

Finalized Draft Kathmandu Declaration, 2019

Outcome Document of *International Conference on Protection of Rights of the Migrant Workers*

Kathmandu, 12-14 November 2019

The International Conference on Protection of Rights of the Migrant Workers held under the auspices of National Human Rights Commission of Nepal (NHRC, Nepal) on 12-14 November 2019 in Kathmandu produced an outcome document in the form of Kathmandu Declaration, 2019. Migrant workers comprise about two-thirds of all migratory flows in the contemporary world and constitute an important pillar of international migration. South-South migration is growing as a predominantly intraregional phenomenon in the Asia-Pacific region and elsewhere. It calls for our common interest and attention. The Global Compact for Safe, Orderly and Regular Migration (GCM), 2018 provides an unprecedented opportunity for reforms in governance of international migration, including movement and mobility of migrant workers in a more organized manner. With a view to seizing this opportunity, the NHRC, Nepal hosted this conference inviting participants from among National Human Rights Institutions (NHRIs), Government Organizations, UN and Specialized Agencies, Non-Government Organizations, Civil Society Organizations, experts, practitioners, academicians and intelligentsia.

The conference held extensive discussion on various challenges and prospects for protecting rights of the migrant workers through all stages of the migration process, particularly focusing on the situation obtaining in South-South migration in the Asia-Pacific Region. Cooperation and partnerships based on international legal and cooperative frameworks as well as synergy between human rights mechanisms and joint political commitments were deemed effective tools for protection of migrant workers' rights.

We, the participants of the Conference,

Welcoming the efforts of the NHRC, Nepal to convene the International Conference on Protection of Rights of the Migrant Workers on November 12-14, 2019 in Kathmandu, in pursuance of its similar effort in 2012¹,

Reaffirming the Universal Declaration of Human Rights, 1948 and other human rights instruments agreed by States, including International Covenant on Civil and Political Rights (ICCPR), 1966; International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966; Convention on Elimination of All forms of Discrimination Against Women (CEDAW) 1979; International Convention on the Protection of the Rights of All Migrant Workers and their Families (ICRMW), 1990 ; other core human rights Treaties and Protocols; relevant

¹ International Conference on Cooperation between National Human Rights Institutions (NHRIs) for the Promotion and Protection of the Rights of Migrant Workers

International Labour Organization Conventions and other regional human rights instruments and mechanisms,

Reiterating the principles espoused by Vienna Declaration and Programme of Action, 1993 that all human rights are universal, interdependent, indivisible and interrelated and the international community must treat all human rights globally in a fair and equal manner,

Welcoming the precedent setting approaches that the Global Compact for Safe, Orderly and Regular Migration (GCM) (A/73/L.66) has taken, including broad-based, people-centered, human rights-oriented, gender responsive and child sensitive, whole-of-government and whole-of-society approaches in international governance of migration,

Acknowledging that the GCM is anchored in the existing international human rights instruments/mechanisms, rule of law and due process, international legal frameworks and development frameworks with political commitment such as 2030 Agenda for Sustainable Development, Addis Ababa Action Agenda, Paris Climate Agreement, and Sendai Framework for Disaster Risk Reduction,

Reprising Global Alliance for National Human Rights Institutions' (GANHRI) assertion that the implementation, follow up and review of the GCM objectives have to be comprehensive, coherent with existing human rights obligations and mechanisms, transparent, participatory, inclusive and accessible.

And also acknowledging the commitment that GANHRI will be engaged with the respective processes at the national, regional and global levels in this regards, as specified in the statement adopted by its annual conference in March 2019.

Mindful that increased movement and mobility of people call for NHRIs' oversight and monitoring of potential human rights violations in cross-border contexts, including outside the territory of the Country of Destination (COD) and through increased cross-border cooperation,

Recalling the win-win development outcome well-governed labour migration can deliver to the countries of origin, transit and destination, and the imperative for ensuring safety, security and dignity of the migrant workers as rights holders and contributors to the mutually beneficial process,

Bearing in mind the international benchmarks to guide the migrant workers' recruitment process and ensure decent work, such as International Labour Organizations' (ILO) General Principles and Operational Guidelines for Fair Recruitment and International Organization for Migration's (IOM) International Recruitment Integrity System (IRIS),

