that the different authorities 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 14 of the present Convention.

3. 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 receive the assistance provided for in Article 12, paragraphs 1 and 2.

3. 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.

4. As soon as a child is identified as a victim and is unaccompanied, each Party shall:

- (g) provide for representation of the child by a legal guardian, organisation or authority which is responsible to act in the best interests of that child;
- (h) take the necessary steps to establish his/her identity and nationality;
- (i) make every effort to locate his/her family when this is in the best interests of the child.

Article 11 – Protection of private life (former article 12)

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 (CETS 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, except, in exceptional circumstances, in order 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 12 – Assistance to victims (former article 10)

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 engaged in victim assistance.

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 13 – Recovery and reflection period (former article 14)

1. Each Party shall provide in its internal law a recovery and reflection period, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on co-operating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without 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.

2. During this period, the persons referred to in paragraph 1 of this Article shall be entitled to the measures contained in Article 12, paragraphs 1 and 2.

Article 14 – Residence permit (former article 15)

1. Each Party shall provide for the possibility to issue a renewable residence permit to victims, either in one of the two following situations or in both:

- (c) the competent authority considers that their stay is necessary owing to their personal situation;
- (d) the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.

2. The residence permit related to child victims, when this is legally necessary, shall be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions.

3. The non-renewal or withdrawal of a residence permit is subject to the conditions provided for by the internal law of the State Party.

4. If a victim submits an application for another kind of residence permit, the Party concerned shall take account of the fact that the victim has benefited or benefits from a residence permit in conformity with paragraph 1.

5. Having regard to the obligations of States Parties to which Article 39 of this Convention refers, each Party shall ensure that granting of a permit according to this provision shall be without prejudice to the right to seek and enjoy asylum.

Article 15 – Compensation and legal redress (former article 11)

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.

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

4. 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 22.

Article 16 – repatriation and return of victims

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 rights, safety, and dignity of that person, the return of that person without undue or unreasonable delay.

2. When a Party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary.

3. At the request of a receiving Party, a requested Party shall verify whether a person is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving Party.

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 authorisation 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. These programmes aim at avoiding re-victimisation. Each Party should make its best effort to favour the reintegration of victims into the society of the State of return, including reintegration into the education system and the labour market, in particular through the acquisition and improvement of their

professional skills. With regard to children, these programmes should include enjoyment of the right to education and measures to secure adequate care or receipt by the family or 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, non-governmental organisations, legal professions able to provide counselling and social welfare agencies.

7. Child victims shall not be returned to a State, 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 as referred to in Article 4 paragraph a of this Convention, with the knowledge that the person is a victim of trafficking in human beings.

Article 19- Criminalisation of acts relating 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 – Attempt and aiding or abetting (former article 21)

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 21 – Corporate liability (former article 22)

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 22 – Sanctions and measures (former article 23)

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 to 20 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 21 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 23 – Aggravating circumstances (former article 24)

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

Article 24- previous convictions (former article 25)

Each Party shall adopt such legislative and other measures providing for the possibility 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 25 – Non-punishment provision (former article 26)

OPTION 1

Each Party shall, in accordance with the basic principles of its national legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so, as a direct consequence of their situation as victim.

OPTION 2

Each Party shall, under the conditions provided by its internal law, ensure that no penalty is imposed on victims for their involvement in unlawful activities when they have been compelled to do so by their situation as victims.

CHAPTER V – INVESTIGATION, PROSECUTION AND PROCEDURAL LAW

Article 26- *Ex parte, ex officio* [and interested third party applications] (former article 27)

1. Each Party shall ensure that investigations into or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim, at least when the offence has been committed in whole or in part on its territory.
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 ensure, by means of legislative or other measures, in accordance with the conditions provided for by its national law, to any group, foundation, association or non-governmental organisations which aims at fighting trafficking in human beings or protection of human rights, the possibility to assist and/or support the victim with his or her consent during criminal proceedings concerning the offence established in accordance with Article 17 of this Convention.

