

Recommendations regarding the Proposal for a Council Framework Decision on Combating Trafficking in Human Beings

Submitted by
Women's Rights Division, Human Rights Watch

Trafficking in persons is a grave human rights abuse that persists at staggering levels in all regions of the world. Moreover, despite international conventions that obligate states to prevent and provide redress for trafficking-related abuses, governments' responses remain woefully inadequate. Human Rights Watch therefore welcomes the E.U. Proposal for a Council Framework Decision on Combating Trafficking in Human Beings. However, we wish to express our grave concern that the proposal only minimally recognizes the importance of addressing the human rights violations inherent in trafficking, and we urge all member states to ensure that comprehensive human rights protections are included in the final language of the Council Framework Decision.

Member states have recently completed negotiations on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which many member states have signed. The United Nations Special Rapporteur on Violence against Women, Radhika Coomaraswamy, advocated that the Protocol "ensure an unequivocal human rights standard on trafficking in women, since it is impossible to combat trafficking without providing protection to victims of trafficking" (E/CN.4/2000/68, paragraph 107). Similarly, the Office of the United Nations High Commissioner for Human Rights (UNHCHR), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF) and the International Organization for Migration (IOM) called for governments to ensure comprehensive human rights protections for victims of trafficking in the Protocol (A/AC/254.27). These high-level calls for human rights protections should apply also to the proposed Council Framework Decision on Combating Trafficking in Human Beings.

Human Rights Watch has reviewed the most recent draft of the Council Framework Decision (Brussels, 21.12.2000) and offers these comments as the debates over the document continue. Human Rights Watch hopes that these suggestions will prove useful as member states work to incorporate human rights standards into all Framework Decisions.

Introduction

Recommendations:

- **Trafficking of persons is a grave human rights abuse:** The introduction should emphasize that trafficking in persons is a human rights abuse and that, in responding to

this problem, member states should prioritize the protection of the human rights of trafficked persons, taking the steps necessary to prevent abuses and provide remedies where abuses occur. These abuses include rape, physical violence, debt bondage, slavery-like conditions, false imprisonment, servitude, sale as chattel, forced abortion, forced labor, lack of access to health care, and lack of education in the case of children. Unfortunately, the introduction to the Framework Decision focuses primarily on a law enforcement approach to trafficking, rather than integrating a human rights framework.

- **The root causes of trafficking include violence against women and children:** The Commission is to be commended for including references to the root causes of trafficking in the introduction to the Framework Decision. Violence against women and children in their countries of origin should be included as a root cause in addition to the “lack of education and professional opportunities.”

Article 1 Trafficking in Human Beings for the Purpose of Labor Exploitation

Recommendations:

- **Forced marriage should be included within the definition of “production of goods or provision of services.”** Slavery-like practices should be understood to include those practices condemned under the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. These practices include, among others, debt bondage and forced marriage.
- **Trafficking can be within as well as across international borders.** Human Rights Watch commends the Commission on its focus on the exploitative purpose of forced labor or forced prostitution rather than on “movement” across a border.

Article 2 Trafficking in Human Beings for the Purpose of Sexual Exploitation

Recommendations:

- **The definition of trafficking should be limited to situations in which coercive practices are used in the recruitment, transportation, transfer, or harboring or receipt of a person for the purpose of placing that person into slavery, forced labor, debt bondage, slavery-like practices, or servitude.** In recognition of women and men’s ability to make voluntary decisions about migration and employment, the definition of “trafficking for sexual exploitation” should be limited to those situations involving deceptive or coercive practices. It is important to recognize that traffickers commonly employ physical and non-physical means of coercion, including physical violence and threat of physical violence, deceit, debt bondage, blackmail, isolation, and/or psychological pressure. The Framework Decision should distinguish between child and adult victims of trafficking. In the case of children, the definition of “trafficking for sexual exploitation” should not be limited to situations involving coercion.
- **The Framework Decision should include a separate definition of trafficking in children.** This definition should reference the recruitment, transportation, transfer or

harboring or receipt of any child — or the giving of any payment or benefits to achieve the consent of a person having control over a child — for the purpose of placing the child into any form of slavery, forced labor, or servitude, or into any other type of labor condemned under the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (Convention 182). Children do not have the same capacity to make decisions about their migration and employment as adults. When children are placed into employment conditions that have been condemned as a “worst form” of child labor by the International Labor Organization, evidence of coercion should not be necessary to qualify the practice as trafficking. ILO Convention 182 identifies the following “worst forms” of child labor: “(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”

