

ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



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

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ESTABLISHING COOPERATION AGAINST TRAFFICKING IN WOMEN AND CHILDREN

I. INTRODUCTION

A. Background

1. The topic “Establishing Cooperation against Trafficking in Women and Children” was proposed by the Government of Republic of Indonesia at AALCO’s Fortieth Annual Session held in New Delhi, in June 2001. The transnational nature and involvement of organized hierarchical criminal organizations in conducting predicate offences to trafficking in human beings has made the issue of global concern. The countries in Asian and African regions remain extremely vulnerable to this problem since they are sending and transit countries. The international community has often responded to this problem but a concrete effort in combating this menace effectuated through the drafting of the United Nations Convention against Transnational Organized Crime (The Convention) and Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking in Persons Protocol). It was adopted by the UN General Assembly (UNGA) at its millennium meeting in November 2000. The Convention entered into force on 29 September 2003. The Convention has 147 signatories and 148 State Parties to it and 41 Member States of AALCO are Parties to it. The Trafficking in Persons Protocol came into force on 25 December 2003 and till date 117 Signatories and 124 countries are parties to it and 30 Member States of AALCO are parties to it.

2. The Government of Republic of Indonesia emphasized that the Convention and the Trafficking in Persons Protocol intended to combat trafficking in persons and facilitate international cooperation against such trafficking.¹ In order to be effective law these international legal instruments required participation and subsequent ratification by Member States of AALCO. It was observed that the inclusion of the topic on the agenda of the AALCO would facilitate the deliberations on the topic and lead to establishing cooperation² among Member States of AALCO in preventing and combating the crime of trafficking in women and children.

3. At the Forty-Third Session of AALCO, held in June 2004 in Bali, Republic of Indonesia, a resolution (RES/43/SP 1) adopted after in-depth and thought provoking presentations and discussions at the Special Meeting on the topic, reiterated *inter alia*, the request for Member States, who are not a party to the Convention and its Protocol, to

¹ The Convention, concluded at the 10th session of the Ad Hoc Committee established by the General Assembly to deal with this problem, is a legally binding instrument committing States that ratify it to taking a series of measures against transnational organized crime. These include the creation of domestic criminal offences to combat the problem, and the adoption of new, sweeping frameworks for mutual legal assistance, extradition, law-enforcement cooperation and technical assistance and training.

² 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.

consider becoming parties to the Convention and Trafficking in Persons Protocol. It urged Member States to transmit to the AALCO Secretariat their national legislations, if they have adopted any, on this subject.³ Also, the resolution directed the Secretary-General to develop, in cooperation with Member States, a Model Law for the criminalization of trafficking in persons as well as protection of victims of trafficking, before, during and after criminal proceedings, based on human rights approach with a view to developing a concrete action plan for a joint effort against trafficking in persons, especially women and children.⁴

4. As a first step towards fulfilling the mandate entrusted to the Secretary-General vide RES/43/SP 1 and as an initial step towards drafting a Model Law, the Secretariat studied the national legislations received from the Member States of AALCO in the light of the Protocol to Suppress, Punish and Prevent Trafficking in Persons, prepared an outline with a view to developing a concrete action plan for a joint effort against trafficking in persons, especially women and children. Accordingly an outline of the model law in the form of addendum was presented at the Forty-Fourth Session, for consideration of the Member States.

5. During the Forty-Fourth Session of the AALCO in Nairobi, Kenya, in 2005, delegations reiterated and emphasized on the urgent need for cooperation within the framework of the Convention and the Protocol. Most of the delegations affirmed the need for the model legislation on this issue. However, the delegation of Indonesia recommended for undertaking an in-depth discussion or workshop for preparation of a set of draft model legislation for the criminalization of trafficking in persons.

6. At the Forty-Fifth Session of the AALCO at Headquarters, New Delhi, India in April 2006, the Secretariat presented a draft model legislation consisting of Preamble and five draft articles. The delegates from various Member States had an in-depth discussion on this topic. Further, at the Forty-Sixth session of AALCO at Cape Town, Republic of South Africa, in July 2007, the Secretariat, revised the draft model legislation and presented a set of Preamble and five draft articles.

7. The Forty-Seventh session Secretariat report dealt with the legal analysis of nexus between trafficking in persons and international migration issues. It substantially analyzed the 'economic perspective' wherein trafficking is regarded as an economic activity and commodification of women that generates profit. On the other hand, trafficking in persons is considered as a criminal activity as well, that contribute towards broadening the activities of criminal entities which run hidden economy parallelly to the governed state economy.

³ So far the Secretariat has received responses from the following Member States relating to their respective national legislations on the topic: **Tanzania, Sultanate of Oman, Singapore, People's Republic of China, Republic of Korea, Republic of Indonesia, Republic of Uganda, Philippines, Japan, Mauritius, Cyprus, Ghana, Qatar, United Arab Emirates, Sudan, Nepal, Lebanon, Myanmar, Syrian Arab Republic, Arab Republic of Egypt, Malaysia, Thailand and Kuwait.**

⁴ Operative Para 9 of the Resolution (RES/43/SP1).

