

발 간 등 록 번 호

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여성 및 아동의 인신매매 방지 아·태지역 세미나 참가보고서

(2001. 8. 1 ~ 3, 태국 방콕)

여 성 부

목 차

I. 회 의 개 요		3
II. 회의 배경 및 목적		3
III. 회 의 일 정		5
IV. 주제발표 및 토의 요지.....		7
V. 최종보고서 채택 및 권고안.....		13
VI. 관찰 및 평가		16
VII. 참고자료		19

I. 회의 개요

- 회의명 : 여성 및 아동의 인신매매 방지를 위한 법적 도구에 관한 지역 세미나
(Regional Seminar on Using Legal Instruments to Combat Trafficking in Women and Children)
- 일시 및 장소 : 2001. 8. 1 ~ 8. 3, 방콕 ESCAP 본부
- 주 최 : 유엔 아·태경제사회이사회(ESCAP), 국제이민기구(IOM)
- 참 석 : 한국, 중국 등 아·태지역 17개국 정부대표, 7개 NGO, UN 기구 대표 등 총 81명
- 우리 대표단
 - 수석대표 : 황인자 여성부 권익증진국장
 - 대표
 - 조희진 서울지검 동부지청 검사
 - 이승범 외교통상부 인권사회과 외무관
 - 김은정 여성부 권익기획과 사무관
 - 최은숙 법무부 검찰제4과 검찰주사

II. 회의 배경 및 목적

- 회의개최목적
 - 인신매매 문제는 그 동안 소홀히 다루어진 점에 대한 세계적 반성이 일고 있는 가운데, 최근 국제적 이슈로 부각되고 있는 바
 - 아·태지역에서도 최근 3년간 지역회의, 전문가회의 등을 통하여 주요한

여성인권 의제로 지속적으로 환기·부각되어 왔음.

- 특히 이번 세미나는 인신매매 방지에 관한 국제협약, 지역협정 및 각국의 입법조치와 대책 등 법적 수단과 장치에 관한 아태지역 각국 정부의 인식제고와 정보공유를 위한 계기를 마련하고자 함.

○ 관련 배경 문서

- 제4차 세계여성회의 북경행동강령(1995)
- 여성 인신매매 방지에 관한 방콕협정 및 행동계획(1998. 12)
- 여성 및 아동 인신매매 방지 마닐라 회의(2000. 3)
- 유엔여성특별총회 결과문서(2000. 6)
- 제4차 세계여성회의 후속에 관한 ESCAP 총회 결의안(2001. 4)
- 미국 인신매매 및 폭력피해자 보호에 관한 법률(2000. 10)
- 국제조직범죄방지협약 및 여성 및 아동의 인신매매 방지 의정서(2000. 12)
- ASEM 여성 및 아동 인신매매 방지 행동계획(2001. 5)

○ 특기사항(미국관련)

- 2000. 6월 유엔 여성특총에서 미국 정부대표는 기조연설을 통하여 인신매매 근절을 위한 글로벌 이니셔티브를 전개하고 있음을 언급
- 2000. 3월 필리핀정부와 공동으로 인신매매 방지에 관한 아시아지역 이니셔티브회의(마닐라 회의) 개최
- 2000. 10월 인신매매 및 폭력피해자 보호에 관한 법률 제정
- 2001. 7월 위 인신매매법에 따라 미 국무부 인신매매 보고서 발표
- 2001. 8월 이번 인신매매 방지 지역 세미나에서 미국의 인신매매법 소개

III. 회의 일정

□ 회의 형식

- 미리 지정된 참가국 정부나 NGO 또는 UN기구의 발제자(Resource Person)들이 주제발표하고, 이에 대해 참가국 정부, NGO 또는 UN기구 대표들이 질의하는 자유토론 형식으로 진행됨.

□ 8. 1.(수)

○ 개 회(Opening session)

- Ms. Lim Kim-Lan(ESCAP 사회개발국장)은 개회연설을 통해 1998년 “여성 인신매매 방지 방콕협정 및 행동계획(Bangkok Accord and Plan of Action for Combating Trafficking in Women)” 채택이후 인신매매는 여전히 줄지 않고 오히려 국제조직범죄와 연계되어 확산되고 있음에 우려를 표시. 특히 미 국무부 인신매매보고서와 관련, 동 보고서가 미국으로 송출된 인신매매 피해자(아시아여성)를 보호하는 기능이 있고, 아태지역 국가들에 대한 국가별 보고서를 담고 있는 점에서 중요한 의미가 있다고 언급.

○ 의장단 선출(Election of officers)

- 의 장 : Ms. Aurora Dios(필리핀 여성역할위원회 위원장)
- 부의장 : 황 인 자(대한민국 수석대표, 여성부 권익증진국장)
- 보고자 : Mr. Pratap Kumar Pathak
(네팔 여성·아동·사회복지부 Joint Secretary)

○ 주제 발표 (Presentation of Overview Paper)

- 국제 인신매매의 정의, 주요 쟁점과 국제법적 장치의 중요성에 대해 주제발표

○ 국제협약(International conventions : Protocol on Trafficking to the Convention against Transnational Organized Crime)

- 국제조직범죄방지협약 및 인신매매방지의정서에 대한 발제

○ 국제인권협약(Other International Human Rights Instruments : CRC & CEDAW)

- 아동권리협약(CRC)과 여성차별철폐협약(CEDAW)에서 각각 정의하는 여성과 아동의 인신매매와 인신매매 방지를 위한 방안에 대한 발제

□ 8. 2.(목)

○ 국내 및 양자간 양해각서(National/Bilateral MOUs)

- 태국정부가 IOM의 지원하에 시행중인 인접국 정부간, 정부와 NGO 또는 NGO 상호간 양해각서에 대해 발제

○ 지역차원의 협정 및 조치(Inter-regional/regional and sub-regional agreements or arrangements : ASEM, ARIAT, The Bangkok Accord, The Puebla Process)

□ 8. 3.(금)

○ 지역프로젝트(Projects from the sub-regions)

- UNIFEM, ILO 등 국제기구들에서 시행 중인 여성 및 아동의 성착취를 수반하는 인신매매 방지를 위한 프로그램 소개

- 역외법 소개(Extraterritorial Legislation: US Victims of Trafficking and Violence Protection Act 2000)

· 미국의 인신매매 및 폭력피해자 보호법(2000)에 대한 소개

- 권고안 채택(Consideration and adoption of recommendations)

IV. 주제발표 및 토의 요지

☐ Presentation of Overview Paper

○ 발표자 : Ms. Amparita S. Sta. Maria(변호사, 필리핀 마닐라 Ateneo Human Rights Center)

○ 아·태지역 제 국가의 인신매매에 관한 법적 규제장치를 인신매매 방지 및 피해자 보호, 갱생과 재통합을 위한 수단의 측면에서 평가. 피해 아동, 여성에게 친화적인 새로운 방식의 수사기법, 법적절차, 국가간 법률 구조 필요성 제기

<우리 대표단 토론요지>

- 우리 수석대표는 우리나라가 인신매매의 목적지(destination)이며, 관련 법규는 구비하고 있으나 인신매매 문제의 심각성이 인식되지 못하였다 ("There is law but not recognized.")는 발표자의 지적에 대해 이의를 제기하고, 관련 근거 및 경위자료를 요구함.
- 이에 동 발표자는 우리나라가 인신매매 관련 법규정은 구체적으로 구비하고 있으나, 동 문제에 대한 정부의 대응(reaction)이 부족하다는 NGO들의 보고를 참고하였다고 답변함.

☐ International Conventions : Protocol on Trafficking to the Convention against Transnational Organized Crime

○ 발표자 : Dr. Sandro Calvani (ODCCP Representative, United Nations Office for Drug Control And Crime Prevention for East Asia and the Pacific)

- 인신매매방지의정서에 의하면 인신매매란 “매춘을 위한 착취, 성적착취, 강요된 노동, 노예, 기타 유사한 행위와 장기절제 등을 목적으로, 폭행·협박·강요·유인·기망·위계·위력 또는 피해자를 지배하고 있는 사람에게 금전이나 대가를 제공하고, 사람을 고용·수송·양도·선적 또는 인수하는 행위 (Trafficking in persons shall mean the recruitment, transportation, transfer, harboring 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, including, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs)”를 말함.
- 인신매매 피해자의 보호, 피해방지, 밀입국 방지대책 및 밀입국자 처리 등에 대한 발표 및 토론

□ Other International Human Rights Instruments : CRC & CEDAW

- 발표자
 - Ms. Saisuree Chutikul(태국 여성·아동 인신매매방지를 위한 국가위원회 의장)
 - Ms. Shanthi Dairiam(Director, International Women's Rights Action Watch-Asia and Pacific)
- 인신매매의 정의 및 아동권리협약(CRC : The Convention on the Rights of the Child)과 여성차별철폐협약(CEDAW : The Convention

on the Elimination of All Forms of Discrimination against Women)
에서 추구하는 최소한의 인신매매 방지를 위한 기준에 대하여 설명 및 토
론

□ National / Bilateral Memorandums of Understanding(MOUs)

○ 발표자

- Ms. Saisuree Chutikul(태국 여성·아동 인신매매방지를 위한 국가위원회 의장)
- Mr. Lance Bonneau(Senior Programme Development Officer, IOM Bangkok)

- 태국정부가 IOM의 지원을 받아 시행중인 모델로서 인신매매가 발생하는 인접 지역 국가 상호간, 정부와 NGO 또는 NGO 상호간에 인신매매 피해자 보호를 위해 상호 양해각서에 서명함으로써 법 제정에 이르지 않는 데라도 실질적으로 정부의 의지를 천명하고 피해자를 보호할 수 있는 방안으로 설명됨.

□ Inter-regional/Regional and Sub-regional Arrangements or Arrangements

○ 발표자

- Ms. Thelma Kay(Director, Social Development Division, UN-ESCAP)
- Mr. Ricardo Cordero(Programme Development Officer, IOM Bangkok)

- 인신매매방지를 위한 동유럽 장관급 선언(Eastern Europe Anti - Trafficking Ministerial Declaration/2000. 12)에서는 인신매매의 효과적인 예방프로그램, 피해자지원과 보호, 입법 및 법률개정, 철저한 법집행의 필요성을 강조하고 각 참가국들은 인신매매에 대한 국가간 행동과

노력을 협력조정하기 위해 각 정부가 고위급 관료를 지정하고 정기적으로 다른 참가국들과 정보교환 및 이행점검 보고서를 작성하기로 함.

- 유럽의회(The Council of Europe) 각료회의에서 “성적착취를 목적으로 한 인신매매에 관한 권고안(no. R(2000) 11)”을 채택, 동 권고안은 법적 구속력은 없으나 국제적인 법 제정과 집행을 위한 가이드라인과 해결방안을 제시하고 있음.
- 그 외 지역차원의 노력으로써, SAARC(South Asian Association for Regional Cooperation)의 1998년 “여성과 아동매춘 목적의 인신매매 예방 및 퇴치를 위한 협약 초안(Draft SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution)”, 1998년 방콕협정 및 행동계획, 2000년 서울에서 개최된 ASEM회의에서 출발한 “ASEM 여성과 아동 인신매매 방지를 위한 행동 계획(ASEM Action Plan to Combat Trafficking in Persons, Especially Women and Children)” 등이 있음.
- 기타 북중미 국가간 협정(1996년)으로 주로 인신매매에 관련된 출입국 문제를 중요한 쟁점으로 부각시킨 “The Puebla Process”와 UNIFEM, ILO 등 국제기구들의 여성 및 아동의 성적착취를 수반하는 인신매매에 대한 정의, 예방 및 퇴치를 위한 프로그램이 소개됨.

□ Extraterritorial Legislation

○ 발표자

- Ms. Terri Ann Motosue(미국 White&Case 법률사무소, 변호사)
- Mr. Vitit Muntarphorn(태국 Chulalongkorn University, 교수)

- ESCAP 사무국에서 의뢰한 미 법률회사(White&Case)에서 미국의 ‘인신매매 및 폭력피해자 보호법(US Victims of Trafficking and Violence Protection Act 2000)’에 대해 3등급 국가들에 대한 미 정부의 제재조치 및 이를 피하기 위한 아시아 국가들의 대처방안 등을 중심으로 설명.
- 이 법은 인신매매 방지를 위한 최소한의 기준을 다음과 같이 제시함.
 - 정부는 인신매매를 금지하고 처벌해야 함.
 - 인신매매관련범죄를 중죄로 처벌하여야 함.
 - 정부는 인신매매를 퇴치하기 위한 진지하고 지속적인 노력을 하여야 함.
- 2003년까지 최소한의 기준에 도달하지 못하거나 기준에 부합하는 노력을 기울이지 못한 외국 정부는 미국의 대외원조 대상국에서 제외, 미국 정부는 세계은행 등 다국적 원조기구에서 이러한 국가에 비통상 관련 원조를 제공하는 것에 반대할 수 있음.
- 이 법은 향후 2년간 약 94.5만 달러에 해당하는 기금을 마련, 미국정부와 외국의 인신매매 퇴치 프로그램을 지원.
- 이와 같은 발표자의 설명에 대해 각국은 2001년 7월 발표한 각국의 인신매매 실태에 대한 미 국무부의 보고서에 대해 격렬한 토론을 벌임.
- 대부분의 국가들은 동 보고서의 문제점을 지적하였고, 특히 중국대표는 미국이 타국에 대한 평가를 너무 쉽게 내리고 있으며, 이는 주권평등의 원칙에 위배되는 것이라 강조. 한편 카자흐스탄 대표는 미국대사관이 동 보고서작성과 관련 카자흐스탄 정부에 공식적인 자료요청을 한 적이 없음을 강조, 동 보고서에 대한 불만을 표시함.

- 동 보고서 및 법률에 대한 참가국의 의견에 대해 주제발표자는 동 보고서가 언제든지 수정가능하며, 이를 위한 각국 주제 미대사관과의 대화를 권장

<우리 대표단 토론요지>

- 우리 수석대표는 미 국무부의 동 보고서에 대한 우리정부의 기본 입장과 우리의 인신매매 예방, 처벌, 피해자 보호를 위한 일련의 법제도 및 조치들을 소상히 설명함.
- 즉 형법, 특정범죄가중처벌법, 청소년의성보호에관한법률 등에서 인신매매관련 범죄를 엄하게 처벌하고, 청소년을 대상으로 한 성범죄자에 대해서는 신상공개제도를 시행하고 있음을 설명
- 또한 한국정부의 교육과 홍보, 긴급전화(Hot Line)를 통한 예방정책 및 각종 상담소, 보호시설 및 재활시설 운영 등 인신매매 피해자 보호정책에 대해서도 설명함.
- 우리 수석대표는 구체적 증거와 면밀한 조사없이 우리나라를 3등급으로 분류한 미 국무부 보고서의 정확성과 객관성에 의문을 제기하고 한국의 상황을 보다 정확히 반영하기 이해 동 보고서를 수정할 것을 요청함.
- 이에 발표자는 우리나라가 인신매매 보고서 수정을 위해 미국측과 협의 시 인신매매 사범에 대한 입건, 유죄판결 실적 및 Hot-line을 통해 접수되는 사건의 숫자 등 구체적인 통계를 제시하는 것이 바람직하다고 권고함.

※ 수석대표 발언문 별첨

- 또한 인신매매법의 역외적용 문제와 관련, Vitit Muntarphorn 교수는 현재 미국, 프랑스, 벨기에, 네덜란드 등 총 32개국이 인신매매와 관련된 법률을 역외에 적용하고 있다고 설명하고 역외적용의 필요성 및 적용과정에서 발생하는 문제점에 대해 설명함.

V. 최종보고서 채택 및 권고안

□ 토의 진행

- 우리 수석대표 주재하에 권고안 초안에 대해 토의하고 최종보고서를 채택함.

□ 권고안 개요(Recommendations)

○ 일반 권고안 부분

- 각국 정부에 반인신매매법 제정을 촉구함.
- 각국 정부는 CRC, CEDAW 및 다른 국제 인권협약과 국내법을 조화시켜야 함.
- 각국 정부는 국내법을 구체화하고 일정 기간 내에 양적, 질적인 조치들을 강구해야 함.

○ The Convention on Transnational Organized Crime and the Protocol on Trafficking(국제조직범죄방지협약 및 인신매매방지의정서)

- 각 국은 “국제조직범죄방지협약 및 인신매매방지의정서”를 비준하고, 협약 및 의정서의 일반원칙에 따라 여성과 아동의 인신매매 방지를 위하여 국내법과의 조화 등 적절한 조치를 취하여야 함.

○ CRC(아동권리협약)

- 각국 정부는 아동권리협약의 이행, 특히 법적 절차가 아동과 피해자 및 목격자를 보호하는 측면으로 개정하도록 노력하는 등 아동 인신매매에 관한 협약 내용을 준수해야 함.

○ CEDAW(여성차별철폐협약)

- 여성차별철폐협약은 가입 당사국들에게 규범의 틀을 제시하고 있으므로, 각 국가는 제한된 기간 내에 우선 순위에 따라 차별철폐를 위한 목

표대상을 정해야 함.

- 각 국가의 이행상황에 대한 평가는 인신매매 퇴치를 위한 각국의 노력을 고려하여 행해져야 함.

○ MOUs(Memorandums of Understanding)

- 태국의 인신매매 방지를 위한 양해각서의 성공적인 발전과 효과적인 실용화에 기초하여 각국 정부는 각 실정에 맞는 양해각서를 개발하도록 건설적인 노력을 기울여야 함.
- 인접 지역국가와 인신매매의 원천국, 경유국, 목적지 국가들은 인신매매범죄를 방지 또는 처벌하고 피해자들을 존엄성이 보장되는 생활로 복귀시킬 수 있는 조건과 협력절차를 정의하는 양자간 또는 다자간의 협정을 체결하도록 해야함.

○ 지역간 협정

- Puebla Process와 같은 지역간 협정을 환영하며, 지역차원에서 유사한 절차와 정치적인 협력체제가 장려되어야 함.
- ESCAP과 같은 UN 산하 지역기구들은 인신매매 되기 쉬운 자 또는 인신매매에 의한 피해자들의 인권을 보호하는 이익의 차원에서 이러한 협정을 주도하고 유지해야 함.

○ 역외법 제정

- 미국 인신매매 및 폭력피해자 보호법은 권고안에서 제외됨.
- 기타 역외법과 관련하여 각 국은 적합한 역외 법 조항들을 보급하도록 노력하여야 함.

○ 국제적인 대응

- 각국 정부는 여성과 아동의 인신매매 방지를 위한 법적 수단의 실효성을 기하도록 연구자료를 산출하여야 함.
- 인신매매 특히 여성과 아동의 인신매매 방지를 위한 공공정책을 공식화하기 위하여 지방정부, 단체 그리고 시민사회 구성원들 사이에 회의를 조직하도록 함.
- ESCAP에 여성과 아동의 인신매매에 관한 지역 전담기구를 설치하여 정기적으로 정보를 교환하고 더 나은 협력방안을 모색할 수 있도록 요청함.

□ 토의 내용

- 권고안 초안은 회의 전반에 대한 요약 부분(proceeding part)과 권고안(recommendation)으로 구성. 미 국무부 인신매매보고서 관련부분에서 참가국들간의 활발한 토의가 진행됨.
- 중국대표는 권고안에 참가국들이 미 국무부 인신매매보고서의 내용을 인정하고, 자국의 인신매매 문제를 개선하기 위해 미국정부와 협의에 들어가기로 합의한 것처럼 보이는 문구(참가국들이 미 국무부 인신매매 보고서와 관련 미국정부와 대화할 것을 권고한다는 내용)가 포함되는 것에 반대하면서 관련조항을 회의 요약부분으로 옮길 것을 제의

□ 토의 결과

- 미 국무부 인신매매 보고서 관련 부분을 권고안에서 삭제하고 회의 진행을 요약한 proceeding part로 옮기기로 합의.

VI. 관찰 및 평가

- 동 세미나는 1998년 “여성 인신매매 방지에 관한 방콕협정 및 행동계획”, 2000년 “유엔 국제조직범죄방지협약 및 인신매매방지의정서”, 2001년 미 국무부 인신매매 보고서 등 최근 국제적으로 활발히 논의되는 인신매매문제에 대한 아시아태평양 국가들의 높은 관심을 반영하였음.
- 따라서 참가국들은 유엔 국제조직범죄협약 등 국제협약과 ASEM, ARIAT, Bangkok Accord, 북중미 협정 등 지역간 협정에서 채택된 인신매매 척결을 위한 방안을 각국 정부 및 NGO 등의 상호협력과 조정을 통해 이행할 수 있도록 노력하고자 함.
- 특히 2001년 7월 발표된 미 국무부의 인신매매보고서와 관련하여 미국으로 송출된 인신매매 피해자(특히 아시아여성)를 보호하는 기능과 함께 아태지역 국가들에 대한 나라별 등급 분류 보고내용을 담고 있다는 점에서 참가국 대표들은 민감한 반응과 함께 높은 관심을 표명함.
- 각 국은 인신매매퇴치를 위한 법적장치를 마련하고 엄정하게 집행함으로써 국제적, 지역적 노력에 동참하여야 하며, 인신매매의 원천지, 경유지, 목적지 국가들은 지역차원의 구속력있는 협약 체결 등 긴밀한 협력이 필요함.
- 우리나라는 미 국무부 인신매매보고서에서 인신매매의 원천지 및 경유지로 지적되면서 최하위 3등급(Tier 3)국가로 분류되었고, 필리핀 NGO의 주제발표에 의해 인신매매의 목적지로 분류되면서 법적 장치는 있으나 인신매매의 중요성에 대한 인식이 부족한 것으로 지적되는 등 우리나라의 인신매매퇴치 노력에 대한 전반적인 평가는 저조한 편임.

○ 우리정부 수석대표는 미국 인신매매 보고서가 정확한 실태조사에 근거하지 못하였다는 점을 지적하고, 인신매매관련 법제도와 조치들을 설명, 미국무부가 보고서 작성시 각국에 대한 보다 면밀한 조사를 거칠 것을 요청함.

○ 결론

- 우리나라는 인신매매 퇴치를 위한 법적인 장치가 마련되어 있고, 인신매매사범을 적극 처벌한 구체적 사례가 많이 있음에도 국제적인 평가가 저조한 것으로 나타났으므로 이에 대한 원인분석이 필요함.
- 우선 형법 및 아동복지법, 청소년의성보호에관한법률, 윤락행위등방지법 등 특별법에 산재된 인신매매 관련 조항을 정비하여 인신매매의 정의, 처벌대상과 절차를 명확히 규정하고, 역외법적 문제가 제기되는 경우에 대비한 조항도 보완할 필요가 있음.
- 특히 국제조직범죄방지협약의 인신매매방지의정서에 의하면 매춘이나 성적착취를 목적으로 폭행이나 협박 등 강요수단을 사용한 경우이외에도 피해자를 지배하고 있는 자에게 금전이나 대가를 제공하고 사람, 특히 여성 또는 아동을 고용, 수송, 양도, 인수 등을 한 경우도 인신매매로 정의하고 이러한 불법적 수단을 사용한 경우에는 피해자의 동의가 있더라도 인신매매로 보아야 한다고 정의하고 있음.
- 인신매매범죄를 처벌하는 측면과 함께 인신매매 피해자에 대한 보호를 중시하는 국제적 추세를 감안, 인신매매된 여성이나 아동을 출입국사범으로 강제출국 조치에 앞서 적절한 보호절차를 마련할 필요가 있으며, 인신매매 원천지, 경유지, 목적지 국가간 협력을 강화할 필요가 있음.

- 또한 아시아 지역의 인신매매 문제에 대한 이해제고와 우리나라의 인신매매 방지를 위한 노력을 홍보하기 위해 인신매매 관련 아주지역 세미나 또는 워크숍 등 개최를 검토할 필요가 있음.

