

International Conference on the Rights of Migrant Workers

(Nov 26-27, 2012, Kathmandu)



National Human Rights Commission of Nepal

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Prologue

We are happy to make public the report of the International Conference on the Promotion and Protection of the Rights of the Migrant workers organized by NHRC-Nepal from 26-27 Nov, 2012 in Kathmandu. The violation and abuse of the rights of migrant workers has been a critical issue across the world, and Asia and the Pacific Region in Particular. Considering the vulnerability of migrant workers NHRC Nepal perceived the need to hold dialogues and work in solidarity and larger cooperation with the NHRIs of the Region. The Conference has enabled us to discuss on pertinent issues of mutual concern.

We adopted the Kathmandu Resolution as a product of the Conference. With this we have added an obligation to ourselves to respect, follow and implement the resolution in the future. The success of the Conference would indeed stand on the level of respect and implementation of the resolution.

We take this opportunity to extend appreciation to the Chairpersons and Commissioners of the NHRIs of the Region for their participation, and providing insights to guide the Conference. We also extend our appreciations to the participating governments, International Organization for Migration, professional organizations, CSO, media and academia in the Conference. Their facilitations, input and feedbacks have tremendously helped enrich the conference.

Last but not the least we thank to all those who involved in the process including NHRC-Nepal staff, and others assisting us from behind the scene as well. Without all those support the Conference would not have been successfully accomplished.

National Human Rights Commission of Nepal

Dec 10, 2012

Acronyms

APF	Asia Pacific Forum of National Human Rights Institutions
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women, 1979
CMW	Convention on the Promotion and Protection of the Rights of the Migrant Workers and their Families, 1990
CSO	Civil Society Organization
EPS	Employment Permit System
GCC	Gulf Cooperation Council
GDP	Gross Domestic Product
HRD	Human Rights Defenders
ILO	International Labor Organization
IOM	International Organization for Migration
MOU	Memorandum of Understanding
NGO	Non-Government Organization
NI	National Institutions for Human Rights
NHRC	National Human Rights Commission
NHRI	National Human Rights Institution
SAARC	South Asian Association for Regional Cooperation

Preliminaries

The National Human Rights Commission of Nepal organized International Conference on the Cooperation of NHRIs for the Protection and Promotion of the Rights of Migrant Workers in the Asia Pacific Region on 26-27th Nov 2012 in Kathmandu. The President of Nepal Dr. Ram Baran Yadav inaugurated the Conference by lighting the lamp. The participants of the conference comprised the representatives of various NHRIs, governments, academia, NIs, CSOs and recruitment agencies. By the end, the Conference adopted the resolution on the promotion and protection of the rights of the migrant workers. The following is the report of the conference deliberation.

Introduction

Migration is a common phenomenon. The human movement in history primarily took place for the reason of safety, security and survival. In order of evolution, people began to migrate in search of better lives. The expansion in international trade and transport facilitated the process of migration abroad. The emerging development trends in line with globalization of economy expanded the ways for international migration. In the recent times, foreign employment has become greater force of development for both sending and receiving countries. The migration has, therefore, become a common human behavior today. The main causes of migration comprises armed conflict, better livelihood, calamity, discrimination, economy, education, environmental effects, ethnic problems, disease, fear, violence, social security and so on.

The countries in the Asia Pacific region fall under the category of either sending or receiving migrant workers. South Asian countries namely Bangladesh, India, Nepal, Pakistan and Sri Lanka are sending large number of workers abroad. Currently, Nepal alone contributes with estimated three million male and female workers to the international job market.

As many as twenty countries in the region are receiving millions of migrant workers. Around equal number of countries are sending their nationals to work abroad as well. The situation of migrant workers and their families therefore has become a contemporary human rights issue in the region. The NHRIs and human rights communities of the region also evidently show concerns for the protection and promotion of migrant rights. The major issues of concern are death and injury in the transit and workplace, fear, indignity, discrimination, xenophobia, servitude, denial

of salary, sexual abuses and health hazards. Additional issues of concern include corruption, inhumane treatment in the process of arrest, detention/deportation; exploitation by traffickers, people smugglers and recruitment agents among others.

Pretext

The aim of the event was to identify key issues and challenges in the protection and respect for the rights of migrant workers. The event also aimed at identifying good practices followed by the countries in the region, and share the lessons learnt by each NHRI. The event also intended to explore possible areas of cooperation between NHRIs of the region.

The majority seeking foreign employment from developing countries comprised with poor, unskilled and disadvantaged population. The employment of hazardous condition is usually assigned to that category of foreign workers. The experiences recounted by the migrant workers reflect that nature of work assigned to a number of them seem to be difficult, dangerous, dirty and denied (to native people). Migrant workers in those situations would often be at the risk of rights violation. The migrant workers being an unavoidable force for development, the respect for their rights is equally important issue of international concern.

The exploitation and abuses of migrant's rights is the topic of current daily news. The discrimination between the natives and migrant workers of different nationalities is another issue of concern. The security concerns, ill treatment and lapses in basic livelihood issues among others fall within the ambit of migrants and their rights today. In this context, NHRC-Nepal organized international conference entitled '*Cooperation of NHRIs for the Protection and Promotion of the Rights of Migrant Workers in the Asia Pacific Region*'.

Participation

The conference participation was open to the representatives of NHRIs of South Asia, Middle East and the Asia Pacific. The representatives of the relevant ministries of the governments of South Asia, Middle East and Asia Pacific and human rights organizations working on the issues of migrant workers were also welcomed to participate in the conference. In addition, the NIs, CSO, academia, foreign employment agencies and international organizations were welcomed to participate in the conference.



NHRIs international representatives participating in the international conference on the protection of the rights of migrant workers

The NHRIs of Afghanistan, Bangladesh, India, Maldives, Nepal, Qatar, South Korea and Sri Lanka participated in the conference. The governments of Malaysia and Nepal, National Women Commission, International Organization of Migration, academia, civil society representatives, human rights defenders and recruiting agencies comprised the participants (see annex-1).

Lessons Learnt

The increased trend of transnational movement of migrant workers and violation of their rights drew the attention of international community. The United Nations, European Union, IoM, and APF of NHRIs among others have repeatedly shown their concerns on the issue. The UN treaty bodies, Human Rights Council and special procedures played significant role by developing principles and creating platform for debate at the international level. The APF of NHRI coordinated member NHRIs and created forum for debate on the issue.

The Colombo Process, which started in 2003, has developed a common forum to look into the rights and interests of migrant workers. The process mainly focuses on the issue of trafficking in persons in the region. The eleven Asian countries along with some observers from destination countries participated in the main events of the process. The Jakarta process of July 2006 focused on the issue of women foreign migrant workers and migrant workers in irregular situations. Those workers are considered most disadvantaged among the migrants. The Abu Dhabi Dialogue of 2008 represented by nine Asian receiving countries and six GCC countries has shown concerns on various aspects of rights of migrant workers.

The International Conference on Human Rights of Migrants in Multicultural Society held in Seoul in 2008 adopted the Seoul Guidelines. The Guidelines identified the principal areas of cooperation and action plan for NHRIs of the region. The Seoul Conference recognized urgent need to develop strategies and action oriented guideline to promote cooperation between NHRIs in addressing challenges identified in the Conference. The Conference also encouraged to promote regional cooperation among NHRIs wherever relevant.

The APF of NHRIs in its 14th annual conference held in Amman, Jordan in 2008 extensively discussed on the issue. The meeting agreed to form APF Working Group on Migration. The working group was represented by Korea (North East Asia), Indonesia and Malaysia (South East Asia), Nepal (South Asia) and Jordan (Arab Region).

Continuing Efforts

In the recent years, NHRC-Nepal has been instrumental for promotion and protection of the rights of migrant workers. The NHRC entertains complaints handling, monitoring and investigation on the violation of the rights of migrant workers.

The NHRC holds dialogue with the government at different levels for legal and policy reforms and responding to the grievances. It advocates and campaigns in collaboration with CSOs, NGOs, professional organizations and media on diverse issues including the concern relating to the ratification of CMW.

The NHRC through its office of the Special Rapporteur on the Trafficking of Human Persons develop, publish and disseminate national report on trafficking of human persons on annual basis. The report contains about the situation of migrant workers during the year.



The NHRC-Nepal organized a national workshop on the Protection of the Rights of Migrant Workers on 19 and 20 March 2012 in Kathmandu. The workshop endeavored to identify the situation of foreign labor migration, its challenges and ways forward for the protection of migrant rights. The workshop was also a preparatory event for the international conference. The NHRC therefore availed an opportunity to share findings of the national workshop in the international conference as well.

In 2010, NHRC Nepal concluded an MoU on the rights of the migrant workers with NHRC Korea. Recently NHRC Nepal has extended its expression of interest for MOU with some NHRIs of South Asia and Arab Region where large number of Nepalese migrants live to work. Based on the complaints of migrant workers, NHRC Nepal made direct correspondence to NHRIs of Afghanistan, India, Korea and Malaysia with a view to ensure their rights to safety and security. Some of those NHRIs have provided positive responses.

Preparatory Process

The NHRC-Nepal organized the conference to ensure larger cooperation and solidarity among NHRIs and governments of the region. As a part of preparatory process, a national workshop on the rights of the migrant workers was held in March 2012. In addition, separate consultations were held with the government officials, security officials, media and civil society representatives. A conference organizing committee headed by Director, Bed Prasad Bhattarai was formed. The committee comprised with directors, divisional/ unit heads and national project manager of SCNHRC Project. The UNDP/SCNHRC project provided financial and technical support for the program (see annex-2).

Inaugural

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The Right Honorable President of Nepal Dr. Ram Baran Yadav inaugurated the Conference amidst a gathering of chairpersons and members of NHRIs, senior officials of the government, members of diplomatic communities, heads of the security agencies, civil society representatives, human rights defenders and media representatives. In his inaugural remarks, the President observed that the event has created the space to address collectively on the common issue of the rights of migrant workers. The role of NHRIs would be instrumental and their larger cooperation would help increase the level of respect for the rights of migrant workers in the region and beyond, he said.

The President emphasized upon the need of ratification of CMW. The ratification of CMW creates obligation for the states to reform law, policy and mechanisms dealing with various issues. The migrant workers worldwide notably contribute to the development of home country and countries of destination. In the present economy of Nepal remittances constitutes nearly 23 percent of GDP. The President stressed upon the issues of vulnerability of migrant workers and especially the female domestic workers. Many of them are the victims of exploitation, abuse, fraud and cheating at different levels, from recruitment to their way back home. The time is ripe to work collectively in building larger cooperation on this common issue. He expressed the confidence that the NHRIs of the region can play vital role for the promotion and protection of the rights of migrant workers. He appreciated NHRC - Nepal for the initiative taken for the noble cause.

Justice Kedar Nath Upadhaya, Chairperson, NHRC-Nepal expressed his gratitude to Hon. President Dr. Ram Baran Yadav for his kind consent to inaugurate the conference. The President's observation will be taken into reference, wherever appropriate, during the conference deliberations, he added.

Justice Upadhaya observed that migration is a natural phenomenon. One out of 33 persons in the world is a migrant today. Reports show that the large number of migrant workers is the victim of misuse, discrimination and stigmatization for various reasons. In order to protect and promote the rights of migrant workers, robust universal campaign is the need of the day. He informed the audience that



Dr. Ram Baran Yadav, Right Honorable President of Nepal



Hon Justice Kedar Nath Upadhaya, Chairperson of NHRC-Nepal

NHRC Nepal has recommended to the government to ratify CMW. The CMW together with other international instruments provide very useful guidance in developing regional or bilateral norms. He also mentioned about the MoU between NHRC-Nepal and NHRC- Korea on the rights of migrant workers.

Justice Ram Nagina Singh, member of NHRC-Nepal, highlighted upon the scope and objectives of the conference. He observed that the conference aimed to identify key issues and challenges with regard to protecting the rights of migrant workers and explore ways to address them. In addition, the Conference aims to share experiences about best practices and lessons learnt by the governments and NHRIs, he added.