8. In this backdrop, the brief at hand prepared for the consideration at the Forty-Eighth Session, attempts at bringing out the human rights violations involved when a woman falls prey to the trafficking problem. It would also briefly state the women's rights that are widely violated due to trafficking and the remedy available through established principles of international norms.

B. Issues for focused deliberations at the Forty-Eighth Session of AALCO

- *Human Rights issues of the trafficked women, particularly the health rights, right to life and right to education*
- *The obligation of states as parties to the Convention in protecting the human rights of the trafficked victims, especially women*
- *Need for States to promote awareness among its citizens regarding their human rights*

II. TRAFFICKING IN WOMEN AND HUMAN RIGHTS ISSUES INVOLVED

A. An outline of violations of Human Rights of the trafficked Women

9. Many human rights violations are involved when the issue one addresses is relating to trafficking in human beings. The vulnerability of women and children falling prey to trafficking is considerably more. Recognizing and promoting women's rights as human rights are the correlative needs to eradicate the institutionalized invisibility of women in global sphere, the restoration of their visibility is possible only when States initiate means to implement their existing rights to benefit women's lives, and to develop, expand, and transform the content and meaning of such rights to reflect women's realities and compel women's equality. The international norms should be reconceptualized to incorporate human rights issues of women such as sexual harassment, domestic violence, gender-based violence, reproductive freedom, education, etc. These are general human rights issues that are of major concern for women.

10. Trafficking in women and children encompasses another set of human rights violation. Human rights abuses due to trafficking are so grave and that one can find its reference under the Statue of International Criminal Court (ICC) under the definition of 'enslavement' under 'crimes against humanity'. It defines enslavement as 'the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.'⁵ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime and Optional Protocol to the Convention on the Rights of Child on the Sale of Children, Child Pornography and Child Prostitution set forth a three pronged approach to anti-trafficking efforts: (i) criminalization of acts of trafficking; (ii) trafficking prevention programs; and (iii) aid for victims of trafficking. International law recognizes prevention as a main ingredient to combat trafficking in human beings, sex

⁵ See Article 7 (1)(c) and 7 (2) (c) of the Rome Statue of the International Criminal Court.

trafficking, commercial sexual exploitation though prevention of which is heavily depended on addressing systematic issues like racism, sexism, poverty and so on and so forth. These factors or root causes of trafficking contributes towards producing conditions that permit sex trafficking networks to profit from exploiting poor and marginalized sections of the society.

11. There is a whole gamut of rights associated with women's rights. However, trafficking addresses different issues within the list of human rights. The women's human rights issues in relation to trafficking in persons process is divided into three stages: (i) during trafficking process, (ii) enslavement process; and (iii) beyond prostitution. During the trafficking process, seldom is a woman or a girl child given the right to protect her own self. She is denied her fundamental freedom to give consent to such an act; even going by the presumption that she is informed of her prospective job, it may not be necessary that she has enough education or literacy to fully understand the legal implications of her 'consent' on her person. Hence, her right to participate in her life-making decisions is violated. Further, the Trafficking in Persons Protocol considers 'consent' of the trafficked person as irrelevant whenever the issue involved is exploitation.⁶

12. The next stage, enumerates how a girl child/woman is made subject to enslavement. It is highly essential to note that girl child/woman are used as nannies, maids, sex workers, dancers, factory workers, and hostesses. The worst scenario remains when they end up in debt bondage at the hands of traffickers who would then inflict upon them slave-like practices, use them for the purpose of prostitution or sexual exploitation. The major human rights issues involved at this instance are (i) right to health, (ii) right to be free from gender-based violence and discrimination, (iii) sexual and reproductive rights, (iv) right to education and (v) right to development. All the above mentioned rights of the trafficked victim relates to right to life with human dignity. The human rights of women include their right to have control over, and decide freely on matters relating to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.⁷ Trafficking in women is violence against women. The health of women in the sex industry indicates that many women have serious health problems and are exposed to life-threatening risks. Female prostitutes suffer from infectious diseases, sexually transmitted diseases, injuries from violence, drug and alcohol addictions, depression and other mental health problems as a result of trauma.

⁶ Article 3 (b) of the Trafficking in Persons Protocol, emphasises that "the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be *irrelevant* where any of the means set forth in subparagraph (a) have been used;". For the purpose of defining exploitation, the Protocol under Article 3 (a) supplements that "exploitation includes at a minimum, the exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

⁷ United Nations Fourth World Conference on Women - Beijing 1995. This World Conference on Women addressed the physical, sexual, and psychological harm that this poses to its victims. It proposed several recommendations to governments of origin, transit and destination.

13. Gender-based discrimination and inequality has severe impacts on trafficking related issues too. Substantiating this, one can find that causes of trafficking and commercial sexual exploitation of women and children needs to be analyzed. Many women and girl children do not have right to exercise control over their bodies; because of gender inequalities, many young women and girl children have difficulties in exerting control with respect to sexual relations.⁸ Another major drawback is non-accessibility to their own properties. Seldom are women in certain societies bestowed with property rights which prohibits them from having rights over their economic resources leaving them as destitute when their supporting male member of the family, be it father or husband or brother passes away. Hence, they would be forced to adopt means to support their families through taking up petty jobs, exposing their vulnerability to outside world to exploit them.

