

Joint NGO Statement on the draft European Convention against Trafficking

Joint NGO Statement on the draft European Convention against Trafficking in Human Beings

The undersigned non-governmental organizations submit the following comments regarding the draft European Convention against Trafficking in Human Beings¹:

Introduction:

1. As the number of people affected by this contemporary form of slavery in the Council of Europe region has dramatically increased over the last decade, we welcome the Council of Europe's focus on trafficking of human beings.
2. Trafficking is an abuse of human rights. It results in the abuse of the human rights of trafficked persons including the rights to: physical and mental integrity; life; liberty; security of the person; dignity; freedom from slavery, slavery-like practices, torture and other inhuman or degrading treatment; family life; freedom of movement; privacy; the highest attainable standard of health; and safe and secure housing. Measures addressing trafficking must place the protection and respect of these rights at their core, as well as the right of trafficked persons to effective redress, including reparation, for the human rights abuses to which they have been subjected.
3. We welcome the recognition by the Council of Europe's Committee of Ministers that there is a need to develop additional standards which improve the protection of the rights of trafficked persons. We therefore welcome the Committee of Minister's mandate to the *Ad Hoc Committee on Action against Trafficking* (CAHTEH) to draft a European Convention against Trafficking in Human Beings which designs a comprehensive, gender-sensitive framework for the protection of the human rights of trafficked persons focusing on prevention, investigation, prosecution and international cooperation.
4. In order to fulfil this mandate, the Council of Europe and its Member States must ensure that the provisions of the treaty which it proposes *enhance* the protection of the rights of trafficked persons. This will require a text which *improves* on the provisions set out in existing international treaties, many existing state laws as well as principles and guidelines issued by specialised international agencies, and requires states to take particular measures to protect and respect the rights of trafficked persons.

¹ For more information please refer to submissions from individual NGOs available at their websites.

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

Consultation with Civil Society

6. We consider that to meet these aims, it is of vital importance that, throughout the drafting and process before the adoption of this treaty, each of the governments of the 46 Council of Europe Member States and the CAHTEH consult with trafficked persons and civil society, in particular those individuals and organizations that work with or on behalf of trafficked persons. We regret that to date, most states have not held such consultations. We therefore call on the 46 Council of Europe Member States to consult such persons, without further delay, and to inform their views on the provisions of this treaty on the basis of such consultations.

Identification of trafficking as a human rights violation

7. We consider that it is important that this treaty identifies trafficking in human beings as a violation of human rights, which results in a range of human rights violations and abuses, and is an offence to the dignity and integrity of the human being. The Convention should assist States to incorporate definitions of trafficking in their domestic legislation in line with the Palermo Protocol, recognising that the issue of consent of a victim to the intended exploitation is irrelevant, where any of the prohibited means has been used to traffic the person.

Trafficked Children

8. With respect to child trafficking, the European Convention against Trafficking in Human Beings must address the various areas into which children are trafficked, the specific forms of exploitation to which children are subjected and the dependency of children on adults. The Convention should ensure a child rights based approach is adopted in relation to anyone aged under 18 who is suspected of having being trafficked. In defining the specific ways in which children are to be protected, we urge that this convention be explicit rather than referring in a generic way to the "special needs of children". Among others there should be express provisions which require states to ensure that: actions taken with regard to trafficked children must be taken in the best interests of the child; a legal guardian is appointed to represent the interests of the child; and that the wishes of the child are taken into account in so far as their maturity allows. This convention offers the opportunity for the Council of Europe to incorporate child-specific protection measures in line with the *Guidelines for Protection of the Right of Children Victims of Trafficking in South Eastern Europe*.

Identification

9. The protection and respect for the rights of trafficked persons requires states to ensure that trafficked persons are promptly and accurately identified. Given the importance and difficulties of accurately identifying individuals as trafficked persons, as well as the risks of a failure to do so to their lives and safety and law enforcement efforts against perpetrators, the organizations urge that the Convention against Trafficking in Human Beings require states to

ensure that the authorities who have the responsibility of identifying trafficked persons are adequately trained and qualified to carry out this task in a gender-and-culturally, and where applicable, child rights sensitive manner. We also recommend that persons not so identified be granted access to appeal to an independent impartial and competent body.