Justice Singh observed that migration is as old as human history. Recently it is associated with rapid economic growth. This is the right time to discuss on the issue and renew commitment to work together in developing common approach and collective strategy to help build a strong regional mechanism to protect the human rights of migrants. The Gulf countries have been receiving millions of foreign workers who have been contributing to the national economy of both sending and receiving countries. However, female migrant workers are at high risk and vulnerabilities in the absence of legal recognition of domestic work as labor and inadequate protection mechanism.

The migrant workers as human possess human rights and fundamental freedoms. However, migrant's rights are frequently violated by dominant section of society. Therefore, time has come to have dialogue with respective governments, NGO and human rights defenders to ensure protection and promotion of the rights of migrant workers and their families. He welcomed the President, both national and international delegates and participants, and thanked for their participation in the Conference.

The Regional Director of IOM Andrew Bruce said that migration is one of the key factors behind socio-economic development of South and South-West Asia, which has become one of the fastest growing sub regions in the world, economically. The South and South-east Asia comprise 42 percent of the population of the Asia Pacific Region. This is the largest remittance-receiving region in nominal terms. Over 40 percent of the officially recorded \$ 63 billion of remittance sent to the region in 2010.

He observed that migrant workers are coming from less developed countries and frequently suffer from human rights abuses, labor exploitation, debt incurred by the high costs of migration, other burden and risk of trafficking. Some



*Hon Justice Ram Nagina Singh,
Commissioner of NHRC-Nepal*

recruitment agencies have unethical hiring practices that exploit migrant workers both in countries of origin and destination. The CMW provides a robust tool that addresses specific vulnerabilities faced by migrant workers. The ratification and implementation of the CMW and other core international human rights instruments would be an important step towards ensuring greater protection of the rights of all migrants in South and South-east Asia. The SAARC Convention against Trafficking could serve as an instrument to address the problems of trafficking in person.

The labor migration can be mutually beneficial for employer and migrants as well, he stressed. In order to ensure mutual benefits, require well-managed migration that protects the rights of migrants, by empowering them through complete and accurate information. Mentioning about the ministerial level meeting of Colombo Process countries in Dhaka where participating countries agreed to cooperate and work together to ensure migrant's rights, he encouraged the countries of the region for effective implementation of all core international human rights instruments.



International Conference
on
Cooperation between NHRIs for the Promotion and Protection of
Human Rights of the Migrant Workers
26-27 November, 2012
Kathmandu, Nepal
National Human Rights Commission
Laligur, Nepal

Reflections

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Session- I: Situation and Challenges of Migrant Workers in the Asia Pacific

Moderator: Justice K.G. Balakrishnan, Chairperson NHRC- India,

Presentation: Andrew Bruce, Regional Director, IOM-Bangkok,

Commentators: Hon Mariyam Azra Ahmed, Chairperson, NHRC-Maldives and Prof Seongphil Hong, Korea

Andrew Bruce began with the opinion that we live in an interconnected world. The international community has to make serious efforts to protect the rights of all migrant workers and members of their families. The migrants from South Asia comprised significantly low/less-skilled workers. Approximately two million South Asians leave their countries every year to work abroad. Bangladesh, India, Nepal and Sri Lanka are the major countries of origin and the majority of them heads to the Middle East.

The labor trafficking and student mobility are emerging areas of migration. South Asia witnesses complex population movements including refugees, asylum-seekers, economic migrants, victims of trafficking, smuggled migrants, unaccompanied minors and other migrants. In the recent years, labor trafficking has emerged as a significant phenomenon in the region. Many of the countries have weak institutional and legal framework to combat trafficking.



Mr. Andrew Bruce, Regional Director, IOM-Bangkok

The migrant workers often have exercised fewer rights than the native population. They are deprived of civil, political, social, work/labor, children and women related rights, among others. The Kafala system in GCC sometimes limits alternatives to abusive and exploitative working conditions. There are challenges for countries of origin as well. There is dilemma of promoting overseas employment vs. protection of their workers abroad. They need to improve migration policy to ramp up human rights of migrant workers. The collaboration with receiving countries is very important to take responsibility for the protection of the workers. The involvement of civil society in promotion of migrant workers' rights is also essential as CSO can play crucial role for the protection and promotion of rights of migrant workers.



MrHwang, Sung Yong, NHRC-S.Korea

Prof Seongphil Hong, making his comments on the presentation, observed that the scenario shows that economically developed countries pull the workforce. Korea started receiving foreign workforce in 1980s. The countries of origin should make good supervision and monitoring during sending processes and destination countries must see whether their rights violated. The receiving countries must supervise the marriage practices to mitigate the potential harm caused to women workforce mainly coming to Korea. He, however, suggested that social issues such as divorce problem emerged through inter-country marriage have been looked into very seriously by NHRC-Korea.

Hon Mariyam Azra Ahmed, making her comments on the presentation, observed that the challenges faced by the migrant workers in Maldives are identical to those of other countries of the region. The prevalence of undocumented migrant workers has emerged as a challenge. Those migrant workers are enticed with big dream and they pay good amount of commission to the recruiting agents. The NHRC Maldives is having dialogue with regard to pervasive problems faced by migrant workers who have fallen prey of trafficking. She suggested that along with the issue of protection of rights of migrant workers, NHRIs may need to develop benchmarks in which mechanisms to combat pervasive issues of migrant workers may be included. The conference would open new avenues for renewed cooperation and collaboration for evolving strategies, she observed.

During Q/A session, Hon Mizanur Rahman, Chairperson NHRC- Bangladesh observed that we could not think the program as such would bring any fruitful results unless and until the countries of destination ratify CMW. The NHRIs



*Hon Mizanur Rahman,
Chairperson NHRC- Bangladesh*

making code of conduct and laying down the norms and rules would not help much since many countries have begun to realize the fact that government should be involved in the recruitment process of agencies. The recruitment agencies do not maintain ethical standards. The EPS system introduced by Korea is commendable. He suggested the governments should allocate fund for recruitment process in order to comply government policies by foreign recruitment agencies.

Som Luitel, an advocate representing National Network for Safe Migration- Nepal observed that the regional declarations or resolutions have little to do better for migrant workers as all the countries primarily look for their interests.

Bed Prakash Lekhak representing Department of Immigration-Nepal observed that substantial number of Nepali migrant workers is in vulnerable situation. Many of them are undocumented workers as well. Women migrant workers are abused and victimized more and therefore women below 30 are discouraged to work overseas particularly in the Middle East.

Surya Prasad Bhandari, representing Department of Foreign Employment-Nepal observed that Nepal has banned for four destination countries that provide paper visa to migrant workers. The government realized that paper visa has created problems including for safety and security of Nepali workers. Currently government is working for original visa and its verification through online system. In addition, mainly female domestic labors are found defrauded both in the country of origin and destination. The Kafala system might sound good but it has got basic demerit of being hired as bonded labor.

Sambhu Ghimire representing Ministry of Home Affairs-Nepal observed that problems relating to migrant workers be solved once receiving countries work hard on the issue meaningfully. The NHRIs can play meaningful role by working with respective governments, so expected things would happen sooner than later.

Manju Gurung representing Paurakhi Nepal suggested CEDAW / GR 26 need to take into account on the issue of women migrant workers during the preparation and adoption of Conference resolution.

Hon Mizanur Rahman, Chairperson NHRC- Bangladesh observed again that one is compelled to take decision to go aboard to seek fortune as a migrant worker due to economic condition. However, CMW is all the more like General Assembly resolution and the fundamental question is how binding it is, he observed.

Justice K.G. Balakrishnan by closing the session observed that considering the magnitude of problem, common efforts of the governments, NHRIs and other stakeholders is required. The NHRIs of the region should reinforce their efforts to respond to the challenge that has been widening day after day. The NHRC-India is interested to work on the issue with other NHRIs in the future as well, he said.

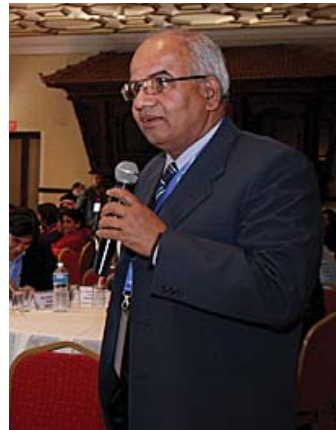
Session-II: Situation and Challenges of Migrant Workers: With Reference to Nepal

Moderator: *Hon Mizanur Rahaman, Chairperson NHRC- Bangladesh,*
Presentation: *Bishal Khanal, Secretary, NHRC-Nepal,*
Commentators: *Justice Priyantha Perera, Chairperson NHRC- Sri Lanka*
and Justice G.B. Mathur, Member, NHRC-India

Bishal Khanal began his presentation with the opinion that scope and extent of human rights has universal recognition. The migrant workers therefore are entitled to enjoy most of the rights and freedoms. Apart from some political rights as vote casting, contesting in election, participating in major political processes and acquiring citizenship, they are entitled to enjoy all civil, cultural, economic, political and social rights as equal to native people. However, the reality is different and most of the migrant workers experienced discrimination and denial of rights followed by rights abuses. Discrimination in pay, holiday, healthcare, housing, insurance, training, education is common. The labor law is discriminatory to migrant workers in terms of work conditions. At times, migrant workers are arbitrarily dismissed, evicted from house, travel documents seized and hundreds of them stranded under bridges and public places.

The freedom from fear is the dream for migrant workers in various countries. The freedom of conscience is almost lost. Women/men were compelled to perform the work that their conscience does not allow them to do. Reports on sexual exploitation of women increased and role of grievance mechanism deem substandard. A number of women return home with newborn, resulting from compelling sexual activities in helpless situations. The mental and physical torture or pain caused by the action of employer is common. The Kafala system prevalent in some Middle East countries equated to imprisonment. It ignores core values of the rights of workers.

The state commitments expressed at various regional initiatives via guidelines and other instruments as Colombo Process, Abu Dhabi Dialogue and Seoul Guidelines needs to take into account. As a follow up to the Seoul Conference on the Rights of Migrants Workers that adopted the Seoul Guidelines, APF of NHRIs annual Conference of 2010 held in Amman formed NHRIs Working Committee on rights of migrant workers represented by NHRIs of Indonesia, Jordan, Korea, Malaysia and Nepal. The NHRC-Nepal elected a member of the Working Committee representing SAARC. The Working Committee needs to be instrumental. Concluding the



*Mr. Bishal Khanal, Secretary,
NHRC-Nepal*

presentation, he observed that happiness with workers help increase productivity. Better respect for the rights of migrant workers increases happiness in migrant workers. That eventually benefits both employer and employees.

Justice Pryantha Perera, making comments on the presentation, observed that human rights problems in Sri Lanka are similar to Nepal. Sri Lanka has no foreign migrant force. The unskilled and semi-skilled Sri Lankan workers are facing some problems in gulf countries. The 1.2 million Sri Lankan migrated to work abroad in 2010. Violation of rights of female migrant workers is common in Middle East. The international organizations have to work more to safeguard the rights of migrant workers. In order to protect and promote the rights of migrant workers co-operation between NHRIs is essential.

Justice GB Mathur, making comments on the presentation, observed that semi skilled and unskilled workers are facing many problems. They have no freedom to return home because the employer is seizing their documents. He raised the issue of pay, healthcare, rights of under trials and so on. There is no enforcement of labor law and no right to trade union in Gulf countries. Giving glimpse of Nepalese labor migration to India he said when Nepalese workers go to work in India, they do not need passport and work permit.

During Q /A session, Manju Gurung representing the CSO gave emphasis to comply with the provisions of CEDAW also as regards the rights of women migrant workers.

Prof Ganesh Gurung of Tribhuban University asked whether women could be prevented to go abroad to work. Is their prevention fair in terms of human rights and fundamental freedoms?

Prof Niru Kumar Chakma of Dhaka University and Honorary Member, NHRC Bangladesh sought clarification that whether NHRIs manages rehabilitation facilities to the returned migrant workers in distress? Do any NHRIs have such facilities?

Hon. Thangarajah Edward Anandarajah, member of the NHRC Sri Lanka observed that the issue has been expanded as a global problem and the issue of international concern. South Asia is being a sending region; more or less we have similar nature of problems. It is, therefore, our concerted effort is very important to reduce the gravity of the problem. He also observed that in order to reduce the magnitude of the problem we need to respond to the related areas from where the rights of migrant workers are being abused. Those areas may include the security, labor management, recruiting companies and people around it among others.