14. Although, the sexual and reproductive rights of the women are not specified in any of the international legal instruments of human rights; they are implicit in all of them and are defined in an array of non-treaty human rights declarations and action platforms.⁹ Women's sexual and reproductive rights under international human rights law is a combination of civil, political, social, cultural, and economic rights. This includes the right to health and family planning; the right to life, freedom, integrity, and security; the right not to be assaulted or exploited sexually; the right not to be tortured or to be the object of cruel, inhuman, degrading punishment or treatment; the right not to be subject to sex-based discrimination; the right to privacy; the right to intimacy; and the right to enjoy scientific progress and the right not to be subjected to scientific or medical experimentation without full consent.

15. The victims of trafficking are generally children especially girl children. Keeping in view that right to education is recognized under international law as an individual's basic right, deprivation of the same to a child leads to non-accessibility of the child to knowledge about exploitative environment, including sex trafficking. When one says the right to development, it indicates that every trafficked victim has a right to fully grow into a person, which is deprived to them.

16. The final stage - beyond prostitution seeks to state that even if a trafficked victim, having been used for the purpose of prostitution would like to come back to normal life and enter into society, there are various problems she has to face including overcoming

⁸ UNAIDS, UNFPA & UNIFEM, *Women and HIV/AIDS: Confronting the Crisis* 7 (2004), available at <http://www.unfpa.org/hiv/women/report/index.htm>.

⁹ The Program of Action adopted at the International Conference of Population and Development (The Cairo Action Program 1994) was the first international conference to define the term "reproductive rights" if not "sexual rights." Specifically, the International Conference on Population and Development (Cairo 1994) defined reproductive health as a "state of general physical, social and mental well-being" and not just "the absence of illness in all the aspects related to the reproductive system, its functions and processes." Reproductive health, therefore, includes the capacity to enjoy a satisfactory sexual life without risks, and the freedom to decide whether or not to have children, when and how many. For this reason, we can say that reproductive rights are recognized internationally and are binding. See also Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995).

the taboo itself. One of the factors responsible are her deteriorating health conditions, her shortened working life span (which means that after a certain age, she will not be fit for the profession) would again leave her in adopting slave like conditioned life. All these factors remind that there are innumerable human rights violations that happen to one's life and person, which leaves them fully deprived of their right to life and right to live with human dignity.

B. International Legal Instruments dealing with the rights of the Women

17. The international community has concluded many human rights treaties, inter alia, to deal with human rights issues of women especially trafficking. Significant among them are: the Convention on the Elimination of All Forms of Discrimination against Women, 1979, the Convention on the Rights of the Child, 1989, 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.

18. Five major human rights violations of the trafficked persons were mentioned in the previous section. These rights are right to health, right to be free from gender based violation, sexual and reproductive rights, right to education and right to development. The health rights are enumerated under international law as the follows; (i) the right to highest attainable standard of health, including both physical and mental health;¹⁰ (ii) right to access health care services and treatment, including non-discrimination in the provision of health rights; and (iii) state obligations to address particular health care issues relevant to women and children. The World Health Organization defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."

19. The major international rights treaties clearly prohibit gender-based violence and discrimination. Such treaties contain non-discrimination that prohibits discrimination, including sex discrimination, in the implementation of the rights enumerated in such treaty¹¹. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) emphasizes on the prohibition on gender-based violence and discrimination, including sex discrimination.¹² International law recognizes that each individual has right to education. States has basically three obligations with respect to right to education, namely; (i) ensure access to education for all; (ii) comply with the

¹⁰ See International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 12 (1) deals with these requirements. It reads thus, "...recognizing every individual's right to the highest standard of physical and mental health". Read also Article 24 of the Convention on the Rights of Child (CRC).

¹¹ See Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) and Article 2 (2) of the ICESCR.

¹² See Preamble of the CEDAW that in short prohibits discrimination against women stating that it is violative of principles of equality of rights and respect for human dignity.

requirements for each of the three levels of education (primary¹³, secondary, and higher education); and (iii) progressively provide more with respect to the higher levels of education.

C. Legal Basis for State's Obligations

20. Though there would be differences in health conditions in countries, the State's could ensure that members of the population will have opportunity to enjoy the best health possible for each of them as individuals. The international human rights instruments require the States to implement health rights and other economic and social rights to the maximum extent of their available resources and within the framework of international cooperation. States are also obliged to ensure, within their available limited resources, facilitate individuals to access health care treatment and facilities. On gender based violence and discriminations, States may adopt accountability system with other States. Generally States have national legislations that prohibit such discrimination, however, proper implementation and mechanisms to rectify any such problems must be assured.

