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ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



**ESTABLISHING COOPERATION AGAINST
TRAFFICKING IN WOMEN AND CHILDREN**

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ESTABLISHING CO-OPERATION AGAINST TRAFFICKING IN WOMEN AND CHILDREN

I. INTRODUCTION

1. The gravity of the issue of trafficking in human beings has been recognized far way back in the 19th century by the international community and efforts have been made to fight against this evil. The first international conference on the prevention of trafficking in women was held in 1895 in Paris, followed by one in 1899 in London and another one in Budapest.

2. In 1904, sixteen States got together at an international conference in Paris leading to the framing of the first international agreement against ‘white slavery’ known as the International Agreement for the Suppression of the White Slave Traffic. This was the first international treaty that addressed the problem of trafficking in human beings. The 1904 international agreement aimed to combat the procuring of women or girls for immoral purpose abroad by forced or abusive recruitment of women and did not include trafficking within national borders.

3. Six years later, this agreement was followed by a new International Convention for the Suppression of the White Slave Traffic, 1910, which included in its purview the “trafficking in women” within national boundaries. However, this treaty related only to the forced or abusive recruitment of women.

4. The International Convention for the Suppression of the Traffic in Women and Children, 1921, was another international instrument in this series, which for the first time recognized that boys, as well as women and girls, too were victims of trafficking.

5. Similar efforts in this direction resulted in the adoption of another International Convention for the Suppression of the Traffic in Women of Full Age, 1933, which marked a shift in the concept of trafficking as it made consensual recruitment of women also punishable. This convention was applicable only when the trafficking occurred across international borders.

6. These four treaties were consolidated later in the form of the Convention for the Suppression of Trafficking in Persons and the Exploitation of the Prostitution of Others, 1949.¹ Similar to the 1933 convention, this convention also makes trafficking punishable even where the woman is recruited consensually.²

¹. This convention entered into force on July 25, 1951.

². Article 1 (1) of the 1949 convention.

7. However, the 1949 Convention has been critiqued from various viewpoints. It is argued, “The 1949 Convention arises out of a prohibitionist perspective and seeks to criminalize acts associated with prostitution, though not prostitution itself. The 1949 Convention has proved ineffective in protecting the rights of trafficked women and combating trafficking. The Convention does not take a human rights approach. It does not regard women as independent actors endowed with rights and reason; rather, the Convention views them as vulnerable beings in need of protection from the “evils of prostitution”. As such, the 1949 Convention does very little to protect women from and provide remedies for the human rights violations committed in the course of trafficking, thereby increasing trafficked women’s marginalization and vulnerability to human rights violations. Further, by confining the definition of trafficking to trafficking for prostitution, the 1949 Convention excludes vast numbers of women from its protection. Documentation shows that trafficking is undertaken for a myriad of purposes, including but not limited to prostitution or other sex work, domestic, manual or industrial labour, and marriage, adoptive or other intimate relationships.”³

8. The Convention also does not contain any strict implementation mechanism for the purpose of compliance with treaty provisions. Although the Convention requires States Parties to report annually to the United Nations Secretary-General in regard to implementation of the Convention at the national level,⁴ no independent treaty body has been established to monitor the implementation and enforcement of the treaty.

9. Since then, more international conventions have been concluded by the international community, inter alia, to deal with this issue. Chief among them are: the Convention on the Elimination of All Forms of Discrimination against Women, 1979,⁵ the Convention on the Rights of the Child, 1989,⁶ the International Convention on the Protection of the Rights of All Migrant Workers and their Families, 1990, The Hague Convention on the Protection of Children and Cooperation in respect of Inter-country Adoptions, 1993, the International Labour Organization (ILO)’s Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 and the Optional protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000.⁷

³. Report of the Special Rapporteur on Violence against Women, its Causes and Consequences on ‘Trafficking in Women, Women’s Migration and Violence against Women’. E/CN.4/2000/68, para 22.

⁴. Article 21 of the 1949 convention.

⁵. Article 6 reads as follows: States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

⁶. Articles 32, 34, 35, 36 and 39 of the Convention on the Rights of the Child deal with the issue.

⁷. In addition, there are other international declarations and plans of action addressing the problem. They are: the Plan of Action of the International Conference on Population and Development (1994) the Beijing Platform of the World Conference on Women (1995), the Declaration and Agenda for Action against Commercial Sexual Exploitation of Children adopted by the Stockholm World Congress on this issue (1996) (supplemented by the Yokohama Global Commitment (2001) as the follow-up process for the Stockholm Congress and Declaration), and the document entitled “A World Fit for Children” adopted by the UN in 2002.

10. Against this backdrop, the topic “Establishing Cooperation against Trafficking in Women and Children” was included on the agenda of the AALCO at its 40th session held in New Delhi, in June 20-24, 2001 upon a proposal of the Government of Indonesia. In the explanatory note the Government of Indonesia pointed out that trafficking in women and children, a transnational organized crime, was truly international in nature and increasingly became a global concern since the menace of this crime has no boundary. Countries in Asia and Africa as in other regions are not immune from the menace of this crime. In response to this threat, UN Conventions against Transnational Organized Crime and Protocol to Prevent, Suppress and punish Trafficking in Persons, especially Women and Children were adopted by the General Assembly at its millennium meeting in November 2000.

11. The Government of Indonesia emphasized that UN Convention against Transnational Organized Crime, particularly its Protocol to Prevent Trafficking in Persons, especially Women and Children is intended to combat trafficking in persons and facilitate international cooperation against such trafficking. Therefore, participation in large numbers in the Convention and the Protocol to Prevent Trafficking in Persons especially Women and Children will strengthen the cooperation in combating the crime of trafficking in human beings. In this regard the Government of Indonesia earnestly hopes that those Member States who have signed the above said Protocol consider ratifying it and that the protocol be fully implemented immediately after the ratification by the respective governments.

12. The Government of Indonesia believes that the inclusion of the topic on the agenda of the AALCO would facilitate the deliberations on the topic which would, in turn, help to establish cooperation between Member States in preventing and combating the crime of trafficking in women and children. For the scope of cooperation, significant issues were proposed by the Indonesian Government, namely, the role of law enforcement in the trafficking in women and children cases; prosecutorial strategies; model legislation and international agreements; intelligence sharing and effective resource utilization and other initiatives.

13. At the forty-second session, in resolution (RES/42/9), Member States were asked to consider becoming parties to the UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. It further requested Member States to transmit to the AALCO Secretariat their national legislation if they have not done so.

14. Pursuant to that mandate, this report gives a brief description of the United Nations Convention against Transnational Organized Crime and its Protocols as well as the work undertaken by other international organizations relating to the protection of women and children.

II. UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND ITS PROTOCOLS

A. United Nations Convention against Transnational Organized Crime

15. The most recent development with regard to the protection of trafficking in women and children is the adoption of the United Nations Convention Against Transnational Organized Crime and its Protocols. The Convention was adopted by the General Assembly at its Millennium meeting in November 2000. It was opened for signature at a high-level conference in Palermo, Italy, in December 2000. The Convention entered into force on 29 September 2003 and at present 61 States are parties to it.⁸

16. The main goals of the Convention include the elimination of differences among national legal systems and setting standards for domestic laws so that they can effectively combat organized crimes. It also provides for strong measures allowing law enforcers to confiscate criminal assets and crack down on money laundering to put an end to transnational crime profiting.

a. Criminalization of Organized Crime

17. The new treaty seeks to align national laws in criminalizing acts committed by organized criminal groups. These acts include agreeing with one or more other persons to commit a serious crime for financial or other material gain. They also include organizing, directing or aiding serious offences committed by an organized criminal group.

18. The Convention further criminalizes acts of corruption, which, many a time, greatly aid the rapid growth of organized crime. For the first time in an international convention, companies and corporations become liable for taking part in or profiting from serious crimes involving an organized criminal group as well for money-laundering activities. These business entities are to be punished appropriately and suffer substantial economic penalties.

b. Combating Money-laundering

⁸. 24 AALCO Member States have signed and 9 have ratified/acceded to it. The signatories Member States are: **Arab Republic of Egypt, India, Indonesia, Iran, Japan, Jordan, Republic of Korea, Kuwait, Lebanon, Libyan Arab Jamahiriya, Malaysia, Nepal, Pakistan, Saudi Arabia, Sierra Leone, Singapore, Sri Lanka, Sudan, Syria, Tanzania, Thailand, Uganda, united Arab Emirates, Republic of Yemen.** The countries that have ratified/acceded to the Convention are **Botswana, China, Cyprus, Gambia, Mauritius, Nigeria, Philippines, Senegal and Turkey.**

19. Organized criminal groups garner huge profits and launder them into safe accounts. It remains to be a major challenge to curtail the storage of these profits. Thus the Convention seeks States to set up machinery to regulate financial institutions, outlaw anonymous bank accounts or accounts in false names, set up financial intelligence units to collect, analyze and disseminate information about potential money-laundering and other financial crimes.

20. Under the Convention, States also agree to separate organized criminal groups from their ill-gotten funds by confiscating the proceeds of crime or property of the same value and by identifying, freezing and seizing assets. They also commit themselves to empower courts or other authorities to order that bank, financial or commercial records or property are made available or seized.

c. Extradition of Criminals

21. To keep criminal suspects from fleeing prosecution in one country to reach freedom in another, the Convention aims to tighten up extradition proceedings. Therefore, the Convention seeks to recognize crimes covered by the convention as extraditable, when no extradition treaty exists with the nation where the suspect is located. It also obliges States to speed up extradition procedures and conclude bilateral and multilateral agreements to make extradition more effective. In the absence of extradition treaty, the Convention seeks the State parties to consider this Convention as the legal basis for extradition in respect of any offences stated in the Convention.

d. Cooperation between States in Prosecuting Offenders

22. As the issues covered under the Convention are of transnational in nature, it is essential that there should be a continuous cooperation between States to achieve the goal of curtailing transnational organized crime substantially. Thus the Convention seeks the State parties to maintain cooperation in the following areas.

1. Carrying out searches and seizures;
2. Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records;
3. Permitting testimony or other assistance to be given through any modern means of communications;
4. Granting witnesses safe conduct when testifying in a second country; and
5. Granting immunity from prosecution or giving reduced penalties to people who cooperate substantially with law enforcers investigating an offence and entering into like arrangements with witnesses from one nation whose testimony is needed in another.

23. Nations also commit themselves to ensure a rapid information flow between authorities, agencies and services as well as to promote the exchange of personnel and other experts. In some cases, nations will set up joint teams to carry out investigations.

e. Training in Skills

24. As transnational criminal groups are adopting various methods to achieving their targets it is necessary to equip the personnel dealing with this crime in latest methods of dealing with it. Thus States are urged to train law enforcers, including prosecutors, magistrates and customs personnel as to how to identify the techniques and methods used by transnational organized groups, monitor the flow of contraband and use the modern equipment and technology.

f. Prevention of Organized Crime

25. Apart from the methods to deal with the crime it is necessary to evolve measures to prevent it. Keeping criminal groups out of legal businesses and markets is a key strategy for preventing organized crime. Therefore under the convention, States are urged to tighten cooperation between law enforcers and private entities, including industry, promote codes of conduct for relevant professions, prevent organized crime groups from manipulating tender procedures for public contracts as well as public subsidies and licenses for commercial activity.