Mr. Niru Kumar Chakma, Honorary Member of NHRC – Bangladesh

Shambhu Koirala representing Ministry of Home Affairs-Nepal highlighted on the security problems that the Nepali migrant workers are facing. He urged to work in solidarity with the governments, NHRIs and CSOs to combat the problem.

Bishal Khanal responding the queries said that we could not prevent women to go abroad to work. They have various rights as equal to men and those rights include right to movement, right to work, right to contribute to development processes, right to security and safety of life and property, including in workplace. The NHRC-Nepal has no rehabilitation facilities for returned migrant workers in distress. Some NGO and community based organizations have been providing temporary shelter and rehabilitation to the returned migrant workers in distress, he said.

We have not any information that any of the NHRIs of the region has such facilities. He encouraged participating NHRIS to mention if any of them have such facilities.

Hon Mijanur Rahman by closing the session observed that the initiatives like this would create a forum to perceive magnitude of problem and take further steps for the future. To address the issue of violation and abuses of the rights of migrant workers primarily receiving countries need to fulfill their human rights obligation. Until the ratification of CMW, the obligation is limited for them. The receiving countries belong to the elite club of nations, a number them do not intend to accept this obligation in full fledged manner. He therefore urged to the receiving countries to take obligation, as they are apparently the larger beneficiaries of migrant's work. As the poor people have dire need to work abroad for basic livelihood or survival and thus no one should take benefit from someone's economic compulsion. We should therefore endeavor to make larger participation of receiving countries to make our deliberation more meaningful, he said.

Session- III: Situation of Migrant Workers: Country Presentation-I (Afghanistan, Bangladesh and India)

Moderator: Justice Kedar Nath Upadhyay, Chairperson NHRC- Nepal,
Presentation: Justice K.G. Balkrishnan, Chairperson, NHRC-India; Md. Tajul Islam Chowdhury, Secretary, NHRC-Bangladesh, Hussain Ali Moin, Coordinator, Afghanistan Independent Human Rights Commission (AIHRC)

Hussain Ali Moin presenting the situation of migrant workers in Afghanistan observed that Afghanistan has experience of more than three decades long war. Millions of Afghans are fleeing for protection in neighbouring countries. The AIHRC is monitoring human rights situation of returned Afghan migrants.



The data presented on the status of human rights violation of returned migrant workers and Afghan refugees showed that 80% Afghan returnees from Iran are forced deportees. In May 2012, thirty three percent of Afghan arrested from workplaces, twenty percent from work homes, nineteen percent from highway and twenty percent from the market. The violation of human rights considered normal and happening repeatedly.

Md. Tajul Islam Chowdhury presenting the situation of migrant workers in Bangladesh observed that NHRC-Bangladesh is an independent statutory body that enjoys power equal to the courts for the purpose of investigation and inquiries on the issues of human rights violations. Bangladesh has ratified CMW and has been effective from Dec 1, 2011.



The Bangladeshi laws and policies that include the Constitution of Bangladesh, 1972, Emigration Ordinance, 1982, Emigration Rules, 2002, Recruiting Agent's Conduct and License Rules, 2002, Wage Earners' Welfare Fund Rules, 2002, National Policy on Expatriates' Welfare and Overseas Employment, 2006, Commercial Important Person Selection Rules, 2006 etc have endeavored to safeguard the rights of migrants.

The Bureau of Manpower, Empowerment and Training are the Key Role players for migrant workers. Bangladesh Association of International Recruiting Agencies and Bangladesh Overseas Employment Services Limited are other

major stakeholders and accountable for the protection of the rights and interests of migrant workers.

Justice K.G. Balakrishnan presenting the situation of migrant workers in India observed that migration is an important feature of human civilization. It reflects human being able to survive in most interesting conditions whether it is natural or man-made. In the context of globalization and opening of the world economy migration has taken an important space.

He presented the scenario of internal and external migration of India. In India 70-80 million people earn Rs.20 a day. Stating on internal migration he observed 60% of among migrants migrate to another district. 20% of migrants moves within their state and the rest migrates to other states in India. Out of total estimated 90 million migrants, 40 millions are in construction work, 30 millions in domestic works, 2 millions are engaged in other works like mining and fishing etc. Out of them, 22% is women/children, 20% of women is less than 14 years of age.



The socio-economic rights of migrants are at stake, he said. The migrant workers have no happy pictures. They do not have access to judiciary. There are many welfare legislations in India but their implementation is weak. He stressed on the need of ratification of CMW and urged the NHRIs to be vigilant in the cause of migrant workers.

Justice Kedar Nath Upadhyay by closing the session observed that we are benefited by learning good practices undertaken by different NHRIs. We also got an opportunity to learn the complex problems that NHRIs are facing. This is a good opportunity for all of us to update in developing common approach and framing strategies. Our engagement during the conference therefore would help us to develop better strategies to respond the issue in future, he said.

Session- IV: Situation of Migrant Workers: Country Presentations - II (Korea, Maldives, Sri Lanka and Qatar)

Moderator: Justice K.G. Balakrishnan, Chairperson, NHRC-India,
Presentation: Hon Hyun Byung Chul, Chairperson, NHRC-Korea);
Hon Mariyam Azra Ahmed, Chairperson, NHRC- Maldives; Justice
Priyantha Parera, Chairperson, NHRC- Sri Lanka; Hon Essa Rashed M A
Al-Kaabi, Member, NHRC- Qatar

Hon Hyun Byung Chul, presenting the situation of migrant workers in Korea, observed that there are few complaints on the rights of migrant workers filed at NHRC-Korea. The NHRC Korea receives around 120 complaints a year.

He mentioned about the International Conference on the Rights of Migrant Workers hosted by NHRC Korea in 2008. In the recent years, NHRC Korea has been supporting other NHRIs for the promotion and protection of the rights of migrant workers through training and capacity building initiatives. The NHRC Korea has been striving hard to ensure the rights of migrant workers in Korea. The NHRC Korea has a policy to work with other NHRIs on the issue of migrant rights in the future as well.



*Hon Hyun Byung Chul,
Chairperson, NHRC-Korea*



*Hon Mariyam Azra Ahmed,
Chairperson of NHRC - Maldives*

Hon Mariyam Azra Ahmed, presenting the situation of migrant workers in Maldives, observed that the Constitution of Maldives guarantees equal rights and freedoms to all people living in Maldives. Therefore, migrant workers may enjoy most of the rights equal to that of the other native people. Despite legal protection, the migrants face problems in Maldives as well. The migrant workers are provided with fewer facilities. Some of them are not getting pay for months despite the fact that they worked for many hours a day. At times, employers confiscate travel documents which is an unethical practice. They are provided inadequate health facilities. The migrant workers are mainly employed in construction and teaching sectors.

A number of migrant workers are either unskilled or less skilled. Maldives has signed 8 out of 9 international human rights core conventions. She urged NHRIs to work together on the issue.

Hon Essa Rashed M A Al-Kaabi, presenting the situation of migrant workers in Qatar, observed that various committees are formed under NHRI-Qatar to look upon the situation of migrant workers in Qatar. The committees frequently meet to discuss about the promotion of human rights. The committees also coordinate with the international organizations. In the event of violation of human rights, one can file the complaints to the Committee. The committee members would handle the complaints. The NHRI- Qatar has the right to enter into the work places to know the working condition of the labors. It also encourages the government to enter into agreements related to human rights.



*Hon Essa Rashed M A Al-Kaabi,
Member of NHRC - Qatar*

He said Qatar is a labor receiving country. The NHRI organizes some workshops to have discussion on the rights of migrant workers. NHRC-Qatar launched several educational programs to bring about public awareness on human rights. He emphasized that sending countries should provide pre-departure orientation to the workers. He suggested that the embassies or other officials of both the receiving and sending countries should duly counter sign the contracts. He encouraged having labor office in the embassies itself and the office can help the migrant workers.

Justice Priyantha Perera, presenting the situation of migrant workers in Sri Lanka, observed that NHRC-Sri Lanka is very much concerned on the promotion and protection of the rights of migrant workers. The Sri Lankan diplomatic missions as embassies, consulates and labor welfare offices play crucial role in protecting the rights of migrant workers in host countries. The NHRC- Sri Lanka minutely monitor the situation of migrant workers, network systems, regular visiting mechanism to safe house, condition of consular/labor welfare office and so on. In May 2012, there were 1.2 million Sri Lankan migrant workers in Gulf region, and the majority of migrants were female domestic workers.



*Hon Justice Priyantha Perera,
Chairperson of NHRC - Sri Lanka*

The violation of the rights of Sri Lankan women migrant workers is common in the entire cycle of migration. The Kafala system and Sharia law in GCC

can lead to exploitation of migrant workers in general and domestic workers in particular. Sri Lanka acceded CMW in 1996 and that came into force in 2003. In addition, Sri Lanka has ratified 40 ILO Convention. The non-ratification of CMW, existing Sharia Laws and the Kafala system are the main causes for the violation of the rights of migrant workers. There is ineffective networking at international level on irregular migration and trafficking. The national legislation on trafficking is also inadequate, he explored.

Justice K. G. Balakrishnan by closing the session observed that presentations have given insights on the problems and prospects for migration to work in different countries of the region. The country presentations show that in commonness of problem we have varied approaches to respond them. The presentations would help us to develop action plan and future strategies.

On behalf of the participants, he expressed condolence for the sad demise of 121 workers in an apparel factory in Dhaka on November 25, 2012. Also urged the Government of Bangladesh to take steps for necessary medical treatment for the injured workers, provide appropriate compensation to the victims and their families and adopt safety measures to avoid the recurrence of such incidents in the future.



*Hon Thangarajah Edward Anandarajah,
Member, NHRC-Sri Lanka*

Session- V: Role of NHRIs in Protecting and Promoting the Rights of Migrant Workers

***Moderator:** Prof Seong Phil Hong, Korea;*

***Presentation:** Hon Gauri Pradhan, Member, NHRC-Nepal,*

***Commentators:** Hon Mariyam Azra Ahmed, NHRC-Maldives, Chairperson, NHRC-India and Hon Essa Rashid M Al Kabib, Member, NHRC-Qatar*

Hon Gauri Pradhan in his presentation observed that migration is a global phenomenon that is shaped by a complex set of economic, social and political factors. However, migrant labor force is increasingly essential for the world economy. In the relevance of CMW and other core human rights conventions, he elucidated the role of NHRIs in promoting and protecting the migrant's rights. He strongly urged the NHRIs to play significant role to engage with states, CSO, human rights defenders, foreign employment related agencies, recruiting agencies and concerned bi-lateral and multi-lateral organizations to help promote and protect the rights of migrant workers everywhere.

The efforts of NHRIs can mitigate the suffering of migrant workers. The NHRI can help the migrant workers to lead for justice in the time of need. As their contribution for development is immensely essential for receiving countries and their earning reduces poverty in the sending countries, increased respect for the rights of migrant workers is unavoidable. In this context, the NHRIs have a duty to be vigilant over the cause of human rights of the migrant workers. Our solidarity in this cause among others is the need of the day as the century has a call for 'all human rights for all'.

Hon Essa Rashid M Al Kabib, Member, NHRI-Qatar opined that both sending and destination countries including via diplomatic channels should look into the matter of migrant workers. The sending countries should also make the environment for the workers to be skilled by educating and training before leaving their countries in order to mitigate the risk of violation of their rights in receiving countries. The NHRIs of course can contribute in this regard as well.



*Hon Gauri Pradhan, Member,
NHRC-Nepal*



*Hon Essa Rashid M Al Kabib,
Member, NHRI-Qatar*

Justice K.G. Balakrishnan, Chairperson of NHRC India requested all NHRIs to give priority to the protection of the rights of the migrant workers. He stressed upon the need of having a network of NHRIs to respond to the situation of violation of migrant rights.

During Q/A session, Dr. Renu Raj Bhandari, representing CSO, said that women migrant workers are abused in the receiving countries. The risk of collateral damage is on the rise. There is need of benchmarks and indicators for the respect of rights, which help measuring the level of protection of the rights of migrant's in particular countries. The CSOs are interested to work in this area and NHRIs should take the lead.