21. States are responsible under international law for human rights violations and acts of violence perpetrated by the State or any of its agents. Such State responsibility arises not only from State actions, but also from omissions and failure to take positive measures to protect and promote rights. Domestic and international responses to trafficking in persons, especially women and children, have adopted a three-pronged approach: prevention of trafficking, prosecution of traffickers, and protection and reintegration of victims.¹⁴ Prosecution, prevention and protection (including human rights protection) must be the main pillars of an effective strategy to combat trafficking in human beings.¹⁵ In their zeal to prosecute traffickers and protect the integrity of their borders, States must take care not to inadvertently violate the principle of doing no harm to trafficked persons, for example, by increasing the risk of exposure to abuse by third parties.¹⁶ There is a clear need to ensure that the individuals falling victim to such criminal practices are protected.¹⁷ There are three important streams of obligation on the part of the States,

¹³ See Article 28 (1) (a) of the CRC, requires States to make primary education compulsory and available free of charge.

¹⁴ See *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, U.N. Doc. A/53/383 (2000).

¹⁵ See: Note by the Office of the United Nations High Commissioner for Human Rights, the United Nations Children's Fund and the International Organization for Migration on the draft protocols concerning migrant smuggling and trafficking in persons. Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, Eight Session, Vienna, 21 February - 3 March 2000 (A/AC.254/27)

¹⁶ See: Human Rights Caucus. 1999. *Human Rights Standards for the Treatment of Trafficked Persons* (www.wagner.inet.co.th/org/gaatw/smr99.htm)

¹⁷ Note by the Office of the United Nations High Commissioner for Human Rights, the United Nations Children's Fund and the International Organization for Migration on the draft protocols concerning migrant smuggling and trafficking in persons. Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, Eight Session, Vienna, 21 February - 3 March 2000 (A/AC.254/27).

namely; crime prevention, protection of human rights of the trafficked victims and prosecution of offenders.

22. The concept of prevention as an obligation has been mentioned in the Protocol for the first time in international law, wherein this instrument addresses the need for crime prevention along with protecting the victims' human rights. The Convention and the Trafficking in Persons Protocol is intended to control and prevent the crime of trafficking in human beings, especially women and children. In other words, government policies and the practices of border control measures, immigration laws, police and justice agencies often concentrate on the illegal aspects of migration, leaving aside the involvement of organized criminal groups in the smuggling of human beings. Therefore, it becomes an obligation on the part of the government authorities to effectively implement the provisions of the Convention and the Trafficking in Persons Protocol to curb the menace of trafficking and to check the activities arising or leading to trafficking in human beings.

23. Criminalization of offences that are predatory in nature to constitute trafficking in persons especially women and children, is an essential factor under Article 5 of the Trafficking in Persons Protocol. One of the reasons for defining "trafficking in persons" in international law was to provide some degree of consensus-based standardization of concepts. Thereby, requiring States to penalize and criminalize these offences in their national legislations too. This in turn would facilitate States to cooperate regionally and internationally to combat this crime. The requirement to criminalize trafficking was intended as an element of a global counter strategy that would also include the provision of support and assistance for victims and that would integrate the fight against trafficking into the broader efforts against transnational organized crime.

III. RECENT DEVELOPMENTS

A. 18th Session of the Commission on Crime Prevention and Criminal Justice (16-24 April 2009, Vienna, Austria)

24. The eighteenth session of the Commission is held in Vienna, Austria from 16-24 April 2009. At the session, international issues on global crime trends and responses would be discussed which is otherwise termed as "a global crime wave". Among other issues, economic fraud and identity-related crime would also be discussed. It has been noted that the recent economic crisis would facilitate extraordinary opportunity for mafia penetration of the international financial system through abuse of the Internet for economic fraud and cyber-terrorism. Other important thematic discussions would address penal reform and the reduction of prison overcrowding, including the provision of legal aid in criminal justice systems.

25. The Economic and Social Council, in its decision 2008/245, entitled "Report of the Commission on Crime Prevention and Criminal Justice on its seventeenth session and provisional agenda and documentation for its eighteenth session", decided that the topics for the thematic discussion at the eighteenth session of the Commission would be the

following: (a) “Economic fraud and identity-related crime” and (b) “Penal reform and the reduction of prison overcrowding, including the provision of legal aid in criminal justice systems”.¹⁸

26. On Economic Crime and Identity-related Fraud, the discussions were focused on the following sub-themes: (a) Defining and criminalizing identity-related crime and fraud in civil and common law systems, taking into account criteria of the United Nations Convention against Transnational Organized Crime.¹⁹ (b) Criminal justice responses: investigation, prosecution and international cooperation; (c) Prevention and cooperation with the private sector, covering cooperation in prevention, investigation and prosecution, and technical assistance in addressing fraud and identity-related crime; and (d) International cooperation in the prevention of economic fraud and identity-related crime, particularly awareness-raising and technical assistance.

27. The issue on “Penal reform and the reduction of prison overcrowding, including the provision of legal aid in criminal justice systems” had addressed following issues: namely, respect for human rights in penal establishments, including as regards pre-trial detention and the principle of fair trial; restorative justice and alternatives to incarceration, including avoiding imprisonment through social reintegration; and case management in penal establishments.