26. Under the Convention, States are asked to stop organized criminals from misusing legal persons by setting up public records on companies or corporations as well as persons involved in their establishment, management and funding, using court orders or other means to keep people convicted of organized criminal activities -for a reasonable period of time- from acting as directors of companies or corporations, setting up national registers of people disqualified as directors of companies or corporations.

g. Implementation of the Convention

27. A Conference of the Parties to the Convention has been set up to assist States in combating transnational organized crime and also to promote and monitor implementation of the treaty. For that purpose the Conference will meet not later than one year after the treaty has come into force to agree on various measures. These measures would include encouraging the exchange of information among States on patterns and trends in transnational organized crime, cooperating with relevant international and non-governmental organizations, checking periodically on how well countries are implementing the treaty, and making recommendations to improve the treaty and its implementation process.

B. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children

28. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children entered into force on 25 December 2003 and presently 46 States are parties to it.⁹

29. The definition of trafficking in persons is intended to include a range of cases where human beings are exploited by organised criminal groups where there is an element of duress involved and a trans-national aspect, such as the movement of people across borders or their exploitation within a country by a trans-national organised crime group. The definition reads as follows:

30. “Trafficking in persons” 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,¹⁰ forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” (Art.3).¹¹ This is the first international

⁹. 14 AALCO Member States have signed this protocol. They are: **Arab Republic of Egypt, India, Indonesia, Japan, Lebanon, Libyan Arab Jamahria, Republic of Korea, Saudi Arabia, Sierra Leone, Sri Lanka, Syrian Arab Republic, United Republic of Tanzania, Thailand, Uganda,.** The 8 Member States that have ratified or acceded to it are: **Botswana, Cyprus, Gambia, Mauritius, Nigeria, Philippines, Senegal and Turkey.**

¹⁰. The terms “exploitation of the prostitution of others” and “sexual exploitation” are the only terms in the definition of trafficking that are intentionally left undefined and are also not defined anywhere else in international law. The delegations that negotiated the Trafficking Protocol at the UN Crime Commission were unable to agree upon definitions for these two terms and so they decided to leave them undefined. There was an understanding that countries have different laws and policies on adult sex work and that many countries would not or be able to sign the Trafficking Protocol if it forced them to change their prostitution laws. Some delegations felt that all adult prostitution, including voluntary and even legal prostitution involving adults, should be classified as trafficking. Many rejected the notion that voluntary, non-coerced participation by adults in sex work, factory work or any other work is trafficking. While such work can be abusive and exploitative, it is only trafficking if it amounts to the internationally recognised human rights violations of forced labour, slavery or servitude. A consensual proposal was made to encourage all countries to sign the Trafficking Protocol, including countries that have laws criminalizing adult sex work and countries that have laws decriminalizing and/or regulating adult sex work. All delegations agreed that trafficking involves slavery, forced labour or servitude. As there is no international agreement on the meaning of ‘sexual exploitation’ there was a proposal to include the term but leave it undefined. Therefore the *travaux preparatoires* indicated “that the Protocol addresses the exploitation of the prostitution of others and other forms of sexual exploitation only in the context of trafficking in persons. The terms “exploitation of the prostitution of others” or “other forms of sexual exploitation” are not defined in the Protocol, which is therefore without prejudice to how States parties address prostitution in their respective domestic laws”.

¹¹. Though the terms “exploitation of the prostitution of others” and “sexual exploitation” are not defined anywhere, the other terms used in the definition are defined elsewhere. The term “forced labour” is defined in article 2.1 of the International Labour Organisation Convention Concerning Forced Labour No. 29, 1930. The term “slavery” is defined in article 1.1 of the UN Slavery Convention, 1926. “Practices similar to slavery” are contained in article 1 of the UN supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956. Servitude is not defined in international law but it is understood that the practices similar to slavery are forms of servitude. The Supplementary

instrument that provides for a broad definition encompassing various dimensions of the issue. Various aspects of the Protocol may be summarized as follows.

a. Requirement of New Domestic Legislations

31. To tighten the net around traffickers, parties to the protocol agree to pass new laws to criminalize trafficking in persons, especially women and children, to ensure that offenders are punished. States also plan to adopt new measures to expose traffickers, such as tightening borders through stricter identity checks, as well as inspecting and seizing vehicles. Law enforcement provisions in the Trafficking Protocol and the Convention are mandatory as these provisions use the phrase “shall adopt”. Therefore States that become parties to these instruments must formulate legislation to that effect.

b. Protection of Victims

32. While the Protocol calls for a crackdown on traffickers, it also stresses that trafficking victims should be well protected. State parties are obliged under the Protocol to:

1. Inform victims about relevant court and other proceedings against offenders and ensure victims' privacy;
2. Give housing, education and care to child victims in governmental custody;
3. Enable victims to seek compensation for damages, including fines, penalties or forfeited proceeds as well as restitution from offenders;
4. Consider immigration laws permitting victims of trafficking to remain on their territory, temporarily or permanently; and
5. Accept and aid, without delay, the return of trafficking victims who are nationals or residents of that nation;

33. The trafficking Protocol is primarily a law enforcement instrument and not a human rights instrument as it has been developed by the UN Crime Commission but not by a human rights body. Therefore, the drafters created a strong law enforcement tool with comparatively weak language on human rights protections and victim assistance. Delegates concentrated on creating a strong law enforcement instrument and many of them did not believe that human rights are appropriate in the trafficking Protocol. This resulted in the law enforcement provisions containing mandatory language, such as “states parties shall”, while the protections and assistance provisions (Protocol articles 6 and 7 and Convention articles 24 and 25) containing weaker terms, such as “in appropriate cases” and “to the extent possible”.

Convention lists specific instances of servitude or practices similar to slavery. Other forms of servitude can be drawn from the principles evident in the Supplementary Convention.

c. Prevention, Cooperation and other Measures

34. The protocol emphasizes that Governments should seek to prevent trafficking, in addition to hunting down and punishing traffickers. It urges them to adopt social policies and programmes to prevent trafficking and the revictimization of trafficked persons, especially women and children. States are also urged to undertake information campaigns about trafficking in persons, especially women and children, to warn potential victims and discourage budding traffickers.

d. Exchange of Information and Border Measures

35. To boost links between law enforcers in countries of trafficking origin, transit and destination, States Parties agree through the Protocol to exchange information relating to the identity of the traffickers and victims, trafficking techniques, means of transportation as well as trafficking routes. For the purpose of preventing trafficking the protocol also asks for initiating border control measures including sanctions against carriers for not taking required measures to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.¹²

e. Non-Discrimination

36. Keeping in view the complex nature of the problem of trafficking, the Protocol recognizes that its application does not affect the rights of victims of trafficking simply because they were trafficked. It further prohibits discrimination on the grounds such as race, religion, sex, nationality etc., that are enshrined under other international legal instruments, such as human rights, humanitarian law and refugee law. Accordingly, it emphasizes that the application of the Protocol should be consistent with the internationally recognized principles of non-discrimination.

C. Protocol against the Smuggling of Migrants by Land, Air and Sea

37. The Protocol against the Smuggling of Migrants by Land, Air and Sea¹³ aims to criminalize the smuggling of migrants and those who practice it, while recognizing that

¹². In this regard UN Interpretative Note reads: “The *travaux préparatoires* should indicate that measures and sanctions applied in accordance with this paragraph should take into account other international obligations of the State Party concerned. It should also be noted that this article requires States Parties to impose an obligation on common carriers only to ascertain whether or not passengers have the necessary documents in their possession and not to make any judgment or assessment of the validity or authenticity of the documents. It should further be noted that this paragraph does not unduly limit the discretion of States Parties not to hold carriers liable for transporting undocumented refugees.”

¹³. This Protocol entered into force on 28 January 2004 and presently 41 States are parties to it. 14 Member States of AALCO signed it and 7 Member States ratified/acceded to it. They are: **India, Indonesia, Japan, Lebanon, Libyan Arab Jamahriya, Republic of Korea, Saudi Arabia, Sierra Leone, Sri Lanka, Syrian Arab Republic, Thailand, Turkey, Uganda, and Tanzania.** The countries that have ratified/acceded are: **Botswana, Cyprus, Gambia, Mauritius, Nigeria,**

migration itself is not a crime and that migrants are often victims needing protection. States Parties are obliged under the Protocol to:

1. Make migrant smuggling a criminal offence under national laws;
2. Adopt special measures to crack down on migrant smuggling by sea;
3. Boost international cooperation to prevent migrant smuggling and to seek out and prosecute offenders.

a. Criminalizing the Smuggling of Migrants

38. To eliminate safe havens for smugglers of migrants and speed up prosecution of these offenders, the Protocol obliges States to adopt laws making the practice a criminal offence. Specific acts to be considered "criminal" include: making, procuring or providing fraudulent travel or identity papers; using, possessing or acting on fraudulent papers to smuggle migrants and organizing, directing others or acting as an accomplice to use, possess or act on fraudulent papers.

39. Cracking down on smuggling by sea. Smuggling by sea is particularly unsafe for migrants and places authorities in tricky situations. The Protocol obliges governments to adopt new laws or take measures that would prevent or act on smuggling by sea, which would encompass:

1. When requested, helping to stop a vessel of the requesting State's nationality which is suspected of being used for migrant smuggling;
2. Confirming registry of a vessel of one's own nationality that is strongly suspected to be smuggling migrants and then authorizing appropriate measures, such as boarding and inspecting the vessel;
3. Ensuring that persons on board a vessel that is smuggling migrants are safely and humanely treated and that necessary actions taken towards the vessel are environmentally sound;
4. Using aircraft or other ships, which are clearly marked as being on government service to take actions at sea in cases of migrant smuggling.

b. Cooperation to Prevent and Detect Smuggling

40. Under the Protocol, States Parties agree to work together both to prevent and to detect migrant smuggling. They are encouraged to carry out information programmes to tell the public that migrant smuggling is an illegal act frequently used by criminal groups for profit, one that can place migrants in serious danger.

Philippines, and Senegal. A third Protocol against the illicit manufacturing of and Trafficking in Firearms, their parts and components and Ammunition, supplementing the United Nations Convention Against Transnational Organised Crime. The Protocol was adopted by resolution 55/255 of 31 May 2001 at the 55th Session of the General Assembly. As this Protocol is not directly related to the present study it has not been discussed here.

41. States Parties are obliged to exchange information relating to embarking, arrival, means of transportation, identity of the smugglers and possible routes and other necessary information. States Parties also agree to tighten their border controls. They are urged to be particularly vigilant about checking persons and travel or identity documents, as well as inspecting or seizing vehicles and vessels.

c. Training in New Skills

42. The Protocol obliges States Parties to give immigration and other officials special training in how to detect fraudulent travel or identity documents; gather criminal intelligence, especially to identify criminal groups known or suspected to be smuggling migrants and their smuggling methods as well as how to treat smuggled migrants.

d. Returning Smuggled Migrants

43. Under the Protocol, States Parties are required to aid and accept, without delay, the return of smuggled migrants who are nationals of their territories or previously had the right to reside there. They will also verify whether a smuggled person is a national of their territory and issue travel documents needed for that person to return.

III. RECENT DEVELOPMENTS

A. Draft Rules of Procedure for the Conference of the Parties to the United Nations Convention Against Transnational Organized Crime.