Recognizing the ILO Declaration on Fundamental Principles and Rights at Work, 1998 which provides a list of inalienable and non-derogable rights to be respected in every workplace across the globe,

Reciprocating the UN General Assembly General Recommendation 26 on CEDAW adopted in 2008 which lays down legitimate reasons for special protection of the rights of women migrant workers in relation to the complexities of migration pathways and the foreign employment opportunities generally available to them,

Recalling the foundational and operational principles of ‘*protect, respect and remedy framework*’ set by the United Nations Guiding Principles on Business and Human Rights (A/HRC/17/31) that guides the respective roles and responsibilities of States and business enterprises in human rights protection,

Acknowledging the continuous emphasis on migrants’ human rights protection expressed by NHRIs through the outcomes of international conferences, including through Zacatecas conference, 2004; Seoul Conference, 2010; Kathmandu conference, 2012; GANHRI Annual Conference, 2019 in Geneva and the 12th Biannual Conference of Network of African Human Rights Institutions (NANHRI), 2019 in Cairo.

Taking into account the contributions made by Regional Consultative Processes such as the Colombo Process and the Abu Dhabi Dialogue and the Bali Process in addressing migration related challenges, as well as the SAARC Plan of Action on Labour Migration and the ASEAN Consensus on the Promotion and Protection of the Rights of the Migrant Workers, 2017,

Keeping in mind the large number of unskilled, low-skilled and semi-skilled migrant workers and migrant women workers originating from the Asia Pacific Region in particular,

Adopt the following:

1. Enhance institutionalized networking of NHRIs both at the bilateral and regional levels, within the NHRI as well as with external stakeholders to strengthen cooperation, collaboration and advocacy for respect and protection of rights of the migrant workers and their families.
2. Welcome the ongoing GANHRI initiative to be an active player in the GCM implementation, follow up and review by developing relevant goals and targets for application in oversight and monitoring activities of NHRIs in national and transnational situations.
3. Encourage Countries of Origin (COOs), Countries of Transit (COT) and Countries of Destination (CODs) to put in place effective grievance mechanisms both at the State and non-State levels, which can provide effective access to justice and remedies through judicial, administrative and operational level settlements, depending on the nature and extent of violations, irrespective of status.
4. Cooperate towards providing effective remedies to victims of rights violations in the migration process through measures such as complaints lodging, legal counseling, investigation, law enforcement by administrative authorities, adjudication at labour

courts or other courts of law, etc., irrespective of the status of migrants, victims of trafficking or smuggling, and their families.

5. Address the problems of discrimination and violence against women migrant workers such as trafficking and smuggling, physical and sexual abuse; labour exploitation, denying basic wages; subjecting to slavery and servitude like conditions; substandard health, safety and security, etc. that may take place in connection with the recruitment process and at workplaces by identifying and sanctioning the perpetrators.
6. Open more legal and safe pathways for prospective women migrant workers to achieve gender equality in migration by making special arrangements between the COOs and CODs with credible complaint and redress mechanisms.
7. Promote universal ratification of the International Convention on the Protection of the Rights of All Migrant Workers and their Families, 1990 as well as ratification of and accession to all human rights treaties and ILO Conventions that are relevant in protection of the rights of migrant workers.
8. Encourage COOs and CODs in signing new labour agreements or amend the existing ones in line with the relevant vision, guiding principles and objectives of the GCM in general and applicable ILO Conventions in particular to ensure respect for human rights in all stages of migration.
9. Promote skill migration to match market demand, and bring employer pay principle as commitment to protecting and respecting the rights of the unskilled, low-skilled and semi-skilled migrant workers, including migrant women workers to free them from debt bondage, forced labour and modern slavery.
10. Identify and address with specific measures the existing gaps and inconsistencies in the migration policy and regulatory systems of the COOs and CODs that may cause adverse impact on human rights.
11. Promote the use of standard job contracts specifying the terms and conditions of employment which can be electronically monitored by authorities in both CODs and COOs, and eliminate non-consensual contract substitution, withholding of identity documents and underpayment or delayed payment of wages and hindrance to local mobility.
12. Enhance institutionalized mechanisms of regular contacts and collaboration between and among consular officials/labour attaches of the COOs with the law enforcement authorities of the CODs to effectively address any violations of rights, exploitation or abuse of the migrant workers.
13. Extend the legal aid programs to migrant workers who are suffering criminal or civil charges.