※ 일본의 경우 2001. 12. 17~20간 요코하마에서 “아동의 상업적 성착취에 관한 제2차 세계회의”를 개최하는 등 아동학대, 아동의 인신매매 등에 관한 initiative를 위해 적극 노력함.

- 마지막으로 여성 및 아동의 인신매매 방지와 관련한 국제적 동향 및 흐름에 대해 국내 관련부처(여성부, 법무부, 보건복지부, 노동부, 청소년보호위원회)의 적극적인 관심과 연계 협조가 요구됨.

VII. 참 고 자 료

1. 우리 수석대표 발언문(영문)

2. 개회연설문(ESCAP 사무국 대표)

3. 회의개관

- Overview Paper
- Report on the Regional Seminar on Using Legal Instruments to Combat Trafficking in Women and Children
- List of Participants

4. 인신매매 방지 관련 국제회의 결과문서

- Bangkok Accord and Plan of Action to Combat Trafficking in Women, 1998 (국·영문)
- SAARC(States of the South Asian Association for Regional Cooperation) Draft Convention on Preventing and Combatting Trafficking in Women and Children for Prostitution, 1998
- ARIAT(Asian Regional Initiative Against Trafficking in Persons, Especially Women and Children) Regional Action Plan, 2000
- The Council of Europe's Recommendation No. R(2000) 11 on Action against Trafficking in human beings for the purpose of sexual exploitation, 2000
- Anti-Trafficking Declaration of SEE(Stability Pact for South Eastern Europe), 2000
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000(국·영문)
- ASEM Action Plan to Combat Trafficking in Persons, Especially Women and Children, 2001(국·영문)

5. 기타 참고자료

- 미국 「인신매매 및 폭력피해자 보호법, 2000」 개요
- 미 국무부 인신매매보고서(2001. 7) 한국관련 내용 및 외교통상부 대변인 성명
- 미 국무부 인신매매 보고서 검토 및 향후 대책(법무부자료)

ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC

Regional Seminar on Using Legal Instruments to Combat Trafficking in Women and Children

1-3 August 2001

Bangkok

Statement

by

Ms. HWANG, INJA

Republic of Korea

Madame Chair,

I would first of all like to express my appreciation to your efforts in chairing this seminar. I believe that, under your able leadership, the discussion of this session will reach a successful conclusion.

My sincere thanks also goes to ESCAP secretariat for its hard work and the panelists for their impressive presentation on the extraterritorial legislation. I'd like to share our situation and information with reference to the U.S. Victims of Trafficking and Violence Protection Act of 2000 presented by Dr. Terri Ann Motosue.

Madame Chair,

The government of the Republic of Korea is fully recognizing that trafficking in persons, especially women and children, is a serious crime inflicting human rights and is an extreme form of discrimination against women and children. In addition, we have a firm belief that the countries of origin, transit and destination have to cooperate with each other in order to cope with the crime against human rights.

My delegation, however, cannot but express our deep regrets over the 2001 Trafficking in Person Report by the U.S. State Department, although it was made for the purpose of enhancing awareness of human trafficking problem in the international community.

My government casts serious doubt on the accuracy and objectivity of the report, which placed the Republic of Korea in the worst category, Tier 3, without any convincing and concrete evidence, and careful examination.

Madame Chair,

Under the principle of respect for human rights, my government has endowed particular consideration to the protection of human rights of the vulnerable groups such as women and children, and is adequately prepared with domestic laws to prevent and punish trafficking in persons and support the victims.

Chapter 31 of the Criminal Act regarding crime of kidnapping and seduction clearly states that any acts that infringe upon freedom, including trafficking, will be subject to generally severe punishment. Besides the Criminal Act, there are many special acts to tackle human trafficking problem. Let me take some examples : the Act on Aggravated Punishment of Specific Crimes, the Act on the Punishment of Sexual Crimes and Protection of Victims Thereof, the Employment Security Act, the Act on the Sexual Protection of Juveniles, the Children's Welfare Act, and the Prevention of Prostitution Act. Under the Act on the Sexual Protection of Juveniles, my government has recently committed a policy of zero-tolerance toward violence against and trafficking in especially children.

My country has also joined related international treaties including not only CRC and CEDAW, but also the UN Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The Korean police and prosecution authorities are exerting utmost efforts to crack down on trafficking in persons activities by means of publicization of the name, age and occupation of the perpetrator.

Regarding the victim assistance program, the victims of trafficking are eligible to file civil lawsuits for damages against the perpetrator in addition to prosecution, and they can receive legal assistance, through the "Free Legal Aid Program", when certain conditions are met. Illegal aliens are not excluded from this program. Furthermore, the Korean government conducts education and campaigns for prevention and operates various counselling centers and shelters for protection, rehabilitation and medical care programs for the victims of sexual trafficking. The government also provides various forms of assistance, including financial, to a number of non-governmental organizations that concentrate on human rights, including women's issues, under the "Act on Assistance to Non-Profit NGOs."

My government has already launched nation-wide hot lines for women and children who suffer from any form of violence including trafficking. The hot lines are operated in collaboration with community-based NGOs across the nation. Through these hot lines, one-stop help service has been established in connection with police agencies, social welfare institutes, and medical institutes.

Madame Chair,

The government of the Republic Korea has requested the U.S. to revise its report to reflect a more accurate and complete picture of South Korea's actions to combat this growing problem and also asked to provide the background informations about the Report. My government will continue to discuss on these issues with the U.S. Government to correct the aforementioned report so as to accurately reflect the situation in the Republic of Korea.

Thank you for your kind attention.

ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC

Regional Seminar on Using Legal Instruments to Combat Trafficking in Women and Children
1-3 August 2001
Bangkok, Thailand

Introductory Statement

By

Ms Lim Kim-Lan, Director
Social Development Division

Distinguished delegates, participants, ladies and gentlemen,

It gives me great pleasure to welcome all of you to the Regional Seminar on Using Legal Instruments to Combat Trafficking in Women and Children. This seminar is organized by United Nations Economic and Social Commission for Asian and the Pacific (UNESCAP) in collaboration with the International Organization for Migration. It has been over two years since ESCAP convened the Regional Conference on Trafficking in Women in November 1998. At that time the participants adopted the Bangkok Accord and Plan of Action for Combating Trafficking in Women, calling for national, sub-regional and regional actions to address the different aspects of trafficking in humans. The call for action came in response to the rising trafficking in women and children, a trend that was exacerbated by the impact of the Asian financial crisis.

Since the 1998 Conference, the problem has not lessened, and trafficking is now increasingly being linked to international organized crime. These developments were noted in the United Nations General Assembly Resolution 55/67 on Traffic in Women and Girls, adopted in December 2000. The Resolution noted with serious concern the increasing number of women and girl children, in particular from developing countries and from some economies in transition, who are being trafficked to developed countries, as well as within and between regions and States. The Resolution reflected the grave concern of Governments of the increasing link between activities of transnational crime organizations and trafficking in persons. In the face of the pressing need to address the problem, the global community by its Resolution 55/67 welcomed the many ongoing activities to combat trafficking in women and girls. It also emphasized the need for strengthening efforts and enhancing collaboration between stakeholders.

While many anti-trafficking interventions have predominantly focused on socio-economic aspects, some promising legal initiatives have emerged since the November 1998 Conference. This Regional Seminar is meant to be a forum for awareness-raising and information sharing of the range of existing legal instruments and cooperative agreements available to Governments to combat

trafficking in women and children.

Various instruments have provided the policy framework for concrete action at the international, regional, national and local levels on the key issues of coordination and cooperation, prevention, protection, recovery and reintegration, and participation, to combat the commercial sexual exploitation of women and children. Over the next three days of this seminar, we will discuss in depth some of the most significant instruments available to Governments. Two important human rights instruments that have been in place for a few decades are the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of the Child. Both Conventions have specific provisions on addressing trafficking in persons, and Governments are requested to report measures taken to implement these provisions.

Recently, in Palermo in December 2000, the United Nations Office of Drug Control and Crime Prevention Convention on Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children was adopted. The Convention and Protocol are paramount, not only in providing the international community with a common definition of what constitutes trafficking in persons, but also in setting international common agreed standards for the protection of the human rights of victims of trafficking.

The Asia-Pacific region has also been the source of inspiring new agreements and instruments for combating trafficking in women and children. In March last year, a Regional Action Plan was adopted at meeting of the Asian Regional Initiative Against Trafficking in Persons, co-hosted by the Philippines and USA. More recently, on 25 May 2001, the EU and ASEAN ministers adopted the ASEM Plan of Action to Combat Trafficking in Women and Children. The Action Plan represents a significant inter-regional approach to addressing trafficking. I am also glad to note the progress that has been made by International Organization for Migration, Thailand and Cambodia in developing Memorandums of Understanding.

Looking beyond the Asia region, anti-trafficking legislation has been promulgated, such as the United States Victims of Trafficking and Violence Protection Act, adopted in October 2000. Knowledge of such extra-territorial legislation is essential, as it defines the rights of victims trafficked in the USA, but also entails reporting in countries in the Asia-Pacific region. Looking beyond our region is also an opportune method of seeking inspiration and learning from other experiences in combating trafficking.

Central and North American Foreign Ministers have for the past five years met annually to discuss migratory issues, including trafficking, to reach and understanding and develop strategies to address the issue. The meeting have now become institutionalized, known as the Puebla Process.

Closer at hand, member governments of ESCAP adopted a resolution in April 2001 on the Follow-up to the Fourth World Conference on Women and the outcome of the twenty-third special

session of the General Assembly. The resolution calls for the development of mechanism and plans of action to combat trafficking in women and children, particularly to follow-up on the Bangkok Accord and Plan of Action to Combat Trafficking in Women, and the Asian Regional Initiative Against Trafficking in Women and Children.

It is evident that, there have been many positive developments since the 1998 Regional Conference. It is thus timely for us to take stock and to learn about the new instruments available to Governments to combat trafficking. More importantly, we are here to draw lessons from the ongoing process, in terms of the institutional mechanisms behind the processes, the achievements and challenges, and to identify recommendations that can be presented to Governments wishing to embark on similar processes. This regional seminar will be the starting point for elaborating a resource guide to Governments on using legal instruments to combat trafficking in women and children.

Distinguished delegates, participants, ladies and gentlemen, we all realize the immense challenges before us. It is imperative that Governments, NGOs, civil society and international agencies, work in concert to build alliances and synergistic partnership to translate the legal instruments into policies and actions that will contribute towards preventing and eradication this trafficking in women and children. Most importantly, we need to promote the respect of the human rights of victims of trafficking. ESCAP looks to your presence here and the outcome from this seminar to quicken the fight against this gross and growing crime in our increasingly borderless world. Let these three days mark another concrete step taken towards this, our collective task.

Thank you.

OVERVIEW OF LEGAL INSTRUMENTS ON TRAFFICKING IN WOMEN AND CHILDREN IN THE ASIA-PACIFIC

AMPARITA S. STA. MARIA

National Consultant

☐ DEFINITION OF TRAFFICKING

"The illicit and clandestine movements of persons across national borders, largely from developing countries and some countries with economics in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations for profit of recruiters, traffickers and crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labour, false marriages, clandestine employment and false adoption."(*UN General Assembly, 1994*)

Trafficking is the "recruitment, transportation, transfer, harboring or receipt of person, 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, force labour or services, slavery of practices similar to slavery, servitude or the removal of organs. (*Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000*)

☐ COMMON CONCERNS

A. Push and Pull Factors

1. Poverty
2. Lack of Employment and Educational Opportunities
3. Economic Disparities
4. Gender Socialization and Erosion of Family Values

5. International Migration and Globalization
6. Development Policies and Expanding Commercial Sex Industry
7. Weak Law Enforcement

B. Working Environment

- Physical facilities are often below acceptable standards
- Treatment involve slavery-like practices and prison-like environments
- Long working hours, little time for rest of recreation
- Low wages or no wages, earning are often unknown to workers and withheld by traffickers of employers
- Prolonged indebtedness to traffickers, employers, brothel owners, and lack of knowledge of debt terms
- Exposure to hazardous work
- Almost non-existent access to health and medical facilities
- Physical and sexual abuse is common

C. Risks

- Health risks - women and girls risk getting pregnant and contracting sexually transmitted diseases and HIV/AIDS
- Drug and other substance abuse/addiction
- Security - threat of physical safety by unscrupulous agents and employers, fear of reprisal from traffickers, fear of apprehension by authorities, detention, prosecution and deportation

D. Responses

Broadly categorized into prevention, protection and reintegration /rehabilitation measures.

☐ INTERNATIONAL LEGAL INSTRUMENTS

1. Tools for prescribing international norms
2. Standard-setting for the minimum treatment of human beings
3. Framework where countries can agree and cooperate in order to address common issues
4. Provide for mechanisms in order to ensure State compliance with its obligations

DECLARATIONS

1. Not binding
2. Express the consensus among States

☐ INTERNATIONAL INSTRUMENTS

TITLE : Convention for the Suppression of White Slave Traffic

YEAR :

Adopted : 1910

Entered into force : 1912

NATURE : Treaty

SIGNIFICANCE/FEATURE :

- Sought to address the problem of procuring women and girls for immoral purposes (Art. 1)
- Engaged State parties to enact laws and make "white slave traffic" punishable
- Provided that offense is committed even if various acts may have been carried out in different countries (Arts. 2 & 3)
- Provided for the inclusion of trafficking as an extraditable offense between States having an extradition treaty (Art. 5)

TITLE : Convention for the Traffic in Women and Children

YEAR :

Adopted : 1921

Entered into force : 1922

NATURE : Treaty

SIGNIFICANCE/FEATURE :

- Extended the application of the offense mentioned in the 1910 Convention to children of both sexes (Art. 2)

TITLE : Slavery Convention

YEAR :

Entered into force : 1927

NATURE : Treaty

SIGNIFICANCE/FEATURE :

- Sought to put an end to slavery and slave trade and also to prevent compulsory or forced labour from developing into conditions analogous to slavery (Arts. 4 & 5)

TITLE : ILO Convention 29 or Forced Labour Convention

YEAR :

Adopted : 1930

Entered into force : 1932

NATURE : Treaty

SIGNIFICANCE/FEATURE :

·Sought to suppress the use of forced or compulsory labour in all its forms within the shortest possible time – exception in Art. 2(2)

TITLE : Abolition of Forced Labour Convention

YEAR :

Adopted : 1957

Entered into force : 1959

NATURE : Treaty

SIGNIFICANCE/FEATURE :

·Supplemented ILO 29

TITLE : Universal Declaration of Human Rights

YEAR :

Adopted : 1948

NATURE : Treaty(customary IL)

SIGNIFICANCE/FEATURE :

·Emphasized the inherent dignity of all human beings

·Prohibited slavery, servitude and slave trade (Art. 4)

TITLE : UN Convention for the Suppress of the Traffic in Persons and of the Exploitation of the Prostitution of Others

YEAR :

Entered into force : 1951

NATURE : Treaty

SIGNIFICANCE/FEATURE :

·Consolidated the earlier treaties on trafficking and declared prostitution and traffic of persons as incompatible with the dignity and worth the human person

TITLE : Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery

YEAR :

Entered into force : 1957

NATURE : Treaty

SIGNIFICANCE/FEATURE :

- Reiterated the abolition of slave trade

- Identified debt bondage and serfdom as institutions similar to slavery which shall also be abolished

- Sought the abolition of the practice of giving a woman in marriage for a consideration; the "transfer" of a woman by her husband for value received; inheriting a woman by another person upon the death of her husband and the delivery of a child to another by his or her parents or guardian for exploitation or labour (Art. 1)

TITLE : International Covenant on Civil and Political Rights

YEAR :

Adopted : 1966

Entered into force : 1976

NATURE : Treaty

SIGNIFICANCE/FEATURE :

- Contained similar provisions against slavery, servitude and compulsory or forced labour (Art. 8)

- Provided for the reporting mechanism to monitor State compliance to the convention

- It has a complaints procedure in its Optional Protocol no. 1 whereby an individual may lodge a complaint against a State, alleging violation of his or her right under the said convention

TITLE : Convention on the Elimination of All Forms of Discrimination Against Women

YEAR :

Adopted : 1979

Entered into force : 1981

NATURE : Treaty

SIGNIFICANCE/FEATURE :

- It imposed obligation on a State to refrain from any act or practice which is discriminatory against women (Art. 2[d])
- It mandated the State to address said discrimination at the institutional and societal levels: Adopt legislation to suppress trafficking and exploitation of prostitution of women (Art. 6); modify social and cultural patterns of conduct of people to eliminate practice based on "inferiority of women" (Art. 5[a])
- It has a complaints/inquiry procedure in its Optional Protocol for violations committed by States under the convention (Arts. 2 & 8)

TITLE : Convention on the Rights of the Child

YEAR :

Adopted : 1989

Entered into force : 1990

NATURE : Treaty

SIGNIFICANCE/FEATURE :

- It mandated States parties to take measures to combat the illicit transfer and non-return of children abroad (Art. 11)
- It enjoined States parties to take all appropriate national, bilateral, and multilateral measures to prevent the abduction of, the sale of, or traffic in, children for any purpose or in any form (Art. 35)
- It has an Optional Protocol that gave special emphasis to the criminalization of serious violations of children's rights: sale, illegal adoption, child prostitution and pornography

TITLE : ILO Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

YEAR :

Entered into force : 2000

NATURE : Treaty

SIGNIFICANCE/FEATURE :

- It enumerated the worst forms of child labour, the first of which is all forms of slavery or practices, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including the forced or compulsory recruitment of children for use in armed conflict. (Art. 3[a])

It required States to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour. (Art. 1)

TITLE : Convention Against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

YEAR :

Adopted : 2000

NATURE : Treaty

SIGNIFICANCE/FEATURE :

It defined trafficking to include means of recruitment or transport, other than through falsity or force; and that when children are involved, the means employed become irrelevant

Underscored need for broader cooperation including extradition and mutual legal assistance (Arts. 16 & 18)

TITLE : Vienna Declaration and Programme of Action

- adopted by representatives of 171 States

YEAR :

Adopted : 1993

NATURE : Declaration

SIGNIFICANCE/FEATURE :

It recognized the human rights of women and the girl-child as inalienable, integral and indivisible.

It declared that gender-based violence including those resulting from international trafficking are incompatible with dignity and worth of the human person.

It recommended the elimination of violence through legal measures, national action and international cooperation

TITLE : Beijing Declaration and Platform for Action

- endorsed by 189 countries and participated in by 2,600 NGOs

YEAR :

Adopted : 1995

NATURE : Declaration

SIGNIFICANCE/FEATURE :

- It reiterated the pronouncements of the Vienna Declaration
- It recommended the elimination of trafficking in women and assistance be given to victims of violence due to prostitution and trafficking (Strategic Objective D. 3)
- It advocated for the ratification and enforcement of international conventions on trafficking, strengthening of laws against trafficking for the greater protection of women and girl-children and more cooperation and concerted action among law enforcement authorities with a view of dismantling national, regional and international networks in trafficking

□ REGIONAL INSTRUMENTS

All members of the Association of Southeast Asian Nations(ASEAN) are now parties to the CRC, except for Brunei, also to the CEDAW.

TITLE : ASEAN Declaration of the Advancement of Women

YEAR :

Adopted : 1988

NATURE : Declaration

SIGNIFICANCE/FEATURE :

- Endeavored to promote the equitable and effective participation of women in the political, economic, social and cultural life at the national, regional and international levels

TITLE : ASEAN Plan of Action for Children

YEAR :

Adopted : 1993

SIGNIFICANCE :

- It outlined the need to address the issues of child abuse, neglect and exploitation including child trafficking

TITLE : ASEAN Vision 2020

YEAR :

Adopted : 1997

SIGNIFICANCE/FEATURE :

·It envisioned the evolution in Southeast Asia of agreed rules of behavior and cooperative measures to deal with problems that can be met only on a regional scale including trafficking in women and children and other transnational crimes

TITLE : Hanoi Plan of Action

YEAR :

Adopted : 1998

SIGNIFICANCE/FEATURE :

·It implemented ASEAN Vision 2020

·It emphasized the strengthening of ASEAN collaboration in combating trafficking in, and crimes of violence against, women and children

TITLE : ASEAN Declaration on Transnational Crime

YEAR :

Adopted : 1997

NATURE : Declaration

SIGNIFICANCE/FEATURE :

·It underscored the need for a comprehensive approach and greater regional and international cooperation toward the fight against transnational crime

·Agreed in principle the establishment of ACTC to promote data sharing and serve as repository of laws

TITLE : SAARC Convention on Prevention and Combating Trafficking in Women and Children in Prostitution

YEAR :

Adopted : 1998

NATURE : Draft Treaty

SIGNIFICANCE/FEATURE :

·It recognized the importance of establishing effective regional cooperation for investigation, detection, prosecution and punishment of those responsible for trafficking

·It emphasized the need to strengthen cooperation in providing assistance, rehabilitation and repatriation to victims of trafficking

It enjoined all member countries to make trafficking an offense under their respective criminal laws (Art. 3. 1), grant to member countries the widest measure of mutual legal assistance in respect to investigations, inquiries, trial or other proceedings (Art. 6. 1), make trafficking an extraditable offense (Art. 7) and in case the member country's national cannot be extradited, prosecute that person in his or her own country (ART. 7)

TITLE : Bangkok Declaration on Irregular Migration

- adopted by the Ministers and representatives of Asia-Pacific countries

YEAR :

Adopted : 1999

NATURE : Declaration

SIGNIFICANCE/FEATURE :

- a framework for regional cooperation in combating irregular migration and trafficking
- a regional migration arrangement to provide technical assistance, capacity building and policy support
- serve as an information bank on migration issues and the implementation of national and regional measures to combat irregular migration and trafficking, including comprehensive research and analysis of causes and consequences of irregular migration, promulgation/ improvement of nation laws, public awareness-raising and exchange of information

TITLE : Asian Regional Initiative Against Trafficking in Women and Children
Regional Plan of Action (ARIAT)

YEAR : Plan of Action adopted : 2000

SIGNIFICANCE/FEATURE :

- Preventive strategies were explored in information and education
- RECAP proposed for coordinated regional action against trafficking
- Expansion of ACTC to include non-ASEAN ARIAT members

☐ BILATERAL AGREEMENTS

- vital in forging cooperation between sending and receiving countries

·most of the sending countries, though, are quite hesitant from entering into these kinds of agreements especially if they do not want to be pressured into concluding similar arrangements with other countries

TITLE : Malaysia and Indonesia Agreement

YEAR : 1984

FEATURE :

·Aimed at regulating Indonesian migrant workers specially in the plantation and domestic services

TITLE : Malaysia Memorandum of Agreement with Cambodia

FEATURE :

·It assigned one company to process the export of domestic workers from Cambodia to Malaysia

TITLE : Malaysia Memorandum of Agreement with the Philippines

FEATURE :

·Purpose was the exchange of police liaison officers

☐ NATIONAL LAWS

·International and regional treaties = create a mandate for States to comply with obligations

·Human rights treaties = provide mechanism in order to monitor State compliance

·Non-binding instruments such as declarations and joint statements = create pressure on countries to commit to the pronouncements or statements especially to plan of action

·COMMON CALL = articulation of trafficking laws and mechanisms in the State's legal system; and if a legal framework is already in place, the call is for the strengthening of its implementation and enforcement mechanisms.