44. In accordance with article 32, paragraph 2 of the United Nations Convention against Transnational Organized Crime, the Conference of the Parties to the Convention shall adopt rules of procedure and rules governing the activities set forth in paragraphs 3 and 4 of the article. In paragraph 10 of General Assembly resolution 55/25 of 15 November 2000, the Assembly decided that the Ad Hoc Committee on the Elaboration of a Convention against Transnational organized Crime would complete its tasks arising from the elaboration of the Organized Crime Convention by holding a meeting well before the convening of the first session of the Conference of the Parties, in order to prepare the draft text of the rules of procedure for the Conference of the Parties and other rules and mechanisms described in article 32 of the Convention, which would be communicated to the Conference of the Parties at its first session for consideration and action.

45. Accordingly, the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime convened its thirteenth session in Vienna from 2 to 6 February 2004 and held 10 meetings. During these meetings, the AD Hoc Committee considered all provisions of the draft rules of procedure for the Conference of the Parties to the United Nations Convention against Transnational Organized Crime. The Ad Hoc

Committee had before it, the draft rules of procedure prepared by the Secretariat,¹⁴ documents containing proposals and contributions submitted by the Governments of Morocco,¹⁵ Senegal,¹⁶ Japan,¹⁷ Germany,¹⁸ Kuwait,¹⁹ and the Netherlands²⁰ and also the amendments to the draft rules of procedure prepared by informal working groups at the request of the Chairman.²¹ On 6 February 2004, the Ad Hoc Committee approved the draft rules of procedure and decided to submit to the Conference of the Parties to the United Nations Convention against Transnational Organized Crime for its consideration and action at its first session.

B. First Conference of the Parties (CoP)

46. The Convention provides for the establishment of a Conference of the Parties to promote and review the implementation of the Convention and supplementing Protocols, which should meet within one year of the Convention's entry into force. In accordance with this Convention mandate it was decided that the inaugural meeting of the Conference would be held in Vienna from **28 June to 9 July 2004** and would begin by adopting its rules of procedure on the basis of the draft rules prepared by the Ad Hoc Committee.

C. The African Regional Preparatory Meeting for the Eleventh Crime Congress

47. The African Regional Preparatory Meeting for the Eleventh Crime Congress was held in Addis Ababa, Ethiopia from 1-3 March 2004. The Meeting was organized by the United Nations Office on Drugs and Crime (UNODC), in cooperation with the Economic Commission for Africa (ECA). It was the first of four regional preparatory meetings²² being organized for the World Congress that will take place in Bangkok, Thailand, in April 2005.

48. Experts from African States, as well as representatives of intergovernmental organizations, United Nations bodies, United Nations-affiliated and regional institutes, and non-governmental organizations gathered to discuss, from the African perspective, the issues to be considered at the Congress. They highlighted special problems and concerns, as well as successful experiences and promising approaches deserving wider application.

¹⁴. A/AC.254/41

¹⁵. A/AC.254/L.282

¹⁶. A/AC.254/L.283

¹⁷. A/AC.254/L.284

¹⁸. A/AC.254/L.285

¹⁹. A/AC.254/L.286

²⁰. A/AC.254/L.287

²¹. A/AC.254/L.290

²². The other three regional meetings are: Asia and Pacific Regional Meeting, from 29-31 March, 2004, Bangkok, Thailand. Latin American and Caribbean Regional Meeting, 19-21 April 2004, San Jose, Costa Rica. Western Asia Regional Preparatory meeting in Beirut, Lebanon.

49. On the issue of “Effective measures to combat transnational organized crime”, the Meeting emphasized that an effective and universal implementation of the United Nations Convention against Transnational Organized Crime and its Protocols would ensure that no safe havens would remain for organized criminal groups and recommended that all States become parties to the Convention and the Protocols at the earliest opportunity.

50. The Meeting particularly identified the problem of trafficking in firearms as being highly lucrative and deeply rooted in the African region. The meeting further stressed that poor communities, especially those living in countries in conflict or post-conflict situations and countries with economies in transition, are particularly vulnerable to human trafficking and smuggling. The Meeting recommended an expanded programme of technical assistance to developing countries and countries with economies in transition in order to enable them to properly implement the Convention and its Protocols. It proposed that technical assistance activities be followed-up with a view to identifying region-specific lessons learned and develop best practices. The Meeting also called for the development and implementation of technical assistance programmes for the strengthening of the rule of law and the establishment of relevant institutions.

51. The United Nations Commission on Crime Prevention and Criminal Justice acts as the preparatory body for the Congress. The report of the African Regional Preparatory Meeting will be submitted for consideration and action by the Commission at its thirteenth session, to be held in Vienna from 11 to 20 May 2004.

IV. WORK UNDERTAKEN BY OTHER INTERNATIONAL ORGANIZATIONS RELATING TO THE PROTECTION OF WOMEN AND CHILDREN.

52. The gravity of the issue of trafficking in women and children has attracted the attention of many international organizations to initiate some action to curtail the problem. Thus, apart from the existing international legal instruments as explained above, these organizations also formulated certain mechanisms addressing the issue within its purview.

A. Office of the High Commissioner for Human Rights (OHCHR)

53. **The OHCHR** has taken an active interest since 1998 in the problem of trafficking in persons, focusing in particular on trafficking in women and children. The OHCHR has made public its decision to give high priority to the issue of trafficking. Concrete steps - including the allocation of additional human and financial resources - have been taken to implement this decision. Consistent approach of the OHCHR towards

the issue has resulted in formulating the ‘Recommended Principles and Guidelines on Human Rights and Human Trafficking’²³.

54. These principles and guidelines “have been developed in order to provide practical, rights-based policy guidance on the prevention of trafficking and the protection of victims of trafficking. Their purpose is to promote and facilitate the integration of a human rights perspective into national, regional and international anti-trafficking laws, policies and interventions”.²⁴

55. A specialist adviser manages the Trafficking Programme, which was started in 1999 by the OHCHR. By way of undertaking various activities the OHCHR endeavors to ensure that the human rights aspects of trafficking problem are adequately reflected in the efforts of States and other organizations at the international level.

B. International Labour Organization (ILO)

56. As the primary function of the ILO is to work in the field of labour, it emphasizes the issue of trafficking in the context of bonded labour, child labour and migrant workers. The main instrument that covers the problem of trafficking under ILO is the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No.182), adopted in 1999 which identifies trafficking and related exploitation such as child prostitution as one of the worst forms of child labour. ILO’s International Programme to End Child Labour (IPEC) also concentrates on ways and means of combating trafficking. Similarly, it is also working on the issue of trafficking in women. The current work of the ILO includes five major regional projects on reducing labour exploitation and combating trafficking in children. These projects are in operation in South Asia, West and Central Africa; Central America and the Dominican Republic; South America; South-East Asia; and the Greater Mekong sub-region.

57. Apart from these, other organizations like United Nations Children’s fund (UNICEF), United Nations Development Programme (UNDP), United Nations High Commissioner for Refugees (UNHCR), International Organization for Migration (IOM) and the South Asian Association for Regional Cooperation (SAARC) also initiated measures against trafficking in women and children.

²³. **Recommended Principles on Human Rights and Human Trafficking** 1. The Primacy of human rights 2. Preventing trafficking 3. Protection and assistance 4. Criminalisation, punishment and redress

Recommended Guidelines on Human Rights and Human Trafficking 1. Promotion and protection of human rights 2. Identification of trafficked persons and traffickers 3. Research, analysis, evaluation and dissemination 4. Ensuring an adequate legal framework 5. Ensuring an adequate law enforcement response 6. Protection and support for trafficked persons 7. Preventing trafficking 8. Special measures for the protection and support of child victims of trafficking 9. Access to remedies 10. Obligations of peacekeepers, civilian police and humanitarian and diplomatic personnel 11. Cooperation and coordination between States and regions. E/2002/68/Add.1

²⁴. Mary Robinson, former High Commissioner for Human Rights, Foreword to the *Recommended Principles and Guidelines on Human Rights and Human Trafficking*.

IV. GENERAL COMMENTS

1. Today, trafficking in human beings has become a global business, generating huge profits for traffickers and organized crime syndicates, creating serious problems for governments of countries involved and exposing the victims to exploitation and violation of their fundamental human rights. Traffickers profit from non-existent or lax sanctions in many parts of the world, an insufficient level of coordinated and effective measures taken to eliminate the practice, and lack of awareness on the part of potential victims, especially women and children of the dangers of being trafficked.

2. Historically, trafficking has often been understood as movement only for commercial sexual purposes, and has thus not been comprehensively dealt with in law as was evidenced in the early international legal instruments. Accordingly in many countries, the problem of trafficking is addressed through prostitution laws, which seek variously to criminalize, regulate or control the sex industry and sex trade. In this regard there is clearly an urgent need for countries to review laws that do not take account of a comprehensive understanding of trafficking as reflected in the Protocol against Trafficking in Persons and to ensure that adequate protection in law is provided.

3. However, it is argued that the approach towards the problem of trafficking is inadequate and narrow. Thus, it is averred that ‘to successfully combat trafficking in persons we need to take a three-pronged approach involving prevention of trafficking, prosecution of traffickers and protection of human rights of trafficked persons.’²⁵ It is further argued that any efforts to understand and analyze the problem of trafficking would remain incomplete if it is approached from the point of view of prevention of crimes only. Thus it is felt that human rights approach should remain the *sine qua non* of any mechanism against trafficking in persons. The existing international legal framework is also critiqued on similar lines including the UN Trafficking Protocol and the UN Convention against Transnational Organized Crime. Therefore, it is necessary that any approach should equally focus on the effects on the victims of trafficking and their rights as reflected in various human rights and other instruments under international law. Recent ‘Recommended Principles and Guidelines on Human Rights and Human Trafficking’ of the Office of the United Nations High Commissioner for Human Rights are of significant importance in this direction.

4. Reintegration has been the most difficult task within the anti-trafficking process, especially in the case of girls returning from the sex industry. It is found that the incidence of reintegration at the family and community levels has been low. Well-entrenched social evils like patriarchy play predominant role in this process. Reintegration within the family or community may not even be desirable in certain

²⁵. Elaine Pearson, Trafficking Programme Officer, Anti-Slavery International, “*The Need for effective Witness Protection in the Prosecution of Traffickers: A Human Rights Framework for Witness Protection*” Paper presented at the First Pan-African Regional Conference on Trafficking In Persons, Abuja, Nigeria, 19-23 February 2001.
<http://www.antislavery.org/archive/other/witnessprotection.pdf>

circumstances where child sexual abuse is also perpetrated within intimate family settings or by people known to the child. Thus there is a need for alternative forms of recovery and reintegration, which should also be rights-based in their approach.

5. In the process of dealing with the problem of trafficking, the victims of trafficking are treated as violators of law, therefore as “illegals”. However, it is necessary that they should be understood as victims of the problem and hence should not be re-victimized by national laws and policies. This re-victimization results primarily from the existing national immigration laws, which classify the victims of trafficking as illegal immigrants because they enter into the country without proper immigration documents. Therefore, there is a need for making a distinction between victims of trafficking and other categories of illegal immigrants.²⁶

6. As the Protocol is primarily intended to be a crime control instrument, measures initiated under this Protocol might result in the adverse effect on other vulnerable groups. An example of this could be the collateral effect on the movement of refugees due to the border control measures, particularly sanctions against carriers for transporting persons without proper travel documents. Under article 11²⁷ of the Protocol, States Parties are empowered to take measures imposing sanctions in cases of violation of the obligations of ascertaining that all passengers are in possession of the necessary travel documents required for entry into the receiving State. The threat of sanctions may force carrier operators to take stringent measures to avoid any fines from the receiving States. This is in direct contravention of article 31 of the 1951 Refugee Convention²⁸, which allows

²⁶. An example of this nature may be the Trafficking Victims Protection Act, 2000 of the United States of America, which provides for the possibility of giving temporary visas –T visas – to the victims of trafficking facilitating them to stay temporarily in the United States. However this method is questioned on the ground that these T visas will undermine the access of asylum-seekers to refugee determination procedures.