14. Empower migrant workers with comprehensive information and orientation packages at all stages of the migration cycle, including at pre-departure, on arrival, at work and on return, and ensure that they understand their rights and responsibilities clearly.
15. Follow and advocate international benchmarks recommended by the ILO Guidelines for Fair Recruitment and the IOM International Recruitment Integrity System (IRIS) to make recruitment process an essential first step in the rights protection of the migrant workers.
16. Eliminate overcharging, forgery and deceit in the recruitment process through collective oversight and monitoring of manpower agencies by relevant State law enforcement authorities, NHRIs, trade unions and civil society organizations.
17. Encourage employers and their respective recruitment agencies working both in COOs and CODs to adopt human rights due diligence to address, mitigate and eliminate adverse effects on human rights due to their activities.
18. Respect the human rights of migrant workers under risk or vulnerable situations due to adversity in visa status, work status or health conditions and take measures under the Rescue, Repatriation, Rehabilitation and Reintegration (4R) principle with shared responsibility of the receiving, sending and transit countries, respectively.
19. Strengthen cooperation with the Special Rapporteur on the Human Rights of Migrants and other Special Procedure Mandate Holders in implementing their key recommendations.
20. Commit to enhancing the role of NHRIs at the subnational, national, bilateral and regional levels in expanding their education and awareness campaigns about the importance of migration for sustainable development and the protection of the rights of the migrant workers.
21. Cooperate with stakeholders to ensure that rights of the migrant workers in irregular situations in the CODs are protected and they have access to justice.

Plan of Action

1. Continue signing agreements between NHRIs at the bilateral and regional levels for facilitating joint cross-border oversight and monitoring of human rights of migrant workers, including women migrant workers, irrespective of their status.
2. Identify, investigate and report for correction any gross violence, discrimination, exploitation and abuses committed against labour migrants through all phases of migration, capitalizing on NHRIs network.

3. Hold regular policy dialogues on migrant rights, engaging the governments and other relevant stakeholders of the COOs, COTs and CODs, including representatives of the migrant workers.
4. Expand networks of NHRIs with government organizations, Civil Society Organizations, Trade Unions, Lawyers' Organizations, Regional Lawyers' Networks, Business Councils, Chambers of Commerce and Industries, migrants' organizations, migration experts, academicians, and other relevant institutions and persons for instituting credible and effective State and non-State based grievance mechanisms easily accessible to all relevant linguistic groups of migrant workers.
5. Work towards providing transitional stay permit and legal aid to the migrant workers who have fallen victim to gross human rights violations at the hands of the employer or their agents, and ensure effective access to justice and remedy, including by creating firewalls between service providers and immigration in cases of irregular migration,
6. Undertake advocacy with the COOs for strengthening the legal support system, including the provision of the legal assistance, in their missions in the CODs, for effective access by migrant workers to grievance mechanisms that lead to redress and remedies. Facilitate collaboration between consular officials/labour attaches representing the COOs and law enforcement officials of the CODs for this purpose.
7. Periodically evaluate the migrant workers information systems instituted in the COOs and CODs, particularly in South-South migration and suggest measures for improvement.
8. Strengthen bilateral, regional or multilateral frameworks of cooperation of NHRIs for protection of rights of the migrant workers, and utilize them for exchange of information and best practices as well as developing strategy for joint action.
9. Undertake advocacy for policy and regulatory reforms, their harmonization and effective enforcement, institution building, exchange of expertise and knowhow as well as standard setting on a regional basis in matters related to protection of rights of the migrant workers.
10. Establish, strengthen and institutionalize respective NHRI Migrant programs specifically for human rights protection of the migrant workers with adequate capacity, resources, information and networking.

List of participants attached

Annexure – List of participating Countries.

1. Australia
2. Bahrain
3. Bangladesh
4. Colombia
5. Germany
6. Greece
7. India
8. Jordan
9. Kenya
10. Kuwait
11. Malaysia
12. Maldives
13. Mongolia
14. Morocco
15. Mauritius
16. Nepal
17. New Zealand
18. Oman
19. Pakistan
20. Philippines
21. Qatar
22. South Africa
23. Saudi Arabia
24. South Korea
25. Sri Lanka
26. Thailand
27. United Arab Emirates
28. United States of America