Bishal Khanal of NHRC-Nepal, upon the call of moderator to explain the desired achievements of the conference, responded that in the recent times incidents of human rights violation of migrant workers is reported incessantly increasing. The respect for their rights is, therefore, immensely important, as they contribute to the development of receiving countries and reducing poverty of their country and families. We therefore realized the need of building larger cooperation and solidarity among governments, NHRIs, NIs and CSO of the region to advocate and take further initiatives to prevent violation of the rights of migrant workers.



Dr. Renu Raj Bhandari, NGO Representative

Surya Prasad Bhandari representing Department of Foreign Employment-Nepal said that migrant workers are cheated in the destination countries due to discrepancy in the facilities stated in the advertisement in the sending country and contract document issued in the receiving country. The destination countries therefore should take note of this issue to get rid of such malicious act.

Hon Mizanur Rahman, Chairperson, NHRC- Bangladesh said that remittance contributed by the migrant workers constitute huge national economy. However, sadly enough, the media project migrant workers negatively in the event of crime committed by the migrant workers of particular country.

Dipak Dhital representing Ministry of Foreign Affairs -Nepal urged the receiving countries to look into problems of migrant workers as their work benefits the receiving countries. The sending and receiving countries therefore should develop necessary mechanism for the entire processes, from recruitment process of migrant workers including the process of their return. The NHRIs also need to work together to create situation to mitigate the risk of violation of the rights of migrant workers.

Som Luitel an advocate representing the civil society appreciated the conclusion of MoU between NHRC- Nepal and NHRC-Korea. This practice is exemplary and other NHRIs also should follow the practice, he stressed.

Prof. Seong Phil Hong, closing the session, observed that we have seen tremendous collaboration between the human rights institutions and organization working in the field of human rights. Let us hope that we will be successful in drawing the regional mechanism for the protection of the rights of the migrant workers. Let us take the rights of migrant workers as our own rights.

Session- VI: Preparation and Adoption of the Resolution

Moderator: Hon Gauri Pradhan, Member, NHRC-Nepal:

Draft Presentation: Surya Bahadur Deuja, Head, Collective Rights Division, NHRC-Nepal

A thirteen member working committee represented by NHRIs, Government, CSO and Academia formed to look upon the draft resolution prepared by NHRC-Nepal.

The committee comprised with Hussain Ali Moni-Afghanistan, Prof Niru Kumar Chakma-Bangladesh, Justice K.G. Balakrishnan- India, Sungyong Hwang-Korea, Hon Maryam Azra Ahmed-Maldives,

Shamun Hameed-Maldives, Hon Gauri Pradhan-Nepal, Bed Prasad Bhattarai-Nepal, Dr. Renu Rajbhandari- Nepal, Som Luitel-Nepal, Deepak Dhital-Nepal, Hon Salih HA Almarri-Qatar, Justice Priyantha Parera-Sri Lanka.

Surya Bahadur Deuja of NHRC-Nepal read out the draft resolution that the committee referred to the Plenary. Receiving feedback and input of participants the Plenary adopted the resolution.



A thirteen member working committee on the 'the Kathmandu Resolution' represented by NHRIs, Government, CSO and Academia

Hon. Gauri Pradhan by closing the session observed that participants' inputs/feedback have helped enrich the draft resolution. Such a good participation in making this resolution indicates that we all want to own the document. **He declared the resolution adopted by the Plenary.** He also observed that this resolution has added responsibility to all the stakeholders for the noble cause for the respect of the rights of migrant workers. The success of the conference depends on the level of increased respect for the rights of migrant workers in the days to come. The resolution would lead our way to conveniently work for the promotion and protection of the rights of the migrant workers in future, he said. He thanked and congratulated the participants for unanimously adopting the resolution.

Session -VII: Closing

Justice Kedar Nath Upadhyay, Chairperson of NHRC-Nepal amidst the presence of participants delivered brief closing remarks. He thanked all the participants for their support and active participation in the conference. The event would indeed help increase the respect of the rights of migrant workers in future, he observed. He appreciated the commendable efforts of respective NHRIs and governments in the direction of the promotion and protection of the rights of the migrant workers. Justice Upadhyay thanked to all participants and concerned who worked hard including those from behind the scene, to make the conference a success.



NHRC- Nepal Office Bearers participating in the proceeding of the Conference

Messages

- Dr. Ram Baran Yadav, Right Hon'ble President of Nepal

Distinguished Guests, Ladies and Gentlemen,

It is my pleasure to welcome all of you in Nepal. First of all I would like to thank and congratulate the National Human Rights Commission of Nepal (NHRC) for organizing the *International Conference on Cooperation between NHRIs for the Protection and Promotion of the Rights of Migrant Workers in the Asia Pacific Region* and inviting me to express few words in this august gathering.

With the peoples' movement in 2006 we made significant strides in Nepal's democratic development. Journey that began with historic 1950 revolution and 1990 movement for multiparty democracy culminated in historical achievements of 2006. In this long journey it was only in mid nineties we instituted National Human Rights Commission as our endeavor to create democratic institutions.

We are committed to sustain and institutionalize the historic political development and peace process in Nepal in order to transform the common aspiration of Nepali people for the Democratic Federal Republic as expressed through the popular movement of Nepali people 2006. We are committed to pluralist democracy, rule of law, devolution of power, human rights, and fundamental freedoms of our people. However, we are equally facing formidable challenges in Nepal to bring about rapid and tangible economic benefits to our people.

Global labor market has extended beyond the national territory. Development taking place in other sectors such as construction, industries and transnational corporations has also extended the area for labor market. The demands of laborers from the destination countries are often met by developing countries such as Nepal. The migrant workers worldwide thus contribute in the process of development of the countries of destination as well. What is more, Nepali migrant workers have been contributing significantly to the national economy with contribution of remittances. The remittances contribute to almost 23 percent of Nepal's GDP.

An increasing number of Nepali female migrant workers are working in various countries in informal sectors for low wage occupations such as domestic work. Similarly, female domestic workers are vulnerable for being trafficked and smuggled and become undocumented workers, which put them into further vulnerable situations. The malpractices of fraud and abuses during the recruitment are increasing attributing to the vulnerability of migrant workers abroad. Therefore,

protection of human rights of the migrant workers should be a matter of collective concern of all including sending, receiving and transit countries.

Many countries in the region have not yet ratified the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (CMW), 1990. Therefore the countries in the regions should take initiatives towards ratification of CMW and bring necessary reforms in the national laws and mechanisms to ensure the rights of migrant workers. I am very happy to note that the NHRC of Nepal has recently recommended the Government of Nepal to sign and ratify the Convention on Migrant Workers (CMW), which is a commendable job.

Likewise, I highly appreciate the initiatives taken by the NHRC Nepal by bringing the NHRIs of Asia Pacific region together to share and discuss ideas and experiences on the promotion and protection of human rights of the migrant workers. I firmly believe that the NHRIs of the Asia Pacific region can play a pivotal role in working with their respective Governments and concerned organizations for the promotion and protection of the rights of migrant workers.

I wish all the best for the success of the conference and am hopeful that the conference will be an appropriate platform in developing common strategies of NHRIs for the better protection of human rights of the migrant workers in Asia Pacific region.

I wish you all a pleasant stay and for a meaningful conference!

Thank you!

नेपालको जय होस्, सबै नेपालीको जय होस् !

- Hon. Justice Kedar Nath Upadhyay, Chairperson, NHRC - Nepal

Rt. Hon. President Nepal, Dr. Ram Baran Yadav, Hon. Ministers of Government of Nepal, Excellences, the Ambassadors, Hon. Chairpersons of participating NHRIs, Distinguished Official Representatives of Friendly Nation, Representatives of various INGO, NGOs etc., All other invitees Ladies and Gentlemen.

It is an exhilarating moment for the members and staff of National Human Rights Commission of Nepal to realize your luminous presence. We feel extremely privileged to welcome you in this auspicious occasion. At the very outset, please allow me, on behalf of National Human Rights Commission of Nepal and also on my own behalf, our gratitude to the Chief-guest Rt. Hon. President of Nepal Dr. Ram Baran Yadav for kindly accepting our invitation and consenting to inaugurate the International Conference on the Cooperation Between National Human Rights Institutions for the promotion and protection of Human Rights of Migrant Workers. We take it a great honor and gesture of cordiality exhibited towards the organizer and participants by Rt. Honorable President. NHRC Nepal would like to place on record our heartfelt thanks and esteemed admiration for his exemplary gesture and goodwill.

If you look back in history or pre-historic era, perhaps, we would come to realize that we are all migrants or descendants or migrants. Migrating is a natural phenomenon; we cope with environmental threats, political oppression of opportunities for ourselves and our children. Even today's meaning and concept one out of 33 persons in the world is a migrant.

And yet, if we scrutinize the human rights situation of migrants we would find that they are routinely misused discriminated and stigmatized for political and economic reasons. Although, some international organizations have played commendable role for ensuring core human rights standard for migrants and their family the human rights issues of migrant workers remains one of the least cared issue of human rights either in national or international forums. The UN convention on the protection of the rights of all migrant workers and their families even after two decades of its adoption, has not been ratified or acceded by many migrant workers receiving countries of this region. The migrant workers sending countries are, by and large, least developed countries having shortage of employment opportunity for its growing population. By sending its youth for foreign employment it receives remittance enhancing its foreign exchange reserve and per capita income for its population. On the other hand, the host country and also the employer there, are interested in cheaper labor and comparative advantage in hiring them and have least consideration of human rights dignity. Besides, the receiving and the sending countries of migrants in between series of intermediaries operating for exorbitant commission or service charges which are eventually borne by the migrant workers. On international level we find that human rights standard for migrants has been developed through a number of international instruments including the convention on Protection of Rights of All Migrant Workers and the members of their families, Protocol to prevent, Suppress and Punish Trafficking in Person, Protocol against the

smuggling of Migrants by land, sea and air etc. Since wide spread acceptance of these instruments have not been achieved so far robust campaign is needed their accession or ratification universally. NHRC Nepal has already recommended to the Government of Nepal to ratify the UN Convention on the Protection of the Rights of All Migrant Workers and members of their family.

Of lately, in the forums of NHRIs the human rights issues of migrant worker. This was, thought small initiative it given some impetus it NHRIs of this region for further deliberation. Subsequently there were meetings at Seoul, South Korea on human Rights issue of migrant workers. The conference of selected APF members of NHRIs in Bangladesh (2009) also included it as an item in agenda and deliberated in committee level meeting. Unlike the earlier deliberations the present conference is not confined or limited to take up this issue merely as an agenda item or committee level only.

Since the conference is specifically organized solely on the holistic issues of human rights of migrant we hope to offer an opportunity to delegates for bringing about from broader issues to issue of specific concern of individual NHRIs. At the same time we would wish to consolidate the achievement of earlier meetings of NHRIs.

I am of the view that UN Convention on the protection of the rights of all migrant workers and members of their families together with other international instruments may provide very useful guidance on developing regional or bilateral norms. As we have with the NHRC of South Korea the Memorandum of Understanding as regards the migrant of our two nations. The other countries of this region may have their own bilateral or sub regional treaty engagements to promote and protect human rights of migrants. These documents may provide abundant insight to work out common standard and evolve best practices based on reciprocity and mutual convenience. The distinguished participants including the chairpersons and members of NHRIs and participating government's representatives are no doubt well informed and experienced luminaries in this respect. I have every hope that this conference would succeed in bringing out purposeful conclusion to secure human rights of migrant workers on sound footings.

I wish this conference to be a great success.

Thank You.

On the Scope and Objectives of the Program **- Hon. Justice Ram Nagina Singh, Member, NHRC-Nepal**

Right Honourable President Dr. Rambaran Yadav, Honourable NHRC Chairman Kedar Nath Upadhyay, Honourable Chairpersons of respective NHRIs, Distinguished guests, Ladies and Gentlemen

I feel great pleasure to welcome all of you in Kathmandu, the holy city of Lord Pashupatinath and the capital of Nepal on behalf of the National Human Rights Commission of Nepal and myself as well.