²⁷. Article 11 of the Protocol deals with border control measures. It reads as follows:

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.
2. Each State 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 article 5 of this Protocol.
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 State 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 State Party shall consider taking measures that 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 Protocol.
6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, *inter alia*, establishing and maintaining direct channels of communication.

²⁸. Article 31 (1) reads as follows: The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without

illegal entry of refugees under justifiable circumstances. However, despite the fact that savings clause under article 14 of the Protocol makes it clear that nothing in the Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law including the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, the carrier operators would be less inclined to take the risk of entering into a legal battle and may prefer to settle the matter by summarily rejecting those passengers with inadequate documents. The provision imposing carrier sanctions attains much significance because some of the European countries have initiated such domestic legislative measures imposing carrier sanctions resulting in the rejection of asylum seekers at the borders or from the airports itself. The provisions incorporating border control measures in this Protocol are not the first of its kind as such measures are already in place in European countries in the form of national legislation and regional agreements. United States, Canada and Australia have done it and this was followed by European States as well. The main purpose of this legislation has been to impose sanctions on carriers for carrying passengers with incorrect travel documents. Similarly, Convention Applying the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at their Common Borders, of 19 June 1990 also made the carrier liability a requirement for the member States. Through the carrier liability legislation these countries are shifting the responsibility of determining the status of the people crossing the borders to the staff of the carrier who are not trained and are unaware of the implications involved in it. It was observed on this situation, that “forcing carriers to verify travel documentation places protection of individuals in the hands of those who are unauthorized to make asylum determinations, who are untrained in refugee and asylum principles, and who are motivated solely by economic considerations in their desire to avoid financial penalties”²⁹. Therefore it is necessary in the context of present Protocol to take appropriate measures to avoid rejection of asylum seekers at the borders.

7. Many countries plan an overhaul and improvement of current legislations. It is hoped that international co-operation will curtail the incidence of trafficking and lead to the development of integrated legal frameworks. However, it needs to be understood that the problem of trafficking in women and children is the result not only of poor legal framework and lack of well-intentioned plans. Poverty, inequitable economic systems, and gender based discrimination are terrible burdens for many women and children throughout the world, which need to be addressed adequately. Thus, what we also need to do simultaneously is to go into the root causes of trafficking and exploitation in all its forms.

authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

²⁹. James C. Hathaway and John A. Dent, *Refugee Rights: Report on a Comparative Survey* (Toronto, 1995), included in B. S. Chimni ed., *International Refugee Law: A Reader*, (New Delhi, 2000), pp.122-23

8. Any strategy to address the issue of trafficking of persons including women and children should be with a rights-based perspective, and should also respond to the issue of illegality and criminalisation of the victims. A preventive strategy in this regard must be targeted towards providing expanding options for forms of legal employment or means of earning a livelihood. It is also crucial to address the issue of mobility and the right to freedom of movement. This is integrally interlinked with the questions of migration and the rights of migrants. In the context of trans-border movement of people and border controls exercised by States, the question of illegal movement of people is a complex one. Therefore, the issue of trafficking should be addressed in the larger context in the light of existing responsibilities of States under the regimes of human rights, humanitarian law and refugee law.

9. It is encouraging to note that most of the AALCO Member States are already Parties to the Convention on the Elimination of all Forms of Discrimination against Women as well as the Convention on the Rights of the Child. These measures could facilitate in addressing these issues effectively and systematically. Communications received by the AALCO Secretariat from Member States in respect of national legislations show that even though many countries do not have anti-trafficking legislations per se, however, provisions in other domestic laws do deal with the offence of trafficking in women and children. An early ratification of the Convention and its Protocols specially the Protocol to Prevent, Suppress and Punish Trafficking in persons especially Women and Children would go a long way in dealing with the crime of trafficking.

10. A significant step towards protection against trafficking in women and children could be the formulation of model legislation, reflecting the dispositions of International instruments, a proposal that was supported during the 40th session of AALCO. The preparation of model legislation may also facilitate consideration by Member States of becoming parties to the UN Convention Against Transnational Organized Crime and its Protocols. This task could be accomplished with the technical assistance and effective co-operation from the IOM and OHCHR with whom a Cooperation Agreement and Memorandum of Understanding were signed in the years 2000 and 2001 respectively. In this connection, Member States may be requested to communicate to the Secretariat their national legislation relating to preventing and combating the crime of trafficking in women and children as well as protecting victims.

11. The 43rd session of AALCO would provide a good opportunity for Member States to deliberate upon various issues involved and find ways and means in tackling the issue and establish an effective cooperation among Member States against trafficking in women and children.

Annex 1

Deliberations at the 42nd Session

1. The item “**Establishing Cooperation against Trafficking in Women and Children**” was discussed at the 42nd session of the AALCO in Seoul, Republic of Korea.
2. The **Delegate of the Republic of Korea** said that trafficking in persons, a contemporary form of slavery victimized four million people every year and Asian – African regions were severely affected by it. He located the problem of trafficking in poverty and inequality, which made women and children more vulnerable to this problem. He suggested that AALCO could organize a workshop in order to provide Member States with expert advice on how to deal with legal and technical matters and also to consider appropriate forms of cooperation. He further expressed hope that AALCO would provide a forum for the Asian-African region to explore the possibility of concluding a regional or sub-regional agreement for fighting transnational crimes such as terrorism, corruption, human trafficking, drug trafficking, and money laundering.
3. The **Delegate of Indonesia**, while stating that impact of trafficking was manifold he stated that international cooperation was indispensable to preventing and combating this crime and asked for enhanced cooperation among Asian and African countries. He suggested that the special meeting to be held in conjunction with 43rd session of AALCO, in 2004, might be dedicated to this item. He pointed out that the existing disparities between haves and have-nots and the gap between developed and the developing countries need to be addressed to understand the problem in its totality.
4. The **Delegate of Nepal** stated that, as the problem was transnational in nature it required concerted regional as well as international cooperation among States. He suggested for following three measures to be taken up by AALCO. They are: to set up a core group formulating effective modalities and mechanisms; to adopt an Asian African Regional Convention on the Suppression of Trafficking in Women and Children; and to expedite the process of formulating a model legislation reflecting dispositions of international instruments.
5. The **Delegate of the United Arab Emirates** said that Protocol to Prevent, suppress and Punish Trafficking in Persons has shown major guidelines for adoption. He stated that Protocol was in line with major principles of the UAE Constitution and also Shariat, which rejected slavery and trafficking.
6. The **Delegate of Ghana** stated that the cultural practices of the Asian African regions had made them easy targets for those engaged in the criminal activity of trafficking in women and children across the world. She believed that it was timely to move away from some of the more harmful traditional practices such as the payment of bridal prices, polygamy, inhuman widowhood rites, etc. She said that due diligence be exercised to prevent, investigate and prosecute where necessary, in accordance with existing international human rights obligations and relevant national laws, the crime of

trafficking in persons. International law required that States protect and remedy human rights violations. Failure to exercise due diligence in this regard and to have effective legal remedies, violates the human rights of the persons affected.

7. The **Delegate of Kuwait** stated that his Government was very much concerned with the dignity of human beings and accordingly it became party to several conventions against slavery including Convention against Racial Discrimination. He observed that their national legislation and penal code criminalized the violation of human rights. He suggested that AALCO could come out with some recommendations for the protection of innocent victims of trafficking.

8. The **Delegate of the People's Republic of China** stated that trafficking in women and children seriously infringed on the legitimate rights of women and children and frustrated social order and security. She observed that apart from national initiatives international cooperation should be enhanced in this regard. She observed that AALCO could provide a forum for international cooperation and China would be willing to continue cooperation with other countries for the protection of women and children.

9. The **Delegate of India** observed that trafficking was a modern day version of slavery. She pointed out that root cause of the problem was poverty. She observed that the problem had larger dimensions and it was on the increase in the SAARC region. She stated that India was completing internal formalities for ratifying the Convention against Transnational Convention and its Protocol against Trafficking in Women and Children. She stated that at the national level, apart from drawing up a National plan of Action and constituting National Advisory Committee to combat trafficking, State Advisory Committees have been appointed in a number of States to draft state-wise policies and action plans.

10. The **Delegate of Thailand** informed that Thailand signed the UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and observed that since the problem was transnational in character there was a need for regional and international cooperation. He observed that mechanisms employed should be victim friendly and child and gender sensitive. He suggested that in-country and inter-country adoption should be encouraged.

11. The **Delegate of Qatar** observed that trafficking in women and children was a grave violation of human rights. He stated that economic deprivation and globalization were the major causes for trafficking and asked for the exploration of constitutional, ethical and legal implications. Finally he supported the suggestion made by the delegate of Kuwait regarding the formulation of recommendations by AALCO addressing the problem of trafficking.

12. The **Delegate of Islamic Republic of Iran** said that large number of men, women, and children were trafficked worldwide under conditions amounting to slavery. He observed that trafficking in human beings was an abhorrent and increasingly worrying

phenomenon that had sadly been facilitated by globalization and modern technologies. He said that the Protocol represented a new approach that struck a balance between crime control measures and measures protecting trafficked persons. He said that the problem in tackling the menace of trafficking was that it was approached primarily as an illegal migration or prostitution problem. Consequently, most law-enforcement agencies targeted the people who were trafficked and not the criminal networks that traffic them. He stressed that preventing and fighting trafficking in women and children could not be left to the action and discretion of a country alone. It called for the resolute will and determination of the entire international community.

13. The **Delegate of Sri Lanka** said that they considered this matter as an important act committed against the most vulnerable sections of the society. She pointed out that socioeconomic factors were one of the compelling reasons, which made it as a most challenging issue. Underlining the difficulties in ensuring effective implementation of legislative measures she pointed out the need for having trained investigators, prosecutors and others involved in the administration of justice. For that purpose she sought the cooperation among Member States of AALCO.

14. The **Delegate of Philippines** strongly endorsed the proposal of drafting by AALCO Member States of model legislation to guide them in combating human trafficking. In this regard he suggested that a seminar could be organized to review and assess the measures taken by Member States and also to facilitate the drafting of the said model legislation. He sought for the formulation of a multilateral framework, as the problem has become an international crime not merely concerning to countries of origin and countries of destination.

15. The **Delegate of Nigeria**, while pointing out that nationals of both African and Asian regions were the victims of trafficking he sought for international cooperation to deal with the problem. He further sought for cooperation among AALCO Member States and also the AALCO Secretariat to study the matter more critically and elaborate on provisions for the compensation of victims of human trafficking. He further suggested that the destination and transit countries should stop criminalizing victims and encourage them to make claims of reparation against traffickers.