☐ IMPORTANCE OF TRAFFICKING LAWS AT THE NATIONAL LEVEL

1. Acknowledgement that it does exist and that the State recognizes it as a problem
2. Definition will set the parameters for data gathering and research
3. The policy statement of the law can help determine the direction of the programs and also give focus to the manner of collecting data
4. Instill in the consciousness of the people, especially those who are most vulnerable, that there is a problem such as trafficking and that the State penalizes its perpetuation
5. Gives rise to enforceable right against the traffickers and may impose an obligation to the State to provide protection, prevention or rehabilitation services to victims

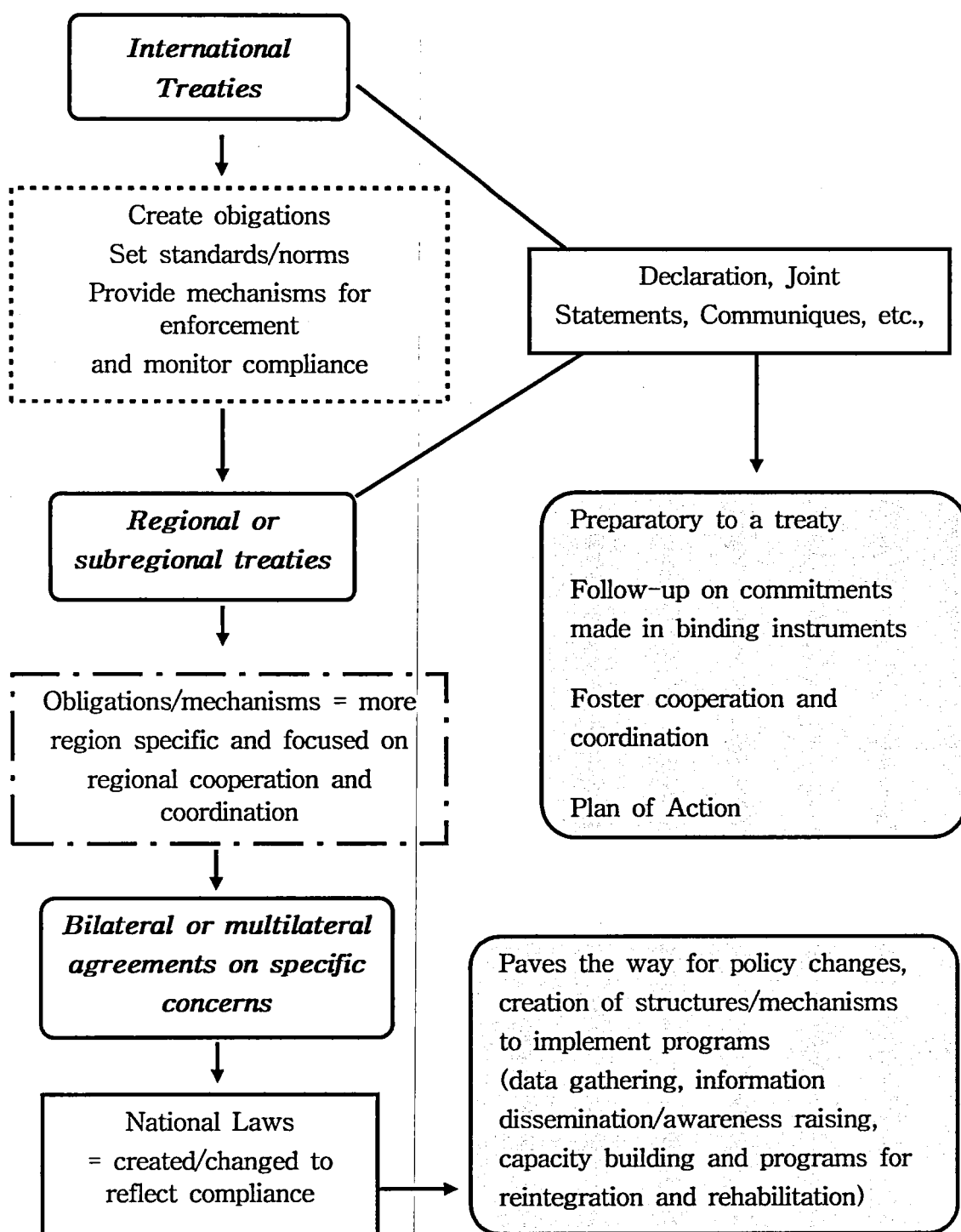
☐ SOME CONCERNS

- No law = e. g., PHILIPPINES (pending Bill)
- There is law but not used either because it is not well crafted or there is vagueness in the manner of its application. = e. g., INDONESIA and CAMBODIA
- There are well crafted laws but not well implemented = e. g., THAILAND and BANGLADESH

Countries of Destination

- There is law but problem not recognized (Korea)
- Treated under Immigration laws (Malaysia and Singapore)

□ SUMMARY OF FRAMEWORK OF LEGAL INSTRUMENTS



ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC

Regional Seminar on Using Legal Instruments to Combat Trafficking in Women and Children

1-3 August 2001

Bangkok

**Report on the
Regional Seminar on Using Legal Instruments to
Combat Trafficking in Women and Children**

I. ORGANIZATION OF THE MEETING

A. Attendance

1. The Regional Seminar on Using Legal Instruments to Combat Trafficking in Women and Children, convened by ESCAP in collaboration with the International Organization for Migration (IOM), was held at the United Nations Conference Centre in Bangkok from 1 to 3 August 2001. The Seminar was attended by a total of 81 participants representing national machineries for the advancement of women, and a range of line ministries such as Foreign Affairs, Social Welfare, Law and Justice, Interior, and Labour, of 17 countries in the Asian and Pacific region; 7 nongovernmental organizations; 2 intergovernmental organizations; 6 United Nations agencies; 4 specialized agencies; 4 other entities; and 3 observers.

B. Opening statement

2. In her introductory statement, the Director of the Social Development Division, ESCAP, expressed her concern that the problem of trafficking in women and children had not lessened since the 1998 Regional Conference on Trafficking in Women, organized by ESCAP, where the Bangkok Accord and Plan of Action for Combating Trafficking in Women was adopted. Trafficking in women and children was over the past years increasingly being linked to activities of transnational crime organizations. The United Nations General Assembly Resolution 55/67 on Traffic in Women and Girls, adopted in December 2000, had serious concern for the increasing number of women and girl children, in particular from developing countries and from some economies in transition, who were being trafficked to developed countries, as well as within and between regions and States.

3. As many promising legal instruments had emerged since the 1998 Regional Conference, it was timely to take stock and to learn about the range of existing and new legal instruments and cooperative agreements available to Governments to combat trafficking. The Director emphasized the need to draw lessons from the ongoing processes, in terms of the institutional mechanisms behind the processes, the achievements and challenges, and to identify recommendations that could be presented to Governments wishing to embark on similar processes. It was envisaged that this regional seminar would be the starting point for elaborating a resource guide to Governments on using legal instruments to combat trafficking in women and children. She stressed that Governments, NGOs, civil society and international agencies, needed to work in concert to build alliances and synergistic partnerships to translate the legal instruments into policies and actions that would contribute towards preventing and eradicating trafficking in women and children.

C. Election of Officers

4. The Seminar elected Ms Aurora Javate-de Dios (Philippines) Chairperson, Ms Hwang Inja (Republic of Korea), Vice-Chairperson, and Mr. Pratap Kumar Pathak (Nepal), Rapporteur.

D. Adoption of the Agenda

5. The Seminar adopted the following agenda:

1. Opening session
2. Election of Officers
3. Adoption of the Agenda
4. Presentation of Overview Paper
5. International Conventions: The Protocol on Trafficking to the Convention Against Transnational Organized Crime
6. Other International Human Rights Instruments: CRC and CEDAW
7. National and bilateral Memorandums of Understanding
8. Inter-regional/regional and sub-regional agreements or arrangements: ASEM, ARIAT, the Bangkok Accord, and the Puebla Process
9. Projects from the Sub-regions
10. Extraterritorial legislation
11. Consideration and adoption of recommendations

6. During the opening debate, a proposal was made to rename the title of the seminar to Using Legal Instruments to Combat Trafficking in Persons, Especially Women and Children to keep it in line with the United Nations Protocol. However as the Seminar was an activity carried out as a follow-up to the Beijing Platform for Action, the current title was maintained.

II. PRESENTATION OF OVERVIEW PAPER

7. In her presentation, Attorney Amparita Sta. Maria, gave the international definition of trafficking and a brief introduction to the issue of trafficking. Further, she explained that international legal instruments were tools for prescribing international norms, standard-setting for minimum treatment of human beings, provided the framework for agreement and cooperation in order to address such common concerns, and provided a mandate for states to comply with obligations spelt out therein. It was noted that the most prominent international legal instrument addressing trafficking in persons was the United Nations Convention on Transnational Organized Crime with its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Adopted in 2000, this protocol included the first comprehensive definition of trafficking. While this Protocol was a clear step ahead, it had yet to enter into force in order to impose binding obligations on states parties. International human rights treaties were instruments to ensure fundamental rights and freedoms of all human beings by providing mechanisms to monitor state compliance. Here, attention was drawn to the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1953), as well as the International Covenant on Civil and Political Rights (Article 8) as examples of longstanding instruments. More recent initiatives in international human rights law included the Convention of the Rights of the Child (Article 32, 34, 35, 36, 39) and its Optional Protocol on the sale of children, child prostitution and child pornography, as well as the Convention on the Elimination of all Forms of Discrimination Against Women

(Article 6). These instruments set the minimum standard of treatment of all humans and were legally binding as such.

8. Other international legal instruments presented were declarations and plans of actions. While they were non-binding they expressed the political will and international consensus among states to address an issue. Most notably, the 1993 Vienna Declaration and Programme of Action as well as the Beijing Platform of Action were mentioned, which declared trafficking as incompatible with the dignity and worth of the human person and adopted the elimination of trafficking as a strategic objective. In addition to international treaties and declarations, the Seminar noted that most of the participating countries were party to several regional arrangements, which tackle the issue of trafficking in Asia and Pacific. Hence it was concluded that an international and regional legal framework exists, imposing various obligations on states, in the area of prevention, protection, rehabilitation and reintegration measures. These had to be taken seriously in order to combat the problem of trafficking and comply with international law.

9. In the discussions that followed, the Seminar recognized that trafficking must be seen in a socio-economic context and the importance of push/pull factors. In addition, it was necessary to look beyond the law as using legal instruments was not sufficient. New modes of investigation, child-friendly procedures and possible legal aid associations across borders were viewed as positive developments. Political will was also important as implementation had to cross line agencies and constant advocacy was needed. It was further found necessary to strengthen implementation mechanisms. The linkage between migration and trafficking was also noted. Also, examples were given of how legal instruments could be effective in addressing trafficking e.g. criminalizing trafficking was not adequate unless people change their attitude. Moreover, there was a need to look at implementation in the broad sense such as what arrangements for implementation and enforcement mechanisms existed. Finally, it was pointed out that in the Asia and Pacific region there was no overarching legal framework within which anti-trafficking legislation could fall in place and the establishment of a regional framework was proposed.

III. INTERNATIONAL CONVENTION: The Protocol on Trafficking to the Convention Against Transnational Organized Crime

10. The Representative of the United Nations Office for Drug Control and Crime Prevention for East Asia and the Pacific presented the Convention Against Transnational Organized Crime and its three protocols: Protocol against the Smuggling of Migrants by Land, Sea and Air, the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, and the protocol that had an immediate relevance to the Seminar, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. While the Convention and Protocol on Trafficking had been signed by 126 and 85 countries respectively, since they were opened for signature in Palermo in December 2000, they had as yet not come into force. Significantly, the Protocol on Trafficking provided the

first internationally agreed definition of trafficking in persons in Article 3a; as "the action of recruitment, transportation, transfer, harbouring, or receipt of persons by means of threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim for the purpose of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices, and the removal of organs". Article 5 called upon State Parties to establish legislative and other measures to criminalize thus defined acts of trafficking in persons, and Article 6 called for further measures to assist and protect victims beyond those stipulated under the Convention itself. The Protocol further stipulated, *inter alia*, prevention policies, investigative measures including witness protection, border and security measures as well as training programmes. State Parties were also required to accord one another the widest measure of mutual legal assistance.

11. In the discussions that followed it was noted that efforts were under way among ESCAP member states to build understanding of the Anti-trafficking Protocol so that they would be ready for ratification. Some delegates pointed out the necessity of international assistance in capacity building. UNODCCP was providing technical support to the interested countries for such efforts. While the agency was giving priority to ratification, it also planned, as the secretariat to the Convention, to establish a reporting mechanism whereby State Parties would be obliged to monitor the status of implementation and enforcement of the Convention. Further, traditional donors on anti-trafficking efforts were expected to continue supporting countries' efforts of anti-trafficking measures strengthened through the Convention. However, the importance of decisions of each country to prioritize anti-trafficking measures as the country's priority area and allocate sufficient resources accordingly was highlighted. It was also underlined that countries should engage themselves in building bilateral and regional frameworks of mutual legal assistance, such as to define the cost sharing responsibility. It was pointed out that this comprehensive Convention was developed to prevent the global village from becoming global pillage, and to reduce the damage to victims was the top priority.

IV. OTHER INTERNATIONAL HUMAN RIGHTS INSTRUMENTS: CRC and CEDAW

12. The Convention on the Rights of the Child (CRC) was adopted by the General Assembly in 1989 and has received nearly universal ratification. The Convention contained 54 Articles on the survival, development, participation and protection aspects of children's lives. Moreover, it was emphasized that the Convention was indivisible, and all Articles thus were interdependent, and that the Convention should be understood holistically within the context of other significant human rights instruments. In her presentation, Dr. Saisuree Chutikul briefly mentioned previous international definitions of trafficking, outlining their common elements, namely the recruitment and transportation of persons domestically and across borders, for the purpose of work or services, with profit for traffickers. She also presented the 1997 agreed definition on trafficking by countries of the Mekong Region. Five articles of the CRC were mentioned to directly address trafficking and sexual exploitation, namely Article 34 on protection from all

forms of sexual exploitation and abuse, Article 35 on the prevention of abduction of, the sale of or traffic in children, Article 36 on the protection against all other forms of exploitation, Article 32 on protection from economic exploitation and hazardous labour, and Article 39 on the recovery and social reintegration of child victims. The Seminar noted that almost all ESCAP member states were Parties to the CRC, and thus were obliged to implement the CRC, as well as to report every five years to the CRC Committee on the progress on measures as contained in the CRC. The Seminar was also presented with 10 recommendations as guidelines to governments in implementing the CRC. Finally, it was noted that the positive development and well-being of children should be the centre of our concern as children were the future of our nations.

13. The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) had been ratified by all of the ESCAP members attending the seminar. In her presentation, Ms Shanti Dairiam briefly mentioned the push factor of trafficking. She further informed the participants how CEDAW addressed trafficking in women. While trafficking was specifically covered under Article 6 of the Convention, which obliged States Parties to suppress all forms of trafficking in women and exploitation of women, it was also touched upon in other provisions. In Article 1 of CEDAW discrimination was defined as any treatment that had the effect or purpose of denying women the enjoyment or exercise of rights. As trafficking in women violated several human rights and fundamental freedoms of women, such as the right to life, the right to be free from torture, the right to liberty and security of the person as well as the right to equal protection under the law, it constituted discrimination. Furthermore, it was observed that trafficking in women was also contrary to the obligations of states to eliminate discrimination against women in the private sphere (Article 2 f), to eliminate traditional attitudes, which see women as inferior to men (Article 5), to ensure equality in employment (Article 11) and development for rural women (Article 14). As Party to CEDAW, countries were obliged to implement CEDAW, and to report to the CEDAW Committee every five years on measures taken. Examples of four country reports to the CEDAW Committee and its concluding comments showed that both sending and receiving countries fell short of fulfilling the obligations arising under the Convention, regardless of their level of development.

14. In the subsequent discussions, the Seminar found that with regard to the usefulness and effectiveness of International Human Rights instruments, CEDAW and CRC established standards, set norms and were important monitoring tools. Also issues such as trafficking and prostitution could be examined within the context of other articles, as the Conventions were integral and indivisible. The Seminar also noted that from the examples given of CEDAW reporting, it was useful to note the different ways in which countries conceptualized approaches to trafficking such as measures for asylum, assistance and protection of victims. Moreover, the Conventions were useful tools for sharing experience, best practice and monitoring. The recommendations of the reviewing committees of the Conventions also crystallized urgent issues as shown in the reports and it was useful to apply the recommendations.

V. NATIONAL AND BILATERAL MEMORANDUMS OF UNDERSTANDING

15. The Seminar was informed of the various aspects of national and bilateral Memorandum of Understandings in Thailand through a panel of speakers moderated by IOM. The first presentation on the work on assisting victims of trafficking in Thailand outlined the evolution from a sporadic tackling of domestic trafficking to an interactive approach with the help of MOUs to coordinate efforts of various agencies to assist national and cross-border victims of trafficking. It was noted that as a country of origin, transit and destination of trafficked women and children, Thailand encountered this problem in various forms, and thus different agencies had to be involved in the undertaking of combating trafficking and assisting victims. This need was brought to a fore and highlighted through an early ad-hoc repatriation of some 150 Burmese victims of trafficking in the early nineties, prior to the development of any formal assistance structures in Thailand. That effort required high-level intervention from both the Royal Thai and Myanmar governments and involved the combined efforts of the Thai Police and Immigration Department, NGOs, social workers and health personnel. Hence, a clear need to coordinate these efforts emerged. Subsequent to this event, concerted efforts began to put in place a formal coordination structure, amend/modify relevant legislation and to establish a National Policy and Action Plan to address trafficking. The National Policy and Action Plan was adopted by the Cabinet in August 1996, concerning the complete cycle of work: prevention, rescue, assistance and protection, prosecution and suppression, repatriation and reintegration as well as establishment of mechanisms for coordination, monitoring and evaluation. As a further step, a Memorandum of Understanding (MOU) on coordination of procedures of government agencies and a division of labour among these agencies was formulated. The need for additional MOUs and increased operational transparency was also recognised.

16. The Seminar was informed that in Thailand there were three types of MOUs under development: among government agencies (signed in June 1999), among NGOs and between the government and the NGOs (both awaiting final approval). Further, it was noted that apart from the national MOUs, efforts were underway to develop bilateral MOUs. However, it was emphasized that before reaching bilateral agreements on cooperation between countries, effective in-country coordination had to be established. This was most effectively achieved if the signing of an MOU was immediately followed up by its dissemination to and training of all personnel concerned. Not only did this ensure the information of officials on how, why, by which means and in which area to combat trafficking, but also provided the possibility for feedback and suggestions regarding problems previously overlooked. It was concluded that MOUs were most effective if they were action-oriented agreements on detailed procedures to provide assistance to victims of trafficking within the overall framework of a well-defined National Plan of Action, and the supporting legislative base. Due to the clear division of labour, MOUs served as an excellent tool for coordinating efforts of various agencies in assisting victims of trafficking.

17. Ms Srisak Thaiarry, Executive Director of the National Council for Child and Youth Development (NYCD), Bangkok mentioned in her presentation that NGOs in their work with migrant and trafficked children had discovered the importance of cooperation among NGOs. As

the NGOs started providing assistance to victims of cross-border trafficking they in their work invariably had to deal with government organizations, in first instance immigration officers as they sought access to victims in the detention centres. This work was often on a case-by-case basis, and the NGOs found that a more systematic arrangement would be helpful and more effective. Through their work they also learned that simple cross-border repatriation was not enough for victims. Thus, they looked into how NGOs could work with governments in rehabilitation and repatriation. The Thai government was at the same time addressing these issues, also realizing the potential benefits of cooperation with NGOs. She emphasized the coordination between NGOs, the government and other agencies, was crucial in fighting the problem, because each could fill gaps or shortcomings of others. These simultaneous developments gave ground to the first MOU. The Seminar was informed that the process of drafting the MOU had not been unproblematic, but a consensus had been reached, recognizing that trafficking could not be dealt with by one agency alone. This first MOU was between government agencies. One of the results was two shelters for child victims. After drafting the first MOU, NGOs decided that they should have a framework for cooperation, and another MOU was drafted. As explained, it contains provisions on all steps of the trafficking process. The NGOs had also discussed the contents extensively before reaching consensus. Finally, a third MOU between the Government and NGOs was in its fourth draft.

18. Mr. Opat Varophat, Provincial Chief State Attorney, spoke on the legal aspect, explaining how the Thai government had changed key laws on prostitution, the trafficking act and the penal code. These changes had signified a decriminalization of prostitution, trafficked children under 18 were defined as victims, and stronger penalties for traffickers. He explained that the MOUs would separate the procedures for Thai and alien victims of trafficking. The MOUs also set new standards for victim statements, securing protection of victims by videotaping testimonies, as well as outlining procedures for police officers upon rescuing victims from brothels such as placing under-aged victims in national shelters rather than detention centre.

19. Ms Sudarat Sereewat, from the FACE coalition, explained that the MOUs were developed based on experiences of real problems in dealing with cases of trafficking. NGOs that had found the double victimization of children of being trafficked and then charged with illegal entry unfair had thus proceeded to work for the MOUs.

20. In his statements, the representative of IOM, commented on the issue of irregular migration and that the effective management of migration required a comprehensive approach that promoted multi-ministerial and inter-departmental dialogue and information sharing, as well as cooperation with civil society. This, however, was not straightforward, and developing trust between NGOs and government organizations was essential. Government and NGOs had different capacities and comparative competencies and through strengthened coordination and collaboration could address capacity gaps. He also acknowledged the efforts made by NGOs of reaching consensus in the MOU. Moreover, he elaborated on the importance of dissemination of the MOUs to front line officials to ensure operational transparency and consistency, and explained how a team from Bangkok, made up of senior Thai government officials and NGO representatives, had conducted numerous training sessions for police and

immigration officers in the provinces. Their understanding of the MOUs and feedback was deemed essential. In addition, he explained about IOMs collaboration with and technical assistance to the Thai Government in the process of drafting MOUs, as well as their protection and reintegration projects.

21. Ms Pisawat Sunkonthapan, Executive Director of MRLC, emphasized in her presentation the importance of having a bilateral MOU as a step to bring about cooperation between countries in combating trafficking. The difficulties in drafting the bilateral MOU included issues of what to include, which actors, and the importance of resources to implement the obligations. She pointed out that it is much easier to create trust between countries at the bilateral level than multilateral level. Effective cooperation can also be created at the bilateral level because there is often less pressure of unbalanced power of several countries than in the multilateral level. Therefore, she concluded that the bilateral MOU is a crucial initiation of cooperative work between countries in combating trafficking. It is a first step for countries before going to the multilateral step, which needs much more efforts in creating cooperation.

22. The many presentations gave ground to a lively and rich debate where several important issues were raised and clarifications were given. Clarification was provided on which government agencies were parties to the MOU and the registration status of NGOs working under the MOU between Government organizations and NGOs. It was emphasized that work was in progress on extending the government organizations party to the MOU to include also Ministry of Foreign Affairs as this ministry played a crucial role in the repatriation of victims. One issue discussed was the effectiveness of MOUs in reducing the incidence of trafficking. The Seminar noted that the MOUs addressed the protection of victims not the traffickers, and as such it was difficult to assess the effect on the incidence of trafficking. However, the MOU was found effective in terms of giving victim protection and assistance in rehabilitation and repatriation. Another pertinent issue discussed was that of resources for combating trafficking and implementing the MOUs. The role of international organizations in supporting national efforts was highlighted in this respect, in giving technical assistance, as well as their projects on trafficking and general poverty alleviation and empowerment projects.