Protection and Assistance Measures

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

11. All such measures should respect the dignity and privacy of the trafficked person. Such protection, services and assistance, as well as preventative measures must respect the right to seek and enjoy asylum and other forms of international protection. Protection measures must also be available to, and when appropriate, extended to the families of trafficked persons and others, including those who cooperate with law enforcement authorities or judicial authorities and those who provide services to trafficked persons.

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

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

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

Recovery and Reflection Period

15. We recommend that the treaty expressly require states to ensure a sufficient reflection and recovery period of a minimum of 3 months, during which time, any person reasonably

believed to have been trafficked should be allowed to remain in the country, and have access to a full range of assistance, protection and services, so as to allow them to begin to recover *and/or* to make informed decisions about their future (including willingness to cooperate in law enforcement efforts against their traffickers), in security. The person's status in the country during this time must be regularized and recognized, including by the issuance of appropriate official documentation.

Renewable and Permanent Residence Permits

16. States should be required to issue renewable residence permits, of a minimum length of six months, and permanent residence permits. Such permits should be issued (and renewed) on the basis of periodic needs and risk assessments which are carried out by suitably trained and sensitized individuals, and should not be conditional on the agreement of the trafficked person to cooperate with law enforcement efforts. Renewal of residence permits should also occur in compliance with other national and international laws, including the right to seek asylum. Family reunification should be available.

Repatriation and Resettlement

17. Repatriation to *any* state (including the country of origin) should be preferably voluntary, assisted and only take place after a needs and risk assessment is conducted. All such returns must be consistent with respect for the rights (including to dignity and privacy) of the trafficked person. In no event should a person be returned if there is a risk to his or her life or safety, including a risk of re-trafficking. States must be required to ensure the provision of repatriation assistance and support. In the case of any trafficking victim under 18, it should be obligatory to ensure that a legal guardian is available in the country to which a young person might be repatriated before proceeding with repatriation.

18. When remaining in a country of destination or origin is not a safe and viable option, states should be required to ensure third-country protection.

Reparation

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

Non-Punishment of trafficked persons

20. The European Convention against Trafficking in Human Beings should prohibit the detention, charge or prosecution of a trafficked person for the illegality of their entry into or

residence in a country or their involvement in unlawful activities that are a consequence of their situation as trafficked persons.

Preventative Measures

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

Criminal Measures

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

23. It is well-established that trafficking flourishes in conflict and post-conflict situations, including, notably, those involving an international presence (such as peacekeepers, peace-builders, civilian policing) and that international law acknowledges state responsibility to ensure respect for human rights of those in territory within the effective control of the state. The European Convention against Trafficking in Human Beings should require states to exercise jurisdiction over trafficking and related offences against or by persons in territory within its effective control.

Monitoring Body

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

Signatures as of 22 November 2004

1. ACT UP HELLAS (Greece)
2. AFESIP International
3. AFIV ARTEMIS Cluj (Romania)
4. ALTEN
5. Amnesty International
6. Animus Association/ La Strada Bulgaria (Bulgaria)
7. ANPPCAN Kenya Chapter (Kenya)
8. Antenna May Day (Switzerland)
9. Anti-Slavery International
10. Anti Trafficking Centre (Serbia and Montenegro)
11. Apis Graubünden (Aidsprävention im Sexgewerbe) (Switzerland)
12. Associação Obra Gay - Opus Gay (Portugal)
13. ASOCIATIA FEMINA 2000 (Romania)
14. Asociatia Jurnalistelor din Romania (Romania)
15. Association Fleur de Pavé (Switzerland)
16. Associazione "Differenza Donna" (Italy)
17. Associazione IRENE (Italy)
18. Associazione IROKO (Italy)
19. Associazione TAMPEP (Italy)
20. ASTRA- Anti Sex Trafficking Action (Serbia and Montenegro)
21. Asylum Aid (United Kingdom)
22. Ban Ying (Germany)
23. BLLF-Sweden (Sweden)
24. Caritas Hellas (Greece)
25. Catholic Bishops' Conference of England and Wales (United Kingdom)
26. CCEM (Committee Against Modern Slavery) (Spain)
27. Center for Legal Resources (Romania)
28. Center for Women Policy Studies