I take this opportunity to reflect on the extraordinary efforts of the National Human Rights Commission of Nepal to work for the protection, promotion and effective enforcement of human rights in Nepal mandate by the *Interim Constitution 2007* and the *Human Rights Commission Act* amidst the prolonged political transition which has also placed additional burdens and expectations on the Commission's shoulders.

Migration is as old as human history, but in recent years it is associated with rapid economic change. There has been a rapid growth in foreign labour migration. The United Nation estimates that there are over 53 million migrant workers in Asia. China and Philippines have longer history of migration and most of the countries of Asia are either sending or receiving countries of the migrant workers. Therefore, it is appropriate and timely that we have gather together to discuss for the protection and promotion of human rights of the migrant workers and renew our commitment to work together in developing common approach and collective strategy to help build a strong regional mechanism to protect the human rights of the migrant worker in the context of booming economy of two big countries of Asia namely India and China. The recent expansions of the European Union have provided opportunities for many people to migrate to EU countries for work. Number of female migrant workers has been also increasing with the pull and push factors of the foreign labour market. However, female migrant workers are at high level of risk and vulnerabilities in the absence of legal recognition of domestic work as labour and lack of protection mechanism. Migrant workers of Asia pacific region have been facing number of problems and they are in dire need of protection.

According to the *UN Convention on the Protection of the Rights of All Migrant Workers and their Families*, the term 'migrant workers' refers to a person who is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. This Convention recognizes the rights of the migrant worker whose rights are at risk in sending and receiving countries and it specifies particular responsibilities to government in both. Despite the strong provision of protection, this Convention has yet to ratify by the developed countries that are receiving higher number of migrant workers and enjoying benefit of economic development with the result of hard labour of the migrant workers. Only 39 member states have ratified this Convention.

I take this opportunity to share you some facts about the situation of Nepali migrant workers. Approximately 3 million Nepali's migrant workers have been living in various countries including the gulf countries for search of work and have been making significant contribution in the economy as about 56 percent Nepali households receive remittances. The numbers of those Nepali's people who has gone to India for work is not mentioned in it because there is no visa system between Nepal and India. The growing number of labour migration has also created adverse effects including cheating, fraud, exploitation, family disintegration, torture and inhuman treatment inflicted against migrant workers in receiving countries.

NHRC-Nepal has been trying to explore strategy for the protection and promotion of human rights of the migrant workers. NHRC-Nepal has signed an MOU with National Human Rights Commission of Korea to exchange information and enhance cooperation for the protection of Nepali migrant workers in Korea. I have had also privilege to attend Conference of South Asian NHRIs on 2009 at New Delhi hosted by National Human Rights Commission of India which among others expressed commitment to enhance cooperation between NHRIs on common human rights issues of the region such as rights of the migrant workers.

I hope that the *Kathmandu Resolution* an outcome document to be adopted by this Conference will be successful in exploring a suitable way for promoting and protecting the Rights of Migrant workers and their family members

Finally I would like to extend my best wishes for your pleasant stay in Kathmandu.

Thank You!

- Andrew Bruce, Director, IOM-Bangkok

Hon'ble Justice Mr. Kedar Nath Upadhyaya as Chair, Chairperson of NHRC, Rt. Hon'ble President Dr. Ram Baran Yadav as Chief Guest, Hon'ble Member Justice Mr. Ram Nagina Singh, NHRC Nepal, Hon'ble Chair Mr. Mizanur Rahman, NHRC Bangladesh, Hon'ble Chair Justice Mr. K.G. Balkrishnan, NHRC India, Hon'ble Chair Mr. Hyun Byung Chul, NHRC South Korea, Hon'ble Chair Ms. Mariyam Azra Ahmed, NHRC Maldives, Hon'ble Chair Mr. Priyantha R.P. Perera, NHRC Sri Lanka, Hon'ble Member Mr. Essa Rashed M. Al-Kaabi, NHRC Qatar, Distinguished delegates, Excellencies, Ladies and Gentlemen

On behalf of the International Organization for Migration, it is an honour and a pleasure for me to deliver this opening address at this important event. First of all, I wish take this opportunity to commend the National Human Rights Commission of Nepal for the support and hard work they have put into organizing this event and thus highlighting migrant's rights.

Migration is one of the key factors behind the socio-economic development of South and South-West Asia, which has become one of the fastest growing Sub-regions in the world economically. Historically, it has helped alleviate population pressures and unemployment while remittances from overseas migrants have contributed to poverty reduction and ensuring macroeconomics stability even during times of crises. Nepal is a prime example of enterprising out-migration with at least 10 percent of the population working abroad.

Notably, South and South-West Asia comprise 42 percent of the population of the Asia-Pacific region and is the largest remittance-receiving sub-region in nominal terms. Over 40 percent of the officially recorded \$63 billion of remittances were sent to the region in 2010. This hard currency strengthens the economies (GDP and BoP) of labour sending countries.

There are some costs, however. Migrant workers coming from less developed countries too frequently suffer from human rights abuses, labour exploitation, debt incurred by the high costs of migration, and other burdens. The cumulative weight of these issues can prove overwhelming for the most vulnerable labour migrants who face the troubling conclusion that their families may require currency hard-earned overseas more than their physical presence at home.

Despite the protecting provided to all migrants under international human rights and international labour laws, many migrants from South and South-West Asia who either live and work in the Sub-region or elsewhere, particularly in destination countries in western Asia, are at risk of human rights violations. Key features of migrants dynamics and migration governance in Western Asia exacerbate the vulnerability of migrants, including, among others, labour migration policies that tie

employees to one employer and recruitment and hiring processes that are dominated by the private sector. Some employment agencies have unethical hiring practices that exploit migrant workers in both countries origin and destination. Although the International Convention on the Protection of the Rights of All Migrant Workers and Members of their families (CRM) provides a robust tool that addresses the specific vulnerabilities faced by migrant workers, ratification among countries in the Sub-region remains low, even among countries of origin of migrants. Nevertheless, ratification and implementation of the CRM and other core international human rights instruments would be an important step towards ensuring greater protection of the rights of all migrants in South and South-West Asia.

And then, there is your very own SAARC Convention against Trafficking which, notwithstanding its limitation, can serve as an instrument to address the problems of trafficking in persons. Trafficking in person as you will all agree with me is one of the most serious violations of human rights affecting Nepal and other countries in the region. The Convention itself merits review to reflect the ground realities of trafficking in the region. In this regard, we hope that we can count in Nepal to support the efforts undertaken by IOM for a comprehensive review of Convention.

What is needed right now, is good international labour migration governance. Good governance on international labour migration is built on cohesive legislation, policies, implementation, enforcement and institutional frameworks supported by national governments and focuses on creating competitive as well as fair labour migration conditions beneficial to the labour-receiving country, the labour-sending country, and the migrant him or herself.

In this regard, IOM believes in:

Ensuring that informal and unregulated work activities are brought within the protection of labour laws so that all workers enjoy the same labour rights;

Encouraging the creation of ethical employer associations which will adhere to codes of conduct that guarantee protection of the rights of its workers, regardless of origin; and Developing guidelines and public awareness campaigns to assist consumers in identifying goods and services that have not been produced through exploitative and forced labour.

To conclude, I would like to highlight the following points to be considered during workshop.

Labour migration can be mutually beneficial for employers and migrants as well as for most residents of countries of origin and countries of destination. Achieving mutual benefits requires well-managed migration that protects the rights of migrants, who are easily typecast as mere assets or ‘factors of production’, by empowering them – through the provision of complete and accurate information

about foreign jobs, regulations and promoting reduced recruitment costs. This would help minimize irregular migration, ensure migrants are treated equally while abroad, and help with their smooth return and reintegration.

While responsibility for the protection of workers is often considered to be the responsibility of the countries of destinations, countries of origin can and should also play an active role in this function. In this context, I am pleased to share with you that there is growing consensus to assume that responsibility and play the role in the Colombo Process, the group of the 11 major labour origin countries in Asia, of which Nepal too is an active member. The Colombo Process countries at the ministerial meeting last year in Dhaka agreed to cooperate and work together to ensure *migration with dignity*; to ensure that the migration process in its entirety promotes and protects the rights, the well-being and dignity of their migrants. It is also an effective forum for member countries to combine their efforts to promote migrants' rights in receiving countries. IOM stands ready to support the Colombo Process to achieve such goals.

The countries in the Sub-region as well as countries of destination for migrants outside South and South-West Asia should be encouraged to ratify and effectively implement all core international human rights instruments, including the CRM. Implements to the ratification of this important instrument must be addressed, including through awareness-raising, particularly in light of addressing misconceptions about the Convention and other core international human rights instruments. Also necessary are capacity-building and strengthening activities on the scope and content of international human rights standards that protect migrants, with government officials, parliamentarians, national human rights institutions and civil society, all joining forces to find smart solutions to incredibly complex migration management challenges. When these approaches are coupled with a strong domestic legislative framework and inspection systems of recruitment in the source country, and access by the migrants to the protection of labour laws in the destination country, there is a good chance of ensuring the basic human rights of labour migrants are addressed.

On that note, I wish to conclude by wishing you all fruitful deliberations.

**Message on the Demise of Workers in Apparel Industry in
Dhaka, Bangladesh**

Homage

The National Human Rights Institutions participating in the International Conference on Cooperation between NHRIs for the Protection and Promotion of the Rights of Migrant Workers in the Asia Pacific Region in Kathmandu are deeply saddened to have learned the sudden demise of 121 factory workers in Bangladesh apparel factory on November 25, 2012.

We, the participants of the Conference, express our heartfelt condolences over the demise of ill-fated workers. The Conference hereby urges the Government of Bangladesh to take steps for the necessary medical treatment for the injured workers and adopt safety measures to avoid the recurrence of such incidents in the future.

The Conference also urges the Government of Bangladesh to provide appropriate compensation to the victims and their families.

The Chairpersons, Members and Representatives of the NHRIs of -Independent Human Rights Commission of Afghanistan, National Human Rights Commission of Bangladesh, National Human Rights Commission of India, National Human Rights Commission of Korea, National Human Rights Commission of Maldives, National Human Rights Commission of Nepal, National Human Rights Committee of Qatar, Human Rights Commission of Sri Lanka and other participants of the Conference

Situation of Migrant Workers in Asia-Pacific Region

(PowerPoint version)

- Andrew Bruce, Director, IOM Bangkok

Outline

1. Trends
2. Challenges
3. Human Rights Issues
4. Women Migrant Workers
5. Global Management Processes
6. Development Gains vs. Costs
7. Leaning Forward

As we live in an interconnected world, it is important that the international community makes serious efforts to protect the rights of all migrant workers and members of their families. Growing incidents of xenophobia and intolerance tend to undermine human rights of the migrant workers in various parts of the world.