23. Further discussions ensued on the issue of laws and the legal system, such as the videotestimony of victims and criminal law procedures. It was clarified that the videotape testimony was not always effective due to technical problems and resource problems as there were more victims than anticipated. During the session participants also debated the relationship between NGOs and GOs in view of their different perspectives and approaches to trafficking, maintaining NGO independence and the democratic space and debate. Furthermore, the importance of capacity building of front line officers on the MOUs and the significance of feedback from them was underscored. While the importance of working with the media was emphasized, there could also be problems such as identified under-aged victims in the media. The importance of prevention, particularly of re-trafficking, was also noted. The Seminar also observed that a bilateral MOU between Thailand and Cambodia was currently in the process of being drafted, and that this would address both victims and perpetrators. It was explained that the MOU between the Thai Government agencies was not legally binding, but provided a clear

operational framework. Finally, it was explained that a Task Force monitoring the implementation of the future 10 year national policy and action plan to combat trafficking in children and women would be appointed in the near future.

VI. INTER-REGIONAL/REGIONAL AND SUB-REGIONAL AGREEMENTS OR ARRANGEMENTS : ASEM, ARIAT, the Bangkok Accord, and the Puebla Process

24. At this information session the Chief of the Women in Development Section, the Social Development Division of ESCAP summarized five initiatives at regional and sub-regional levels. Two of them were from Europe. The South Eastern Europe Anti-Trafficking Ministerial Declaration was signed in December 2000, emphasizing the need for implementing effective programmes of prevention, victim assistance and protection, legislative reform, law enforcement and prosecution of traffickers. The Declaration had been developed under the Stability Pact for South Eastern Europe. The Declaration called each participating state to appoint a high-ranking government official to co-ordinate national actions and efforts on trafficking, regularly exchange information with other participating states, prepare follow-up and progress reports. Ministers of participating states would meet annually to review activities and give political guidance. Under the Stability Pact, guidelines for national plans of action to combat trafficking in human beings had also been developed. The Council of Europe had also been proactive in combating trafficking in persons, and recently Recommendations no. R (2000) 11 on Trafficking in human beings for the purpose of sexual exploitation were adopted by the Committee of Ministers in May 2000. The Recommendations were based on the cumulative efforts over the past decade, especially under the Steering Committee for Equality between Women and Men. Although the document was not legally binding, it provided guidelines for national legislation and administrative practices and a means of proposing effective and practical solutions to new problems.

25. In the ESCAP region, the Seminar was briefed on the Draft South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution and the Bangkok Accord and Plan of Action for Combating Trafficking in Women. The Draft SAARC Convention, a pioneering effort in the Asia and Pacific region, was finalized in 1998 and was awaiting signature. The Bangkok Accord and Plan of Action adopted at the Regional Conference on Trafficking in Women, held by ESCAP in 1998 was developed as the starting point for a regional consensus on measures to combat trafficking and it called for national, sub-regional and regional actions to address the different aspects of trafficking in humans. Finally, the Chief of the Women in Development Section introduced the regional ESCAP Trafficking Prevention Programme, which gave priority to regional cooperation in sharing information, addressing root causes, using legal instruments, and community based approaches.

26. The Seminar was also informed of an inter-regional level initiative, namely the ASEM Action Plan to Combat Trafficking in Persons, Especially Women and Children. Ms Srisak

Thaiarry, Executive Director, National Council for Child and Youth Development of Thailand presented the initiative proposed by Sweden, Thailand and the Philippines. The idea started in ASEM 3 in Seoul in 2000, where leaders expressed their commitment to addressing global issues of common concern such as transnational crime of trafficking of persons, in particular of women and children for the purpose of sexual exploitation. An expert group meeting to follow up on the initiative identified knowledge and overall coordination; prevention of and combating trafficking; law enforcement and protection of victims; recover, repatriation and reintegration of victims; and monitoring and follow-up as key priority areas, which was crystallized in the ASEM Action Plan. The Plan was in compliance with CRC and CEDAW and addressed the needs to deal with HIV/AIDS issues, mobilization of support in the social sector and the media, and the privacy of victims.

27. Ms Aurora Javate-de Dios, Chairperson, National Commission on the Role of Filipino Women, discussed the Asian Regional Initiative Against Trafficking in Persons, Especially Women and Children (ARIAT) process. In March 2000, the Philippines had hosted an ARIAT meeting, which was attended by 23 governments and other organizations. The meeting adopted a comprehensive and implementable regional action plan. In order to deal with the transnational crime of trafficking, the ARIAT Plan called for development of databank and information sharing mechanisms, cooperation with the civil society, coordination with parallel initiatives, and South-South cooperation. Identifying poverty as a primary cause of trafficking, it listed education and training as a strategic action for prevention. Also in training, ARIAT called for strengthened efforts for capacity building of ASEAN members to deal with transnational crime. The ARIAT Action Plan recognized the need of gender mainstreaming in economic cooperation and development and the strengthening of existing mechanisms to promote gender mainstreaming. Although the ARIAT Action Plan had not specified the timeframe for implementation, some follow-up actions had taken place, including the USA and the Philippines' actions to finalize the legislation on trafficking and the efforts of almost all participating countries to strengthen national mechanisms. Some national projects on selected areas had also been undertaken.

28. Following these presentations the floor was opened to participants to share their experience in combating trafficking. Many governments presented statements on their efforts and actions, showing that the countries had not only recognized trafficking as a serious concern, but that they had addressed the issue in various ways by ratifying international human rights instruments and taking measures to harmonize national laws, improving travel documentation and control of these, training and capacity building of government officials, developing policy and national plans, establishment of working committees, research, prevention and protection programmes, awareness raising campaigns, programmes for empowerment of women, etc. The scarce resources of Governments to address the issue, and the need for NGOs, GOs, and IOs to work together as this problem happened internationally were also discussed. The Seminar was also informed by the UNDP HIV and development project for South and South West Asia of its three areas of concern, which were trafficking, migration, and HIV/AIDS. Moreover, it was noted that a United Nations Task Force Against Trafficking in Nepal was established in 1998. One of the major outputs of this Task Force had been the

formulation and implementation of the project, "Beyond Trafficking: A Joint Initiative in the Millennium Against Trafficking in Girls and Women". The growing needs for research, establishment of database, and creation of policy as well as cooperation among various stakeholders was also emphasized.

29. A second representative of IOM delivered a presentation on the Puebla Process. In his presentation, he explained that the Puebla Process was initiated during the course of the Central and North American Presidential Summit held in Tuxtla, Mexico, in February 1996. The heads of state of 11 countries of the region gave special relevance to migratory issues within the framework of the economic and social development of the region. In March 1996, Mexico organized the first Regional Conference on Migration in America, also called the "Puebla Process". The Seminar was informed that for the first time, the issue of migration was discussed at the multinational level, leading to the recognition that migration between nations could be beneficial for both, countries of origin and countries of destination, and that multilateral dialogue was the most effective tool for addressing these issues. The presentation outlined the different instruments of the Puebla Process, with the help of which the participating countries sought to stimulate the regional dialogue on migration issues. Apart from the Joint Communiqué, which served as a policy guideline, a Plan of Action was updated every year the implementation of which was followed up by the Virtual Secretariat. The Seminar noted that the secretariat was an Internet site administered on a rotating basis by the participating countries to facilitate coordination and discussion, disseminate information and create an effective database. As one of the most important lessons learned, the IOM representative stressed the need to focus only on a limited number of high priority migration issues in order to achieve significant results. In this way the Puebla Process had managed to adopt a focused plan of action as well as create a Regional Consultative Group on Migration meeting twice a year to discuss migration issues with the participation of NGOs.

30. In the subsequent discussions, mention was made of parallel initiatives on the regional level to combat migrant trafficking and the overall need for inter-regional arrangements to map out routes of trafficking and migration, collect essential data and exchange information on all issues related, including legal review and improvement of migratory laws. In addition, the interest of the participants centered on the idea of a virtual secretariat as a cost effective means of running an international or regional agency, as funding was always problematic. Also, the floor was opened to countries for another round of information sharing on lessons learned in national efforts to combat trafficking in women and children.

VII. PROJECTS FROM THE SUB-REGIONS

31. The representative of UNIFEM South Asia began his presentation by outlining the conceptual approach that UNIFEM followed in addressing trafficking. He then went on to explain the underlying causes of trafficking including the issue of poverty, low status of women and girls, increasing violence against women and most importantly the powerful demand that existed for the abuse of female labour and women's bodies. In describing UNIFEM's

antitrafficking efforts, he listed the major strategies which were (1) strengthening regional collaboration at governmental and non governmental levels (2) supporting networks against trafficking (3) developing capacity of state and non-state actors in addressing the prevention, protection and prosecution related work (4) supporting research leading to more validated information and understanding about the nature, size and the dynamics of the problem (5) disseminating information through websites, and other means and (6) supporting media advocacy.

32. In her presentation, the ILO representative presented the issue of trafficking of children for exploitative employment sharing the ground-level experiences of the ILO's international Programme on the Elimination of Child Labour (ILO-IPEC) with child domestic workers in the Philippines. The ILO's Convention No. 182 on the Prohibition and Immediate Action on the Worst Forms of Child Labour was introduced as an important tool in the campaign against the trafficking of children for employment. She also remarked upon the development of appropriate strategies against the trafficking in children for specific worst forms of child labour as in child domestic workers, and lessons learnt in the development, designing, and implementation of programmes on the issue.

33. The chairperson opened the floor for discussion following the panel presentations. The issue of legislation as a solution to decreasing and eliminating trafficking was discussed, and it was underscored that legislation alone was not enough but it played a significant role in raising awareness and creating instruments in combating trafficking. It was proposed that trafficking laws be developed, since traffickers obtaining a valid visa could not be prosecuted under the immigration laws. Another issue raised was that of forced repatriation of trafficked persons. The Seminar noted that forced repatriation was a major human rights issue and stressed the importance of understanding various factors such as poverty and broken families since repatriation was not sufficient to solve the problem. The necessity of a process approach which included creating the conditions such as law and policy, building capacity, and taking direct action by looking at the target group and listening to their issues, was also remarked upon.

VIII. EXTRATERRITORIAL LEGISLATION

34. In her presentation, Ms Terri Ann Motusue, explained that the Victims of Trafficking and Violence Protection Act was signed into law in 2000. The Seminar noted that it provided new tools and stronger penalties for traffickers (including foreign government officials) in the United States, and the Act also defined minimum standards for the elimination of trafficking? and mandated that foreign governments satisfy those standards or make significant efforts to bring themselves into compliance with those standards. The minimum standards for the elimination of trafficking were the following: (1) The government must prohibit trafficking and punish acts of trafficking; (2) For the knowing commission of sex trafficking, or of trafficking in children, or of trafficking which includes rape, kidnapping, or death, the government must prescribe punishment that is commensurate with that for grave crimes; (3) For the knowing

commission of any act of a severe form of trafficking, the government must prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense; and (4) The government must make vigorous and sustained efforts to eliminate trafficking.

35. The Seminar was informed that beginning in the year 2003, a government failing to meet the minimum standards, and to make significant efforts to comply, would face withholding of foreign assistance from the USA. In addition, the USA would oppose non-trade-related assistance from the multilateral lending institutions such as the World Bank to such countries. It was further noted that if the U.S. President determined that it was against the U.S. national interest to do so, the President may waive the minimum standards. The State Department would assist the President in this decision by including an evaluation of each country's compliance with the minimum standards in the Department's annual Country Reports and in annual Trafficking Reports required by the Act. The Seminar was also informed that to help foreign governments meet the minimum standards, the Act sets aside funds (about \$94.5 million over the next two years) to support U.S. and foreign programs to combat trafficking, and that Governments and NGOs could receive assistance for programs that address prevention of trafficking, protection of victims, and prosecution of traffickers. To apply for funding, foreign governments and NGOs should contact the U.S. embassy or consulate in their country or region, to find out which embassy staff member is responsible for anti-trafficking programs. A government or group that seeks funds should then submit a proposal to the embassy, identifying specific programs that focus on prevention, protection, and prosecution. Finally, the US State Department report of July 2001 was presented.

36. In his presentation, Mr. Vitit Muntarphorn, explained that extraterritorial legislation sought to cover the criminal liability of nationals who had committed an offence abroad, but had not been prosecuted by the foreign state. In the context of trafficking in women and their sexual exploitation, an example of such legislation was the conviction of a French national who was prosecuted and convicted in France early this year for raping an 11 year-old Thai girl in Thailand. To date, the Seminar was informed, 32 countries in the world had extraterritorial legislation, some of which readily applied these laws whereas law enforcement in others lagged behind intention. He further pointed out several lessons learnt from dealing with extraterritorial legislation. First of all, extraterritorial legislation often covered a broad range of offences committed abroad, and was not necessarily geared only to trafficking and related offences. However, as trafficking overlapped with several offences, which were often covered, such as forced labour, sexual abuse and exploitation of children, a trafficker would most likely come within the ambit of extraterritoriality upon return. Second, extraterritorial legislation did not substitute local law enforcement. Effective law enforcement in the country where the crime took place was necessary since usually extraterritorial legislation could be used to prosecute nationals who had committed offences abroad only when they returned to their country of origin. Thirdly, it should be borne in mind that, although it was easy to advocate for more extraterritorial legislation, enforcement of such laws depended heavily on mutual cooperation and was thus not always easy. Lastly, extraterritorial legislation was found in mainly those legal systems, which refused to extradite their nationals for crimes committed abroad. These

laws thus served as a legal basis for states to deliver justice for crimes committed by their nationals abroad.

37. He then proceeded to give recommendations to countries seeking to develop extraterritorial legislation. Among the issues that countries should take into consideration in this process were: (1) Until what age should a child tried under extraterritorial legislation be considered a minor? He recommended that it be 18. (2) Which offences and crimes should be covered by the extraterritorial legislation, in view of the fact that trafficking comprised more than just trafficking for sexual exploitation? (3) Jurisdiction, *inter alia* who should be subject to the extraterritorial law? Should it be nationals, residents of the country or visitors or all of these? (4) Should double criminality (i.e. a crime under the extraterritorial legislation also be a crime in the alien country where the crime took place) be included? He explained that the trend was to abolish double criminality. (5) What should be the time period for prosecution? It was recommended that the time period should preferably start from the time of maturity of the child, rather than from the time of the crime, to allow more time for prosecution of offenders. (6) Should offenders be subject to double jeopardy (i.e. if convicted in one country, should the perpetrator also be tried in the other country)? (7) What sentence should the perpetrator receive? It was recommended that sentencing take into account the different nature of the crimes of sex offenders who are often not receptive to retributive sentencing. (8) Finally, in elaborating extraterritorial legislation the quality of the legal process with regard to obtaining evidence and the questioning of witnesses abroad should be considered. Overall, it was concluded that extraterritorial laws required international cooperation, whether formally or informally, and it was recommended to adopt mutual cooperation treaties or MOUs to ensure the quality of the legal process abroad by providing access to evidence and witnesses.

38. The presentations gave ground to a lively debate predominantly on the US Act and the recent State Department report. One of the main concerns of the Seminar was the categorization of the countries into tiers, in particular what sources of information had been used for the report and the categorization. The latter was deemed important as countries informed the Seminar that requests had not been made to their governments to provide information for preparing the report. It was clarified that the 2001 report was not alterable, and should be seen as a baseline study, and that the sanctions did not come into effect until the year 2003, thus leaving time for governments to alter their status on the list. In addition, it was pointed out that the US Government could waive the sanctions. Moreover, countries were urged to contact local US embassies and consulates to enter into dialogue to allow for a better informed 2002 report. It was clarified that US citizens also could be charged with crimes of trafficking. It was also pointed out that having laws alone did not appear sufficient to be categorized under tier 1; rather demonstration of law enforcement seemed more essential.

IX. ADOPTION OF RECOMMENDATIONS

39. A wide variety of recommendations came out of the Seminar deliberations, among others:

General recommendations:

40. As there was no overarching regional human rights framework within which trafficking legislation could build upon, countries in the ESCAP region should consider starting to establish a regional cooperative process.

41. The Seminar noted that laws were fundamental in combating trafficking, as they provided the framework for Governments to address the issue, for NGOs to advocate implementation, compliance and action, and for raising awareness. Thus Governments were urged to draft and adopt anti-trafficking laws if they had not already done so. It was further recommended that Governments harmonize national laws with the CRC, CEDAW and other international human rights instruments in accordance with national conditions. Governments were also encouraged to strengthen law enforcement so that the laws will be effective. In addition, new and innovative modalities of legal cooperation such as forming legal aid associations between countries to provide cross-border legal counsel should be promoted.

42. Governments should consider formulating national action plans through consultation with other concerned stakeholders, which should be prepared by all concerned stakeholders, and should have quantitative and qualitative measures within a specified time frame. This would allow for progress to be measured against the national action plan and would enable the abstract to be translated into concrete action with the commitment of all actors.

The Convention on Transnational Organized Crime and the Protocol on Trafficking

43. Governments should consider ratifying the Convention and the Protocol and adopt appropriate measures for combating trafficking in women and children within the general principles of the Convention and Protocol, including taking measures to harmonize national legislation in accordance with the Convention and Protocol.

44. Governments should also consider making requests to the UNODCCP for technical assistance in preparing for ratification of the Convention and its Protocols, as well as request assistance for capacity building for ratification and implementation. It was further recommended that technical assistance also be available for pre-signing of the Convention.

CRC:

45. Governments should consider improving the implementation of the CRC, specifically trafficking in children, among others revising legal procedures to make them child-sensitive and victims and witness oriented. In addressing trafficking, governments should also consider other related rights of children and providing services accordingly. Moreover, building capacities in investigating techniques dealing with children and psychosocial counselling and support for child victims was recommended, as well as to disseminate the knowledge about the CRC and other relevant legal instruments to the public, community and religious leaders, private sector, professional organizations, civil society, government officers, politicians, law

makers and law enforcers, mass media, other relevant persons or organizations, teachers, parents caregivers and children themselves.

46. Governments were invited to consider signing and ratifying the optional protocols to CRC on the sale of children, child prostitution and pornography, and the involvement of children in armed conflicts. Finally, coordinating efforts among the international agencies and international organizations in using child rights approach as a base for their advocacy and actions as well as coordinating their efforts in their financial and technical support to combat trafficking at the local, national, sub-regional, and regional levels was recommended.

CEDAW:

47. As all states, developing and developed, had further scope for improvement in relation to the full implementation of CEDAW, it was noted that the goal of eliminating discrimination and achieving gender equality is a long process attained through progressive realization. Governments should therefore prioritize the different aspects of discrimination to be addressed. As CEDAW provided the normative framework within which member states were obliged to act, states parties should define specific targets according to set priorities in a clearly defined time limit. By designing 5-year plans of action, states parties would be able to tackle pressing issues in a comprehensive manner with noticeable results. The concluding comments by the CEDAW Committee given after the reporting obligation of a country should be taken into account by the country in its efforts to combat trafficking. Gender mainstreaming in the legal process on trafficking both at the national and international levels should be promoted.

Memorandums of Understanding:

48. Based on the successful development and effective utilization of an MOU by various government agencies dealing with trafficking in Thailand, Governments were urged to make constructive efforts to develop their own MOUs. The Seminar learned that the highest possible authority of each agency should be involved in signing and disseminating information about an MOU for it to be most effective across the country, including border areas. A national MOU among governmental agencies, which preferably may include ministry of finance, should enable a better coordination and collaboration of a multi-sectoral approach whereby each agency would bring in respective authority and expertise to counter the cross-cutting issue of trafficking. Governments should also consider developing an MOU with NGOs to enable NGOs to perform their roles specified in the MOU and in the procedure also specified therein with explicit governmental support. NGOs should also enhance collaboration and coordination among themselves thorough an adoption of an MOU among NGOs. Effectiveness of MOUs could be augmented through identification of focal points or establishment of a coordinating body.

49. Countries that share a border or the countries of origin, transit and destination of trafficking should consider establishing bilateral and/or multilateral agreements to define and to adopt the terms and procedures of cooperation to prevent and punish the offence of trafficking and to help victims to return to life with dignity.

Inter-regional/regional/and sub-regional agreements:

50. The Seminar welcomed the many presentations on inter-regional, regional and subregional arrangements as inspiration, including the experience of ASEM and the Puebla Process, and recommended that similar processes and political framework of cooperation would be explored in the region. In doing so, it was further recommended that such a framework for cooperation initially limited itself to a few priority areas to gain greater momentum and success.

51. All United Nations agencies, including ESCAP, should consider compiling and maintaining these initiatives along with other pertinent documents in the interest of protecting human rights of persons victimized by or vulnerable to trafficking. Efforts should be made to build a cross-reference system and another device for easy reference. Efforts should also be made by Member States to have sustained opportunities to share best practices and address common concerns, perhaps at regular intervals. Regional agencies should also mobilize resource to develop a standardized methodology to collect and archive reliable data and train concerned parties in the methodology and use of the database.

International Responses:

52. The Seminar emphasized the importance of regional and international initiatives in support of country level actions to combat trafficking in persons, especially women and children. International organizations, particularly ESCAP and other entities in the United Nations system, other international and regional organizations and donor agencies and governments are invited to follow up on this seminar by:

- (a) Producing a resource guide to assist countries to utilize legal instruments to combat trafficking in women and children, which would include materials discussed at this seminar
- (b) Organizing sub-regional meetings of governments, NGOs and other civil society members to create awareness, stimulate interaction and catalyze action to use international instruments and national laws to formulate public policy to combat trafficking in persons, especially women and children
- (c) Strengthening country-level, sub-regional and regional networks for promotion and exchange of experience and information and comparative research
- (d) Establishing a regional resource facility to collect and disseminate information of activities undertaken by the United Nations system and other entities, (building upon the ESCAP Directory of Anti-Trafficking Activities) and bilateral/multilateral agreements, national action plans, cooperative efforts etc.

53. ESCAP was requested to take steps to establish a Regional Task Force on Trafficking in Women and Children which would meet periodically to share and exchange information and discuss further cooperation.

54. The Regional Seminar unanimously adopted the recommendations as outlined above on 3 August 2001.

BANGKOK ACCORD AND PLAN OF ACTION TO COMBAT TRAFFICKING IN WOMEN

I . Preamble

We, the participants, at the ESCAP/ILO/IOM/NCWA/AWF Regional Conference on Trafficking in Women, held at Bangkok from 3 to 4 November 1998;

Reaffirming the fundamental principles enshrined in the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Declaration on the Elimination of Violence against Women;

Reaffirming also the pertinent provisions on trafficking in women and girls as contained in the Beijing Platform for Action and the Vienna Declaration and Programme of Action;

Recalling the General Assembly resolution 52/98 of 12 December 1997 on traffic in women and girls;

Welcoming the Commission resolution 51/7 on the Implementation of the Jakarta Declaration and Plan of Action for the Advancement of Women in Asia and the Pacific;

Welcoming also the Commission resolution 52/3 on the Follow-up to the Fourth World Conference on Women;

Recognizing that women's rights are human rights;

Recognizing also that combating trafficking in women can enhance human dignity;

Bearing in mind that integration of women in all aspects of development efforts is the foundation for sustainable development;

Bearing also in mind that political, social and economic empowerment of women can contribute effectively towards combating trafficking in women;

Expressing deep concern at the increasing number of women who continue to fall victims to trafficking and sexual exploitation;

Noting with concern the effect of the present economic crisis in the Asian-Pacific region on trafficking in women;

Noting also with concern the growing use of new information technologies for trafficking in women, prostitution and child pornography;

Expressing the view that globalization of the world economy has given rise to a global sex industry;

Bearing in mind that organized crime and easy money are important factors in trafficking in women;

Emphasizing the need for strengthening the efforts of Governments, intergovernmental and non-governmental organizations, business community, women's advocacy groups and other sections of civil society in combating trafficking in women;

Convinced that all forms of violence against women which is a heinous crime, including trafficking in women, are incompatible with the dignity and worth of a human person;

Affirming that research and studies should be conducted on all important aspects of women in development with special emphasis on trafficking in women;

Recognizing the important role being played by regional and sub-regional organizations such as ASEAN, SAARC, Mekong Regional Law Centre, national authorities, NGOs and other sections of civil society in combating trafficking in women;

Urging the international, multilateral and bilateral donor agencies and organizations to provide financial support towards the implementation of the various recommendations and proposals for action, as contained in this Accord and Plan of Action;

Adopt the Accord and Plan of Action for Combating Trafficking in Women in the Asian and Pacific region.