29. Centre for Family Support (Greece)
30. Centro Antiviolenza della Provincia di Roma (Italy)
31. CHASTE
32. CISL Milano (Italy)
33. Child and Women Abuse Studies Centre, London Metropolitan University (UK)
34. Chortiatis Local Youth Council (Greece)
35. Christian Partners Development Association (Kenya)
36. Clube Safo (Portugal)
37. Church Women United (United States of America)
38. Comitato per i diritti civili delle prostitute (Italy)
39. Cnca - Coordinamento nazionale comunità di accoglienza (Italy)
40. CONEDIS (Italy)
41. Conexiuni Deva (Romania)
42. Cooperativa Sociale "Magliana '80" (Italy)
43. Cradle-the Children's Foundation (Kenya)
44. Danish Anti-Slavery Society (Denmark)
45. Danish Women's Society (Denmark)
46. December 18 vzw
47. DIKPO Thélesphere T
48. DIYA
49. Dutch Foundation of the Religious against Trafficking in Women (SRTV)
50. ECPAT International
51. ECPAT Italia (Italy)
52. ECPAT Nederland/ Defence for Children International Nederland (Netherlands)
53. ECPAT Sweden (Sweden)
54. ECPAT UK (United Kingdom)
55. Ecumenical Forum of European Christian Women - Scotland Branch (United Kingdom)
56. Ensi- ja turvakotien liitto - The Federation of Mother and Child Homes and Shelters in Finland (Finland)

57. EPER (Entraide Protestante Suisse) / HEKS (Hilfswerk der evangelischen Kirchen Schweiz) (Switzerland)
58. European Network of Women –Greece (Greece)
59. European Roma Rights Centre
60. Fédération International pour l'Education des Parents
61. Feminist Net (Greece)
62. FiM - Frauenrecht ist Menschenrecht e.V Beratungs- und Informationsstelle für Migrantinnen (Germany)
63. Finnish Refugee Advice Centre (Finland)
64. FIZ - Fraueninformationszentrum für Frauen aus Afrika, Asien, Lateinamerika und Osteuropa (Women's Information Center for Women from Africa, Asia, Latin America and Eastern Europe) (Switzerland)
65. FN Forbundet / Danish United Nations Association (Denmark)
66. Franciscans International
67. GAATW
68. Genathlon – Centre for the Interdisciplinary Study of Human and Natural Systems (Greece)
69. Global Ministries of the Protestant Church in the Netherlands (the Netherlands)
70. Greek Helsinki Monitor (Greece)
71. HERRMANN - Prävention, Information und Beratung für Sexworker (Switzerland)
72. Hotline for Migrant Workers (Israel)
73. Human Rights Watch
74. Ibis (Denmark)
75. Immigration Advisory Service (United Kingdom)
76. International Federation of Social Workers (IFSW)
77. International Federation of Terre des Hommes
78. International Movement Against All Forms of Discrimination and Racism (IMADR)
79. Irish Congress of Trade Unions (Ireland)
80. Israel Women's Network (Israel)
81. ISSAS - Istituto superiore di studi e ricerca per l'assistenza sociale e sanitaria (Italy)
82. Justice (United Kingdom)
83. Karditsa Women Centre (Greece)

84. Kav LaOved (Worker's Hotline) (Israel)
85. KOOFRA - Coordination Center against Trafficking in Women (Germany)
86. "Korais" Cultural Association (Greece)
87. Kumppanuushanke Tyttöjen Talo - Girls' House Cooperative Project (Finland)
88. Kurdish Human Rights Project
89. Kvinderådet/Women's Council in Denmark (Denmark)
90. Lamed Alef (No to Violence) (Israel)
91. Law Centre (NI)
92. Law Society (United Kingdom)
93. LEFO (Austria)
94. Legal Clinic for Minors
95. Legal Resource Foundation (Kenya)
96. Lithuanian HumanRights association (Lithuania)
97. Ludwig Boltzmann Institute of Human Rights (Austria)
98. Lykeion Ellinidon (Greece)
99. Maltese Association of Social Workers (Malta)
100. Medical Foundation for the Care of Victims of Torture
101. Minority Ethnic Women Cymru (United Kingdom)
102. Minority Rights Group (Greece)
103. Monika - Multicultural Women's Association (Finland)
104. Naisten Linja Suomessa ry - National Women's Line in Finland (Finland)
105. National Council of Women of Malta (Malta)
106. National Council of Women, Foreign Affairs Committee (United Kingdom)
107. National Council of Women of South Africa (South Africa)
108. The National Federation of Women's Institutes (NFWI)
109. The National Federation of Women's Institutes - Wales (NFWI - Wales)
110. National Missing Persons Helpline (United Kingdom)
111. NPF (Help for Children)
112. New York Asian Women's Center (United States of America)
113. NGO Centre Against Violence and Human Trafficking (Russian Federation)