B. Fifty-third session of the Commission on Status of Women (2-13 March 2009, UN Headquarters, New York)

28. The Report of the fifty-third session of the Commission on Status of Women held in New York from 2-13 March 2009 had deliberated upon various issues dealing women.²⁰ This report deals with activities of United Nations Development Fund (UNDF) on elimination of violence against women.²¹ The Commission considered the following themes for consideration at its session:

- (i) The Equal Sharing of Responsibilities between Women and Men, including Caregiving in the context of HIV/AIDS;
- (ii) Equal sharing of responsibilities between women and men, including caregiving in the context of HIV/AIDS;

¹⁸ See document No. E/CN.15/2009/15: Note by the Secretariat at the eighteenth Session of the United Nations Commission on Crime Prevention and Criminal Justice on the “Economic fraud and identity-related crime; and penal reform and the reduction of prison overcrowding, including the provision of legal aid in criminal justice systems”.

¹⁹ The following issues could be addressed by panellists during the discussion on this sub-theme: (i) Definition of identity-related crime, application of existing offences and formulation of new offences; (ii) Basic meaning of fraud and consensus on criminalization, and current initiatives, including the Council of Europe Convention on Cybercrime; and (iii) Possible approaches of common law and civil law systems: criminalization that supports international cooperation.

²⁰ Report of the United Nations Development Fund for Women on the activities of the Fund to eliminate violence against women: A/HRC/10/43-E/CN.6/2009/10.

²¹ At the Sixty-third session of the UNGA, two resolutions were adopted, namely, (i) A/RES/63/155 on intensification of efforts to eliminate all forms of violence against women; and (ii) A/63/156 on trafficking in women and girls.

- (iii) Key policy initiatives on equal sharing of responsibilities between women and men, including care-giving in the context of HIV/AIDS; and
- (iv) Capacity-building for mainstreaming a gender perspective into national policies and programmes to support the equal sharing of responsibilities between women and men, including care-giving in the context of HIV/AIDS.

29. An interactive dialogue had evaluated progress of the implementation of the agreed conclusions "Equal participation of women and men in decision-making processes at all levels" adopted at the Fiftieth session of the Commission on Status of Women. The emerging issues were on gender perspectives of the financial crisis and global public health. The Commission on the Status of Women and the Commission on Criminal Justice and Crime Prevention convened a joint dialogue on addressing violence against women through legal reform.²²

30. A Model framework for legislation on violence against women was circulated at the joint dialogue. The goal of legislation on violence against women should be to prevent violence against women, to ensure investigation, prosecution and punishment of perpetrators, and to provide protection and support for complainants/survivors of violence. Laws on violence against women should also create mechanisms to: (a) monitor implementation of legal reforms to assess how well they are working in practice; and (b) keep legislation under constant review and continue to reform it in the light of new information and understanding. The Model framework underlined the following guiding principles:

- i. address violence against women as a form of gender-based discrimination, and a violation of women's human rights;
 - ii. make clear that violence against women is unacceptable and that eliminating it is a public responsibility;
 - iii. ensure that complainants/survivors of violence are not "revictimized" through the legal process.
- promote women's agency and empower individual women who are complainants/survivors of violence;
 - promote women's safety in public spaces; and
 - take into account the differential impact of measures on women according to their race, class, ethnicity, religion, disability, culture, indigenous or migrant status, legal status, age or sexual orientation.

31. The report referred to five main pillars for implementation of United Nations Trust Fund Strategy which were impact, involvement, efficiency, knowledge management and capacity development, and resource mobilization. The initiatives incorporated methods to increase the capacity of the judiciary, law enforcement and health service providers, creating and strengthening data collection systems and indicators, building multi-sectoral partnerships and increasing attention to the links between violence against women and the spread of HIV and AIDS.

²² The Model legislation on violence against women is available at: [http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Report%20EGMGPLVAW%20\(final%2011.11.08\).pdf?NewsID=30089&Cr=violence+against+women&Cr1=](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Report%20EGMGPLVAW%20(final%2011.11.08).pdf?NewsID=30089&Cr=violence+against+women&Cr1=)

**C. United Nations Global Initiative to Fight Human Trafficking (UN.GIFT)
(February, 2009)**

32. The UNODC, in 2007, had conducted in the framework of the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT), a study on the state of the world's response to the crime of human trafficking. The report briefly provides for an unprecedented view of the available information on the state of the world's response to human trafficking, including near-comprehensive data on national legislative and enforcement activity. During 2007 and 2008, the UNODC had gathered information concerning 155 countries and territories. With a few notable exceptions, nearly all of the larger states participated. The report summarized these information, starting with a discussion of the global and regional figures and closing with country profiles for participating nations.