I. National Level

A. General

1. Establish and strengthen multisectoral national mechanisms such as national committees which consist of concerned Government agencies, NGOs and other

relevant entities of civil society.

2. Formulate national plans of action in each country, specifically on trafficking and commercial sexual exploitation of women and children (hereinafter referred to as "trafficking") in line with the relevant provisions of the Beijing Platform for Action, the Stockholm Agenda for Action, and SAARC resolutions, in close collaboration among all related government agencies, with NGOs and other relevant entities of civil society.
3. Allocate needed financial and human resources to implement national plans of action in countries which have already formulated a National Plan of Action.
4. Undertake the preparation of national situation analysis on the problems of trafficking to be updated at least every two years in collaboration with NGOs and other relevant entities of civil society.
5. Enact laws where none exist and amend existing ones on trafficking to ensure decriminalization and confidentiality of victims, higher penalties for exploiters and traffickers, including clients and guardians, and adoption of victim-sensitive legal/judicial procedures, with scope for the participation of NGOs and other entities of civil society.
6. Establish special units in law enforcement agencies, staffed with trained police officers including female police officers, to handle cases of trafficking.
7. Provide more support to and promote further collaboration with NGOs and other entities in civil society which have been working on this issue.
8. Undertake a holistic, integrated and multi-level consortium approach in collaboration with NGOs and other entities of civil society to plan, implement and monitor projects.
9. Develop a sustained community based partnership in combating trafficking.
10. Amend laws, rules and regulations in order to allow assistance to victims of trafficking.
11. Build a core of committed public officials and improve governmental systems and procedures in assisting the victims trafficked.

B. Prevention

12. Provide legal literacy amongst concerned law enforcement officers, organizations and people at large.
13. Provide basic education, and relevant and quality training for gainful employment to women and children.
14. Provide more and better employment opportunities to women and children of appropriate age.
15. Formulate programmes for economic empowerment for women, such as increased amount of direct loan with very low or no interest from government banks, for selfemployment activities.
16. Formulate specific affirmative actions for especially vulnerable groups of women and children, such as scholarship programmes for children at risk, or comprehensive community-based initiatives, or collaboration with private sector for career training and development.
17. Educate and mobilize the business community, including new information technologies and tourism related industries, as well as the media in combating trafficking.
18. Foster cooperation with media organizations to develop sensitivity and a code of ethics to the rights of trafficked persons, including the right to privacy and positive imaging of women in the media.
19. Disseminate as widely as possible, through mass media for awareness raising, information on laws, instruments, and protocol and conduct information campaigns on the realities of trafficking in women to the general public, including forms which can be easily understood by children and illiterate women.
20. Strengthen training activities of strategic target groups, such as lawyers and judges, and law enforcement personnel, including police and immigration officers.
21. Undertake appropriate socio-economic interventions and establish mechanisms in regions and areas which are targeted by traffickers.
22. Strengthen and support NGOs and other entities of civil society which have direct access to women and children at risk.

23. Devise more popular and innovative forms of education and consciousness raising on the issue, including use of local languages and dialects to outreach vulnerable groups and communities such as indigenous peoples.
24. Introduce free and compulsory education (where none exists) from elementary to high school level for all children.
25. Provide gender sensitive and other appropriate training and invest in capacity building to empower women and girls who could become the victims of trafficking, in collaboration with experienced NGOs and other entities in civil society.
26. Undertake comprehensive research on the social and economic cause of the sex industry at the national and international level particularly highlighting the factors that facilitate trafficking of women and children, and the cases of forced labour, slavery and slavery like practices. The surveys and research data should be able to provide information and understanding on the dynamics, causes and forms of the buying and selling of women, especially on the demand side i.e. sex tours, mail order brides, export of entertainers, etc.

C. Protection and humanitarian treatment of victims

27. Formulate or strengthen gender/child-sensitive judicial processes and training of judicial staff including judges, clerks, prosecutors to prevent the re-victimization of the victims of trafficking.
28. Ensure humane treatment of victims of trafficking under existing laws.
29. Conduct health impact studies on victims of trafficking.
30. Follow-up on convicted traffickers to prevent recidivism.
31. Protect victims of trafficking, their family members and service providers from reprisals of the perpetrators, including persons in positions of authority.
32. Develop and implement witness protection laws and procedures.
33. Provide access to competent and qualified interpreters/translators during all proceedings, and make available all relevant documents and records to the victim

of trafficking.

34. Provide free legal assistance.
35. Find legal possibilities of redress for economic, physical and psychological damage caused to them.
36. Provide victims of trafficking access to the embassy/consulate of their home country or, if there is no embassy/consulate representation, provide access to a diplomatic representative of the State or to any national or international authority vested with the task of protecting such persons.
37. Take positive steps not to hold victims of trafficking in detention at any time in the course of investigation and prosecution of cases against traffickers. Moreover, avoid placing the burden of proof in any prosecution on trafficking or related criminal proceeding on the victims.
38. Make efforts to formulate/revise appropriate laws to avoid prosecuting victims for the use of false travel or other documents and/or visas.
39. Provide legal representation to victims of trafficking in criminal or other proceedings that may result in detention, deportation or loss of legal status, and provide legal representation free of cost if the victim cannot afford to pay.
40. Utilize all funds/possessions of the person convicted of trafficking for paying any debts the victim might have incurred as a consequence of being trafficked in addition to ensuring adequate compensation.
41. Accord to the victims of trafficking who are arrested under the criminal law of the country for committing an alleged crime, the following consideration: Physical, psychological or economic duress or coercion suffered by the victims of trafficking should be considered as part of any defense of duress or coercion during pretrial and trial proceedings and as mitigating circumstances in sentencing, if convicted.
42. The voluntary movement of citizens should not be prevented or obstructed, including victims of trafficking out or into their own country at all times.
43. Governments of the countries of origin should use all possible diplomatic channels and resources in destination and transit countries to protect their nationals abroad.

D. Sanctions against traffickers

44. Confiscate assets of traffickers.
45. Compensate victims of trafficking.
46. Reform labour laws to include provisions against debt bondage and sexual harassment.
47. Investigate, arrest and prosecute officials involved in trafficking.
48. Take into consideration that extremely severe penalties (e.g. death penalty) against traffickers are less effective as judges are reluctant to pass such punishment while ensuring the complete enforcement of law relating to trafficking.

E. Medical and psychological intervention

49. Provide adequate, confidential and affordable medical and psychological care, such as counselling centres by the State or, if no adequate State agency exists, by a private agency funded by the State.
50. Provide strictly confidential HIV testing services only if requested by the person concerned. Additionally, any and all HIV testing must be accompanied with appropriate pre- and post-test counselling. The standard provided in the UN Centre for Human Rights and World Health Organization Report of an International Consultation on AIDS and Human Rights, Geneva, July 1989 shall be followed.

F. Repatriation and reintegration

51. Set up guidelines including detailed procedures related to assistance and treatment of victims and the coordination of actions among designated responsible agencies.
52. Focus on more empowering measures rather than suppressive ones.
53. Prepare agreed procedures among various authorities involved in combating trafficking such as the departments of immigration and the police, embassies and/or consulates, NGOs and public welfare agencies.
54. Develop survivor programmes which help the victims of trafficking in becoming

active agents in engaging society to confront trafficking issues.

55. Improve the reintegration process for victims of trafficking with systematic assistance to reintegrate them into their societies and with follow-up activities.
56. Provide assistance to victims who need assistance in the areas of employment, education or further vocational and other training, housing and special health care and services.
57. Develop and provide clearly defined but flexible reintegration programmes to be provided by the local agencies, whether they be governmental or non-governmental organizations.
58. Promote consultative processes with victims and organizations dealing with victims of trafficking in the formulation of legal reforms, protection and reintegration strategies.
59. Facilitate the safe return of victims of trafficking, in line with their wishes, seeking flexibility in bilateral agreements in cases where victims express the wish not to return to the country of origin.
60. Enhance the role of local government in providing social support for victims of trafficking.
61. Create and support multi-disciplinary teams to address the aspects of healing and redress for victims of trafficking.
62. Establish (where none exists) government mechanisms for the reintegration of victims of trafficking.
63. Support family and community-based programmes for victims of trafficking.
64. Provide the necessary funds to enable victims of trafficking to return to their homecountry and for court proceedings.

G. Information/Monitoring Mechanisms

65. Ensure integration of the principles contained in key international laws and instruments such as CEDAW, CRC, Beijing Platform for Action and Stockholm Agenda for Action into national policies and programmes.

66. Organize, encourage and support information and prevention campaigns in the countries of origin and destination aimed at clarifying the opportunities and the legal rights of women in case they decide to migrate so that they can make informed decisions and seek help in case they fall victim to trafficking.
67. Increase the use of multi-media technologies for information sharing and educational purposes by parties engaged in the struggle to prevent trafficking.
68. Monitor child pornography, including the Internet and make the monitoring reports available to concerned authorities.
69. Identify and map source areas, routes, and destinations of trafficked women and children and establish a reliable and relevant database.
70. Undertake comprehensive, action-oriented, culturally-sensitive research into the situation of trafficking.
71. Introduce systematic procedures for documenting cases of trafficking in women.
72. Promote the involvement of embassies and consulates in the countries of origin in information dissemination, prevention, protection, repatriation and reintegration activities.
73. Develop programmes in cooperation with NGOs, both in countries of origin and destination, where they are in the best position to reach the women and children involved. To this end, NGOs should be provided with effective support through inter alia, greater development cooperation.
74. Promote and facilitate the exchange of information between relevant organizations in the countries of origin, transit and destination.

H. Participation

75. Stimulate and sustain participation of all concerned groups in society including youth at community, local and national level.
76. Enlist active participation of elected representatives, traditional and religious leaders.

II. Sub-regional/Regional/Multi-lateral Levels

1. Create sub-regional and bilateral treaties setting the framework for detailed procedures to be taken against trafficking in women.
2. Implement regional and sub-regional Plan for Action for Children, such as ASEAN and SAARC.
3. Promote international mutual assistance in law, enforcement, including sharing evidence, exchange of information, joint investigation and exchange programmes.
4. Promote cooperation and link-up with international monitoring organizations, including CEDAW Committee, Human Rights Committee, UN Human Rights Commission, Committee on the Rights of the Child, INTERPOL, among others, to monitor the situation of trafficking.
5. Establish regional and sub-regional framework including focal points for trafficking.
6. Encourage networking and coordination of organizations, institutions and professional bodies, at the national, sub-regional, and regional levels.
7. Endeavour to hold a forum on an annual basis for exchange of experience, coordination and cooperation to follow-up Beijing Fourth World Conference on Women and Stockholm World Congress against Commercial Sexual Exploitation of Children.
8. Support and strengthen the UN inter-agency follow-up mechanisms for Beijing Platform for Action and establish such mechanisms for the Stockholm conference.
9. Encourage and support the work in the area of trafficking in women of the UN Special Rapporteur on Violence against Women, who has explored these acts as one of the causes of violations of human rights and fundamental freedoms of women and girls, providing to her all relevant information.
10. Consider establishing a regional task force against trafficking.
11. Monitor and assess effectiveness of international, regional, and subregional instruments to eliminate trafficking.
12. Encourage bilateral partnership within the framework of official development

assistance in projects against trafficking.

13. Establish centres for assisting the victims of trafficking where there are victims.
14. Promote more collaboration, coordination and cooperation among international agencies to maximize existing resources by avoiding the duplication of activities.
15. Analyze economic dimensions of trafficking in order to devise appropriate measures to combat trafficking.
16. Integrate this issue into new dimensions such as human security and combating and preventing organized crimes.
17. Reinforce the recognition of trafficking as a violation of women human rights.
18. Explore the possibility of establishing new regional mechanisms to implement this plan of action.
19. Integrate this issue into important political and economic forum such as ASEM Forum and APEC.
20. Explore the possibility of establishing regional funds to assist victims of trafficking for repatriation and reintegration purposes.

여성 매매 방지를 위한 방콕 협정 및 행동계획

I. 전문

1998년 11월 3일부터 4일까지 방콕에서 열리는 여성 매매에 관한

ESCAP/ ILO/ IOM/ NCWA/ AWF 지역회의에 참가하고 있는 우리는,

세계인권선언, 여성차별철폐협약, 국제인권협약, 아동권리협약의 기본적인 원칙을 재확인하며,

북경 행동강령과 비엔나 선언과 행동계획이 포함하고 있는 여성과 여아 매매 관련 규정을 또한 재확인하며,

여성과 여아 매매에 대한 1997년 12월 12일자 총회 결의안 52/98을 상기하며,

아시아 태평양 지역의 여성 지위향상을 위한 자카르타 선언과 행동계획의 이행을 위한 위원회 결의안 51/7을 환영하며,

제4차 세계여성회의 후속조치에 대한 위원회 결의안 52/3을 또한 환영하며,

여성의 권리는 인권임을 인정하며,

여성매매를 퇴치시키는 것이 인간의 존엄성을 높이는 것임을 인정하며,

개발노력의 모든 측면에서 여성을 고려하는 것이 지속 가능한 개발을 위한 근간임을 인식하며,

정치, 사회, 경제적으로 여성의 역량을 강화시키는 것이 여성매매 퇴치를 위한 효과적인 방법임을 인식하며,

매매와 성적 착취를 당하는 여성 피해자가 지속적으로 늘어나는 것에 대한 깊은 우려를 표시하며,

현재 아시아 태평양지역에 닥친 경제 위기가 여성매매에 영향을 미치는 것에 주목하며,

여성 매매, 매춘과 아동 포르노에 신기술이 이용되는 것이 증가함에 주목하며,

세계경제의 세계화가 세계 매춘 산업의 증가를 가져왔다는 견해를 피력하며,

여성매매에 있어서 계획적인 범죄와 손쉬운 돈벌이라는 요소가 중요한 부분을 차지하고 있다는 것을 인식하며,

여성 매매 퇴치를 위해 정부, 정부간 기구 및 NGO, 재계, 여성단체와 여타 시민사회의 노력을 강화시키는 것이 중요함을 강조하며,

여성 매매를 포함, 여성에 대한 어떠한 형태의 폭력행사도 극악 무도한 범죄이며 인간의 가치와 존엄성과 양립할 수 없다는 것을 확신하며,

여성 매매에 대해 초점을 맞춘 여성의 주요한 측면에 대한 연구와 조사가 실시되어야 한다는 것을 지지하며,

ASEAN, SAARC, 대 메콩강 지역 내 발안권(Greater Mekong Sub-regional initiative), 국가 기구, NGO, 여성 매매 퇴치를 위한 여타 시민사회의 역할의 중요성을 인식하며,

국제공여기구, 다자 및 양자 공여기관으로 하여금 본 조약과 행동계획이 포함하는 여러 권고안과 실천을 위한 제안의 이행을 재정적으로 지원하도록 촉구하며,

아시아 태평양 지역에서 여성매매 퇴치를 위한 조약과 행동계획을 채택한다.

I. 국가적 차원

A. 개괄

1. 관련 정부기관, NGO와 시민사회의 여타 관련 기관들을 포괄하는 국가적 차원의 위원회와 같은 다각적인 국가적 기구를 설립·강화한다.

2. 북경 행동강령, 스톡홀름 행동의제, SAARC 결의안의 관련조항과 같은 맥락에서 관련 정부 기관, NGO와 여타 관련 시민사회 단체들과 긴밀히 협력하며 각국에 여성과 아동의 성적 착취와 매매에 (이후부터는 성 매매로 통일) 관한 구체적인 국가 행동계획을 수립한다.
3. 국가별 행동계획을 이미 고안한 국가들은 이를 이행하기 위해 필요한 자원과 인력을 할당한다.
4. NGO와 여타 관련 시민단체와 협력하여 성 매매 문제에 관한 국가 상황 분석을 최소 매 2년마다 업데이트 하는 작업에 착수한다.
5. 피해자의 해금 및 비밀을 보장하는 법과 윤락 고객 및 업주를 포함, 착취자와 성 매매범에 대해 무거운 형벌을 내리는 법이 없다면 이에 대한 법을 제정하고 기존의 법을 수정·보완한다. NGO와 여타 시민단체의 참여할 수 있도록 하며 피해자를 최대한 고려하는 법적 절차를 보장한다.
6. 성 매매 사건을 다루는 여 경찰관을 포함, 훈련된 경찰관이 배치된 특별반을 법 집행기관에 창설한다.
7. 이 문제 해결을 위해 애쓰는 NGO와 여타 시민단체들을 지원하고 이들과의 협력을 보다 증진시킨다.
8. NGO와 여타 시민단체들과 협력하여 프로젝트를 기획·집행하고 이를 감시하기 위해 총체적·통합적·다자적 콘소시엄을 형성한다.
9. 여성 매매를 퇴치하기 위해 지역사회에 기반을 둔 지속적인 파트너십을 개발한다.
10. 성 매매 피해자들을 도울 수 있도록 법과 규약을 개정한다.
11. 성 매매 피해자들을 돕기 위한 헌신된 공무원들의 모임과 정부 체제 및 절차를 개선하는 핵심모임을 만든다.

B. 예방

12. 관련 법 집행관, 집행기관 및 관련 인사들의 법에 대한 이해를 높인다.
13. 여성과 아동에게 기본적인 교육과 양질의 적절한 직업훈련을 제공한다.
14. 적절한 연령대의 아동과 여성에게 보다 나은 고용기회를 더 많이 제공한다.
15. 여성 창업활동 지원을 위해 정부은행이 매우 낮은 이자율을 적용하거나 무이자 대출금을 늘려 주는 등 여성의 경제적인 역량을 강화하는 프로그램을 고안한다.
16. 위기에 처한 아동을 위한 장학제도라던가 지역사회에 기반을 둔 포괄적인 발안이나 기업과 협력하여 진로 개발 및 직업 훈련을 시키는 방안과 같이 위험에 노출되어 있는 여성과 아동을 위한 구체적이면서도 긍정적인 방침을 제정한다.
17. 성 매매 퇴치를 위해 정보통신업계를 비롯하여 관광관련업계, 언론계를 대상으로 교육을 실시하고 지지세력을 모은다.
18. 사생활 보호 등 성 매매 당한 사람들의 권리를 보호하기 위한 윤리의식을 갖고 여성에 대한 긍정적인 인상을 심어줄 수 있도록 언론기관과의 협력을 육성한다.
19. 문맹의 아동과 여성도 쉽게 이해할 수 있는 형태로 일반 대중에게 여성 매매에 대한 현실을 보여주는 대중매체를 통해 경각심을 일깨우고, 법, 법률문서 및 의정서에 대한 정보를 최대한 많이 유포시킨다.
20. 경찰과 출입국관리소 직원을 포함한 법 집행관, 변호사, 판사 등 전략적 대상집단에 관한 교육 활동을 강화시킨다.
21. 적절한 사회경제적 개입을 하며 성 매매범들의 주요 목표대상이 되는 지역에 기구를 설립한다.
22. 위험에 처한 여성과 아동과 직접적인 관련이 있는 NGO와 여타 시민단체를 강화·지원한다.
23. 소수민족과 같은 소외집단에게 다가가기 위해 지역어, 방언 등을 사용하는 것과

같이 성 매매에 대해 보다 대중적이고 혁신적인 교육과 의식향상의 방법을 고안한다.

24. 모든 아이들에게 초등교육부터 고등교육까지 무료의무 교육을 실시한다.

25. 경험이 많은 NGO와 여타 시민단체와 협력하여 인신매매의 피해자가 될 수 있는 여성과 여아의 역량을 강화하기 위해 성인지적이고 기타 적절한 교육기회를 제공하고 이에 투자한다.

26. 국가적·국제적 차원에서 매춘산업의 사회경제적 원인에 대한 포괄적인 연구를 여성과 아동의 매매를 촉진하는 요소들과 강제노역, 노예 및 노예와 같은 신분에 처한 사례에 초점을 맞추어 진행한다. 조사와 연구 결과는 특히 매춘관광, 신부 주문(mail-order brides), 연예인 알선 등과 같은 수요측면에서의 여성 매매의 역학과 형태에 관한 정보와 이해를 제공할 것으로 보인다.

C. 보호와 피해자에 대한 인도주의적 치료

27. 성 매매 피해자 및 상업적 성 착취 피해자가 또 다른 희생자가 되게 하지 않기 위해 성/아동 인지적 재판 절차와 판사, 서기, 검사 등 법조인의 교육을 실시·강화한다.

28. 기존 법제 하에서 매매 피해자들에 대한 인간적인 치료를 보장한다.

29. 성 매매 피해자들에 대한 건강 영향 연구를 실시한다.

30. 유죄선고를 받은 성 매매범/착취범의 상습범죄를 방지하기 위해 사후 관리한다.

31. 성 매매 피해자, 그들의 가족 및 사회복지사들을 가해자의 보복조치로부터 보호한다.

32. 증인 보호법과 절차를 개발·시행한다.

33. 모든 법적 절차를 거치는 동안 유능하고 자격을 갖춘 통·번역사들의 도움을 받을 수 있도록 하고 모든 관련 문서와 기록을 성 매매 피해자들에게 제공한다.

34. 무료 법적 자문을 제공한다.

35. 여성과 아동이 입은 경제적·육체적·심리적 피해를 보상해 주기 위한 법적 가망성을 모색한다.

36. 성 매매 피해자들에게 그들의 대사관/영사관을 이용할 수 있도록 한다. 만약 주재 대사관/영사관이 없을 경우 이러한 사람들을 보호하는 권한이 부여된 외교관을 면회하도록 허락하거나 이들을 국가기관 혹은 국제기관에 인도한다.

37. 성 매매법을 조사 및 기소하는 과정 중 어떠한 경우에도 피해자들을 억류하지 않도록 한다. 더 나아가서는 피해자들에게 인신매매 기소절차나 관련 형사소송에서 입증 책임을 묻지 않도록 한다.

38. 위조 여행서류나 비자를 사용한 벌로 피해자들이 기소되지 않도록 적절히 법을 개정하거나 입법한다.

39. 구금, 이송이나 법적 지위 상실의 상황을 낼 수 있는 그녀/그에 대한 형사소송 과정에서 법률적인 지원을 제공한다. 피해자가 돈을 지불할 수 없을 경우 무료로 법률적인 지원을 제공한다.

40. 피해자에게 적절한 보상을 주는 것 외에 그 사람이 성 매매를 당함으로 입은 빚을 성 매매법의 모든 자금/재산을 사용하여 갚는다.

41. 범죄의 공범이 됨으로써 그 국가의 형법상 체포된 성 매매 피해자들에 대해 다음 사항을 참작한다.

공판전이나 재판 중 느끼는 협박이나 압제에 대한 항변의 일부로서, 유죄인 경우, 형을 감량하는 방법으로서 성 매매 피해자들이 느끼는 육체적·정신적·경제적 협박이나 압제가 고려되어야 한다.

42. 어떠한 경우에도 피해자들이 자국의 입·출국하려는 것을 포함, 시민들의 자발적인 움직임을 방해하거나 막아서는 아니 된다.

43. 본국은 해외에 있는 자국민을 보호하기 위해 목적국과 경유국에서 가능한 모든 외교적 경로와 수단을 동원해야 한다.

D. 성 매매법에 대한 처벌

44. 착취범들의 재산을 몰수한다.

45. 성 매매 피해자들에게 보상을 해준다.

46. 빚으로 인해 노예가 되는 경우와 성희롱을 근절을 위한 법 조항을 포함하도록 노동법을 개정한다.