Article 27 – Protection of victims, witnesses and collaborators with the judicial authorities (former article 28)

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 in particular during and after investigation and prosecution of perpetrators, for:
 - (e) Victims;
 - (f) As appropriate, 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;
 - (g) witnesses who give testimony concerning criminal offences established in accordance with Article 17 of this Convention;
 - (h) when necessary, 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 and to offer various kinds of protection. This may include physical protection, relocation, identity change and assistance in obtaining jobs.
3. A child victim shall be afforded special protection measures taking into account the best interests of the child.
4. Each Party shall consider entering into agreements or arrangements with other States for the implementation of this article.

Article 28 – Specialised authorities and co-ordinating bodies (former article 30)

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. Such persons or the staffs of such entities should 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 relevant officials in the prevention of and fight against trafficking in human beings, including Human Rights training. The training may be agency-specific and shall, as appropriate, 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.

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

Article 29 – Court proceedings (former article 32)

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 or 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 conditions under its internal law and, in the case of child victims, by taking special care of children's needs and ensuring their right to special protection measures.

Article 30 – Jurisdiction (former article 33)

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:

- (g) in its territory; or
- (h) on board a ship flying the flag of that Party; or
- (i) on board an aircraft registered under the laws of that Party; or
- (j) 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:
- (k) against one of its nationals.

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 paragraphs 1 (d) and (e) 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 31 – General principles and measures for international co-operation (former article 34)

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;
- the protection of, and providing assistance to victims;
- the purposes of investigations or proceedings concerning criminal offences established in accordance with this Convention.

Article 32- Measures relating to endangered persons (former article 38)

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 27, paragraph 1, is in immediate danger on the territory of another Party, the Party that has the information shall, in such a case of emergency, transmit it without delay to the latter so as to take the appropriate protection measures.

Article 33 – Information (former article 41)

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.
4. All information requested concerning Articles 13, 14 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 11 of the present Convention.

[CHAPTER VII – CO-OPERATION WITH THE CIVIL SOCIETY

Article 34]– Co-operation

Each Party shall encourage state authorities, as well as public officials, to co-operate with non-governmental organisations, other relevant organisations and members of civil society, in establishing strategic partnerships with the aim of achieving the purpose of this Convention.

CHAPTER VIII – MONITORING MECHANISM

Article 35 – Implementation of the Convention (former article 42)

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 36 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] and the protection of victims.
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, chosen from amongst nationals of the States Parties to this Convention.
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) they should represent the main legal systems.

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 36 – Procedure (former article 43)

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.

[Article 37 – Participation in the Committee of Ministers by Parties which are not members of the Council of Europe (former article 44)

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 IX – RELATIONSHIP WITH OTHER INTERNATIONAL INSTRUMENTS

Article 38 – 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 (former article 45)

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 39 – Relationship with other international instruments (former article 46)

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 X – AMENDMENTS TO THE CONVENTION

Article 40 – Amendments (former article 47)

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 41 and to any State invited to accede to this Convention in accordance with the provisions of Article 42.
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.

CHAPTER XI – FINAL CLAUSES

Article 41 – Signature and entry into force (former article 48)

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 42 – Accession to the Convention (former article 49)

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 43 – Territorial application (former article 50)

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 44 – Reservations (former article 51)

No reservation may be made in respect of any provision of this Convention, with the exception of the reservation of Article 30, paragraph 2.]²⁰

²⁰ A decision on this Article will be made once the text of draft Convention is finalised.

Article 45 – Denunciation (former article 52)

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 46 – Notification (former article 53)

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 41 and to any State invited to accede to this Convention in accordance with the provisions of Article 42 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 41 and 42;
- d any amendment adopted in accordance with Article 40 and the date on which such an amendment enters into force;
- e any denunciation made in pursuance of the provisions of Article 45;
- g any other act, notification or communication relating to this Convention, in particular relating to Article 36, 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.