16. The **Observer from Tunisia** stated that international cooperation was required to address the problem. While observing that AALCO could make an impact on the decisions taken at national levels he suggested that the concern expressed in this session should be transmitted to other international organizations.

17. The **Observer from the International Law Commission (ILC)** made two suggestions. One was that trafficking in human beings should be categorized as crime of *jus cogens* category and the other one was that a resolution might be passed criticizing this practice in strongest terms.

Annex 2

Summary of the Communications Received from Member States in Respect of National Legislation Relating to Trafficking in Women and Children

1. The Secretariat has so far received communications from 17 Member States relating to their national legislation on the topic. These States are: **Tanzania, Sultanate of Oman, Singapore, People's Republic of China, Philippines, Japan, Mauritius, Cyprus, Ghana, Qatar, United Arab Emirates, Sudan, Nepal, Lebanon, Myanmar, Syrian Arab Republic, Arab Republic of Egypt, Malaysia, The republic of Uganda and Thailand.** A summary of the communications is as follows.³⁰

2. **The Government of Tanzania:** Vide its communication dated 28 November 2001, informed the AALCO Secretariat that in 1998 the Parliament of the United Republic of Tanzania made an overhaul of the legislation dealing with offences against women and children and enacted a statute called "Sexual Offence Special Provisions Act, No. 4 of 1998. The Statute amended the Penal Code, Chapter 16 of the Laws of Tanzania in order to deal with trafficking in persons, including women and children, alongside sexual offences.

Trafficking in persons was included in the list of Sexual offences. The offence was placed in a stringent scheme of Punishment of sexual offences and a more liberal procedure of trial.

The under-mentioned new section: 139A, which deals with trafficking of persons, was introduced and states :-

139A (1) any person who –

- (a) engages in the act of buying selling or bartering of any person for money or for any other consideration;
- (b) for the purpose of promoting, facilitating or inducing the buying or selling or battering or placement in adoption of any person for money or for any other consideration :-
 - (i) arranges for, or assists, a child to travel within or outside the United Republic without the consent of his parent or lawful guardian; or
 - (ii) obtains an affidavit of consent from a pregnant woman for money or for any other consideration for the adoption of the unborn child of that woman; or
 - (iii) recruits women or couples to bear children; or

³⁰. The communications received from Member States are available with the Secretariat.

- (iv) being a person concerned with registration of births, knowingly permits the falsification of any birth record or register; or
- (v) engages in procuring children from hospitals, shelters for women, clinics, nurseries, day care centers or other child care institutions or welfare centers for money or other consideration or procures a child for adoption from any such institution or center, by intimidation of the mother or any other person; or
- (vi) impersonates the mother or assists in impersonation; Commits the offence of trafficking and is liable on conviction to imprisonment for a term of not less than twenty years and not exceeding thirty years and a fine of not less than one hundred thousand shillings and not exceeding three hundred thousand shilling or to both the fine and imprisonment, and shall in addition be ordered to pay compensation of any amount to be determined by the court, to the person in respect of whom the offence was committed.

(2) In this section “child” means a person of eighteen years.

This section has been widened to deal with trafficking of all persons, including women and children. It must have been intended to deal with cases of servitude as well. It will be appreciated that the legislation is fairly new. It has not been tested in courts, it is not possible therefore to test the jurisprudence of the legislation as developed by the Courts.

Another momentous change was made in the Law of Evidence, where restrictions in admission of evidence of children of tender age who are, victims of sexual offences has been relaxed. A new provision has been introduced which dispenses with the requirement of subjection such witnesses to “voire dire” examination, which if conducted, failure of such examination excludes such persons from testifying in court. Under the new scheme such witnesses of tender age are allowed to testify and the courts are enjoined to admit their evidence and are allowed to assess its viability after it has been admitted. The new provision reads as follows:

“7 Notwithstanding the proceeding provision of this section, where in criminal proceedings involving sexual offence the only independent evidence is that of a child of tender years, or of a victim of the sexual offence, the court shall receive the evidence, and may after assessing the credibility of the evidence of the child of tender years or as the case may be the victim of sexual offence on its merit, notwithstanding that such evidence is not corroborated, proceed to convict, if for reasons to be recorded in the proceedings, the court is satisfied that the

child of tender years or the victim of sexual offence is telling nothing but the truth.”

Finally, the Children and Young Persons Ordinance chapter 13 of the Laws of Tanzania, a Statute which deals with juvenile delinquency, has also been amended to protect juvenile offenders and witnesses of tender age. The statute now directs the courts to conduct in camera, proceedings involving juvenile offenders who are accused of sexual offences, and where such juveniles are jointly accused with adults then their cases are supposed to be tried separately and in camera. Similar protection is accorded to witnesses and victims of tender age. The new provision reads as follows:

“Where a child of less than eighteen years of age is a witness, a victim, an accused or a co-accused in a case involving a sexual offence, the child shall be tried in camera and separately from the adult co-accused, or the evidence of the child shall be recorded in proceedings conducted in camera.”

3. **The Sultanate of Oman** vide its communication dated 13 December 2001 informed the Secretariat that there is no legislation in the Sultanate of Oman to deal with this topic precisely but article 26 of the Penalty law specifies between 3-5 years imprisonment against whoever brings into the territory of Sultanate of Oman or takes out of the Oman a human being to be used as a slave or kept as one, this is punishable under the law.

Therefore it is clear that that article does not indicate whether the human is a women or a child, thus it should be interpreted within the framework of this article as a legislative tool to stop trafficking of women and children from one country to another.

4. **The Government of Singapore** vide its letter dated 19 December 2001 sent relevant national legislations. The following provisions in its laws deals with the trafficking in women & children.

Children and Young Persons Act

The Children and Young Persons Act, Chapter 38 also contains provisions making the following acts unlawful:

- (a) Contribution to delinquency of child or young person;
- (b) sexual exploitation of child or young persons; and
- (c) trafficking in children.

Penal sanctions are imposed on persons convicted of involvement in such activities. The Act also provides powers to certain categories of persons to place such children and young persons in a place of safety.

Penal Code

The Penal Code was first enacted in 1871. It recognized that women and minors should be specially protected from being exploited to slavery and prostitution. There are a number of provisions (sections 366 to 373A) which make:

- (a) kidnapping or abducting a woman to compel her to marriage, illicit intercourse or prostitution punishable with imprisonment upto 10 years and liable to fine or to caning;
- (b) Kidnapping or abducting a person in order to subject the person to grievous hurt, slavery or unnatural lust punishable with the same penalties as (a) above;
- (c) buying or disposing of any persons as a slave punishable with imprisonment extending to 7 years and liable to a fine;
- (d) habitual dealing in slaves punishable with life imprisonment or imprisonment for up to 10 years and liable to a fine;
- (e) selling and buying of minors for purposes of prostitution punishable with imprisonment upto 10 years and liable to a fine; and
- (f) importing with intent to sell in Singapore any women for the purpose of prostitution or buying or selling any woman for the purpose of prostitution similarly punishable as in (e) above.

The Government of Singapore has made provisions in the Women's Charter (Cap.353), Children and Young Persons Act (Cap. 38) and Penal Code (Cap. 224) to deter trafficking of women and girls:

Women's Charter

Sections 140 to 179 of the Women's Charter deal with offences of this nature. It is an offence for any person to solicit or loiter in public for the purpose of prostitution.

- Offences relating to prostitution, such as the procurement of a woman or girl for immoral purposes, are punishable with imprisonment of up to 5 years and liable to a fine of upto S\$10,000.
- Any offender who is convicted for a second and subsequent offence will be liable to caning as well.
- It is also an offence to live on the earnings of another person's prostitution, and to keep, manage or assist in the management of a place of assignation or brothel.
- Trafficking in women or girls, whether or not it is for the purpose of prostitution, is an offence which is punishable with imprisonment of upto 5 years and liable to a fine of up to S\$10,000.

The Anti-Vice Unit of the Criminal Investigation Department are responsible for the enforcement of these provisions and the suppression of vice activities.

The Act specifically provides for trials for such offences or for offences of rape or outrage of modesty to be heard in camera. In protecting the identity of such witnesses, the law aims to lessen the trauma experienced by the victim. This is to indirectly encourage witnesses to testify and ensure the thorough prosecution of such offenders.

In addition to penal sanctions, the Act also provides for the termination of tenancy of places of assignation or brothels, and for the demolition of structural contrivances for facilitating the running of a place of assignation or of a brothel (Sections 150 and 151 of the Women's Charter).

5. The **Government of the People's Republic of China** vide its communication of 29 December 2001 sent the relevant provisions of the "Criminal Law of China" which deals with trafficking in women and children.

Articles 240, 241, 242 and 243 deal with the sentence to be meted out to a person who abducts and trafficks in women and children. The minimum sentence is 5 years and the maximum 10 years. However, in exceptionally serious cases sentence to death and confiscation of property are also envisaged.

Provisions of Chapter VI of the Criminal Law of China deal with "Crime of Obstructing the Administration of Public Order". Articles 277, 278 and 279 deal with crimes of Disturbing Public Order.

6. The **Government of Philippines** in its communication of 8 January 2002 forwarded the following materials adopted by the Philippines on the said subject.

1. Covenant among members of the Inter-Agency Executive Committee of the Coalitions Against Trafficking in Human Beings in the Philippines, for enhancing and sustaining the partnership in addressing trafficking in human beings in the Philippines.

The Covenant was signed by the Philippine Government together with the United Nations, to strengthen an alliance of government departments and agencies led by the Department of Foreign Affairs and the Department of the Interior and local government to carry out the UN's global programme against trafficking in human beings.

The Government departments and agencies compose the alliance that will implement the UN's global programme "Coalition Against Trafficking in Human Beings in the Philippines". The pilot project is envisioned to strengthen crime prevention strategies of law enforcement and criminal justice responses, and provide protection and assistance to victims and witnesses. Some of the activities lined up on the programme are assistance in setting up specialized databases, preparation of a compilation of relevant legislation, bilateral and multilateral agreements, conduct of training for law conferences, prosecutors, social workers and a comprehensive public awareness campaign on the subject.

Last year, the Philippine government entered into an agreement with the United Nations Center for International Crime Prevention, Office for Drug Control and Crime Prevention (ODCCP), to implement the pilot demonstration project. The ODCCP and the United Nations Inter-regional Crime and Justice Research Institute (UNICRI) will undertake a worldwide assessment of regional and inter-regional trends in addressing the issue of trafficking in human beings, to take stock of the best practices adopted by countries in each particular region to combat the problem, to carry out demonstration projects and evaluate these projects based on standardized criteria.

To assist the implementation of the programme in the country an Inter Agency Executive Committee (IAEC) was established composed of representatives from the concerned offices.

2. The follow-up Action/Recommendations in the Strategic Action Plan for the Philippine –UN National Coalition against trafficking in Human Beings.
3. Republic Act No. 7610, particularly sections 7 and 8 on child trafficking; and
4. Article 341 of the Philippine Revised Penal Code, which provides the crime of white slave trade.

Albeit indirectly and only in the appropriate circumstances, traffickers could also be punished for violating the Philippine Passport Act of 1996, Republic Act No. 8042, Republic Act No. 6599(which punishes the practice of matching Filipino women for marriage to foreign nationals on a mail order basis).

Likewise, for information, there is a Philippine Center for Transnational Crimes (trafficking being one of them) and an Executive Council to Suppress Trafficking in Persons, particularly women and children. Both entities assist the President in policy making and law enforcement.