33. The lack of specific and/or adequate legislation on trafficking in persons at the national level is one of the major obstacles in the fight against trafficking. There is an urgent need to harmonize legal definitions, procedures and cooperation at the national and regional levels in accordance with international standards. The development of an appropriate legal framework that is consistent with the relevant international instruments and standards will also play an important role in the prevention of trafficking and related exploitation. The UN Trafficking Protocol requires the criminalization of trafficking in persons. The UN Convention against Transnational Organized Crime, Article 5 of the Trafficking Protocol, also requires the criminalization of the full range of conducts related to trafficking in persons as defined in Article 3 of the Protocol. In other words, it is not sufficient to criminalize some underlying offences of human trafficking, but human trafficking in its entirety needs to be criminalized. Additionally, the UN Trafficking Protocol requires the criminalization of the attempt to commit trafficking, participation as an accomplice, and organizing or directing others to commit trafficking.

34. Global baseline data on criminal justice responses from 2003 to 2007 indicates that 32% of the countries recorded no prosecutions, 40% of the countries recorded no convictions and 19% of the countries that had a specific offence on trafficking in persons recorded no convictions. It was also noted with significance that sexual exploitation was the most commonly identified form of human trafficking, but it is not the only form. Forced labour and other forms of exploitation were also detected by State authorities, NGOs and International Organizations. Detailed accounts of trafficking for domestic servitude, child begging, forced marriage, organ removal and ritual killings were reported by different State authorities. These types of cases were only recorded episodically, but they remain alarming since they only represent reported cases and actual numbers could be higher.

35. The report indicated that forced labour was less considered as an offence of trafficking in comparison to sexual exploitation. The reasons were; firstly, many of the national legislations incorporated forced labour as form exploitation with special reference to trafficking only since 2005. Secondly, law enforcement agencies and the general public viewed trafficking in persons within the purview of sexual exploitation

only. Thirdly, visibility bias that indicated that only trafficking for forced prostitution could be visible than trafficking for forced labour.

36. The statistics collected and presented in that report shows that countries responded positively to the comprehensive data collection effort undertaken under the UN.GIFT initiative. The quantity of information collected under this research activity is the largest ever. It includes information concerning more than 50,000 offenders and victims of trafficking in persons officially identified by the State authorities of 155 countries and territories. This effort of the UNODC is commendable as the international community will be fighting the problem blindfolded. The first step in tackling a transnational issue must be information sharing. Today, the States are unable to say with any precision how many victims of human trafficking there are, where they come from or where they are going. The various estimates that have been made have been highly controversial. Since the magnitude of the problem or where it is most acute cannot be stated, changes cannot be tracked over time, and interventions cannot be evaluated for their impact. Tackling transnational trafficking in human beings requires an ongoing exchange of data. The States Parties recognized this need when they agreed upon the language in Article 28 of the United Nations Convention against Transnational Organized Crime, which states:

“States Parties shall consider developing and sharing analytical expertise concerning organized criminal activities with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.”

37. The report represents a significant step in this direction, and the data collected so far are impressive. It is significant to note that a good deal can be learned from this collective experience, as this report has shown. But far more could be done with a system of sustained information gathering. In many countries, it appears that very few data are collected, and no comprehensive analysis of this data is conducted. All Member States would benefit if more were approaching the knowledge problem systematically, and the insights to be gained in pooling experience and sharing information would be invaluable in designing targeted interventions to this international problem. In principle, four headings were relevant for gathering information on trafficking in persons: legislative and administrative framework; criminal justice response; victim services; and data on the markets that absorb human trafficking victims and data on the populations at risk in the origin countries.

D. Fourth session of the Conference of Parties to the United Nations Convention against Transnational Organized Crime (8-17 October 2008, Vienna)

38. At the fourth session of the Conference of Parties (COP-4)²³, the common concerns centred on the need to implement fully the Trafficking in Persons Protocol and included the following:

²³ Report of the Conference of Parties to the United Nations Convention against Transnational Organized Crime on its fourth session, held in Vienna from 8-17 October 2008; CTOC/COP/2008/19.

- (i) the urgent need to address the non-identification of victims of trafficking in persons;
- (ii) the introduction of national legislation in line with the Protocol;
- (iii) practical cooperation and coordination mechanisms at the national, regional and international levels;
- (iv) provision of greater assistance and support to victims of trafficking;
- (v) increasing the number and quality of investigations and prosecutions;
- (vi) improved data collection and analysis to identify trends and respond accordingly;
- (vii) the need to reduce demand for activity and behaviour generating trafficking in persons, such as sex services and sex tourism, forced prostitution, pornography and trafficking in organs; and
- (viii) the provision to States parties of technical assistance to enable such actions.

39. Deliberations were made on the following areas such as information-gathering and possible mechanisms to review implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto. Deliberations happened on expert consultations on criminalization; money-laundering; international cooperation, with particular emphasis on extradition, mutual legal assistance and international cooperation for the purpose of confiscation, and the establishment and strengthening of central authorities; implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; protection of victims and witnesses; travel and identity documents; and marking of firearms, the keeping of records of firearms, trafficking in firearms, their parts and components and ammunition and the identification of competent authorities.