Trends- Migration in South Asia

- Migrants from South Asia comprised significantly of *low/less-skilled* workers; Approximately 2 million South Asian migrant workers leave their countries every year to work abroad
- Bangladesh, India, Nepal and Sri Lanka are the major countries of origin of migrant workers
- Majority head to Middle East in different sectors, such as: manufacturing, construction, housekeeping, health care, IT
- *Intra-regional migration and movement is significant*; but no specific schemes or policies exist to regulate that movement; mostly irregular, for CSE and labor exploitation
- Emerging areas: *Environmental migrants; labour trafficking, student mobility*

Positive Trends

- Immense growth in the number of migrants; South Asia has emerged as a major labour migrant source region
- Remittances constitute an essential part of the GDP- 23% in Nepal, 12% in Bangladesh, 8.7% in Sri Lanka
- India is the largest remittance receiver globally, followed by Bangladesh (7th) and Pakistan (11th) from South Asia
- Remittances replacing ODA, FDI - 3 times the size of FDI; 13 times that of ODA

- Multiplier effect on family and community
- Increased opportunities and demand for women labour migration
- Evolving consensus/collaboration (Colombo Process; Bali Process; Abu-Dhabi Dialogue; Asia-EU Dialogue)

The Downside

- Over dependence on a few select countries of destination – bulk headed to GCC countries
- Concentrated in less skilled jobs & informal sector
- High exploitation & abuse in the recruitment process
- *Pull factors* associated with increased human vulnerability to trafficking, e.g. poverty, lack of employment opportunity & gender-based violence
- Labour trafficking growing, especially of men: gaps in national laws and SAARC Convention to address this form of TIP
- Emerging challenges viz.: climate change and displacement, health challenges
- Absence of effective regional cooperation and collaborative framework

Trends

- South Asia witnesses complex population movements including refugees, asylum-seekers, economic migrants, victims of trafficking, smuggled migrants, unaccompanied minors and other migrants.
- Push factors include poverty, lack of employment opportunities, adverse environmental conditions. Pull factors include better employment opportunities, higher standard of living etc.
- While certain push-factors for irregular migration are similar to regular migration, lack of awareness, legal framework and high costs can lead to human trafficking, an affront to human rights and dignity of migrants

Human Trafficking

- Population
- Environmental degradation & Climate Change
- Socio-economic factors
- Inadequate legal framework
- Lack of awareness
- High cost of migration

Trends

- All South Asian countries experience cross border and internal trafficking; for some, internal trafficking is considered to be a more prevalent problem than cross-border trafficking
- Accurate assessment of the human trafficking situation is complicated by lack of, and sharing of, reliable data

- Most commonly identified form of trafficking is trafficking of women and children for sexual exploitation
- In recent years, labour trafficking (especially of men) has emerged as a significant phenomenon in the region; but not yet covered under most existing trafficking laws
- Weak institutional and legal framework to combat trafficking; most countries do not have comprehensive trafficking laws
- Only India is a state party to the Palermo Protocol; Sri Lanka is a signatory
- No effective regional cooperation or collaborative framework; gaps in the SAARC Trafficking Convention and in its effective implementation

Challenges

- Political, economic and socio-cultural factors
- Inadequate regional migration governance structure
- Lack of resources and capacity
- Lack of awareness

Human Rights Issues

- Civil/Political Rights
- Social Rights
- Work/Labour Rights
- Women/Children Rights
- Other Human Rights
- Migrants share one common characteristic: in reality, they often have fewer rights than the native population.

Human Rights Issues

Civil / Political	Social	Work / Labour	Women/ Children	Other
<ul style="list-style-type: none"> ▶ Overseas Voting Rights ▶ Freedom from Discrimination ▶ Freedom of Movement ▶ Freedom from Torture, Ill-Treatment, Sex- & Gender-Based Discrimination ▶ Right to Life 	<ul style="list-style-type: none"> ▶ HIV/AIDS ▶ Insufficient Accommodation ▶ Exclusion from Social Security Systems ▶ Family Unification 	<ul style="list-style-type: none"> ▶ Recruitment Issues ▶ Kafala System ▶ Wages ▶ Freedom of Association ▶ Hazardous Conditions ▶ Fixed-Term Contracts ▶ Debt Bondage ▶ Trafficking and Forced Labour 	<ul style="list-style-type: none"> ▶ Feminization of Migration ▶ Sexual and Physical Harassment ▶ Entertainment and Sex Industry ▶ Education 	<ul style="list-style-type: none"> ▶ Emotional Deprivation ▶ Physical Exhaustion ▶ Naturalization Issues ▶ Cycle of Migration / Re-migration ▶ Irregular Migration ▶ Brain Drain

Women Migrant Workers

Women constitute 50% of the global migrant workforce

Bangladesh	6.5%
India	10%
Nepal	10%
Sri Lanka	52%
South Asia	15%

Challenges:

- ▶ Unofficial figures of women migrant workers are substantially higher (ADB, 2012)
- ▶ Women are more vulnerable to trafficking. ‘Kafala system’ sometimes limits alternatives to abusive and exploitative working conditions
- ▶ Negative perception of women labour migration; stigma, abuse and exploitation
- ▶ Women labour migration subjected to ban; even if the ban is lifted, stringent conditions apply

Percentage of Women Migrant Workers to Total Migrant Workers

Conditions on International Migration of Women Workers

Country	Condition
Bangladesh	▶ Ban on recruitment of entertainers but not on nurses, doctors and engineers.
India	▶ Women must be at least 30 years to work as domestic workers in Western Asia or Northern Africa, with exceptions made on a case-by-case basis. ▶ Ban on recruitment of female domestic workers to Kuwait.
Nepal	▶ Women must be at least 18; ▶ Women must be at least 30 to work as a domestic worker in Gulf countries and the Middle East. ▶ Temporary ban on recruitment of domestic workers to Lebanon, as the Gov is working on the MOU with Lebanon.
Pakistan	▶ Women must be at least 35 years to work abroad as domestic workers. ▶ Ban on recruitment of nurses.
Sri Lanka	▶ Women must be at least 20 to work as domestic workers. ▶ Ban on recruitment of entertainers.

Measures to improve women’s labour migration scenario:

- IOM worked with the Bangladesh government to lift the ban on women labour migrants:
 - Advocacy with stakeholders
 - Provided technical assistance
- Specific sectoral projects in the field of labour migration are underway to:
 - Enhance training for women labour migrants
 - Ensure skill development
- Raise awareness through MRCSUNJP-VAW project covering women migrant workers
- Ensure rights-based approach

Country	Year	Total	Women
Saudi Arabia	2009	777,254	506,950
Kuwait	2010	569,536	310,402
Oman	2009	94,592	69,256
Bahrain	2011	83,198	51,811
Qatar	2009	80,342	48,147

Migrant Domestic Workers in GCC Countries

Global Management Processes

Colombo Process

- A regional initiative on the management of overseas employment and contractual labour for countries of origin in Asia; initiated in 2003; includes 11 Asian countries

Abu Dhabi Dialogue

- Held in 2008; included 9 Asian destination countries and 6 countries of the GCC

Asia-EU Dialogue

- Held in 2008 and 2011; comprised of the 11 Colombo Process countries and all 27 EU countries

Global Forum on Migration and Development

- Meeting annually since 2006, more than 160 governments have taken part in the GFMD
- The theme is a common understanding that migration is a constant phenomenon, and that through dialogue and partnerships, governments and other stakeholders can help and learn from each other in order to maximize migration's developmental benefits while minimizing its negative impacts.

Development Gains vs. Costs

How regional countries have fared:

- India
- Bangladesh
- Sri Lanka
- Nepal

		Nepal	India	Bangladesh	Sri Lanka
International Instrument	Entry into force	Status	Status	Status	Status
ILO Convention concerning Migration for Employment	22 January 1952	--	--	--	--
ILO Convention concerning Migrants in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers	09 December 1978	--	--	--	--
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children	25 December 2003	Signed 2002	Signed 2002	--	Signed 2000
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	01 July 2003	--	--	Ratified 2011	Acceded 1996
Protocol Against the Smuggling of Migrants by Land, Air, Sea	28 January 2004	Signed 2002	Signed 2002	--	Signed 2000
1951 Convention relating to the Status of Refugees	22 April 1954	--	--	--	--
1967 Protocol relating to the Status of Refugees	04 October 1967	--	--	--	--

Development Gains vs. Costs: India

Gains	Costs
India has long been an important source of highly skilled migrants (professionals and students), particularly to developed countries, making 'brain drain' a concern.	Many of the poor interested in working in GCC countries are deterred by the extremely high cost for low-skilled workers to migrate.
The MOIA has launched a scheme to provide life insurance coverage for Indian workers who have migration clearance and migrated overseas on contractual/employment visas	The Gov. of India prohibits women under 30 from migrating for employment if they hold emigration check required (ECR) passports. These women still migrate, but do so through unofficial channels, which makes them vulnerable to unlawful practices and exploitation.
India receives 10% of total global remittances, putting it as one of the top two remittance-receiving countries. India is the 2nd largest country of student migrants.	After their studies, the students often become permanent residents of the respective countries.

MOIA is developing a comprehensive law strictly related to overseas migration & combating cross-border human trafficking	India is a destination for women trafficked from Nepal and Bangladesh for sexual exploitation & a transit country for men & women trafficked to W. Asia for forced labour and sexual exploitation
India has signed the protocols on trafficking and the smuggling of migrants	India has not signed any of the key international conventions related to refugees or migrant workers.

Development Gains vs. Costs : Bangladesh

Gains	Costs
Out-migration has helped alleviate the country's surplus of workers	Sources suggest that about 5% of the labour force is unemployed and 28.7% is underemployed
Remittances contribute to nearly 11% of GDP. During the 2008 global financial crisis, Bangladesh's growth remained resilient partially due to remittances	
Lifting of a governmental ban on women migrant workers has raised the participation of women in the overseas employment sector over the last decade	The labour force of Bangladeshi women is high for Asia, at 31.5%, but they comprise one of the lowest percentages in the international labour market due to a (lifted) governmental ban in response to abuse of workers
Bangladesh is looking to steadily turn its human resource capital resource into an asset through training, skills development and market research programmes and reap benefits from the labour migration process	About 50% of its temporary migrants are classified as low skilled, 16% semi-skilled, 31% skilled, and only 3% professional

Development Gains vs. Costs : Sri Lanka

Gains	Costs
Overall, labour migration trends show that the majority of the migrants tend to be semi-skilled and low-skilled workers. The skill level of male migrants since 2002 has been fairly balanced, with the largest portion being skilled workers.	Only limited progress has been made in promoting overseas migration to skilled workers.
Traditionally, women in Sri Lanka have migrated in greater numbers than men. The percentage has decreased as male migration has increased.	One challenge the country faces is protecting its overseas migrants.

There is significant cross-border movement in the form of international student mobility to OECD countries and other South Asian countries.

The rapid internationalization of higher education poses new challenges for policymakers. Strengthening higher education institutions and training would help minimize the adverse effects of student migration, and address concerns of a 'brain drain'

Development Gains vs. Costs : Nepal

Gains	Costs
<ul style="list-style-type: none"> ▶ Remittances function as a cushion or safety valve for the economy and as an informal social protection mechanism for migrant households ▶ Source of foreign currency, which helps keep the account deficit under control even in periods of economic slowdown due to political instability. ▶ Remittances contributed significantly to poverty reduction in Nepal during 1996-2009, despite internal conflict from 1996-2006. 	<ul style="list-style-type: none"> ▶ Remittances put inflationary pressure on the economy, which pushes up the prices of land and housing. Inflation has been trending higher in recent years, peaking at 11.6% in 2009, partially due to remittance ▶ Remittances contribute to the appreciation of the real exchange rate and expansion of the non-tradable sector ▶ To counteract the negative effects, Nepal Rastra Bank, the central bank of Nepal, has made efforts to use fiscal and monetary policies to maintain economic stability. This requires investment in the tradable sector in the long run.
<ul style="list-style-type: none"> ▶ Nepal is committed to addressing human trafficking, particularly of women and children; it is instituting effective legislative measures to ensure implementation of the provisions of the SAARC Convention on Preventing and Combating Trafficking of Women and Children for Prostitution. 	<ul style="list-style-type: none"> ▶ An estimated 5,000-15,000 girls and women are trafficked annually from Nepal to other destinations ▶ Nepal has yet to ratify the key international conventions related to the status of refugees, the protection of migrant workers and protocols to prevent, suppress and punish trafficking in persons.

Leaning Forward

Considerable Challenges for Countries of Origin

- Dilemma of promoting overseas employment vs. protection of their workers abroad
- Need to improve migration policy to ramp up human rights of migrant workers
- How to collaborate with countries of destination to encourage them to take responsibility for protection of workers
- Enhance delivery of consular and other support to ensure human rights issues are addressed

Related Challenges

- Establishing a human rights framework beyond labour rights to include social, cultural and political rights
- Placing normative and institution issues around rights-base governance of migration on agenda of regional + international bodies
- Involvement of civil society in promotion of migrant workers' rights

Thank you !

Role of NHRIs in Protection of Human Rights of the Migrant Workers (PowerPoint version)

- Hon. Gauri Pradhan, Member, NHRC-Nepal

Migration is a global phenomenon which is shaped by a complex set of economic, social and political factors.

- The UN estimated the stock of international migrants at 214 million in 2010, meaning that 3.1 percent of the world's 7 billion people were living outside their country of birth (www.unmigration.org).
- In Asia and the Pacific, 18 million or 1 in 3 of the foreign population live in North and Central Asia.
- Even though migrants' labour is increasingly essential in the world economy, the non economic aspect of migration – and especially the human and labour rights of migrants – remains a neglected dimension of globalization.