7. **The Government of Japan** vide its communication dated 14 January 2002 sent to the Secretariat some translated documents with regard to certain laws, Acts and the Penal Code of Japan

- Law for Punishing Acts related to Child Prostitution and child Pornography, and for protecting children;
- Employment security law;
- Child welfare law;
- Immigration control and
- Refugee recognition Act

Article 226 of the Penal Code deals with kidnapping or abduction for Transportation to Foreign country; Traffic in Person. It states that a person who kidnaps another by force, threat or fraud or enticement for the purpose of transporting the same person out of Japan shall be punished with imprisonment at forced labour for limited term of not less than two years.

The same shall apply to a person who buys or sells another for the purpose of transporting the same person out of Japan, and to a person who transports out of Japan another who has been kidnapped or sold.

Article 222 deals with Assistance in Kidnapping or Abduction: Receiving Kidnapped or Abducted person

Article 228 deals with Attempts.

The law for punishing acts related to child prostitution and child pornography and for protecting children

Article 8 (Trade, etc. in Children for the Purpose of “Child Prostitution, and Suchlike)

1. A person who buys or sells a child for the purpose of making the child be a party to sexual intercourse, etc. in child prostitution or for the purpose of producing child pornography by depicting any of the poses provided for in items (i) to (iii) of paragraph 3 of Article 2 shall be punished with imprisonment with labour for not less than one year and not more than ten years.
2. A Japanese national who, for any of the purposes mentioned in the preceding paragraph, transports a child, who has been abducted, kidnapped, sold or bought in a foreign country, out of that country shall be punished with imprisonment with labour for a limited terms of not less than two years.
3. Attempts of the crimes mentioned in the two preceding paragraphs shall be punished.

Article 10 (Crimes Committed by Japanese Nationals Outside Japan)

The crimes specified in Articles 4 to 6, paragraphs 1 and 2 of Article 7, and paragraphs 1 and 3 (limited to the part thereof which relates to paragraph 1) of Article 8 shall be dealt with according to the provision of Article 3 of the Penal Code (Law No. 45 of 1907).

The Employment Security Law

Article 63. A person who falls under any of the following items shall be punished with penal servitude of not less than one year and not more than ten years or a fine of not less than two hundred thousand yen and not more than three million yen;

- (1) a person who has carried on or engaged in employment placement, labour recruitment or labour supply by means of violence, intimidation, imprisonment or other restraint on mental or physical freedom;

- (2) a person who has carried on or engaged in employment placement, labour recruitment or labour supply with an intention of having workers do work injurious to public health or morals.

The Child Welfare Law

(Prohibited Acts)

Article 34. No person may commit the following acts:

- (7) acts transferring custody of a child to a person who is liable to commit any of the acts prescribed in the preceding items, or who is otherwise liable to violate any of the penal laws and regulations concerning children, knowing such facts, or acts transferring custody of such a child to any other person, knowing that the child will be handed over to others for such purposes;
- (9) keeping a child under one's control for the purpose of inducing a child to do certain acts having harmful effects on its body and soul, except in cases where the child is within the relative in the fourth degree of consanguinity, or in cases where the control over the child is based on lawful employment relations or has been authorized by a family court, the governor of prefecture or the superintendent of a Child Guidance Center

(Penal Regulations for Violation of Prohibited Acts)

Article 60.

2. Any person who violates any of the provisions of Article 34, clause 1, item (1) to (5), or items (7) to (9), or clause 2 of the same Article shall be punished with imprisonment at forced labour for a period of not longer than one year or fined not more than 300,000 yen.
3. Any person who employs a child shall not be exempt from the punishment provided for by the preceding two clauses on the ground that he or she was ignorant of the child's age. However, this shall not apply when he or she was not negligent.
4. When a representative of any juridical person, or an agent, employee or other worker of a juridical person or natural person has committed any of the violations under clause 1 or 2 in connection with the business of the said juridical person or natural person, not only the violator but also the said juridical persons and other persons shall be liable to the fine prescribed in each of the same clauses. However, this shall not apply to the juridical person or natural person in the case that they have exercised reasonable care and supervision over the business concerned in order to prevent their agents, employees or other workers from committing such violations.

The Immigration Control and Refugee Recognition Act

Article 73.2. Any person subject to any of the following items shall be punished with penal servitude not more than 3 years or a fine not more than 2 million yen, or shall be punished with both prison and a fine.

- (1) A person who has had an alien engage in illegal work in relation to business activities;
 - (2) A person who has placed an alien under his control for the purpose of having the alien engage in illegal work;
 - (3) A person who has repeatedly mediated either the procurement of an alien to engage in illegal work or the act specified in the preceding item.
2. Illegal work mentioned in the preceding paragraph means activities which violate the provisions of Article 19, Paragraph 1, or the activities done by those who fall within the provisions of Article 70, Item (1), (2), (3), (5), (7) or (7)-2, and for which he received remuneration and/or other income.

Article 74. Any person who has had collective stowaways (those aliens in groups who have intention to land onto Japan without obtaining landing permission, etc. from Immigration Inspectors, or with obtaining permission, etc. from Immigration Inspectors, or with obtaining landing permission, etc. from Immigration Inspectors by a false representation or other illegal measures. Hereinafter the same.) under his control or charge enter into Japan or land onto Japan shall be punished with penal servitude of not more than 5 years or a fine of 3 million yen or less.

2. In case where the person has committed the crime provided in the preceding paragraph for the purpose of profit, he shall be punished with penal servitude of not less than 1 year nor more than 10 years and a fine of not more than 10 million yen.
3. Attempts at the crimes provided in the preceding two paragraphs (applicable only to the act of having the stowaways land) shall be punished.

Article 74-2. Any person who has transported collective stowaways under his control or charge toward Japan, or who has transported them to the place of landing in the territory of Japan, shall be punished with penal servitude of not more than 3 years or a fine of not more than 2 million yen.

2. In case where the person has committed the crime of the preceding paragraph for the purpose of profit, he shall be punished with penal servitude of not more than 7 years and a fine of not more than 5 million yen.

Article 74-3. Any person who has prepared vessels for the criminal use with the intention of committing the crime of Article 74, Paragraph 1 or 2, or the preceding article, shall be punished with penal servitude of not more than 2 years or a fine of

not more than 1 million yen. The same shall be applied to any person who knowingly provided vessels for the criminal use.

Article 74-4. Any person who has received, from another person who had committed the crimes of Article 74, Paragraph 1 or 2, all or a part of aliens aided to land by the person, or who has transported, harboured, or concealed the aliens received, shall be punished with penal servitude of not more than 5 years or a fine of not more than 3 million yen. Any person who has received all or a part of the aliens from the person who had received them, or who has transported, hided or concealed the aliens received, shall be punished the same.

2. In case where the person has committed the crime of the preceding paragraph for the purpose of profit, he shall be punished with penal servitude of not less than 1 year nor more than 10 years and a fine of not more than 10 million yen.
3. Attempts of the crimes provided for in the preceding two paragraphs shall be punished.

Article 74-5. Any person who has made preparations for the purpose of committing crimes provided for in the preceding article, Paragraph 2 or 3, shall be punished with penal servitude of not more than 2 years or a fine of not more than 1 million yen.

Article 74-6. Any person who has made the acts provided in Article 70 (1), (2) or (3) easier to commit shall be punished with penal servitude of not more than 3 years or a fine of not more than 2 million yen, or shall be punished with both of these. Any person who has made these acts easier by offering a passport or a crewman's pocket-ledger, which is invalid to the holder, or fraudulent documents produced as passport or crewman's pocket-ledgers, shall be punished the same.

Article 74-7. Crimes provided for in Article 73-2, Paragraph 1 and 2, Article 74-2 (except for the part of transportation in the territory of Japan), Article 74-3 and the preceding article shall follow the case provided in Article 2 of the Penal Code.

Article 74-8. Any person who has harboured or concealed aliens who falls under any of Article 24 (1) to (3) for the purpose of letting the aliens escape from deportation, shall be punished with penal servitude of not more than 3 years or a fine of not more than 1 million yen.

2. In the case where a person has committed the crime of preceding paragraph for the purpose of profit, he shall be punished with penal servitude of not more than 5 years and a fine of not more than 3 million yen.
3. Attempts to commit the crime provided for in the preceding two paragraphs shall be punished.

8. **The Government of Mauritius** vide its communication dated 14th January 2002 forwarded the national legislations currently in force pertaining to the Prevention of Trafficking in Women and Children. The relevant provisions are as follows:

- (i) Section 262 A of the Criminal Code (child trafficking);
- (ii) Section 253 of the Criminal Code (Procuring, enticing and exploiting prostitute);
- (iii) Section 251 of the Criminal Code (Debauching Youth)
- (iv) Section 258 of the Criminal Code (unlawful arrest, detention and sequestration);
- (v) Section 260 of the Criminal Code (family abandonment);
- (vi) Section 263 of the Criminal Code (Abandoning in secluded spot);
- (vii) Section 268 of the Criminal code (Abducting minor);
- (viii) Section 90 of the Criminal Code (Supplementary)(Brothel keeping); and
- (ix) Section 17 of the Child Protection Act (Mendicity).

9. **The Government of Cyprus** vide its communication dated 25th January 2002 forwarded the following material to the Secretariat.

(1) Law providing for the Special protection of persons being victims of sexual exploitation and for related matters (No. 3(1) of 2000).

The relevant provisions of the aforementioned law are as follows:

(i) This law may be cited as the Combating of Trafficking in Persons and Sexual Exploitation of Children Law of 2000.

(ii) The interpretative Clause 2 defines trafficking to mean 2 (c) : “any act that facilitates the entry into, transit through, residence in, or exit from the Republic for purposes of sexual exploitation.”

(iii) Article 3 deals with sexual exploitation of persons and the acts which are prohibited: 3 (d) the trafficking of children for purposes of their sexual exploitation.

(iv) Article 5 deals with Trafficking of persons for purposes of sexual exploitation and the sentence to be given for such an offence.

(2). Law which provides for the Prevention of Violence in the Family and Protection of Victims (119(1) of 2000).

In a communication dated 23 May 2002 the Secretariat received further information on the above stated topic from the Republic of Cyprus wherein it was informed that the House of Representative enacted in June this year, a new legislation for

the protection of witnesses (Law No. 95 (1) of 2001). This legislation provides equal measures with EU Resolutions of 23 November 1995 on the protection of witnesses in the fight against international organized crimes and of 20 December 1996 on individuals who cooperate in the fight against organized crimes.

Alignment with the *acquis* and international law in an ongoing process. For this reason the existing legal framework regarding combating trafficking and sexual exploitation is undergoing amendments in order to implement the provisions of the UN Convention on Transnational Organized Crime and both its Protocols.

In addition operational measures are taken for the strict enforcement of the existing legislation. Along side preventive measures are also undertaken to make border control more efficient.

Regarding international cooperation Cyprus has signed a number of bilateral agreement with other countries, especially the neighbouring countries, for regional and international Police cooperation concerning organized crimes, exchange of information, border control etc.

Finally, having regarded the utmost importance of the issue of cooperation between the Member States of the EU and the candidate countries to combat this phenomenon, on the 19.9.2001 the Council of Ministers has established a Monitoring Unit for Combating Trafficking and Sexual Exploitation of Human Beings.