Article 4: Penalties and Aggravating Circumstances

Recommendations:

- **The Framework Decision should give particular attention to complicity by state officials, law enforcement officials, and customs agents.** Human Rights Watch’s research in Europe and around the world indicates that trafficking, in most cases, cannot flourish without corrupt officials in countries of origin, transit, and destination. These complicit and corrupt officials make it difficult for trafficked persons to turn to the authorities for assistance.
- **Frozen assets should be made available to victims to settle financial claims for violations of their human and civil rights.** The Framework Decision should require states to make assets confiscated from traffickers (in accordance with due process protections) available to settle financial claims of trafficking victims. This is a particularly important concern in cases of trafficking in persons, in which the traffickers derive often enormous profits from trafficked persons’ labor, and at the expense of trafficked persons’ health and well-being. When the proceeds of this unjust enrichment have been confiscated through appropriate legal procedures, they should be used to provide victims with remedies for the abuses they have suffered.

Article 8: Victims

Recommendations:

- **The Framework Decision should acknowledge that states have a responsibility to protect the human rights of all trafficked persons, ensuring that further violations**

are prevented and that victims have access to legal remedies for the abuses they have suffered. The Framework Decision should require states to take measures to protect trafficking victims from being prosecuted or otherwise penalized for offenses directly related to their being trafficked, including lack of a valid visa, solicitation, prostitution, or the use of false travel or identification documents. Neither should any victims of trafficking be prosecuted nor otherwise penalized (including through restrictions on the right to future travel) in the country of origin or destination for having been trafficked or having left the country of origin in an irregular manner. Protecting the rights of trafficked persons is also critical for gaining the trust and cooperation of trafficking victims that is necessary to investigate and prosecute traffickers effectively.

- **The Framework Decision should require states to meet the urgent needs of trafficked persons, ensuring that they have access to the emergency services necessary to address the abuses they have suffered.** Trafficked persons should be provided with appropriate housing, economic assistance, confidential medical and psychological care, and other social services, as needed. Child victims of trafficking should have access to education. Trafficked persons have been subjected to serious human rights abuses, and a variety of services may be necessary to address the harms they have suffered. For example, persons who escape or are removed from the control of their traffickers may need assistance in accessing appropriate shelter and economic support, and persons exposed to psychological trauma and/or physical health risks, including the risk of contracting sexually transmitted diseases, need immediate health care services. Such urgent needs must be met in order to protect trafficked persons' physical health and safety and to avoid further traumatizing victims of trafficking. Trafficked persons should not be detained or imprisoned.
- **The Framework Decision should explicitly provide that the right to seek asylum and the fundamental principle of *non-refoulement* should in all cases be upheld.** Trafficked persons should be given full opportunity (including through the provision of adequate information and access to groups and individuals with expertise on trafficking and asylum cases) to make a claim for asylum, and their claims should be considered on a case-by-case basis with full rights to appeal. Offenses related to being a victim of trafficking, including lack of a valid visa, the use of false travel or identification documents, or having left the country of origin irregularly, should not adversely affect trafficked persons' asylum claims, impede their access to asylum determination procedures, nor result in punitive responses, including detention. In making refugee determinations, gender-based persecution should be recognized as grounds for asylum and consideration should be given as to whether authorities in the country of origin will not or cannot protect the trafficking victim from persecution by his/her traffickers. As a general rule, asylum seekers should not be detained. The detention of asylum seekers should only take place in exceptional circumstances, on a case-by-case basis, and in accordance with the 1999 UNHCR Guidelines on applicable Criteria and Standards relating to the Detention of Asylum-Seekers.
- **The Framework Decision should require member states to refrain from the immediate expulsion of trafficked persons, offering all victims of trafficking the**

opportunity to remain in the country while they consider their legal options.

Trafficked persons should be given the time, information, and assistance needed to initiate legal proceedings against their trafficker(s) and/or employer(s). Where trafficked persons decide to initiate a civil action and/or act as a witness in a criminal action, they should be allowed to remain in the country for the duration of such case(s), including all appeals. During this time, trafficked persons should be provided with the right to work and/or other means of support. States have an obligation to suppress human rights violations and provide remedies for victims where violations occur (see International Covenant on Civil and Political Rights, Article 2). Protection against immediate expulsion for all trafficking victims is necessary both to facilitate criminal investigations and prosecutions of traffickers and to provide trafficked persons with an opportunity to seek redress for the abuses they have suffered. Persons who are summarily deported will not be able to serve as witnesses in criminal cases or complainants in civil trials, nor will they be able to collect any financial judgments made in their favor. Similarly, trafficked persons will not be able to safely remain in the country of destination to pursue criminal and/or civil claims unless they are given the opportunity to work legally and/or access to other means of support.