Violation of Human Rights of Migrant Workers

- Violation of human rights include ill-treatment by immigration or law enforcement authorities, abusive or exploitative working conditions, an absence of basic workplace rights and protections, limited access to social security, systemic discrimination and wide-spread xenophobia and prejudice.
- There have been some recorded cases of human trafficking, forced labour and statelessness of migrant workers and their families.
- Hence protection of human rights is a major common concern of all including Governments, NHRIs, CSOs and International Agencies.

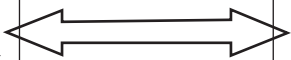
Irregular Migration

- Migration in Irregular Situation
- Trafficking
- Smuggling

Regular Migration

- Seeking Asylum and Protection
- Migrants in Regular Situation

Dynamics, Causes and Consequences

Status : Irregular Situation/Undocumented		Status : Regular Situation/Documented
Condition of Work : Forced Labour/Sexual Exploitation, Slavery	Condition of Work : Discrimination, Labour Rights not Respected	Condition of Work : Descent Work, Fair Treatment, Labour Rights Respected

Role of NHRIs

- Promotion Role
- Monitoring Role
- Investigation Role
- Protection Role
- Advisory Role
- Policy Making Role
- Training Role
- Mediation Role
- Suo-Moto Action Role
- Advocacy Role
- Legal Aid/Service Role
- Collaboratory Role
- Recommendatory Role
- Instructive Role
- Constructive Role

The International Human Rights Framework and the Rights of Migrant Workers

- Human Rights Core Conventions
- Other International Instruments including ILOs Conventions
- UN Treaty Bodies
- Special Procedures
- And UPR

Human Rights System

HR Instruments

Charter
Conventions
Optional Protocols
Covenants
Rules
Guidelines
Declarations

HR Mechanisms

HR Treaty Bodies
Special Procedures
UPR

Three Pillars Approach

The SC is responsible for international peace and security.
The ECOSOC is responsible for development.
The HRC is responsible for human rights.

Human Rights Core conventions (The international instruments and mechanisms can be used to better promote and protect migrant workers' rights.)

- ICERD International Convention on the Elimination of All Forms of Racial Discrimination, 21 Dec 1965
- ICCPR International Covenant on Civil and Political Rights, 16 Dec 1966
- ICESCR- International Covenant on Economic, Social and Cultural Rights, 16 Dec 1966
- CEDAW- Convention on the Elimination of All Forms of Discrimination against Women, 1979
- CAT Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 Dec 1984
- CRC Convention on the Rights of the Child, 20 Nov 1989
- ICRMW International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 18 Dec 1990
- International Convention for the Protection of All Persons from Enforced Disappearance, 20 Dec 2006
- CRPD Convention on the Rights of Persons with Disabilities, 13 Dec 2006

Other Human Rights Treaties Relevant to Migrant Workers

- United Nations Convention against Transnational Organized Crime and its Protocols:
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
- Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime
- Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, Institutions and Practices Similar to Slavery
- Durban Declaration and Programme of Action 23
- Resolution of the UN Commission on Human Rights on the Human Rights of Migrants (2005)25
- Resolution of the UN General Assembly on Protection of Migrants (2004).

ILO Conventions on the Rights of Migrant Workers

Migration for Employment Convention, 1949 (ILO C-97)

Migrant Workers (Supplementary Provisions) Convention, 1975 (ILO C-143).

These conventions are supplemented by two (non-binding) ILO recommendations that provide further guidance on how the rights of migrant workers can be protected in practice: Migration for Employment Recommendation (Revised), 1949 (ILO R-86) and Migrant Workers Recommendation, 1975 (ILO R-151).

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) (Adopted by General Assembly resolution 45/158 of 18 Dec. 1990, Entry into Force: 1 July 2003, Registration: 1 July 2003, Status: Signatory: 35, Parties 46)

- ICRMW is the most comprehensive international treaty in the area of migration and human rights up to now so far.
- The ICRMW was proposed in the 1970s, drafted in the 1980s and opened to ratification in the 1990s and entry into force in the 2000s.
- It is an instrument of international law meant to protect one of the most vulnerable groups of people: migrant workers, whether in a regular or irregular situation
- It sets a worldwide standard in terms of migrants' right to access to fundamental human rights, whether on the labour market, in the education, social security and health systems or in the courts.

UN Human Rights Mechanisms

- Human Rights Treaty Bodies (General Comments and Conclusions)
- Special Procedures (Special Rapporteurs, Working Group and Special Representatives of UN Secretary General)
- Universal Periodical Review (UPR)

Regional Co-operation for Implementation of ICRMW and other Human Rights Conventions

Africa:

- Africa African Com. on Peoples and Human Rights 1987
- African Charter on Human and Peoples' Rights (1981)
- African Court on Human and Peoples' Rights 1998

America:

- Americas Inter American Commission on Human Rights 1959
- American Declaration of the Rights and Duties of Man (1948)
- Charter of the Organization of American States (1951)
- American Convention on Human Rights (1969)
- Inter American Court of Human Rights 1979
- American Convention on Human Rights (1969)

Europe:

- European Court of Human Rights 1959
- European Convention for the Protection and Promotion of Human Rights and Fundamental Freedoms (1950)

- European Committee of Social Rights 2001
- Charter of Fundamental Rights of the European Union (2000)

South East Asia:

- ASEAN Intergovernmental Commission on Human Rights 2009 ASEAN Charter (2007)

Middle East:

- The first Arab Charter on HR was adopted in 1994.
- The Arab Charter on Human Rights, 2004 is the main regional HR instrument adopted by the League of Arab States (LAS).

South Asia:

- South Asian Association for Regional Cooperation (SAARC), 1985
- The SAARC Convention on Combating and Prevention of Trafficking in Women and Children for Prostitution, 2002;
- The SAARC Convention for the Promotion of Welfare of Children, 2002

Role of NHRIs in Promoting and Protecting of the Rights of Migrant Workers (ICRMW) (Develop cooperative relationships with stakeholders, especially NHRIs of countries of origin, countries of destination and transit countries to undertake research, share information and exchange expertise.)

- Work as a credible national institute to monitor the role of the state to respect, protect and fulfill Human Rights.
- serve as a critical link between migrant communities, civil society, the State and the international human rights system
- Engage with a broad range of stakeholders working in the field of the rights of migrant workers
- Undertake a range of education, capacity building, advocacy and other programs with concerned stakeholders
- Develop constructive partnerships with other stakeholders who can take action to address the human rights challenges being faced migrant workers
- Initiate to establish relationship through Memoranda of Understanding with NHRIs in bilateral and multi-lateral basis.
- Designated one or more staff members within NHRIs to act as “focal points” on the rights of migrant workers.
- Engage with a broad range of stakeholders working in the field of the rights of migrant workers
- Undertake a range of education, capacity building, advocacy and other programs with concerned stakeholders
- Develop constructive partnerships with other stakeholders who can take action to address the human rights challenges being faced migrant workers

Other expected role of NHRIs for the promotion and protection of the rights of Migrant Workers (Sharing of the best practices of NHRIs in help protecting the rights of migrant workers in need.)

- Advocating for the adoption of ICRMW to Countries of Origin, transit and destination.
- Creating Regional Instruments and Mechanisms on Protection and Promotion of HR of Migrant Workers
- Promoting Cross-border Co-operation to fight against All Forms of Human Trafficking
- Undertaking monitoring and investigation of the systematic violations of the rights of migrant workers.
- Engaging with International Organizations and Process (ILO, HR Council, Global Forum on Migration and Development, ICC of NHRIs)

Follow-up of NHRIs Initiatives undertaken to promote and protect the Rights of Migrant Workers

Zacatecas Declaration

- International Workshop of Nis for the Promotion and Protection of Human Rights: Causes, Effects and Consequences of the Migratory Phenomenon and Human Rights Protection Zacatecas, Mexico; 14–15 October 2004

Rabat Declaration

- On Migration and Human Rights 3rd Arab-European NHRI's Dialogue on Migration and Human Rights Rabat, Morocco; 6–8 May 2008

Seoul Guidelines

- On the Cooperation of NHRIs for the Promotion and Protection of Human Rights of Migrants in Asia International Conference on Human Rights of Migrants and Multicultural Society Seoul, Korea; 10–12 November 2008

Seoul Statement

- On the Cooperation of NHRIs for the Promotion and Protection of Human Rights of Migrants in Asia International Conference on Human Rights of Migrants and Multicultural Society Seoul, Korea; 10–12 November 2008

The International Conference on Co-operation Between NHRIs for the Promotion and Protection of the Rights of Migrant Workers, Kathmandu; 26-27 November, 2012

The Kathmandu Resolutions 2012

As a credible, independent and impartial national institutions, NHRIs can play a significant role to engage states, CSOs, Human Rights Defenders, Labour Supply Organizations, Employment Providing Organizations and concerned bi-lateral and multi-lateral organizations to help promote and protect the rights of migrant workers everywhere !

Let's join our hands together to march ahead to make this truly globalised for all !!

Think globally act locally !!!

Thank you.

Situation of Migrant Workers in South Asia: With Reference to Nepal (PowerPoint version)

- Bishal Khanal, Secretary, NHRC-Nepal

General Scenario

- Roughly 250m people of the world live to work abroad
- South Asia is the major supplier work force to global job market
- Gulf countries and East Asia are major destination for sizeable number of South Asian workers
- Majority of them perform job that does not require special skills
- On occasion they work in inhumane condition and equated to bonded labor, as Kafala system
- Performing dirty, dangerous, denied and probably deadly jobs are common to many migrant workers

Push Factors (reasons going to work abroad)

- Poverty
- Conflict
- Lack of employment opportunities
- Environmental effect/decreasing land productivity
- Population growth
- Social Inequality

Pull /Attraction Factors

- Better employment
- Better livelihood
- Skill development
- Education
- Enjoy change

Trends

- Estimated 2 m South Asians go abroad to work every year
- Bangladesh, India, Nepal, Pakistan and Sri Lanka are the major countries of origin
- Manufacturing, construction, health care and house keeping are the major areas of work
- Emerging trends – labor trafficking and students movements

Women Migrant Work Force

- | | |
|--------------|-------|
| • Bangladesh | 6.5 % |
| • India | 10% |
| • Nepal | 10% |
| • Sri Lanka | 52% |

- SA in total constitutes – 15%
- But in terms of severity of HR abuses women are the hard hit

Positive Trends

- Remittance constitute essential part of GDP
- Bangladesh 12%
- Nepal 24%
- Sri Lanka 9%
- India – largest remittance receiver in the world
- Bangladesh 7th
- Pakistan 11th

Negative Trends

- Over dependence on certain countries
- Concentration on unskilled jobs and informal sector
- Exploitation and abuse in recruitment process
- Labor trafficking and sex exploitation
- Consequences of family separation
- Legal and policy gaps

Concerns on the Rights of Migrant Workers

- Human rights are universal so MW are entitled to enjoy basic rights, wherever they live
- Except some political/civil rights as vote casting, contesting in elections, citizenship rights most of other rights are available to MW as well. *However reality is different.*
- Most of MW experience discrimination followed by many other rights abuses
- Discrimination in pay, holiday, healthcare, housing, insurance, training, education are common
- CMW has not been ratified by many, Although being state party ILO rules are also not well respected
- And, labor law is discriminatory to MW in condition of work
- Pay lower than specified on contract appears time and again
- Government /employer policy recognizes discriminatory treatment
- Conditions of services relating to dismissal seems monopolistic mainly in informal sector
- Right to safety and security are jeopardized
- Freedom of conscience is almost lost. Women and men were compelled to do that their conscience does not allow them.
- Reports on sexual exploitation of women increased and role grievance mechanism deemed unsatisfactory
- Number of women return home with newborn, resulting from compelling sexual activities in helpless situations
- Mental and physical torture or pain as a result of the action of employer are common

- Treatment to under trial MW are sometimes pathetic
- Freedom from fear often becomes a dream
- Kafala system ignores very core of the rights of workers and human value
- Some equates Kafala system to harsh imprisonment
- On occasions MW are arbitrarily dismissed, evicted from house, travel documents did not given back and hundred of them stranded under bridges and public places
- Extremely serious is some of them are denied pay for their work and return home empty handed
- Serious of all is neither the person returns home nor any clue available in the receiving country for years and decades

Regional Initiatives

Seoul Guidelines 2008

- Participating countries of APF Region expressed commitment to work on the PP of rights of migrant workers
- As a follow up APF Sub-committee on RWM was formed in Amman and Nepal was a member representing SAARC

Colombo Process

- Initiated in 2003; includes 11 Asian member countries plus observers from destination countries

Abu Dhabi Dialogue

- Held in 2008; included 9 Asian destination countries and 6 countries of the GCC

Conclusion

- MW notably contributes to the development of both sending and receiving countries
- It has become unavoidable and determining for development of many countries
- Happiness of workers help increase productivity and the principle applies to MW as well
- An environment free of discrimination and compulsion has worth for both employer and employees
- Their security, rights and interest should be put on priority in order to achieve more
- To this end the ratification of CMW is immensely important
- In addition respect to the provisions of ILO convention may require to reenforce
- National law and policies need to address the issues of discrimination based on nationality and employment
- Greater advocacy is expected to abolish Kafala system that restricts freedom in various forms
- A consolidated effort need to address issues raised in Colombo Process 2003, Adudhavi Dialogues, 2008 among others

Thank You !