The Republic of Cyprus has also ratified the following UN Conventions:

- (1) The UN Convention on the Elimination of all forms of Discrimination Against Women. The Republic of Cyprus ratified the said Convention in 1985 (Law 78/85).
- (2) The UN Convention on the Rights of the Child. The Republic of Cyprus ratified the said Convention in 1990 (Law 243/90).

10. **The Government of Ghana** vide its communication dated 6 February 2002 sent its legislation and relevant information related to the topic.

The Criminal Code 1960 (Art. 29) does not make specific reference to the term “trafficking “. It however contains provisions which create criminal offences in acts which are to a large extent related to trafficking. There are therefore various provisions on abduction, child stealing and slavery, procurement of female under 21 years for immoral purposes, encouraging the seduction or prostitution of a girl under 14 years,

custody of a child under 14 years and the power of search for female detained for immoral purpose and slave dealing.

The relevant sections of these provisions are as follows:

Abduction (Section 91-92) ; child stealing (Section 93-94); special provisions as to child stealing and abduction (Section 95); Procuration (Section 107); Encouraging the seduction or prostitution of a girl under 14 (Section 108); Custody of female under 14 years of age (Section 110); Power of search for a child detained for immoral purposes (Section 111); and Slave dealing (Section 134).

With respect to international conventions, Ghana was the first country to ratify the International Convention on the Rights of the Child, the provisions of which have been incorporated into the Children's Act 1998. Ghana has also ratified ILO Convention No. 182 on the worst forms of child labour, ILO Convention No. 29 on forced Labour, ILO Convention No. 105 on the Abduction and the African Charter on the Rights and Welfare of the Child. It has also commenced the ratification process towards ratification of ILO Convention No. 138 concerning Minimum Age for Admission to Employment.

Ghana recently hosted an ECOWAS Experts Meeting on Trafficking In Persons. The Meeting came up with an Initial Action Plan for the period 2002 to 2003 and draft Resolution C/RES.../12/01 on the Fight Against Trafficking in Persons, which was adopted in December 2001 by the ECOWAS Authority of Heads of State. In line with the obligations set out in the Initial Action Plan (2002-2003), the Ministry of Justice is presently working on possible amendments to the Criminal Code that would directly address the issue of trafficking together with its modern complexities. It is also proposed that a National Committee on Trafficking comprising of relevant Government departments, NGOs and civil society would be set up shortly to coordinate and advise on matters relating to trafficking.

Finally, it will be noticed that these provisions do not fully capture the elements of trafficking, which is, the movement of a person which leads to the exploitation of that person for the gain of another person. The loopholes in the Criminal Code, 1960 have been identified and proposals have been made for the amendment of the Code to ensure that its provisions accord with the sub-regional ECOWAS conventions on the matter.

11. **The Government of State of Qatar** vide its communication dated 2 February 2002 informed the Secretariat that though the trafficking in women and children phenomenon does not exist in the Qatar Society, there is Qatari legislation and laws to protect the women and children from such crimes as:

- (i) Rule No. 14 from Qatar penal code 1971 Chapter 21 (Kidnap and Slavery) and Chapter No. 22;
- (ii) Article Nos. 7 & 8 from the Interim amended constitution regarding the protection of children; and

- (iii) The State of Qatar is also a Member State of UN Convention on the Rights of Child (1989) which stands a law in the State of Qatar in accordance with Emiri Decree No. 54, 1995.

12. **The Government of United Arab Emirates** vide its communication dated 7th February 2002 informed the Secretariat concerning its national legislation regarding Combating all Forms of Sexual Violence and Trading in Human Beings. The communication affirmed that U.A.E.'s Penal Code incriminates in its dispositions the instigation into prostitution and debauchery advice articles (363 to 370). On the other hand the Law No. (9) of 1976 of U.A.E. concerning Juvenile Delinquent has urged to take all necessary measures to avoid and prevent their exploitations in activities related to prostitution or commercial sexual exploitation. On the other hand, Law No. (8) of 1980 of U.A.E. contains a number of dispositions which are helping factors in forcing the exploitation of women and children. The article (20) of this Law forbids the employment of minors from both sexes before the age of 15. Also, chapter 3 of the same Law contains the rules concerning the employment of women, and one of the most important features is the equality between men and women in terms of salary, if the woman is performing the same work of the man.

The U.A.E. has crowned its efforts in this matter by ratifying the ILO Convention No. 138 of 1973 concerning Minimum Age for Admission to Employment. This ratification aimed at forbidding the exploitation of children of both sexes and protecting them from any commercial sexual exploitation due to poverty or/and instability. This aim was confirmed in the Second World Conference for Combating Commercial Sexual Exploitation for Children which was held in Stockholm in 1996, as well as the World Conference for Combating Commercial Sexual Exploitation for Children which were held in Yokohama, Japan in January this year.

By these laws and regulations the U.A.E. wanted to prove that in line with its constitution it has forbidden total commercial sexual exploitation of women and children or their trafficking with the aim of prostitution. In the same line U.A.E. is exerting its efforts to combat all helping factors which compel women and children to slip in this kind of illegal exploitation due to poverty or instability etc.

13. **The Government of the Republic of Sudan** in its communication informed the Secretariat of the relevant provisions enshrined in the Constitution of Sudan 1998, the Criminal Act of 1991 as well as the related international treaties which were signed or ratified by Sudan.

The Constitution of 1998: The following articles of the Constitution are relevant : Social Justice and Mutual Aid (Article 11); Children and Youth (Article 14); Family and Women (Article 15); Freedom and Sanity of Life (Article 20).

The Criminal Act 1991: Practicing prostitution (Article 154 (1) & (2); Running a place for prostitution (Article 155 (1) (2) (3) & (4); offences against personal liberty Abduction (article 161(1) and (2); Kidnapping (Article 162), and Forced Labour (Article 163).

The Government of Sudan has ratified the following International Conventions:

The Convention on the Right of Child ratified in 1990. The African Charter on the Rights and Welfare of the Child.

The ILO Convention on the Prohibition of the Worst Forms of Child Labour ratified on 31.12.2001 and Related ILO Minimum Age Convention.

UN Convention against Transnational Organized Crime ratified in December 2000.

14. **The Government of Nepal** vide its communication dated March 6, 2002 sent the provisions of the national law on the establishing of Cooperation against Trafficking in Women and Children.

In Nepal, there are two laws against the trafficking in persons. One of them is the Muluki Ain, 2020 (1963), the general law of the country, which in the chapter 11 of Part 4 on Trafficking in Person provides legal provision against the trafficking in person.

In addition to this there exists a specific law namely the Trafficking in Persons (control) Act, 2043 (1986). Some of the main provisions of this Act are Section 3 Trafficking in person shall be prohibited; Section 4 Acts to be deemed to be the trafficking in person; Section 8 Punishment.

15. **The Government of Lebanon** vide its communication dated March 8, 2002 sent its legislations regarding trafficking in women and children. The main features of the Lebanese legislations are related to:

(i) Trafficking in Children

The Penal Code of Lebanon incriminates kidnapping or hiding children under seven years of age, or exchange of children. The Penal Code also incriminates kidnapping or deportation of a minor under 18 years of age, even if it is with his consent, far from his parents. On the other hand the Penal Code also incriminates parents who give away their children less than 18 years of age in adoption with the aim of financial or any other gain.

(ii) Sexual Exploitation

The Penal Code incriminates anybody who kidnaps by trickery or by violence a girl or a woman even with a aim of marriage. It also incriminates if this happens to a

man or a woman with a aim of prostitution or sexual exploitation. The same incrimination applies to anybody who persuades a minor less than 15 years even with his own consent, and instigates him for sexual exploitation. The Penal Code also incriminates any person who instigates a girl or a woman less than 21 years of age for prostitution either by trickery or violence or threat.

(iii) Protection of Children and Women

The Constitution Lebanon believes that all children and women should be subject of respect and protection and should be prevented from any act which could hurt their shame. In that context Lebanon has signed the Protocol annexed to the Convention of Rights of the Child, and more specifically their protection from sexual exploitation or rape.

To summarize, the communication of Lebanon underlines that all these incriminations are very strongly punished with penalties which go from temporary forced labour, to imprisonment to very high sums of fines with a aim of protecting children and women from any kind of trafficking, commercial sexual exploitation or instigation into prostitution.

16. **The Government of Myanmar** vide its communication dated 2 April 2002 forwarded its domestic legislation on Prevention Against Trafficking in Women and Children. The excerpts from the following domestic laws were sent:

- (1) The Child Law, 1993: it contains many provisions to protect children from exploitation, abuse, sale, etc and to ensure a child's health and well being.
- (2) The Suppression of Prostitution Act, 1949: In Myanmar, prostitution is discouraged and soliciting (seduction) in public is a crime. It is illegal to force or entice a women into prostitution and to keep a brothel.
- (3) The Penal Code, 1860: various sections refer to offences against children such as procuration of minor girls, importation of girls from overseas, selling or buying of minors for purposes of prostitution.

17. **The Government of the Syrian Arab Republic** vide its communication dated 6 May 2002 informed the Secretariat that:

“The Syrian Penal Code which came into force on 22.6.1949 criminalizes acts of kidnapping of persons, male and female, whether by deception or by force and considers it a crime as per Article 501. Likewise the Syrian Penal Code considers the acts committed against minors under 15 years of age even when the act of kidnapping is not combined with deception of force.

Further, Articles 504, 505, 506 of the Syrian Penal Code criminalize and penalize the acts of allurement, enticement, immorality and violation of the sanctity of places reserved for women.

In addition the Syrian Penal Code, Section 2 of chapter 7, criminalizes the acts of promoting trafficking in women, and the offense against public moral and decency and penalizes these acts as well as the acts of facilitating them or assisting the doer in committing these acts. Likewise Section 1 of the same Chapter criminalizes the assault on dignity and honour.

That the legislator in the Syrian Arab Republic has also considered in the Law No. 10 of the year 1961 these aspects of prevention of trafficking in women with more rigorous punishment to counter these immoral and inhuman phenomena. The provisions of this Law are still in force.

18. **The Government of Arab Republic of Egypt** vide its communication dated 23 May 2002 informed the ongoing applicability of the following measures:

- (i) Egypt has signed and ratified the 1980 Convention on the Abolition of All Forms of Discrimination Against women, by virtue of presidential decree No.434 of 1981;
- (ii) Egypt is vehemently engaged in the enforcement of the provisions of Law No. 10 of 1961 regarding combating Adultery; and
- (iii) The United Arab Republic has adhered to the 1950 Convention on Combating Trafficking in Human Beings and Adultery, by virtue of a presidential decree issued on May 11, 1959.

19. **The Government of Malaysia** forwarded the relevant legislation that is in application in Malaysia. Following are the provisions that are applicable to the problem of trafficking in women and children.

1. Malaysia has undertaken a study of the UN Convention against Transnational Organized Crime, the Trafficking Protocol and the Smuggling Protocol.
 - Malaysia is currently awaiting Cabinet approval to become a signatory to the Convention.
 - The Ministry of Home Affairs is to co-ordinate the inter-agency study on the Trafficking Protocol and the Smuggling Protocol.
2. Malaysia's position in relation to the trafficking in persons issue may be summarized as follows:
 - Malaysia recognizes that trafficking in persons, especially women and children, is a serious problem in the Asian-African region with the

increasing involvement of organized criminal groups. It is noted that trafficking in persons is now considered to be more profitable and less risky than drug trafficking.