40. During deliberations broad range of issues were addressed. One of the views opined was that absence of a definition of exploitation had led to a lack of clarity in implementation of the Protocol. There should be guidance as to relevant criteria of differences between forms of exploitation, such as sexual exploitation or forced labour. It was stated that certain governments regarded consent as an important factor, however a person would be regarded as being a victim of trafficking, even if he or she had given consent, if that person had come from difficult economic circumstances and had had to accept exploitative work. Speakers underlined the importance of regularly re-evaluating established trafficking indicators and accepted profiles of victims. This was highlighted in order to affirm that State needs to identify trafficking in persons for forced labour in stone-laying work. It was said that though they are highly visible to the public, had previously not been thought to be potentially victims of trafficking.

41. In terms of cooperation with regard to criminal justice system the importance of facilitating access to services for victims and ensuring a victim-centred approach was accentuated. Such approach would prompt rehabilitation and reintegration of victims; and the cooperation of victims in the investigation and prosecution of traffickers. With regard to prevention obligation, it was stressed to raise awareness-raising and media campaigns,

and simultaneously measures to combat the demand side of trafficking in persons, for instance by encouraging consumers to purchase goods and services produced through non-exploitative means or by criminalizing the purchase of sex also was emphasized. It was observed by a speaker that the Protocol addressed prevention only to a limited extent, especially with regard to the issue of demand, and that a global plan of action might address this and other limitations of the Protocol.

42. Additionally, considerable importance had to be attached to technical assistance in the fight against trafficking in persons and related forms of organized crime. The issue of a review mechanism for the Convention and its Protocols also needs to be conducted in order to check why there is inconsistent implementation by States of their obligations under the Protocol that has negative human rights implications for trafficked persons. One of the major purposes for the adoption of the Trafficking in Persons Protocol was for the States parties to accord protection to trafficked persons. It was suggested to have a review mechanism as a means of ensuring that commitments were implemented in the way that was envisaged and that would improve coordination and cooperation between all States parties.

43. A decision was adopted by the Conference of the Parties on Trafficking in human beings (Decision 4/4). The decision reiterated the need to continue to strengthen the national legislations and policies for the implementation of the trafficking in Persons Protocol. The decision also noted that primary purpose of the Conference was to improve the capacity of States parties to combat trafficking in Persons and that the Conference should spearhead international efforts in that regard.

E. 17th Session of the Commission on Crime Prevention and Criminal Justice (14-18 April 2008, Vienna, Austria)

44. The Secretariat report covers the Seventeenth session of the Commission on Crime Prevention and Criminal Justice responses to violence against women and girls.²⁴ The seventeenth session of the Commission was held in Vienna, Austria from 14-18 April 2008. The session focused on how governments can curb violence against women and girls. Apart from focusing on organized crime, corruption and terrorism, the session also paid attention to human trafficking, illegal logging and strengthening justice in post-conflict societies.

45. The role of United Nations Office on drugs and Crime (UNODC) is commendable in crime prevention and criminal justice field. The comparative advantage of UNODC in the area of violence against women relates to criminal justice responses to such violence. This was highlighted in the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century²⁵, in which the Members of the United Nations committed themselves to taking into account and addressing within the United Nations Crime Prevention and Criminal Justice Programme, as well as within national crime prevention and criminal justice strategies, any disparate impact of programmes and

²⁴ E/CN.15/2008/2.

²⁵ United Nations General Assembly resolution 55/59, annex.

policies on women and men, as well as committing themselves to the development of action-oriented recommendations based on the special needs of women as criminal justice practitioners, victims, offenders and prisoners, and also to more effective ways of collaborating on the issue of trafficking in persons, especially women and children. The plans of action for implementation of the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century²⁶ called for measures to meet the special needs of women as criminal justice practitioners, victims, offenders and prisoners.

46. At the reporting of the programme delivery and training of the UNODC, one of the main areas that was highlighted was trafficking in human beings especially women and children. The UNODC had developed a programme to implement Commission on Crime prevention and Criminal Justice resolution 16/2, entitled “Effective crime prevention and criminal justice responses to combat sexual exploitation of children”, in which it was requested to explore ways and means, within its mandate and subject to extra-budgetary resources, taking into account, *inter alia*, work done on that issue by other agencies and bodies in the United Nations system, by which it could contribute to effective crime prevention and criminal justice responses to combating sexual exploitation of children. Under the programme, it was proposed to prepare model legislation and a training package, and to develop public service announcements, as well as to provide technical assistance to requesting States. Responding to the issue of men, women and children being trafficked for a great number of exploitative purposes; the UNODC Office’s Global Programme against Trafficking in Human Beings addressed trafficking in women and girls as a specific form of violence against women. Parallel with the Trafficking in Persons Protocol, programme activities were aimed at providing balanced interventions that would address both criminal justice concerns and ensure victims’ rights – in other words, that improve criminal justice action against offenders, but not at the expense of providing support and assistance to victims of trafficking.