47. 성 매매와 관련된 관리들을 조사, 체포, 기소한다.

48. 판사는 성 매매범들에게 극도의 중벌(사형 등)을 내리기 보다 성 매매 관련법을 온전히 집행하려고 하기 때문에 중벌의 효과가 그리 크지 않다는 것을 고려한다.

E. 의학적, 정신적 조정

49. 국가에 의한 상담센터를 통해 적절하고 신뢰할만하면서도 저렴한 의학적·심리학 적 치료를 제공한다. 이러한 국가기관 부재 시에는 국가가 지원한 사단법인이 이와 같은 기능을 대행한다.

50. 피해자의 요청이 있을 시에만 HIV 검사를 극비로 진행한다. 또한 모든 HIV 검사는 적절한 사전 및 사후 상담을 동반해야 한다. 1989년 7월 제네바에서 발표된 AIDS 와 인권에 대한 국제 자문을 얻어 쓰여진 유엔인권센터와 세계보건기구 보고서가 정한 기준대로 시행될 것이다.

F. 본국송환/ 재할

51. 지정 책임기관간의 일치된 행동을 위해 피해자의 지원 및 치료와 관련된 세부절차를 포함하는 지침을 수립한다.

52. 억압조치보다는 역량강화조치에 초점을 맞춘다.

53. 출입국 관리소나 경찰, 대사관/영사관, NGO, 공공복지기관 등 성 매매에 대항하는 각종 관련기관들 간에 합의된 절차를 마련한다.

54. 성 매매 피해자들이 사회가 성 매매에 적극적으로 대항해 나가도록 만드는 역할을 다할 수 있도록 이들을 위한 재활 프로그램을 개발한다.

55. 사회로 되돌아갈 수 있도록 체계적인 지원과 사후관리를 통해 성 매매 피해자들의 재활과정을 향상시킨다.

56. 고용, 학교교육 더 나아가서는 직업 및 여타교육, 거주지 제공 및 특별 건강관리 등의 범위에서 이에 대한 도움을 필요로 하는 피해자들을 지원한다.

57. 뚜렷한 목적을 갖춘 융통성 있는 재활 프로그램을 개발하여 정부와 NGO 지역기관에게 제공한다.

58. 법개정, 보호 및 재활 전략을 수립함에 있어 피해자 및 관련기관과의 협의를 향상시킨다.

59. 피해자들이 본국으로 돌아가기를 원치 않는 경우 양자협정의 융통성을 모색하며 피해자들의 뜻에 따라 성 매매 피해자들의 안전한 귀환을 도모한다.

60. 여성 피해자들에게 사회적 지원을 함에 있어 지방자치단체의 역할을 강화한다.

61. 성 매매 피해자 치료 및 보상 시 다양한 분야의 전문가로 이루어진 팀을 구성·지원한다.

62. 피해자들의 재활을 위한 정부기관이 없을 때에는 이를 설립한다.

63. 피해자들을 위해 가족 및 지역단위 프로그램을 지원한다.

64. 피해자들의 본국 송환이 이루어지고 법정의사가 진행되도록 필요한 자금을 제공한다.

G. 정보/감시 기구

65. 여성차별철폐협약, CRC, 북경행동강령과 스톡홀름 행동의제와 같은 주요 국제법 및 법률문서에 나와있는 원칙이 국가정책과 프로그램에 통합·반영되도록 보장한다.

66. 여성이 이주하려는 경우, 그들이 정보를 바탕으로 결정을 내리고 성 매매의 피해자가 될 경우, 도움을 요청 할 수 있도록 여성의 기회와 법적 권리를 명확히 설명하는 정보제공 및 예방 캠페인을 본국과 목적국에서 조직·장려·지원한다.
67. 성 매매 방지를 위해 악전고투하는 기관으로 하여금 정보교환 및 교육 시 멀티미디어 기술을 사용하도록 권장한다.
68. 인터넷상의 아동 포르노를 포함, 아동 포르노를 모니터하고 이 결과를 관련 기관에 통보한다.
69. 매매된 여성과 아동의 본적 및 이동 경로와 목적지를 확인 조사하여 신뢰할만하고 적절한 데이터베이스를 구축한다.
70. 성 매매에 대한 포괄적, 실천적, 문화적 연구를 실시한다.
71. 여성 매매에 관한 사건을 증거서류로 입증하는 체계적인 절차를 도입한다.
72. 정보 보급, 예방, 보호, 송환과 재활활동에 본국의 대사관과 영사관의 참여를 증진시킨다.
73. 관련 여성들에게 가장 접근하기가 용이한 입장에 있는 본국과 목적국 양측의 NGO와 협력하여 프로그램을 개발한다. 이러한 목적에서 NGO는 효과적인 지원, 특히 더 많은 개발협력을 받아야 한다.
74. 본국, 경유국, 목적국에 있는 관련 기관간의 정보교환을 조성, 촉진시킨다.

H. 참여

75. 지역, 지방 및 국가적 차원에서 청소년 참여 등 모든 관련 단체의 참여를 격려하고 지지한다.
76. 의원, 전통 및 종교 지도자들의 적극적인 협력을 요청한다.

II. 지역 내/ 지역/ 다자적 차원

1. 여성 매매에 대한 세부적인 절차를 규정하기 위해 지역 내 조약 및 양자 조약을 만든다.
2. ASEAN과 SAARC과 같은 지역 및 지역 내 기구에 아동행동계획을 수립·적용한다.
3. 증거공유, 정보교환, 공동조사와 프로그램 교환과 같은 방법으로 국제적인 상호 법집행을 증진시킬 수 있도록 한다.
4. 성 매매 상황을 감시하기 위해 여성차별철폐조약 위원회, 인권위원회, 유엔 인권위원회, 아동권리위원회, 인터폴간의 협력을 증진시키고 이들을 포함하는 국제 감시 조직을 연계한다.
5. 지역과 지역 내 성 매매에 초점을 둔 제도를 창설한다.
6. 국가, 지역 내 그리고 지역 차원의 조직, 기관 그리고 전문 단체간 네트워킹과 업무조정을 장려한다.
7. 북경 제 4차 세계 여성 회의와 아동매춘착취에 대한 스톡홀름 세계대회에 대한 후속조치로 경험 및 정보를 교환하고 업무조정을 위해 매년 정기적으로 포럼을 열도록 노력한다.
8. 북경행동강령 후속 UN 기구들을 강화·지원하고 스톡홀름 회의를 위한 그러한 기구들을 창설한다.
9. 여성과 여아의 인권과 기본적인 자유를 침해하는 원인 중 하나를 여성폭력으로 보는 UN 특별위원(rapporteur)에게 필요한 모든 정보를 제공하는 등 여성 매매 관련 업무를 장려하고 지원한다.
10. 성 매매에 관한 지역 특별 업무반 창설을 고려한다.
11. 여성 매매를 근절시키려는 국제, 지역 그리고 지역 내 기구의 효율성을 평가하고

감시한다.

12. 성 매매 반대 프로젝트의 공식적인 개발 협력 틀 안에서 양자 협력을 장려한다.

13. 피해자들이 있는 곳에 성 매매 피해자들을 도울 수 있는 센터를 만든다.

14. 활동의 중복을 피함으로써 기존의 자원을 극대화하도록 국제기구들간의 협력, 업무 조정 및 협조를 더욱 증진시킨다.

15. 성 매매 근절을 위한 적절한 방법을 모색하기 위해 성 매매의 경제적인 측면을 분석한다.

16. 이 문제를 인간의 안전과 조직적인 범죄 예방 및 근절이라는 새로운 측면으로 편입한다.

17. 성 매매는 여성인권을 침해하는 것이라는 인식을 강화한다.

18. 이 행동계획을 이행하는 새로운 지역 기금 창설 가능성 여부를 타진한다.

19. 이 문제를 ASEM 포럼과 APEC과 같은 중요한 정치적·경제적 포럼에 포함시킨다.

20. 성 매매 피해자의 송환, 재활을 돕기 위한 목적으로 지역 기금 창설이 가능한지를 검토한다.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,
Have agreed as follows:

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights;

and

- (c) To promote cooperation among States Parties in order to meet those objectives.

Article 3

Use of terms

For the purposes of this Protocol:

- (a) 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, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

- (b) The consent of a victim of trafficking in 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;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered trafficking in persons even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) Child shall mean any person under eighteen years of age.

Article 4

Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
 - (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
 - (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this

article; and

- (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons

Article 6

Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, *inter alia*, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings;
 - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with nongovernmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
 - (a) Appropriate housing;
 - (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
 - (c) Medical, psychological and material assistance; and
 - (d) Employment, educational and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7

Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in

persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8

Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.
2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.
3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.
4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.
6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9

Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:
 - (a) To prevent and combat trafficking in persons; and
 - (b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.
3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 10

Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:
 - (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
 - (b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
 - (c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.
2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

Border measures

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.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

- (a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- (b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. Final provisions

Article 14

Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and

individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention 4 and the 1967 Protocol 5 relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15

Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.
2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.
3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or

approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.
5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19

Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.
2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

국제연합국제조직범죄방지협약을보충하는인신 특히여성과아동의매매예방및억제를위한의정서

이 의정서의 당사국은,

국제적인 인신매매, 특히 여성과 아동의 인신매매를 퇴치하기 위한 효과적인 조치로 이러한 인신매매를 예방하고 인신매매범들을 처벌하며, 국제적으로 인정된 인권의 보호 등 인신매매 피해자들을 보호하기 위한 조치를 포함한 근원국, 경유국 및 목적국에서 종합적인 국제적 접근방법이 요구됨을 선언하며,

인신, 특히 여성과 아동의 착취를 퇴치하기 위한 규칙과 실질적인 조치들을 포함하는 다양한 국제적 문서들이 있음에도 불구하고 인신매매의 모든 측면을 다루는 보편적인 문서가 없다는 사실을 고려하고,

이러한 문서의 부재로 인하여 인신매매에 취약한 자들이 충분히 보호되지 못할 것임을 우려하며,

국제연합총회가 1998년 12월 9일자 총회결의 53/111에서 국제조직범죄방지를 위한 종합적인 국제협약을 성안하고, 특히 여성과 아동의 인신매매를 다룰 국제적 문서의 성안을 논의할 목적으로 무기한의 정부간 임시위원회를 설치하였음을 상기하고,

인신매매, 특히 여성과 아동의 인신매매의 예방, 억제 및 처벌에 관한 국제적인 문서로 협약을 보충하는 것이 인신매매를 퇴치하는 데 유용할 것임을 확신하며,

다음과 같이 합의하였다.

제1장 일반규정

제1조 국제연합국제조직범죄방지협약과의 관계

1. 이 의정서는 국제연합국제조직범죄방지협약을 보충한다. 이 의정서는 협약과 함께 해석한다.
2. 협약의 규정은 이 의정서에 달리 규정되지 않는 한 이 의정서에 준용한다.
3. 이 의정서 제5조에 따라 규정된 범죄는 협약에 따라 규정된 범죄로 간주된다.

제2조 목 적

이 의정서의 목적은 다음과 같다.

- 가. 인신매매, 특히 여성과 아동의 인신매매를 예방하고 퇴치하는 것
- 나. 인신매매의 피해자들의 인권을 충분히 존중하면서 이들을 보호하고 지원하는 것
- 다. 상기 목적을 달성하기 위하여 당사국간의 협력을 증진하는 것

제3조 용어의 사용

이 의정서의 목적상,

- 가. ‘인신매매’란 착취를 목적으로 위협, 무력의 행사 또는 기타 형태의 강박·납치·사기·만, 권력의 남용 또는 취약한 지위의 이용, 타인에 대한 통제력을 가진 사람의 동의를 얻기 위한 보수 또는 혜택의 제공 또는 접수 등의 수단에 의한 인신의 모집, 운반, 이전, 은닉, 인수를 의미한다. 착취는 타인의 매춘 또는 기타 형태의 성적 착취, 강제노동 또는 서비스, 노예제도 또는 노예제도와 유사한 관행, 종속 또는 장기의 절제를 포함한다.
- 나. 이 조 가호에 규정된 수단이 사용된 경우, 이 조 가호에 규정된 착취에 대한

인신매매 피해자의 동의는 무의미하다.

다. 착취를 목적으로 한 아동의 모집, 운반, 이전, 은닉, 또는 인수는 이러한 행위가 이 조 가호에 규정된 수단을 사용하지 아니하였더라도 “인신매매”로 간주된다.

라. “아동”은 18세 미만의 자를 의미한다.

제4조 적용범위

이 의정서는, 달리 규정된 경우를 제외하고, 이 의정서 제5조에 따라 규정된 범죄행위가 성질상 국제적이며 조직범죄집단이 관련된 경우, 동 범죄행위의 예방, 수사 및 기소, 그리고 이러한 범죄행위에 의한 피해자의 보호에 적용된다.

제5조 범죄화

1. 각 당사국은 이 의정서 제3조에 규정된 행위가 고의로 행해진 경우, 자국의 국내법상 이를 범죄로 규정하기 위하여 필요한 입법 및 기타 조치를 채택한다.
2. 각 당사국은 또한 다음의 행위를 범죄로 규정하기 위하여 필요한 입법 및 기타 조치를 채택한다.
 - 가. 자국의 법체계의 기본 개념에 따라, 이 조 제1항에 따라 규정된 범죄행위의 미수
 - 나. 이 조 제1항에 규정된 범죄를 조직하거나 타인에게 범하도록 지시하는 것

제2장 인신매매 피해자의 보호

제6조 인신매매 피해자에 대한 지원 및 보호

1. 각 당사국은 적절한 경우, 그리고 자국의 국내법상 가능한 범위내에서 인신매매 피해

자의 사생활과 신원을 보호한다. 이는 특히 이러한 인신매매와 관련된 법적절차를 비공개로 하는 것을 포함한다.

2. 각 당사국은 적절한 경우 자국의 국내법 체계 또는 행정제도가 인신매매 피해자에게 다음을 제공하는 조치를 포함하도록 보장한다.

가. 관련 재판절차 및 행정절차에 관한 정보

나. 피고의 권리를 침해하지 않는 방식으로 적절한 형사소송 단계에서 피해자가 자신의 견해와 우려를 제시하여 심의될 수 있도록 하기 위한 지원

3. 각 당사국은 적절한 경우 비정부간기구, 기타 관련 기구 및 기타 사회 단체와의 협력을 통해 특히 다음을 포함, 인신매매 피해자의 신체적·심리적·사회적 회복을 위하여 제공할 이행조치를 고려한다.

가. 적절한 주거지

나. 인신매매 피해자가 이해할 수 있는 언어로 이루어지는 상담 및 정보, 특히 법적 권리에 관한 상담 및 정보

다. 의료, 심리적 및 물질적 지원 제공

라. 고용, 교육 및 훈련기회

4. 각 당사국은 이 조의 규정을 적용함에 있어 인신매매 피해자의 연령, 성별 및 특별한 요구, 특히 적절한 주거, 교육 및 보호를 포함하는 아동의 특별한 요구를 고려한다.

5. 각 당사국은 인신매매 피해자가 자국의 영역에 있는 동안 그들의 신변 안전을 제공하기 위해 노력한다.

6. 각 당사국은 자국의 국내법체계가 인신매매 피해자들에게 손해에 대한 보상을 받을 수 있는 가능성을 제시하는 조치를 포함하도록 보장한다.

제7조

접수국내에서의 인신매매 피해자의 지위

1. 이 의정서 제6조상의 조치에 추가하여 각 당사국은, 적절한 경우, 인신매매 피해자들이 일시적으로 자국의 영역내에 체류하도록 허가하는 입법 또는 기타 적절한 조치를 채택하는 것을 고려한다.
2. 이 조 제1항의 규정을 이행함에 있어 각 당사국은 인도주의적 및 온정주의적 요소를 고려한다.

제8조

인신매매 피해자의 송환

1. 접수당사국 입국 당시에 인신매매 피해자가 그 국민이거나 영주할 권리를 가지고 있었던 당사국은 동인의 안전을 정당하게 고려하여 부당하거나 불합리한 지체없이 동인의 귀국을 촉진하고 수락한다.
2. 어느 당사국이 인신매매 피해자가 접수당국에 입국 당시 그 국민이거나 영주할 권리를 가지고 있었던 당사국으로 동 피해자를 송환하는 경우, 이러한 송환은 동인의 안전 및 인신매매의 피해자라는 사실과 관련된 법적 절차의 진전상황을 정당하게 고려하여, 그리고 가급적 자발적으로 이루어지도록 한다.
3. 이 조는 접수국의 국내법에 의해 인신매매 피해자들에게 제공되는 권리를 침해하지 아니한다.
4. 이 조는 인신매매 피해자들의 송환을 전체적 또는 부분적으로 규율하는 적용가능한 양자 또는 다자의 협정 또는 약정을 침해하지 아니한다.
5. 접수당사국의 요청에 따라, 피요청 당사국은 부당하거나 불합리한 지체없이 인신매매 피해자가 접수국의 영역에 입국 당시 자국의 국민이거나 영주권자였는지를 확인한다.
6. 적절한 문서를 소지하지 아니한 인신매매 피해자의 송환을 촉진하기 위하여, 접수당사국에 입국당시 인신매매 피해자가 국민이거나 영주권을 가지고 있었던 당사국은 접

수당사국의 요청에 따라 그 자가 자국의 영역안으로 이동 및 귀환하는 것을 가능하게 하는 필요한 여행문서 또는 허가증을 발급하는 데 동의한다.

제9조 인신매매의 방지

1. 당사국은 다음을 위해 종합적인 정책, 프로그램 및 기타 조치를 확립한다.

가. 인신매매의 방지 및 퇴치

나. 인신매매피해자가 또다시 인신매매에 희생되지 않도록 보호, 특히 여성과 아동의 보호

2. 당사국은 인신매매의 방지 및 퇴치를 위해 연구, 홍보 및 대중매체 캠페인 그리고 사회·경제적 사업과 같은 조치를 취하기 위하여 노력한다.

3. 이 조에 따라 확립된 정책, 프로그램 및 기타 조치는 적절한 경우 비정부 기구, 기타 관련기구 및 기타 사회단체와의 협력을 포함한다.

4. 당사국은 빈곤·저개발 및 동등한 기회의 부재 등 특히 여성과 아동을 인신매매에 취약하게 만드는 요인을 완화하기 위하여 양자 또는 다자협력을 포함하는 조치를 취하거나 강화한다.

5. 당사국은 인신매매를 야기하는 모든 형태의 인신착취, 특히 여성과 아동의 착취를 조장하는 수요를 감축시키기 위하여 양자 및 다자협력방식을 포함한 입법 또는 교육·사회·문화적 조치를 채택 또는 강화한다.

제3장 예방, 협력 및 기타 조치

제10조 정보교환 및 훈련

1. 당사국들의 범집행, 출입국 또는 기타 유관 당국은, 적절한 경우, 다음을 판단하기 위해 자국법에 따라 정보를 교환함으로써 상호 협력한다.

가. 타인의 여행문서를 소지하거나 여행문서를 소지하지 아니하고 국경을 통과하거나 이를 시도하는 자가 인신매매범인지 또는 인신매매 피해자인지 여부

나. 인신매매를 목적으로 국경을 통과하기 위하여 사용되었거나 사용이 시도된 여행문서의 유형

다. 인신매매 피해자의 모집 및 운반, 이러한 인신매매에 관여하는 개인 및 집단 간의 경로 및 연결점 등 조직범죄집단이 인신매매를 위해 사용하는 수단 및 방법, 그리고 가능한 인신매매범의 탐지 조치

2. 당사국은 인신매매의 예방을 위해 범집행, 출입국 및 기타 관련 관리들을 위한 훈련을 제공·강화한다. 훈련은 이러한 인신매매의 예방, 인신매매범의 기소, 인신매매범으로부터의 피해자의 보호를 포함한 인신매매피해자의 권리보호 방법에 중점을 둔다. 훈련은 또한 인권, 아동 인지적 및 성 인지적인 문제를 고려할 필요성을 감안하여야 하며, 비정부간 기구, 여타 관련 기구 및 기타 사회단체와의 협력을 장려해야 한다.
3. 정보를 접수한 당사국은 동 정보를 제공한 당사국이 정보의 사용에 부당한 제약에 따른다.

제11조

국경조치

1. 사람의 자유로운 이동에 관한 국제적인 약속을 침해함이 없이, 당사국은 가능한 범위 내에서 인신매매를 방지하고 탐지하기 위하여 필요한 국경통제를 강화한다.
2. 각 당사국은 가능한 범위내에서 상업운송인이 운영하는 운송수단이 의정서 제5조에 따라 규정된 범죄행위에 사용되는 것을 방지하기 위한 입법 또는 기타 적절한 조치를 취한다.
3. 적절한 경우, 그리고 적용가능한 국제협약을 침해함이 없이, 이러한 조치는 모든 승객들이 접수국의 입국에 요구되는 여행문서를 소지하고 있을 것을 확실히 하기 위하여 모든 운송회사, 모든 운송수단의 소유주 또는 운영자 등 상업운송인의 의무

를 규정하는 것을 포함한다.

4. 각 당사국은 자국의 국내법에 따라 이 조 제3항에 규정된 의무를 위반하는 경우 제재를 가하는 데 필요한 조치를 취한다.
5. 각 당사국은 자국의 국내법에 따라 이 의정서에 규정된 범죄에 연루된 자의 입국 금지 또는 사증 취소를 허가하는 조치를 취하는 것을 고려한다.
6. 협약 제27조를 침해함이 없이, 당사국은 특히 직접적인 통신경로를 수립·유지함으로써 국경통제관간의 협력을 강화하는 것을 고려한다.

제12조

문서의 안전 및 통제

각 당사국은 가능한 수단에 따라 다음 사항에 필요한 조치를 취한다.

- 가. 자국이 발급한 여행증명서 또는 신분증명서가 오용되거나 위조되거나 불법적으로 변조·복제·발급될 수 없을 정도의 품질을 갖출 것을 보장하는 것
- 나. 당사국에 의하여, 또는 당사국을 대표하여 발급된 여행증명서 또는 신분증명서의 무결성과 안정성을 보장하고 동 문서의 불법 생산·발급 및 사용을 예방하는 것

제13조

문서의 적법성 및 유효성

다른 당사국의 요청을 받은 당사국은 자국의 이름으로 발급되었거나 발급된 것으로 알려진 여행증명서 또는 신분증명서가 의심받는 경우, 자국의 국내법에 따라 합리적인 시간내에 동 문서의 적법성 또는 유효성을 검증한다.

제4장 최종규정

제14조

보존조항

1. 이 의정서의 어떠한 규정도 국제인도법 및 국제인권법, 특히 적용가능한 경우, 난민의 지위 및 불송환의 원칙에 관한 1951년 협약 및 1967년 의정서 등 국제법상의 국가 및 개인의 기타 권리·의무 및 책임에 영향을 미치지 아니한다.
2. 이 의정서에 규정된 조치는 어떠한 자들이 인신매매의 희생자라는 이유로 그들에게 차별적인 방식으로 해석·적용되지 아니한다. 이러한 조치의 해석·적용은 국제적으로 인정된 비차별 원칙과 일치하여야 한다.

제15조

분쟁해결

1. 당사국은 이 의정서의 해석·적용에 관한 분쟁을 교섭을 통하여 해결하도록 노력한다.
2. 합리적인 기간안에 교섭에 의하여 해결될 수 없는 둘 또는 그 이상의 어느 일방의 요청에 따라 중재에 회부된다. 만일 중재 요청일로부터 6월이 지난 후 동 당사국들이 중재의 구성에 합의할 수 없는 경우, 국제 사법재판소 규정에 따라 요청함으로써 국제사법재판소에 분쟁을 회부할 수 있다.
3. 각 당사국은 이 의정서의 서명, 비준, 수락 또는 승인, 또는 가입시 이 조 제2항에 기속된다고 여기지 아니함을 선언할 수 있다. 타방 당사국은 그러한 유보를 행한 어느 당사국과의 관계에 있어 이 조 제2항에 구속되지 아니한다.
4. 이 조 제3항에 따라 유보를 행한 당사국은 언제라도 국제연합 사무총장에 통고함으로써 동 유보를 철회할 수 있다.