- **The Framework Decision should note that permanent resettlement of trafficked persons may be appropriate in some cases, and states should provide trafficked persons with the right to apply for permanent residence status, giving appropriate consideration to humanitarian and compassionate factors in determining these cases.** Such measures should be in addition to states' obligation to protect the right to seek and enjoy asylum and to uphold the fundamental principle of *non-refoulement*.
- **The Framework Decision should require member states, in the investigation and prosecution of traffickers, to protect victims or witnesses who cooperate in these proceedings, with measures to ensure their safety, physical and psychological well-being, dignity, privacy, and right to timely repatriation to their country of origin.** The full range of witness protection measures should be made available to trafficking victims participating in criminal proceedings. Victims and witnesses should be notified in advance of decisions relating to disclosure of identifying information. Where victims' or witnesses' security would be adversely affected, measures should be available to prevent disclosure of information to the public and to delay disclosure to the accused. None of these measures should be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.
- **The Framework Decision should mandate that victims of trafficking, whether or not they are serving as witnesses, have access to the same human rights protections.** Human rights protections should be available to all victims, whether or not they agree to cooperate or testify.
- **The Framework Decision should require states to provide trafficked persons with information about their legal rights and access to legal assistance and translation services so they may seek compensation and restitution for abuses they have suffered.** Member states should ensure that their legislative frameworks contain

measures that provide trafficked persons with access to adequate criminal, civil or administrative procedures for seeking compensation for material and non-material damages, unpaid wages, and restitution, regardless of the legal status of their work.

- **The Framework Decision should require states, in the investigation and prosecution of traffickers, to take measures to ensure that the alleged “character” or current or previous occupation of the trafficked person is not admissible save in the most exceptional circumstances, where the judge is satisfied that the evidence is highly relevant and credible and is essential for a fair trial.** In no circumstances should such information be admitted where it is presented for the sole purpose of attacking the character of the victim. Moreover, such information should not be cited as a ground for disqualifying a trafficked person’s complaint. This issue is particularly relevant where victims of trafficking have had experience working in the sex industry (before and/or after being trafficked). Information about sexual conduct has often been used to discredit and/or humiliate victims or witnesses in rape cases, and care should be taken to ensure that this does not occur in the investigation and prosecution of trafficking abuses.
- **The Framework Decision should require member states to keep information about the identity and location of trafficking victims confidential and to refrain from putting any indication regarding a person’s history as a trafficking victim in her/his travel documents.** Many trafficking victims have been subjected to further trauma and/or mistreatment after information about their experience of being trafficked was released through the press or other sources. Such publicity can also endanger the physical security of trafficked persons by increasing their risk of facing retaliation from their traffickers.
- **The Framework Decision should call upon member states to cooperate with countries of origin, transit, and destination — as well as with persons with expertise in working with trafficking victims — to facilitate the safe and humane repatriation of trafficking victims.** The Framework Decision should explicitly reference the important role that persons with expertise in working with trafficking victims, including members of non-governmental organizations, can play in ensuring trafficked persons’ safe and humane return. Many trafficking victims have been re-trafficked or otherwise abused after being “dumped” across international or internal borders without appropriate care taken to ensure their safety and their ability to reach their place of residence.
- **The Framework Decision should explicitly provide that no one should be involuntarily returned to a country where there are substantial grounds for believing that s/he would become a victim of a gross human rights abuse, such as torture, enforced disappearance, summary or arbitrary execution, or prolonged arbitrary detention.** This principle is well-established under international law (for example, see the 1951 Convention Relating to the Status of Refugees, Article 33 on *non-refoulement* and the 1967 Protocol relating to the Status of Refugees, Article 1.1; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, Article 3; and the Declaration on the Protection of All Persons from Enforced Disappearances, Article 8).