114. Norske Antislaveriselskapet (Norwegian Anti Slavery Society) (Norway)
115. Northern Ireland Council for Ethnic Minorities (United Kingdom)
116. Northern Ireland Women's Aid Federation (United Kingdom)
117. The Norwegian Anti-Racist Centre (Norway)
118. The Norwegian Bar Association's Human Rights Council (Norway)
119. The Norwegian Council of the Rights of the Kurdish People (Norway)
120. Norwegian Helsinki Committee (Norway)
121. Norwegian Mission to the East (Norway)
122. The Norwegian Organisation for Asylum Seekers (Norway)
123. Nytkis - The Coalition of Finnish Women's Associations (Finland)
124. On the Road (Italy)
125. Open Gate / La Strada Macedonia
126. Open Society Foundation (Romania)
127. Pag-Asa (Belgium)
128. "Panathinaiki" Panhellenic Women's Organization (Greece)
129. Parsec (Italy)
130. Partnership for Equality Center (Romania)
131. Phoenix Women Take Back the Night (United States of America)
132. The Pro Centre (Norway)
133. Pro-Tukipiste - Prostitute Counselling Service (Finland)
134. Psycho-social centre "Yatra"
135. Rabbis for Human Rights (Israel)
136. The Rehabilitation Centre For Victims Of Torture And Other Forms Of Abuse (CRTV) (Greece)
137. Refugee Consortium of Kenya (Kenya)
138. Refugees Women's Legal Group (United Kingdom)
139. Respect (United Kingdom)
140. Ruhama (Ireland)
141. Salvation Army
142. Save the Children

143. Scottish Human Rights Centre (United Kingdom)
144. Scuola Superiore Sant'Anna di Pisa (Italy)
145. Social Aid of Hellas (Greece)
146. Society for Human Rights, Environment, Law and Governance Activities (SHELGA) (Nepal)
147. Soroptimist International of Great Britain and Ireland
148. South Essex Rape and Incest Crisis Centre (SERICC) (United Kingdom)
149. La Strada Belarus (Belarus)
150. La Strada Czech Republic (Czech Republic)
151. La Strada Moldova (Republic of Moldova)
152. La Strada Network
153. La Strada Ukraine (Ukraine)
154. STV (Netherlands)
155. Sudanese Community In Greece (Greece)
156. Sudan National Alliance, Greece Chapter (Greece)
157. Suomen Unifem - National Committee for Unifem in Finland (Finland)
158. Swedish Helsinki Committee for Human Rights (Sweden)
159. The Swedish NGO Foundation for Human Rights (Sweden)
160. Terre des hommes Italia (Italy)
161. Terre des hommes Switzerland (Switzerland)
162. Traditional – Cultural Association “O Arapis” (Greece)
163. Transparency International Denmark (Denmark)
164. Transparency International Greece (Greece)
165. Trócaire (Ireland)
166. Truth About Rape (United Kingdom)
167. Tukinainen - Rape Crisis Centre (Finland)
168. Unioni - The League of Finnish Feminists (Finland)
169. University of Nottingham Human Rights Law Centre (United Kingdom)
170. Wales Women's National Coalition (United Kingdom)
171. Womankind (United Kingdom)

- 172. Womanzone (United Kingdom)
- 173. Women's Empowerment project (Kvinna till Kvinna Foundation) (Sweden)
- 174. Women in Black (Serbia and Montenegro)
- 175. Women's International League for Peace and Freedom German Section
 (Germany)
- 176. Women's Shelter Association (Samtök um kvennaathvarf) (Iceland)
- 177. The World Organisation Against Torture (OMCT)
- 178. Youth Council of Municipality of Sofades (Greece)
- 179. Youth Information Centre (Greece)
- 180. Youth Secretariat of the Greek Workers Confederation (Greece)