제16조

서명, 비준, 수락, 승인 및 가입

1. 이 의정서는 이태리 팔레르모에서 2000년 12월 12일부터 15일간 그 이후에는 2002년 12월 12일까지 뉴욕에 소재한 국제연합 본부에서 서명을 위하여 모든 국가에게 개방된다.
2. 이 의정서는 지역경제통합기구의 최소 일개 회원국이 이 조 제1항에 따라 이 의정서에 서명을 한 경우, 동 기구에게도 서명을 위하여 개방된다.
3. 이 의정서는 비준, 수락 또는 승인을 받는다. 비준, 수락 또는 승인문서는 국제연합 사무총장에게 기탁된다. 지역경제통합기구는, 만일 동 기구의 최소 일개 회원국이 비준, 수락 또는 승인문서를 기탁한 경우, 기구의 비준, 수락 또는 승인문서를 기탁할 수 있다. 이러한 기구는 비준, 수락 또는 승인문서상에 이 의정서가 규율하고 있는 사항에 관한 기구의 권한의 범위를 선언한다. 이러한 기구는 또한 동 기구의 권한 범위에 있어서의 모든 관련 수정내용을 수탁자에게 통지한다.
4. 이 의정서는 모든 국가 또는 최소 일개 회원국이 이 의정서의 당사국인 모든 지역경제통합기구에게 가입을 위하여 개방된다. 가입문서는 국제연합 사무총장에게 기탁된다. 지역경제통합기구는 가입서 기탁시 이 의정서가 규율하고 있는 사항에 관한 권한의 범위를 선언한다. 이러한 기구는 또한 동 권한 범위에 있어서의 모든 관련 수정내용을 수탁자에게 통지한다.

제17조

발 효

1. 이 의정서는 40번째 비준, 수락, 승인 또는 가입문서 기탁일로부터 90일 후에 발효한다. 단, 이 의정서는 협약의 발효이전에 발효하지 아니한다. 이 항의 목적상, 지역경제통합기구가 기탁한 문서는 동 기구의 회원국들이 기탁한 문서에 추가하여 계산되지 아니한다.
2. 40번째 비준, 수락, 승인 또는 가입문서가 기탁된 후 이 의정서를 비준, 수락, 승인 또는 여기에 가입하는 국가 또는 지역경제통합기구에 대하여, 이 의정서는 이러한 국가 또는 기구가 관련문서를 기탁한 후 30일째 되는 날 또는 이 조의 제1항에 따라 이 의정서가 발효하는 날 중 나중일자에 발효한다.

제18조

개 정

1. 이 의정서 발효 후 5년의 기간이 경과한 후 이 의정서의 당사국은 개정을 제안할 수 있으며, 개정안은 국제연합 사무총장에게 제출한다. 사무총장은 동 개정안에 대하여 심의·의결하기 위하여 당사국 및 협약 당사국회의에 동 개정안을 통보한다. 당사국 회의에 참석하는 이 의정서는 당사국은 각 개정안에 대하여 콘센서스에 도달하기 위하여 모든 노력을 기울인다. 만일 콘센서스에 도달하기 위한 모든 노력을 다하였으나 어떠한 합의도 이루어지지 않았을 경우, 동 개정안은 최후의 수단으로 채택을 위하여 동 당사국회의 출석하여 투표하는 이 의정서 당사국의 3분의2 다수결 표결이 요구된다.
2. 지역경제통합기구는 그들의 권한내의 사항에 대하여 이 의정서 당사자인 기구의 회원국 수와 동일한 수의 투표권을 이 조에 따라 행사한다. 동 기구의 회원국이 투표권을 행사하면, 기구는 투표권을 행사하지 아니하며, 반대로 동 기구의 회원국이 투표권을 행사하지 아니하면, 기구가 투표권을 행사한다.
3. 이 조 제1항에 따라서 채택된 개정안은 당사국에 의하여 비준, 수락 또는 승인된다.
4. 이 조 제1항에 따라서 채택된 개정안은 당사국이 국제연합 사무총장에게 동 개정안에 대한 비준, 수락, 승인 또는 승인문서를 기탁한 일자로부터 90일이 지난 후 그 당사국에 대하여 발효한다.
5. 개정안이 발효하는 때에, 동 개정안은 개정안에 대한 기속적 동의를 표시한 당사국을 구속한다. 기타 당사국은 여전히 이 의정서의 규정 및 동국이 비준, 수락, 승인 또는 승인한 이전의 개정에 구속된다.

제19조

탈 퇴

1. 당사국은 국제연합 사무총장에게 서면통고함으로써 이 의정서를 탈퇴할 수 있다. 이러한 탈퇴는 사무총장이 동 통고를 접수한 날로부터 1년 후에 효력을 발생한다.
2. 지역경제통합기구는 기구의 모든 회원국이 이 의정서를 탈퇴하는 때에 이 의정서의

당사자 자격을 상실한다.

제20조
수탁자 및 언어

1. 국제연합 사무총장은 이 의정서의 수탁자로 지정된다.
2. 아랍어본, 중국어본, 영어본, 불어본, 러시아어본 및 스페인어본이 동등히 정본인 이 의정서의 원본은 국제연합 사무총장에게 기탁된다.

이상의 증거로, 각자의 정부로부터 정당하게 권한을 위임받은 이래 전권이임대표들은 이 의정서에 서명하였다.

**ASEM Action Plan to Combat Trafficking in Persons,
Especially Women and Children**

- An Initiative from Sweden, Thailand and the Philippines

"The Ministers recognized that trafficking in women and children was a growing concern to all and welcomed the UN Convention against Transnational Organized Crime and its Protocols. ASEM Partners would intensify cooperation to combat the hideous crime of trafficking in human beings with a view to ensuring respect and protection of the rights of victims of trafficking, especially women and children. The Ministers welcomed the action plan prepared by the Core Group Expert Meeting on ASEM initiative on Trafficking in Women and Children"

(Paragraph 15, Chairman's Statement of the Third ASEM Foreign Ministers' Meeting Beijing, China, 24-25 May 2001)

Background

At ASEM 3 in Seoul in 2000, Leaders expressed their commitment to addressing global issues of common concern such as transnational crime, including smuggling, exploitation of migrants and trafficking of persons, in particular of women and children for the purpose of sexual exploitation.

Action Plan

1. To strengthen knowledge and overall co-ordination

- 1.1 Advance systematic research and effective methodologies for data collection and exchange of information in order to improve and complement assessments of magnitude and nature of the situation of trafficking in women and children in Asia and Europe.
- 1.2 Encourage and develop appropriate mechanism of regional, subregional and interregional co-operation both with regard to prevention of trafficking in persons and protection of and assistance to victims.
- 1.3 Encourage and strengthen co-operation between countries of origin, transit and destination to make national legislations compatible with the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.
- 1.4 Encourage and facilitate cross border information and law enforcement operations.

2. To prevent and combat trafficking

- 2.1 Apply a gender perspective and address and address the rights of women in national development policies and programs.
- 2.2 Emphasize the rights of women and children in formal as well as in non-formal education.

- 2.3 Encourage and support fact-finding and research to explore, assess and analyse the demand for the most common forms of exploitation of trafficked women and children, in particular for commercial sex services, in order to design strategies to influence attitudes.
- 2.4 Ensure good quality, relevant basic education, including life skills, as well as livelihood opportunities, in line with UN Convention of the Rights of the Child, for children most at risk of being trafficked.
- 2.5 Endeavour to provide viable employment or other livelihood opportunities for women in line with the UN Convention on Elimination of All Forms of Discrimination Against Women.
- 2.6 Undertake persistent and pervasive information campaigns targeted at at-risk groups, including families and communities, in consultation with countries concerned. Linking such campaigns to those being carried out to combat the spread of HIV/Aids should be considered.
- 2.7 Strive to mobilise support from non-governmental organizations and other members of civil society, the corporate sector, in particular tourism-related business, and the mass media to raise public awareness.

3. To strengthen law-enforcement and protection of victims of trafficking

- 3.1 Encourage adoption of such legislative and other measures as may be necessary to make trafficking in persons a criminal offence in line with the UN Convention against Transnational Organized Crime and its supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
- 3.2 Sensitize law enforcement personnel, immigration officers and other officials and staff concerned of trafficking, to ensure that they understand the phenomenon of trafficking, and its consequences, and thus, respect the rights of women and children and their dignity.
- 3.3 Provide victims of trafficking with the psychological and social assistance immediately

needed

- 3.4 Provide victims of trafficking with information on their legal rights, including facilitating the provision of legal aid free of charge in a language they understand.
- 3.5 To the extent possible under its domestic law, undertake measures to protect the privacy and identity of victims of trafficking during legal proceeding and be sensitive to their needs and interests, in particular when dealing with children.
- 3.6 Consider adopting measures that permit victims of trafficking to remain in the country of destination temporarily or permanently, where possible and appropriate.

4. To promote the recovery, repatriation and reintegration of trafficked women and children

- 4.1 Enhance and exchange documentation of experiences and lessons learned regarding recovery, repatriation and reintegration, in order to develop and provide appropriate short and long-term assistance to the victims of trafficking.
- 4.2 Consolidate and institutionalize effective interventions and methods of recovery, repatriation, and reintegration of victims to avoid stigmatization and re-victimization, and to provide sustainable solutions to their needs.
- 4.3 Facilitate and develop co-operation between governments and non-governmental organizations in order to strengthen the overall capacity to assist the victims. This may include providing victims with appropriate shelter, counselling and other support, both short and longer term

5. Monitoring and follow-up activities

- 5.1 Address, where feasible, aspects pertinent to trafficking in women and children in the planning and implementation of already endorsed initiatives by ASEM Leaders, such as
 - ASEM Child Welfare Initiative
 - Ministerial Conference on Co-operation for the Management of the Migratory Flows Europe-Asia

- Initiative on HIV-Aids
- Symposium on Law Enforcement Organ's Cooperation in Combating Transnational Crimes.
- Anti-Corruption Initiative
- Anti-Money Laundering Initiative

5.2 Support follow-up activities to be developed to facilitate the implementation of the action plan;

5.2.1 An experts' meeting to discuss legislative measures required to bring national legislation in line with the UN Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

5.2.2 A seminar to exchange experience on promotion of gender perspectives in relation to trafficking of women and children for the purpose of commercial sexual exploitation, Such a seminar will discuss various best practices, focussing on patterns of causality and strategies to address trafficking, including, promotion of respect for gender equality.

5.2.3 A multi-country study on the prevalence and characteristics of the demand for services provided by trafficked women and children. Such a study should help identify appropriate measures to combat trafficking

5.2.4. A conference for the purpose of sharing experiences, methods and approaches learned from various interventions for recovery, repatriation and reintegration in order to identify and adopt best practice in this respect. Such a conference will examine different models of Government-NGO co-operation.

The Philippines, Sweden and Thailand as co-partners of the Comprehensive Initiative to Combat Trafficking in Women and Children will initiate the follow-up activities outlined in Paragraph 5, encouraging all ASEM Partners to actively participate in these activities. The three co-partners will submit a progress report on this Initiative through the ASEM Senior Officials' Meeting (SOM) to the ASEM Foreign Ministers' Meeting (FMM), the Ministerial Conference on Co-operation for the Management of the Migratory Flows Europe-Asia and to ASEM 4 in Copenhagen in 2002.

인신매매, 특히 여성과 아동의 매매 방지를 위한 ASEM 행동계획

모든 장관들은 여성과 아동 매매 우려가 커지고 있음을 인식하고 국경을 초월하여 이루어지는 범죄에 대한 UN 협약과 의정서를 환영하는 바이다. ASEM 회원국들은 인신매매의 피해자 중 특히 여성과 아동의 권리를 보호하며 이들이 존중받도록 한다는 관점을 가지고 인신매매라는 흉악 범죄를 퇴치하기 위해 협력을 증대할 것이다. 장관들은 ASEM 이니셔티브에 대한 주요 전문가 회의에서 도출된 여성과 아동 매매에 관한 행동계획을 받기는 바이다.

(제 3차 ASEM 외무장관 북경 회의 의장 성명서 제15장, 중국, 2001. 5. 24 - 25)

배경

2000년 서울에서 개최된 제3차 ASEM 정상회의에서 지도자들은 공통적으로 전지구적인 문제, 예를 들면 밀수, 이민자 착취와 특히 성적 착취를 목적으로 한 여성과 아동매매를 포함하는 국경을 초월한 범죄 등 전지구적인 문제에 대해 우려를 표명하였으며 이에 대한 공약을 하였다.

위의 일을 시발로 실현 가능한 업무계획과 주요 우선 순위 분야를 가리기 위해 ASEM 회원국의 여성과 아동 매매 관련 전문가들이 모여 여성과 아동 매매에 관한 제1차 전문가 회의를 2000년 11월 27 - 28일 스톡홀름에서 개최하였다.

행동계획

1. 전반적인 업무 협조와 지식기반 확대

1.1 아시아와 유럽의 여성과 아동 매매 현황의 성격과 규모에 대한 전반적인 평가를 증진시키기 위해 체계적인 조사방법과 정보 수집 및 교환의 효율적인 방법을 향상시킨다.

1.2 인신매매 예방과 피해자 지원 및 보호라는 두 가지 측면을 다루는 지역, 지역 내, 지역간 협력의 적절한 방법을 개발·장려한다.

1.3 여성과 아동 인신매매의 예방, 근절 및 처벌을 위한 유엔 의정서에 상응하는 국내법을 제정하도록 본국, 경유국 그리고 목적국간의 협력을 강화·장려한다.

1.4 국가간 정보 교환과 범 집행을 촉진하고 장려한다.

2. 인신매매 예방과 퇴치

2.1 성 평등적 관점과 여성의 권리를 국내 개발 정책과 프로그램에 적용한다.

2.2 사교육을 포함 공교육에서 여성과 아동 권리를 강조한다.

2.3 태도변화에 영향력을 끼칠 수 있는 전략을 수립하기 위하여 특히 매춘을 목적으로 매매된 여성과 아동의 가장 흔한 착취 유형을 조사, 평가, 분석하는 정보수집 및 연구 활동을 지원·장려한다.

2.4 유엔 아동권리 협약의 연장선상에서 매매의 위기에 직면해 있는 아동에게 생계수단의 기회를 제공할 뿐만 아니라 삶의 기술을 비롯, 양질의 관련 기초 교육을 제공한다.

2.5 유엔 여성차별철폐조약과 같은 맥락에서 여성에게 살아갈 수 있는 직업이나 다른 생계수단의 기회를 제공하도록 노력한다.

2.6 관련 여러 국가들과 협의하여 가족과 사회에서 위기에 처한 그룹을 대상으로 지속적이며 영향력 있는 정보 캠페인을 시작한다. 이러한 캠페인을 HIV/에이즈 확산 퇴치 캠페인과 연계하는 것도 고려한다.

2.7 대중의 경각심을 일으키기 위하여 NGO와 여타 시민사회 구성원, 재계, 특히 관광 관련 업계와 대중매체의 지원을 얻도록 노력한다.

3. 법 집행과 인신매매 피해자 보호 강화

3.1 국경을 초월하여 이루어지는 범죄에 대한 UN 협약과 여성과 아동의 인신매매 예방, 근절 및 처벌을 위한 유엔 의정서와 동일선상에서 인신매매가 범죄로 규정될 수 있는 법규 및 다른 조치의 도입을 장려한다.

3.2 인신매매와 관련된 법 집행관, 출입국관리소 직원, 여타 정부 관리 및 직원들이 인신매매 현상, 결과를 이해함으로써 여성과 아동의 권리와 존엄성을 존중할 수 있도록 한다.

3.3 인신매매 희생자에게 즉각적으로 필요한 육체적, 정신적, 사회적 도움을 제공한다.

3.4 인신매매 피해자들에게 그들이 이해할 수 있는 언어로 그들이 무상 법적 지원을 받을 수 있다는 것과 같은 그들의 법적 권리에 관한 정보를 제공한다.

3.5 국내법의 범위 내에서 소송이 이루어지는 전과정동안 인신매매 피해자의 신원과 사생활을 보호하는 장치를 만들고 그들의 필요와 관심을 주의 깊게 살핀다.

3.6 가능하고 적절하다면 인신매매 피해자가 목적국에 임시적으로나 영구히 체류할 수 있도록 허가하는 제도를 도입하는 것을 고려한다.

4. 인신 매매된 여성과 아동의 회복, 본국 송환 및 재할 증진

4.1 인신 매매 피해자들에게 적절한 장·단기 법적 지원을 개발하고 제공하기 위하여 경험사례와 회복, 본국송환 및 재할에 관한 정보교환을 증진한다.

4.2 피해자들이 낙인찍히지 않고 또 다른 희생자가 되는 것을 방지하기 위해 효율적인 중재와 피해자들의 회복, 본국송환 및 재할 방법들을 조직화하고 통합한다.

4.3 희생자들을 도울 수 있는 전반적인 역량을 강화하기 위해 정부간, NGO간의 협력을 모색·증진한다. 피해자들에게 적절한 쉼터제공, 상담 및 장단기적인 지원을 포함하는 것을 골자로 한다.

5. 감시와 후속조치

5.1 ASEM 지도자들이 이미 승인한 아래의 이니셔티브와 여성과 아동 인신매매에 대해 적용·연계할 수 있는 부분이 있다면 그렇게 조치한다.

- ASEM 아동복지 이니셔티브
- 유럽-아시아 이주 관리 협력을 위한 장관회의
- HIV-Aids 이니셔티브
- 국경을 초월한 범죄에 대항하는 법 집행기관들의 협력을 위한 심포지움
- 반부패 이니셔티브
- 돈세탁 방지 이니셔티브

5.2 행동계획의 이행을 촉진시킬 수 있는 후속조치들이 개발될 수 있도록 지원한다.

5.2.1 국내법규가 국경을 초월하여 이루어지는 범죄에 대한 UN 협약과 여성과 아동의 인신매매 예방, 근절 및 처벌을 위한 유엔 의정서와 동일 선상에 놓일 수 있도록 필요한 법적 장치에 대해 논의하는 전문가 회의가 요구된다.

5.2.2 매춘을 목적으로 하는 여성과 아동 인신매매에 대하여 성 평등적 관점을 증진시키는 경험을 나누는 세미나가 될 것이다. 이 세미나는 범죄의 유형과 남녀 평등 증진 방안을 포함, 인신매매에 대한 전략에 초점을 맞추어 다양한 최고의 사례를 다루게 될 것이다.

5.2.3 인신 매매된 여성과 아동에게 요구되는 서비스의 특징과 보급에 관한 다국적 연구는 적절한 인신매매 퇴치 방안을 강구하는데 유용할 것이다.

5.2.4 최상의 이행방법을 발견하고 채택하기 위하여 회복, 본국 송환 및 재활 등의 문제에 다양한 방법으로 개입하면서 새로 알게된 방법과 경험을 나누기 위한 목적으로 개최되는 회의는 정부와 NGO간의 여러 협력 모델을 검토할 수 있게 할 것이다.

여성과 아동의 매매에 대한 포괄적 이니셔티브의 협력국으로서 필리핀, 스웨덴과 태국은 모든 ASEM 회원국이 적극적으로 참여하도록 유도하면서 제5장에 언급되어 있는 후속조치를 시행할 것이다. 위의 세 국가들은 본 이니셔티브에 관한 진행보고서를 ASEM 고의관료회의(SOM)를 통해 ASEM 외무장관회의(FMM), 국경을 초월한 범죄에 대항하는 법 집행기관들의 협력을 위한 심포지움과 2002년 코펜하겐에서 열리는 제4차 ASEM회의에 제출할 것이다.

**미국 「인신매매 및 폭력피해자 보호법, 2000」 (U.S. Victims of
Trafficking and Violence Protection Act of 2000)**

Summary

by

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□ OUTLINE OF PRESENTATION

- I. Introduction
- II. Overview of the Law
- III. Specific Provisions
 - Section 105 - Interagency Task Force
 - Section 108 - Minimum Standards for the Elimination of Trafficking
 - Section 109 - Assistance to Foreign Countries to Meet Minimum Standards
 - Section 110 - Actions Against Governments Failing to Meet Minimum Standards
 - Section 111 - Actions Against Significant Traffickers
 - Section 112 - Strengthening Prosecution and Punishment of Traffickers
- IV. Current News

I. INTRODUCTION

- Public Law 106-386
- About \$94.5 million for FY 2001 and 2002
- The purpose of the law is to combat trafficking through the "three P" approach :
 - Prevention of Trafficking
 - Protection of victims
 - Prosecution of traffickers

□ Definition of "Severe Form of Trafficking"

- (1) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to

involuntary servitude, peonage debt, bondage, or slavery

II. OVERVIEW OF THE LAW

☐ What Does the Law Do?

- Mandates that governments satisfy certain "minimum standards" or make significant efforts to bring itself into compliance with such standards;
- Authorizes the President to fund U.S. and foreign programs to meet the minimum standards;
- Require that the U.S. State Dept. compile an annual report regarding the status of trafficking;
- Creates sanctions against foreign persons involved with trafficking; and
- Toughens the penalties against traffickers convicted in the U.S.

III. SPECIFIC PROVISION

☐ Section 105

<Interagency Task Force>

- General mandate of the Task Force is to monitor and combat Trafficking
- Specifically, the Task Force is responsible for :
 - Assisting the Secretary of state in his reporting task;
 - Assessing the progress of the U.S. and of other nations in preventing trafficking;
 - Facilitating and accessing interagency cooperation to collect data on trafficking in persons;
 - Facilitating and accessing international cooperation with countries of origin, transit, and destination; and
 - Facilitating and accessing the influence of the international sex tourism industry on the trafficking of women and children;

<Members of the Task Force>

- Appointed by the President
- Shall include at least most of the cabinet members of the administration
- As of July 12, 2001, the Task Force had not been established.

☐ Section 108

<Minimum Standards for the Elimination of Trafficking>

○ What are the Minimum Standards?

1. The government must prohibit Trafficking and punish acts of Trafficking;
2. The government must prescribe punishment for the knowing commission of Trafficking which is commensurate with that for grave crimes;
3. The government must prescribe punishment for the knowing commission of Trafficking that is sufficiently stringent to deter and which adequately reflects the heinous nature of the offense; and
4. The government must make "serious and sustained efforts".

○ What are other factors that should be considered as indicia of "serious and sustained efforts"?

1. Whether the country vigorously investigates and prosecutes acts of Trafficking that take place within its territory.
2. Whether the government has adopted measures to prevent Trafficking.
3. Whether the government protects victims of Trafficking and encourages their assistance in the investigation and prosecution of Trafficking.
4. Whether the government cooperates with other governments in the investigation of Trafficking and prosecution of traffickers.
5. Whether the government extradites persons charged with trafficking on substantially the same terms and to substantially the same extent as persons charged with other serious crimes.
6. Whether the government monitors immigration and emigration patterns for evidence of Trafficking and whether law enforcement agencies of the government respond to any such evidence.
7. Whether the country vigorously investigates and prosecutes public officials who participate in or facilitate Trafficking, and takes all appropriate measures against officials who condone Trafficking.

☐ Minimum Standards for the Elimination of Trafficking

The Law also states 3 factors that the State Dept. will consider in determining whether a country is making significant efforts to bring itself into compliance with these minimum standards.