Special Provisions for Child Victims of Trafficking

- **The Framework Decision should require states to ensure that where a trafficking victim is a child, countries of origin and destination take all necessary steps to locate the family members of the trafficked child, ascertain the circumstances under which the child became a victim of trafficking, and make a determination about placement in accordance with the best interests of the child.** Once a determination has been made, countries of origin, transit, and destination should facilitate the child's safe and humane return (or other placement). The goal of states' efforts should be the prompt reunification of the child with her/his family unless the best interests of the child dictate otherwise, giving consideration to the wishes of the child.
- **The Framework Decision should require states to ensure that special assistance, including legal counsel, is available to child victims of trafficking.** States should also adopt measures to ensure that monetary awards made to children are actually received by them through the formation of a trust or other legal mechanism.
- **The Framework Decision should require states to ensure that where trafficked children are remaining in the country during the pendency of trials, efforts are made to place such children with extended family members, and where not possible, in foster care or alternative small group home settings.** Under no circumstances should they be placed in a punitive institution, such as juvenile detention centers or remand homes for children. Shelters or group homes for trafficked children must have adequate security to protect residents from traffickers. They must also be given access to education, in addition to the services described in the recommendations above. A child's right to education is guaranteed in the Convention on the Rights of the Child, Article 28.

General Recommendations

At present, the Framework Decision lacks a specific section on prevention:

- **Prevention efforts should not be carried out at the expense of other human rights, including the right to freedom from discrimination and the right to freedom of movement and travel.** In particular, the right to freely leave any country, including one's own, and the right to seek and enjoy asylum in another country should not be limited by any efforts on the part of countries of origin to prevent trafficking abuses. Countries of destination should also avoid overly broad measures that restrict the mobility of women of a certain age group, class, nationality, ethnicity, and/or other characteristic on the basis of their suspected status as potential trafficking victims. Many states have responded to the problem of trafficking with sweeping policies that restrict women's access to travel documentation, including passports and visas. These policies are often carried out in violation of women's human rights to freedom from discrimination and freedom to leave any country, including their own (International Covenant on Civil and Political Rights, Articles 2, 12), and can impede their right to seek

and enjoy asylum. Moreover, such overly broad measures can be counterproductive to the effort to suppress trafficking. By making it more difficult for women to negotiate emigration and immigration controls by themselves, these measures can push women who wish to migrate into the hands of traffickers who are able to bypass the legal obstacles.

- **The Framework Decision should require states to undertake measures to ensure that educational and employment opportunities are available to women and girls on a non-discriminatory basis.** In the design and implementation of national educational and employment programs, emphasis should be given to populations who are particularly vulnerable to being trafficked. The Introduction to the Framework Decision, which calls for social and economic initiatives to prevent trafficking in persons, should make explicit reference to the need to eliminate discriminatory policies and practices that limit women and girls' access to education and/or employment. Such discrimination makes them more likely to accept risky employment offers and thus more susceptible to traffickers. In addition, sex discrimination is often compounded by discrimination on the basis of ethnicity or other characteristics to make specific populations of women and girls especially vulnerable. Efforts to prevent trafficking should address these inequities.
- **The Framework Decision should require states to undertake information campaigns that educate women and girls about their rights at home and abroad, empowering them to make informed choices about their employment and to defend their rights as workers.** Such efforts should pay particular attention to the rights of women and girl migrants and to services available to them when they are abroad.

At present, the Framework Decision lacks a general non-discrimination clause:

- **All anti-trafficking efforts should be carried out in a non-discriminatory fashion without distinction of any kind, such as discrimination based on nationality, sex, racial or ethnic origin, religion or belief, disability, age, sexual orientation, property, or birth or other status.** Moreover, member states should guarantee these rights and services to all victims of trafficking without discrimination on the basis of their immigration status, their having worked in the sex industry, or their decision to serve as a witness or otherwise cooperate in criminal investigations or prosecutions. Finally, such distinctions should not have any effect on the determination of a person's status as a victim of trafficking. The Framework Decision should be consistent with the European Union Race Directive.

The Framework Decision should institutionalize the European Union's efforts to combat trafficking in persons.

- **The Framework Decision should include implementation mechanisms for enforcement and monitoring of anti-trafficking efforts. Human Rights Watch recommends the appointment of a Trafficking Coordinator or E.U. Special Envoy on Trafficking to oversee implementation of the Framework Decision.**

- **The Framework Decision should require annual public reporting on progress in combating trafficking. Member states should submit information on implementation of the Framework Decision to the E.U. Special Envoy, who will report to the European Parliament and the Council of Ministers.**

- **As a logical extension of the European Union Human Rights Charter, the Framework Decision should mandate a Human Rights Forum to discuss internal human rights issues, with a particular focus on trafficking.** Such a forum would provide an opportunity for non-governmental organizations to have input into anti-trafficking efforts.

- **All member states should ratify and encourage non-member states to ratify and implement the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; the International Covenant on Economic, Social, and Cultural Rights; ILO Convention 143 (the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment); the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.**