- Malaysia accepts the definition of “trafficking in persons” in the Trafficking Protocol subject to its domestic laws and policies. However, Malaysia does not agree with the generalization that all persons who are trafficked in this manner are victims in need of protection and thus should be immune from prosecution.
- Malaysia draws a distinction between genuine victims of trafficking (as defined in the Protocol) and self/voluntarily trafficked persons who knowingly allow themselves to be trafficked to seek economic gain in destination countries. Thus, Malaysia does not consider all trafficked persons to be victims who should be immune from prosecution for offences such as prostitution.
- Although Malaysian law does not specifically criminalize “trafficking in persons” as defined in the Trafficking Protocol, its laws already criminalize the component elements of that definition.
- Malaysia also notes the existing international legislative framework on trafficking in persons. Generally, Malaysia supports these instruments and adheres to their principles.
- Malaysian law already provides limited protective measures for victims and witnesses of crimes. Malaysia is now considering a more comprehensive Witness Protection Act. However, any assistance and protection would first require the person to be classified as a “victim of trafficking” according to Malaysian criteria.
 - At present, the police and immigration authorities only consider a trafficked person to be a victim if he or she makes a police report that he or she has been victimized.
- Malaysia already provides assistance to victims through the Social Welfare Department and NGOs subject to their financial and manpower resources. This assistance includes shelter, medical care and legal or other counseling.
- Malaysia already makes special arrangements to temporarily legalize the stay of victims of trafficking where their assistance or evidence is required in a pending criminal matter. However, there is no right to remain permanently in Malaysia or to seek employment while they are temporarily legalized for the purposes of assisting in a criminal matter.
- Trafficked persons are immediately deported without being charged on any immigration offence unless they have committed other offences under Malaysian law or unless their assistance is required in criminal proceedings against the traffickers. Malaysia thus welcomes the requirement in Article 8 of the Trafficking Protocol that requires States Parties that are countries of origin to facilitate the repatriation of their

nationals. However, less acceptable is the requirement in Article 8.2 that repatriation “shall preferably be voluntary”.

- Malaysia already has several bilateral and multilateral arrangements for co-operation to combat transnational crime, including to prevent and suppress trafficking in persons. This includes border and security arrangements with neighbouring countries, the use of INTERPOL and ASEANAPOL as well as the Agreement on Information Exchange and Establishment of Communication Procedures with the Republic of the Philippines and the Republic of Indonesia which was signed on 7 May 2002 in Kuala Lumpur. These instruments and arrangements provide for co-operation in criminal matters and border control and includes co-operation in the identification of the offender and victims, sharing information about modus operandi and routes used and the training of law enforcement personnel.

3. Malaysia’s position in relation to the smuggling of migrants issue may be summarized as follows:

- Malaysia does not agree with the generalization that migration in itself is not a crime and that migrants should be considered as victims in need of protection. Malaysia makes a clear distinction between legal migrants and illegal migrants and overstayers.
 - Illegal migrants are persons who have entered Malaysia illegally in breach of Malaysia’s immigration laws and thus are treated as offenders. However, in most cases they are immediately deported without being charged on any immigration offence unless they have committed other offences under Malaysian law.
 - Overstayers are migrants who entered Malaysia legally under work or social visit passes but have remained in Malaysia beyond the period of those passes or in breach of the conditions of those passes. Again the preferred method of dealing with them is deportation, where possible.
- Malaysia has tried to facilitate legal migration through Government to Government arrangements and even offered regularization and amnesty exercises to reduce the number of illegal migrants with little success.
- Malaysia recognizes that this matter cannot be resolved by it alone and requires the co-operation of both countries of origin and transit countries.

4. Malaysia notes the role being taken by international organizations such as IOM and OHCHR in this issue but maintains that this matter should be dealt

with by the countries concerned bilaterally without the influence or interference by any third parties.

5. Malaysia participated at the World Conference against Racism, Xenophobia and Related Intolerance in Durban and supports the Durban Declaration and its proposed Programme of Action. In relation to the call to sign the relevant international instruments relating to trafficking in persons, Malaysia is already party to the following instruments.

<u>Instrument</u>	<u>Date in force in relation to Malaysia</u>
i) Convention on the Elimination of All Forms of Discrimination against Women 1979 and its Optional Protocol 1991	Convention – 5 July 1995 Not party to Protocol
ii) Convention on the Rights of the Child 1989 and its 2 Option Protocols 2000 * The Ministry of National Unity is studying the 2 Optional Protocols with a view to recommending accession.	Convention – 17 February 1995
iii) ILO Minimum Age Convention 1973 (No. 138)	9 September 1997
iv) ILO Worst Forms of Child Labour Convention 1999 (No. 182)	10 November 2000

As mentioned above, Malaysia is also considering signing the UN Convention against Transnational Organized Crime. Malaysia however, would like to make the point that it is capable of giving effect to its international obligations in this matter without necessarily being a State Party to these instruments. Membership to such instruments is a formality in most cases to show international solidarity on particular matter.

6. In relation to regional efforts, Malaysia, as a Member Country of the Association of South-East Asian Nations (ASEAN), is also actively involved in the implementation of the Trafficking in Persons component of the Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime that was adopted at the 2nd Annual ASEAN Senior Officials Meeting on Transnational Crime in Kuala Lumpur on 17 May 2002.

7. Malaysia also participated at the Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crimes in Bali from 27 – 28 February 2002 which was attended by countries from the Asia-Pacific region. The Conference established 2 Ad Hoc Experts Groups chaired by New Zealand and Thailand respectively to deal with international co-operation issues and the international legislative framework.
 8. Malaysia is not a Member of SAARC but welcomes the adoption of its Regional Convention on Combating the Crime of Trafficking in Women and Children for Prostitution to further the fight against the menace of trafficking in women and girls in that region.
 9. Malaysia notes that many countries, Malaysia included, may need to overhaul and improve its current legislation on trafficking in persons and take measures, both bilaterally and multilaterally, to effectively combat trafficking in persons.
 10. In this regard, Malaysia proposes that emphasis should also be given on tracing and forfeiting the proceeds of the crime of trafficking in persons through effective anti-money laundering legislation in addition to the measures already proposed for prevention, prosecution, international co-operation and protection of victims. Malaysia has already made the existing trafficking in persons offences under its laws predicate offences for the purposes of its Anti-Money Laundering Act 2001 which came into operation on 15 January 2002.
 11. Thus Malaysia supports the proposal for an in-depth study by the Secretariat on this matter with the possibility of formulating model legislation which reflects the dispositions of relevant international instruments. Malaysia notes that this proposal was first mooted during the 40th Session. Malaysia also supports the convening of a seminar or expert group meeting if this is considered necessary. However, Malaysia is of the opinion that this forum of the AALCO, which comprises legal experts from Asia and Africa, is fully competent to address the issue of drafting model legislation without the technical assistance of IOM or OHCHR.
 12. It is proposed that, depending on the views expressed by other AALCO Member States, Malaysia may also consider supporting a further resolution that the Secretariat monitors the developments in this matter.
20. **The Republic of Uganda** vide its communication dated 8th February, 2002 forwarded the legislations that are in vogue in Uganda relating to combating trafficking in women and children. Following are the relevant provisions.

Constitution of Republic of Uganda

XXVIII. Foreign Policy objectives.

- (i) The foreign policy of Uganda shall be based on the principles of :
 - (b) respect for international law and treaty obligations;
 - (e) opposition to all forms of domination, racism and other forms of oppression and exploitation.

23. (1) No person shall be deprived of personal liberty except in any of the following cases :

24. No person shall be subjected to any form of torture, cruel, inhuman or degrading treatment or punishment.

31. (5). Children may not be separated from their families or the persons entitled to bring them up against the will of their families or of those persons, except in accordance with the law.

34. (4) Children are entitled to be protected from social or economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health or physical, mental, spiritual, moral or social development.

Penal Code Act

125. Any person who --

- (a) procures or attempts to procure any girl or women under the age of twenty-one years to have unlawful carnal connection, either in Uganda or elsewhere, with any other person or persons; or
- (b) procures or attempts to procure any women or girl to become, either in Uganda or elsewhere, a common prostitute; or
- (c) procures or attempts to procure any women or girl to leave Uganda, with intent that she may become an inmate of or frequent a brothel elsewhere; or
- (d) procures or attempts to procure any women or girl to leave her usual place of abode in Uganda (such place not being a brothel), with intent that she may, for the purposes of prostitution, become an inmate of or frequent a brothel either in Uganda or elsewhere,

is guilty of an offence and liable to imprisonment for seven years;

Provided that no person shall be convicted of any offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

126. Any person who ---

- (a) by threats or intimidation procures or attempts to procure any woman or girl to have any unlawful carnal connection, either in Uganda or elsewhere; or
- (b) by false pretences or false representations procures any woman or girl to have any unlawful carnal connection, either in Uganda or elsewhere; or
- (c) applies, administers to, or causes to be taken by any woman or girl any drug, matter or thing with intent to stupefy or overpower so as thereby to enable any person to have unlawful carnal connection with such woman or girl.

is guilty of an offence and is liable to imprisonment for seven years:

Provided that no person shall be convicted of an offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

134A. In this Code, a prostitute means a person who, in public or elsewhere, regularly or habitually holds himself or herself out as available for sexual intercourse or other sexual gratification for monetary or other material gain and “prostitution” shall be construed accordingly.

134B. Any person who practices or engages in prostitution is guilty of an offence and is liable to imprisonment for seven years.

231. Any person who conveys any person beyond the limits of Uganda without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from Uganda.

233. Any person who by force compels, or by any deceitful means induces, any person to go from any place is said to abduct that person.

234. Any person who kidnaps any person from Uganda or from lawful guardianship is guilty of a felony and is liable to imprisonment for ten years.

236. Any person who kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined is guilty of a felony and is liable to imprisonment for ten years.

237. Any person who kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous harm, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such a person will be so subjected or disposed of, is guilty of a felony and is liable to imprisonment for fifteen years.

238. Any person who, knowing that any person has been kidnapped or has been abducted wrongfully conceals or confines such person, is guilty of a felony, and shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose, as that with or for which he conceals or detains such person in confinement.

241. Any person who imports, exports, removes, buys, sells or disposes of any person as a slave or accepts, receives or detains against his will any person as a slave, is guilty of a felony and is liable to imprisonment for ten years.

242. Any person who habitually imports, exports, removes, buys, sells, traffics or deals in slaves is guilty of a felony and is liable to imprisonment for fifteen years.

Children Statute: Statute No.6, 1996

6(2) It shall be the duty of any person having custody of a child to protect the child from discrimination, violence, abuse and neglect.

21. **The Thailand** government vide its communication dated 21 august 2002 transmitted the relevant legislation applied in Thailand against trafficking in women and children. The following are laws applicable to the issue of suppression of trafficking in women and children.

- The Penal Code (No.14) B.E. 2540 is the main law that contains a chapter for punishing sexual offenders.
- The Prostitute Prevention and Suppression Act B.E. 2539 (1996)
- The Criminal Procedure Amendment Act (No.20) B.E. 2542 (1999)
- Immigration Act B.E. 2522
- The Measures in Prevention and Suppression of Trafficking Women and Children Act B.E. 2540 (1997)