These considerations are:

1. The extent of Trafficking in the country;
2. The extent of governmental noncompliance with the minimum standards, particularly

- the extent to which government officials have been complicit in Trafficking; and
3. What measures are reasonable to bring the government into compliance with the minimum standards in light of the government's resources and capabilities.

☐ **Summary of Minimum Standards**

Four minimum standards:

1. The government should prohibit and punish Trafficking;
2. Punishment should be commensurate with stringent to deter and reflect the heinous nature of Trafficking; and
3. The government should make "serious and sustained efforts to eliminate Trafficking"
* 7 indicia that should be considered as "serious and sustained efforts"

☐ **What Happens if a Government Fails to Meet the Minimum Standards?**

1. President will withhold Foreign Assistance and instruct directors or representatives of U.S. multilateral lending institutions to vote against nontrade-related assistance to the noncompliant government; or
2. President will waive the minimum standards upon a finding that it is in the U.S.' national interest
* This Section becomes effective the year 2003.

☐ **What will the President Base his Decision on?**

- Interim and Annual Reports compiled by the U.S. State Department;
- The Annual Country Report on Human Rights Practices; and
- Other appropriate documentation;

☐ **Can Government and NGOs Apply for Assistance to Meet the Minimum Standards?**

Yes; those types of programs eligible are for prevention, protection and prosecution, including for:

- Assistance in drafting laws prohibiting and punishing trafficking;
- Training of law enforcement officials and of officials in the judiciary in the investigation and prosecution of trafficking;
- Expansion of exchange programs and international visitor programs for governmental and nongovernmental personnel to learn about other programs to combat trafficking.
- Creation and maintenance of facilities, programs, projects for the protection of

victims;

- Assess foreign governments' efforts not to prosecute victims of trafficking and to ensure they have access to justice;
- Assess foreign governments' cooperation with other governments for prosecuting traffickers, investigating and combating trafficking

☐ **How Can Governments and NGOs Get Funding?**

- The key to getting funding: contact the U.S. embassy of consulate in your country or region
- Embassies and consulates welcome the opportunity to work with host governments
- If there is a separate USAID office outside of the embassy, contact that office as well
- Prepare a proposal and submit it to the contact person at the embassy or consulate in your country or region

☐ **How Can Governments Avoid Sanctions?**

- Domestic Legislation
 - Prescribe punishment for trafficking similar to punishment for grave crimes such as rape
 - Prescribe punishment that is severe enough to deter trafficking
 - Prosecution of Traffickers
- Vigorously investigate of acts of trafficking
 - Prosecute traffickers
 - Prosecute public officials who participate in trafficking
- Protect Victims
 - Encourage victims to assist in investigation of trafficking and prosecution of traffickers
 - Do not repatriate victims to countries where they would face hardship or reprisal
 - Do not penalize victims for their unlawful acts that are the direct result of their being trafficked
- Prevention Efforts
 - Conduct public information campaigns
 - Monitor immigration and emigration patterns for evidence of trafficking
- Cooperate With Other Governments
 - Cooperate in investigations and prosecutions

- Extradite persons charged with trafficking

☐ Section 111

<Sanctions Against Traffickers>

The President may sanction any citizen or national of a foreign country (including government officials) that:

- Plays a major role in trafficking in the U.S. ("Significant Trafficker")
- Materially assists activities of a Significant Trafficker; or
- Foreign persons that act on behalf of a Significant Trafficker.

<What are the sanctions?>

- Freezing assets under U.S. jurisdiction;
- Barring Significant Traffickers, their spouses, sons and daughters of other aliens known aider and abettor with a Significant Trafficker by the consular office or the U.S. Attorney General from obtaining visas and entering the U.S.; and
- Various heads of U.S. agencies are authorized to take other appropriate action

<What is the process of the sanctions?>

- Upon sanctioning a foreign person, the President must publicly identify the foreign person(s) and articulate the basis for such a determination and the sanctions imposed
- The accused person must be afforded an opportunity to be heard in an expeditious manner

☐ Section 112

<Strengthening Prosecution and Punishment of Traffickers>

○ Increase penalties

- The new maximum criminal sentences is now doubled to 20 years with a possibility of life imprisonment
- If death results from the violation of if the violation includes kidnapping, aggravated sexual abuse or attempted murder, the defendant is liable for a fine, life imprisonment of both
- Provides for the forfeiture of property.

Any property, including real estate, used to commit or facilitate trafficking by any person convicted of trafficking will be forfeited to the U.S. government

- U.S. Sentencing Commission must consider increasing sentences for those convicted of trafficking-related crimes

- Creates several crimes
 - Forced Labor
 - Trafficking with respect to Peonage, Slavery, Involuntary Servitude or Forced Labor
 - Sex Trafficking of Children of by Force, Fraud or Coercion
 - Unlawful Conduct with Respect to Documents in Furtherance of Trafficking, Peonage, Slavery, Involuntary Servitude or Forced Labor

III. CURRENT NEWS

☐ What are the recent developments with regard to the Law and initiatives by the U.S.?

- Annual Report on Trafficking
 - First report released July 12, 2001
 - Lists 23 countries that do not meet the Act's minimum standards and are not making significant efforts to bring themselves into compliance.
 - Lists 47 countries that do not meet the Act's minimum standards but are making significant efforts to bring themselves into compliance.

☐ Tier 1

- Fully comply with the Law's minimum standards
- Countries

Austria	Belgium	Canada	Colombia	Germany	Hong Kong
Italy	Netherlands	Spain	Switzerland	Taiwan	United Kingdom

☐ Tier 2

- Do not yet comply with the Law's minimum standards, but making significant efforts
- Countries

Angola	Bangladesh	Benin	Brazil	Bulgaria
Burkina Faso	Cambodia	Cameroon	China	Costa Rica
Cote d'Ivoire	Czech Republic	Dominican Republic		El Salvador
Ethiopia	France	Georgia	Ghana	Guatemala
Haiti	Honduras	Hungary	India	Japan
Kyrgyzstan	Laos	Lithuania	Macedonia	Mali
Mexico	Moldova	Morocco	Nepal	Nigeria

Philippines	Poland	Sierra Leone	Singapore	Slovenia
South Africa	Sri Lanka	Sweden	Thailand	Togo
Uganda	Ukraine	Vietnam		

☐ Tier 3

- Do not yet comply with the Law's minimum standards, and not making significant efforts

- Countries;

Albania	Bahrain	Belarus	Bosnia-Herzegovina
Burma	Democratic Republic of Congo	Gabon	Greece
Indonesia	Israel	Kazakhstan	Lebanon
Malaysia	Pakistan	Qatar	Romania
Russia	Saudi Arabia	South Korea	Sudan
Turkey	United Arab Emirates	Federal Republic of Yugoslavia	

SOUTH KOREA (Tier 3)

South Korea is a country of origin and transit for trafficking in persons. Young female Koreans are trafficked primarily for sexual exploitation, mainly to the United States, but also to other Western countries and Japan. Female aliens from many countries, primarily Chinese women, are trafficked through Korea to the United States and many other parts of the world. In addition to trafficking through the air, much transit traffic occurs in South Korean territorial waterways by ship.

While South Korea is a leader in the region on human rights and democracy generally, the Government has done little to combat this relatively new and worsening problem of trafficking in persons. Although it does prosecute alien smuggling activities such as visa fraud and possession or sale of fraudulent civil documents, there are no laws that specifically address trafficking. There are statutes against kidnapping and sale or purchase of sexual services with a juvenile, and maximum penalties for these are commensurate with those for rape. Although corruption occurs, there is no evidence that government officials are involved in trafficking in persons. Aliens are treated as immigration violators and deported. No government assistance is available for trafficking victims or to support NGO's involved in assisting trafficking victims.

【국문 번역】

대한민국(제3등급)

한국은 인신매매의 발생국이자 경유국이다.

한국의 젊은 여성들이 주로 성적 착취의 대상으로서 미국을 비롯한 서방국가 및 일본으로 매매되고 있다.

여러 국가 출신의 외국여성(주로 중국여성)들이 한국을 통해 미국과 세계 다른 많은 지역으로 매매되고 있다.

인신매매에는 항공편 이외에도 선박을 이용하여 한국 영해를 경유하는 방법이 이용되고 있다.

비록 한국이 아시아에서 인권·민주주의의 선도국이지만, 한국 정부는 비교적 최근에 부상한 문제로서 점차 상황이 악화되고 있는 인신매매 문제에 대해 거의 아무런 대응을 하지 않아 왔다.

비록 한국정부가 비자위조, 위조서류 소지나 거래를 이유로 한 불법 입국과 관련된 범죄를 단속하고는 있으나, 인신매매 자체를 특정하여 다루는 법률은 없다.

한국에서는 청소년을 대상으로 하는 유괴, 매매춘을 금지하는 법률이 있으며, 관련 범죄자는 강간범에 준하는 최고 형벌에 처한다.

비록 부패사태가 있기는 하지만 공무원이 인신매매에 관여하고 있다는 증거는 없다.

인신매매 피해 외국인들은 불법 입국자로 취급되어 추방되고 있다.

인신매매 피해자 또는 동 피해자를 지원하고자 하는 NGO에 대한 정부의 지원은 없다.

美 국무부 인신매매 보고서에 대한 외교부 대변인 성명
(2001. 7. 13)

1. 우리정부는 미 국무부가 7.12(목) 발표한 「인신매매 보고서」가 사전에 면밀한 확인 절차도 거치지 않은 채 우리나라내 관련상황을 부정적으로 서술한데 대해 깊은 유감을 표하며 아울러 각국의 상황을 분류하면서 우리나라를 제3그룹에 포함시킨 것을 받아들일 수 없다는 점을 분명히 밝히고자 함.
2. 우리나라는 인권존중의 원칙아래 특히 취약계층 인권보호를 중시하면서 인신매매의 예방과 처벌, 피해자 보호와 지원을 위한 국내입법을 충분히 구비하고, 관련 국제협약에도 가입하고 있으며, 인신매매 행위 단속을 위한 최대한의 노력을 해오고 있음.
3. 이와 같이, 우리정부는 우리나라가 미국의 「인신매매 및 폭력피해자 보호법」이 제시하고 있는 인신매매 철폐를 위한 최소한의 기준을 대부분 충족하고 있다고 보며, 따라서 미국정부가 우리나라내 상황이 정확히 반영되도록 동 보고서를 조속히 수정할 것을 촉구함.

**Statement by MOFAT Spokesman on the Trafficking in Persons
Report by US State Department**

The Government of the Republic of Korea deeply regrets that the Trafficking in Persons Report, announced by the United States State Department on July 12, 2001, has negatively described the related situation in the ROK without previously undergoing thorough steps to ascertain the truth. In addition, the ROK government clearly expresses its position that it can not accept the fact that the ROK had been included in "Tier Three" in the categorization of each country according to the situation.

Under the principle of respect for human rights, the ROK has endowed particular considerations to the protection of human rights of the vulnerable group, and is adequately prepared with domestic laws to prevent and punish trafficking in persons and protect and support the victims. The ROK has also joined related international treaties, and is exerting utmost efforts to crack down on trafficking in persons activities.

Therefore, the ROK government is of the view that the ROK satisfies most of minimum standards to crack down on trafficking in persons as proposed by the "Victims of Trafficking and Violence Protection Act 2000" of the United States, and demands the US government to correct the aforementioned Report at an early date, so as to accurately reflect the situation in the ROK.

Spokesman of MOFAT

美 國務部 「人身賣買 報告書」檢討 및 向後 對策 (法 務 部)

1. 「人身賣買 報告書」의 背景 및 內容

□ 7. 13.(금) 美 國무부는 2000년 10월 제정된 「인신매매 및 폭력 피해자 보호에 관한 법률(the Victims of Trafficking and Violence Protection Act of 2000)」에 따라 「인신매매 보고서(U.S. 2001 Trafficking in Person Report)」 발표

□ 동 보고서는 세계 82개국의 인신매매 실태 및 동향을 조사하고 그 결과 우리나라를 인신매매가 심각한 3등급 국가로 분류

※ 보고서 중 한국 관련 내용

- 한국의 젊은 여성들이 미국 등 서방국가 및 일본으로 매매되고 있으며 여러 국가 출신의 여성들이 한국을 통해 미국 등지로 매매되고 있음.
- 한국 정부는 인신매매 문제에 거의 아무런 대응을 하지 않고 있음.
- 불법 입국과 관련된 범죄를 단속하고는 있으나, 인신매매 자체를 특정하여 다루는 법률은 없음.
- 인신매매 피해 외국인들을 보호함이 없이 불법 입국자로 취급하여 추방하고 있음.

2. 同 報告書의 問題點

□ 한국정부가 인신매매 문제에 대해 아무런 대응을 하지 않아 왔다는 내용에 대하여

◆ 우리나라는 검찰, 경찰 등 수사기관의 수사력을 집중하여 부녀자나 아동 등의 인신매매와 관련된 각종 범죄행위에 대한 강력한 단속활동을 전개하는 등 인신매매 문제에 지속적이고 적극적으로 대처하여 왔음.

○ 강력한 단속활동과 엄중한 처벌 병행

- 우리 정부는 인신매매와 관련된 각종 범죄행위를 국민의 인권을 침해하고 사회질서를 저해하는 중대 범죄로 간주하고, 지속적이고 강력한 단속활동을 실시함과 동시에 관련자들을 엄중 처벌하는 등 인신매매 근절을 위해 노력하여 왔음.

※ 주요 단속 사례

- 관광목적으로 러시아 여성 4명을 입국시킨 후 윤락을 알선한 국내 윤락조직 적발 등 관련자 12명 검거(98. 11.)
- 국내에 러시아 윤락여성을 공급한 러시아 마피아 일원 등 3명 적발(99. 12.)
- 러시아 마피아 조직으로부터 윤락여성을 공급받은 국내 보도조직 5개파 12명 검거(2000. 1.)
- 러시아 여성 3명을 고용하고 윤락행위를 강요한 조직폭력배 2명 검거(2001. 2.)
- 우즈베키스탄 등지에서 윤락여성 27명을 모집하여 국내로 입국시킨 조직원 4명 검거(2001. 5.)
- 채무변제 명목으로 부녀자 등 10명을 멕시코로 송출하려던 일당 4명 검거(2001. 5.)

※ 인신매매 사범 단속 실적(약취·유인사범)

()는 구속인원

연 도	1998	1999	2000	2001(1~6월)
단속인원	611(192)	567(151)	789(148)	342(65)

○ 따라서 한국정부가 인신매매 문제에 대하여 아무런 대응을 하지 않아 왔다는 보고서의 내용은 부당함.

□ 인신매매 자체를 특정하여 다루는 법률이 없다는 내용에 대하여

◆ 현재 우리나라는 형법, 특정범죄가중처벌등에관한법률, 윤락행위등방지법, 아동복지법, 청소년보호법, 청소년의성보호에관한법률, 직업안정법 등에서 부녀자나 아동의 매매 등 인신매매 행위를 처벌하고 피해 여성 등의 보호·구제에 만전을 기하고 있음.

○ 인신매매에 대한 강력한 처벌 법규 보유

- 현재 우리나라는 형법이나 특별법을 통하여 인신매매 범죄를 피해자의 인권을 침해하고 사회질서를 저해하는 중요 형사범죄로 간주하고 이에 대해 강력히 처벌하고 있음.

▲ 형법

- 288조 2항 : 추업(醜業) 사용목적 부녀자 매매행위 처벌(1년~15년의 징역)
- 289조 1,2항 : 국외이송 목적 부녀자 등 매매, 매매된 부녀자 등 국외이송 행위 처벌(3년~15년의 징역)
- 292조 : 매매된 부녀자 등 수수·은닉행위 처벌(7년 이하의 징역)

▲ 특가법

- 5조의2, 4, 8항 : 형법상의 인신매매 가중처벌(무기, 5년~15년의 징역)

▲ 아동복지법

- 29조 : 아동 매매, 음행 강요, 음행 매개행위 처벌(10년 이하의 징역)

▲ 청소년보호법

- 49조의 2, 3, 4조 : 청소년의 성적 접대행위 알선·매개, 음란행위 강요 등 처벌(1년~10년의 징역)

▲ 청소년의성보호에관한법률

- 6조, 7조 : 성매수, 성행위의 강요·장소제공·알선 및 자금·토지의 제공 등 처벌(3년이상 또는 5년 이상의 징역)
- 9조 : 성적 목적 청소년 매매, 국외 이송, 국내 이송 처벌(무기 또는 5년 이상의 징역)

▲ 윤락행위등방지법

- 25조 : 윤락행위 장소 제공, 알선행위 등 처벌(3년 이하의 징역)

- 특히, 인신매매 범죄에 대한 법정형을 대폭 상향하여 관련자들을 가중 처벌하고, 외국에 유례가 없을 정도의 강력한 처벌 법규를 계속하여 제정하는 등 적극 대처하여 오고 있음.

○ 인신매매 피해자에 대한 보호제도 구비

- 아동복지법, 청소년보호법, 청소년의성보호에관한법률, 윤락행위등방지법 등 특별법을 제정하여 인신매매 부녀자 및 아동에 대한 보호·구제에 적극 대처하여 오고 있음.

▲ 아동복지법

- 보호치료시설, 직업훈련시설, 단기보호시설, 자립지원시설 등 인신매매 피해 아동 등의 보호·구제를 위한 아동복지시설 설치·운영(제16조)

▲ 청소년보호법, 청소년의성보호에관한법률

- 청소년보호위원회를 설치하고 이를 중심으로 청소년 보호센터, 청소년 재활센터의 운영 등 청소년 관련 인신매매 방지 대책을 강력히 추진(청소년보호법 제4장, 청소년의성보호에관한법률 제16조)

▲ 윤락행위등방지법

- 피해 부녀자를 위한 일시보호소, 선도보호시설, 자립자활시설, 여성복지상담소 등을 설치·운영하도록 하여 피해 부녀자들의 보호 및 구제 업무 적극 수행(제11조~제18조)

- 따라서 인신매매 처벌에 대한 단일 법규가 없다고 하여 한국에 인신매매 처벌에 관한 직접적인 법률이 없다고 평가한 보고서 내용은 부당함.

□ 인신매매 피해 외국인들을 불법 체류자로 취급하여 추방하고 있다는 내용에 대하여

◆ 현재 우리나라는 외국인 윤락여성들에 대하여도 보호와 지원을 위한 각종 제도를 시행하고 있으며, 윤락여성들을 형사처벌하지 않고 본국에 송환함으로써 그들의 인권보호를 위해 적극적으로 대처하고 있음.

- 동 보고서는 국내에서 문제되고 있는 러시아 여성의 윤락행위에 대한 정부의 대처가 단순히 국외추방에 그칠 뿐 이들에 대한 보호 및 구제조치가 미흡하다는 판단을 전제하고 있는 것으로 보이나,
- 위에서 언급하고 있는 바와 같이 한국 정부는 현재 윤락행위등방지법에 따라 윤락 여성의 보호와 지원을 위한 각종 제도를 시행하고 있으며 그 과정에 국내인과 외국인에 차별을 두고 있지 않고 있음.
- 다만, 그 동안 적발된 러시아 등 외국인 윤락여성 등은 대부분 자의의사에 따라 돈을 벌기 위하여 불법으로 국내 입국한 것으로 인신매매의 피해자라고 볼 수 없어 출입국관리법 등 관련 법령에 따라 관련 외국인 여성들을 본국으로 송환한 것으로서,
- 오히려 외국인 여성들을 불법체류, 불법취업 등으로 처벌하지 않고 본국에 송환함으로써 그들의 인권을 적극 보호하였음.
- 따라서 외국인 윤락여성을 인신매매 피해자라고 단정하고 이들에 대한 보호조치가 미흡하다고 평가함은 부적절함.

□ 기타 인신매매 근절 및 피해자 보호를 위한 조치

- 각종 인신매매 관련 국제협약 가입
 - 2000. 9. 6. 「아동매매·아동매춘 등에 관한 아동권리 협정의정서」에 서명
 - 2000. 12. 13. 「국제연합 국제조직범죄 방지협약」 및 「여성 및 아동의 매매 예방·억제·처벌 등과 관련된 인신매매 방지 의정서」에 서명
 - 2001. 3. 29. 「아동노역 근절을 위한 즉각행동 및 금지에 관한 ILO규약」 비준

○ 국제적 수사공조활동에 적극 노력

- 99. 8. 중국인 부녀자 등 131명을 한국 선박에 태우고 캐나다 불법 입국을 시도한 한국인 선주를 구속 처벌하고 공범들에 대한 캐나다 수사당국의 수사활동 적극 지원
- 「국제형사사법공조조약」 및 「범죄인인도조약」 체결국가를 지속적으로 확대하고 인신매매 범죄자를 일반 범죄자와 동일하게 인도하도록 규정

○ 인신매매 관련자들에 대한 출입국 상황 철저 감시

- 인신매매 관련자들의 출입국 상황에 대한 철저한 감시와 불법행위 발견 시 신속한 수사로 인신매매행위 사전 차단활동 적극 전개

○ 인신매매 피해자들에 대한 형사미입건 조치

- 경찰 등 수사기관에서 인신매매 피해여성들에 대하여 형사입건하지 않고 보호센터 등 관련 기관에 보호 의뢰

○ 인신매매 피해자들에 대한 법률구조

- 인신매매 피해자의 피해회복을 위한 형사 고소 및 민사상 손해배상 청구에 대한 무료 법률구조 활동 실시

3. 向後 對策

□ 미 행정부 및 의회에 한국 정부의 입장 전달 및 시정 촉구

- 美 국무부로부터 우리나라를 3등급 국가로 분류한 구체적인 근거자료 등을 입수하는 대로 이를 분석하여 우리 정부의 입장을 종합·정리한 공식문서를 작성, 외교경로를 통하여 美 행정부 및 의회에 제출
- 미 행정부 및 의회 관계자를 접촉, 동 보고서의 오류를 지적하고 인신매매 근절을 위한 우리 정부의 노력과 활동을 설명하는 등 보고서 시정을 위한

활동을 강력 전개

※ 금번 보고서에 관한 정보입수 직후 곧바로 외교 경로를 통하여 미국에 반박 자료를 제출하고 시정을 촉구하는 한편, 2001. 7.27. 미 국무부 인권차관보 방한시 우리 정부의 입장을 설명하고 조속한 시정을 재촉

- 향후 발행될 「인신매매 보고서」에 우리나라의 실태가 제대로 반영될 수 있도록 사전에 미 국무부에 우리나라의 인신매매 관련입법 및 단속 현황 등 자료 제공

□ 대책회의의 정례화

- 매년 6.1 발행될 예정인 「인신매매 보고서」에 효율적으로 대처하기 위하여 법무부 차관 주재로 외교통상부, 여성부, 국정홍보처, 경찰청 등의 담당 국장이 참여하는 대책회의 상설화
- 관계부처간 긴밀한 협조로 인신매매 보고서에 우리나라의 실태가 정확히 반영될 수 있도록 범정부적·효율적 대처체제 구축
 - ※ 2001. 7.15 법무부 대회의실에서 법무부 차관 주재로 외교통상부, 여성부, 국정홍보처, 경찰청 담당 국장 등이 참석한 「인신매매 방지를 위한 유관기관 대책회의」를 개최, 향후 정부의 대책 등을 논의

□ 인신매매 사범에 대한 강력한 단속 및 엄중 처벌

- 국내 여성의 해외송출·취업이나 러시아 등 외국 여성의 국내 취업 과정에서 인신매매 사례가 없는지 등을 철저히 조사·점검
- 각급 검찰청에 설치된 「민생침해사범 합동단속반」을 적극 가동하여, 약취·유인, 윤락여성의 해외송출 및 국내이송, 성행위 강요, 감금 등 인신매매와 관련된 각종 불법행위에 대한 단속활동 강화

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