47. Information was received from 26 member States of the United Nations on various issues. Out of which seven Member States of AALCO²⁷ had expressed their opinions and addressed the issues at hand. The information that were sought from member States were on the following areas: (i) national action plans, (ii) legislation and judicial procedures, (iii) police, (iv) victim support and assistance, (v) training, (vi) awareness-raising/information campaigns, (vii) research and data collection, ensuring effective criminal justice responses to violence against women and girls, and (viii) Children: special considerations. The member States who had responded to the queries stressed on the need for taking concerted action and that efforts were being undertaken to ensure that national strategies, action plans and related legislative framework included specific provision and/or guidelines for ensuring effective criminal justice responses to violence against women. Also, they recognized that to maximize the effects of promoting an active and visible policy for integrating a gender perspective into the development and implementation of criminal justice system policies and programmes.

²⁶ United Nations General Assembly resolution 56/261, annex.

²⁷ The Member States of AALCO that had sent information on the issues were Japan, Jordan, Malaysia, Mauritius, Pakistan, Syrian Arab Republic and Turkey.

F. Follow-Up of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice (14-18 April 2008, Vienna, Austria)

48. The report of the Secretary-General²⁸ at the United Nations Commission on Crime Prevention and Criminal Justice was prepared pursuant to General Assembly resolution 62/173 of 18 December 2007. The main emphasis during the follow-up was on the preparatory framework for the Twelfth Congress, the venue would be Brazil wherein the dates for the Congress have not yet been finalized. The informal Open-Ended working group on preparations for the Twelfth Congress agreed that the theme for the Twelfth Congress would be “Comprehensive strategies for global challenges: crime prevention and criminal justice systems and their development in a changing world”.

49. The informal open-ended working group has recommended for the following agenda items and workshop topics. The Agenda items recommended were: (i) Children, youth and crime; (ii) Making the United Nations crime prevention guidelines work; (iii) Criminal justice responses to the smuggling of migrants and trafficking in persons: links to transnational organized crime; (iv) International cooperation against money-laundering; (v) New trends and strategies in fighting crime: the case of cyber-crime; (vi) Improving international cooperation: new and practical approaches to solving crime-related problems in a changing world; and (vii) Violence against migrants, migrant workers and their families: crime prevention and criminal justice responses.

50. The workshop topics that are under consideration, which has to be held within the framework of the Twelfth Congress are (a) Enhancing effective international cooperation in counter- terrorism through criminal justice systems; (b) International criminal justice education for the rule of law; (c) Science, technology and crime; (d) Drug trafficking and illicit trade in arms: structural links and a coordinated international response; and (e) Strategies and best practices to prevent overcrowding of correctional facilities. Further, resources have been allocated to hold regional preparatory meetings for the Twelfth Congress in Africa, Asia and the Pacific, Latin America and the Caribbean, and Western Asia, including necessary resources for the participation of the least developed countries. Finally, the Commission has been requested to consider and take action on the following matters at its eighteenth session. It includes: (i) decision on possible amendment of the rules of procedure for United Nations crime Congress, (ii) recommendations on the documentation for the Twelfth Congress, and (iii) recommendation on the public information activities for the Twelfth Congress, which should be undertaken in a timely manner in order to ensure that Governments and civil society are fully aware of and participate in the Congress and the preparations therefore.

²⁸ E/CN.15/2008/14.

IV. COMMENTS AND OBSERVATIONS OF THE AALCO SECRETARIAT

51. The international human rights treaties that deal with various rights of the trafficked victims are numerous. Such treaties impose obligations on States to check whether any violation of the same occurs or not. If any such violation occurs, it becomes the States obligation to take immediate action and protect the victim and bring the perpetrators under the criminal justice system and prosecute them. States can report of any trafficking issues when the trafficking of human beings occurs within the State (intra-state). On the other hand, any other form of trafficking like trans-border or inter-regional trafficking requires States to have effective exchange of information process. The information exchange process and international cooperation provisions incorporated in TOC Convention are essential tools of combating trafficking in human beings.

52. Another significant aspect of the TOC Convention is the ‘prevention’ obligation. This obligation is one of the salient features of the Convention. It requires States to take effective measures to prevent trafficking in human beings through spreading awareness among citizens about the consequences of such heinous crimes. Implementing preventive strategies must take place at source and transit states also, which emphasis that preventing such crimes is not the only responsibility of destination state. Poverty and discrimination against women and children contribute towards trafficking flows. It is necessary also to check that while dealing with these cases, Law enforcement machineries shall adequate precaution to not to violate the human rights of the trafficked victims. Therefore, the issue of trafficking in persons should be addressed within the larger context in light of the existing obligations of States under the various regimes of international law and human rights law.

53. Many of the AALCO Member States are already Parties to the two important international human rights treaties namely, Convention on the Elimination of all Forms of Discrimination against Women, as well as the Convention on the Rights of the Child which are considered very relevant for protection of human rights of women and children. Many of the AALCO Member States do not have national legislations that deals directly with anti-trafficking, however, provisions in other domestic laws do deal with the offence of trafficking in women and children. It is urged that those Member States of AALCO which are not signatories to these Convention and the Trafficking in Persons Protocol may ratify these two international legal instruments in order to combat trafficking in human beings in an effective manner.