Country Presentations

6

Situation of Migrant Workers in Afghanistan

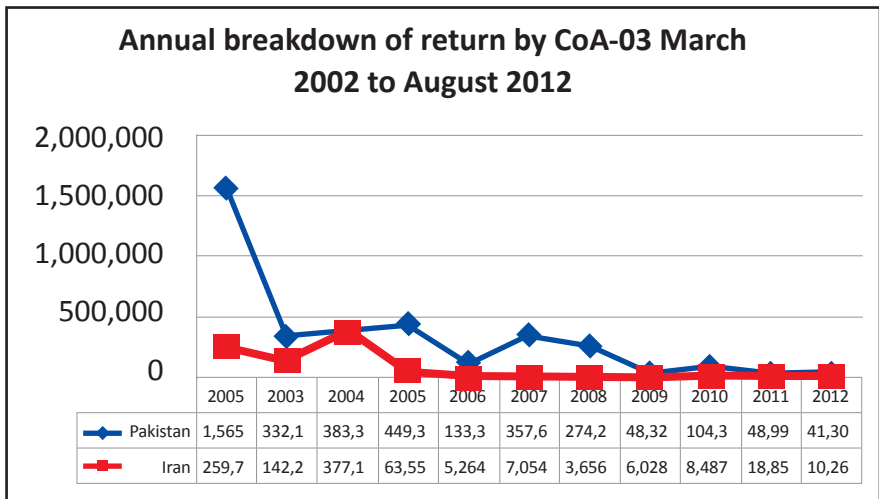
(PowerPoint version)

- Hussain Ali Moi, Coordinator, AIHRC, Afghanistan

Background

- Afghanistan has experience more than 3 decades of war resulting in millions of Afghans fleeing for protection in neighbouring countries particularly Pakistan and Iran.
- Afghans fled in 3 stages;
- between 1979 – 1989
- between 1985 - 1995
- 1996 – 2001
- Today nearly 3 million Afghan refugee still living in Pakistan (1.7 million) and Iran (0.9 million).

Return Trends

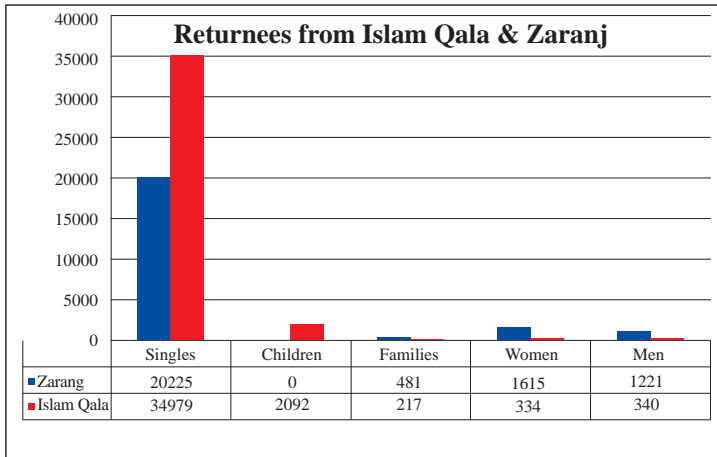


NHRI- Afghanistan

- AIHRC is a NHRI and working in Afghanistan
- AIHRC is monitoring human rights situation of Afghan migrants, returnees
- Border monitoring in two borders (Islam Qala and Zaranj) Afghanistan/Iran

Reasons: serious human rights violation and huge number of deportees

AIHRC's Findings (Apr- June)



Arrest of Afghan Refugees

- 80% Afghan returnees from Iran are forced deportees
- Majority of them are immigrant workers
- Example (in May 2012)
 - 33% arrested from workplaces
 - 28% arrested from homes
 - 19% arrested from the highway
 - 20% arrested from Bazar
- The main reason is lack of legal documents and being in forbidden zone/ provinces

Human Rights Violation

- Right to dignity
 - Abjection and insultation
 - Abuse/annoyance

- These are normal that have been happened by authorities and people
- Ill-treatments
- Beating
- Extorsion/ money, mobile...
- Separating member of families; one, two or more have been deported and others remain inside of Iran
- Remain members of families don't know about the arrestment, deportation
- Nobody is allowed to see their relative in camps
- Deportation of children without their parents/ relatives
- Violation of right to property
 - Lack of poney/payment from employer (finance clearance)
 - Property, equipments
 - Rent
- Forced labor
- Lack of moving/being in forbidden zones, provinces, cities, parks
- Lack of access to justice
- Defense lawyer
- Execution; children
- Lack of consulate supports
- Discriminations
- Condition of camps/accommodation, food
- Rape against children and women
- Right to education
- Limitations for Afghan migrants
 - Every Iranian can ask Afghans if they have legal document
- Iran citizens are not allowed to sale food to Afghans (some cities)

Migrant Workers in Afghanistan

- After 2002 many migrant worker came in Afghanistan
- Now, There are around 35000 migrants
- From Nepal, India, Pakistan, Turkey, Egypt, Columbia, USA, EUROPE, and...
- 18000 migrants are registered by ministry of work and social affairs
- All of legal migrants are professional and registered (no problem)
- Others are illegal migrants (no registered)

Illegal Migrants and Human Rights

- All of illegal migrants are common labors (no skill workers)
- Some of them are arrested by Afghan Police because of terrorism accusation, lack of document
- Majority of them are from Pakistan and some from other countries
- Right to dignity
 - Abjection and insultation
 - Abuse/annoyance

Thank You!

Situation of Migrant Workers in Bangladesh

(PowerPoint version)

- Md. Tajul Islam Chowdhury, Secretary, NHRC-Bangladesh

Presentation Structure

- About the National Human Rights Commission (NHRC) of Bangladesh
- Discussion about salient issues on migrant workers in Bangladesh

Legal Status of NHRC

As per the founding Act, the NHRC is

- Statutorily Independent (sec 3)
- Person before Law (sec 3)
- Exercise power as the Civil Court for the purposes of investigations and inquiries (sec 16)

Salient Mandates

- Investigation and Inquiry (Suo moto or on a petition)
- Awareness Building and Training on Human Rights
- Reviewing Existing laws and systems
- Recommend to the concerned authorities
- Human Rights Advocacy (Bridging between the State and the People)

Recent Achievements

- Adopted Strategic Plan for 2010-2015 where Child Rights, trafficking and child labour; Women Rights, Discrimination against Women, violence by state mechanism and abuse of migrant workers have been prioritized
- Conducted Baseline Survey on Human Rights for the first time in Bangladesh
- Arranged series of national and international workshops/seminar and for the first time submitted UPR Report
- Research study on compliance of Bangladeshi laws and policies with the UN Migrant Workers' Rights Convention 1990_
- Research studies to assess the Compliance of Bangladesh's National Laws with International Human Rights Obligations (ICCPR, CAT, ICESCR, and CEDAW)
- Conducted a round table discussion on Business and Human Rights of Women and Children and put forward the issue to the business community and policy makers.

Issues on Migrant Workers

- Bangladesh ratified the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990
- The Convention came into force on 1 December 2011, and its first report is due to the Committee by December 2012
- The Constitution of Bangladesh, 1972, predated safeguards for migrant workers

The Constitution of Bangladesh, 1972

- The basic human rights of the migrant workers and members of their families have been expressly or impliedly recognized in the Constitution of Bangladesh.
- The Preamble to the Constitution firmly declares the aim of the State to establish a society “free from exploitation” and based on the rule of law, and in which “fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens”.
- Article 11 of the Constitution mentions as a state principle the respect for fundamental human rights and freedoms and respect for the dignity and worth of human person.
- Article 14 imposes a fundamental responsibility upon the State to emancipate the peasants and workers and backward sections of the people from all forms of exploitation.
- Article 19 provides for equality of opportunity, while article 20 recognizes work as a right and duty and a matter of honour
- Article 27 provides for the equality before law while article 28 prohibits discrimination.
- Article 31 recognizes the right to protection of law as an inalienable right.
- Article 32 further guarantees the right to life and personal liberty,
- Article 33 provides safeguards against arrest and detention.
- Article 34 prohibits forced labour. Article 35 provides for protection in respect of trial and punishment.
- Articles 36, 37, 38 and 39 provide for freedom of movement, freedom of assembly, freedom of association and freedom of thought, conscience and of speech respectively.
- Article 40 provides for the freedom of profession or occupation subject to any restriction imposed by law.
- Article 41 guarantees freedom of religion.
- Article 42 safeguards the right to property, and article
- 43 ensures the protection for home and correspondence.
- Finally, Article 44 provides for the enforcement of the fundamental rights through the means of the High Court Division of the Supreme Court under the powers guaranteed in article 102 of the Constitution.

Issues on Migrant Workers

Other laws and policies have also safeguarded rights of the migrant workers, for example

The Emigration Ordinance, 1982

This Ordinance is the main statute in Bangladesh that governs the affairs of migrant workers. The Ordinance only allows persons with valid travel documents to emigrate, and makes it illegal to emigrate or to attempt to emigrate in violation of its provisions.

Other laws and policies

The Emigration Rules, 2002

Section 19 of the Emigration Ordinance empowered the government to frame rules for carrying out the purposes of the Ordinance. After a long twenty years, the Government framed and issued three sets of Rules under this Ordinance. The Rules aim at substantiating the *modus operandi* of certain provisions of the Ordinance.

The Recruiting Agent's Conduct and License Rules, 2002

The Recruiting Agent's Conduct and License Rules (hereinafter the "Recruitment Rules") had been framed to regulate and monitor the functions of the recruiting agents engaged in the recruitment of Bangladeshi citizens as migrant workers. Rule 3 provides that, every person including any company/partnership firm will have to apply to the government for obtaining a license to recruit workforce for overseas employment. The Rules requires the aspiring recruiting agent to furnish a number of documents to the Government and a prescribed fee as 'security money'.

The Wage Earners' Welfare Fund Rules, 2002

The Wage Earners' Welfare Fund Rules had been formulated to establish and maintain a fund for general welfare of the migrant workers from Bangladesh. Rule 3 provides for the constitution of the fund and specifies the sources thereof.

National Policy on Expatriates' Welfare and Overseas Employment, 2006

The Policy has been formulated with a view to guiding governmental actions regarding welfare of the emigrants and the management of overseas employment. The most significant aspect of the policy is that it emphasized on transparency and accountability of both government and private actors.

The Commercial Important Person (Non Resident Bangladeshi) Selection Rules, 2006

In order to recognize the significant role of Non Resident Bangladeshi, Government declares important NRB from, each year.

Key Role Players for Migrant Workers and the Protection of their Rights

1. The Government
2. The Bureau of Manpower, Empowerment and Training (BMET) was established in the year 1976 by the Government of the People's Republic of Bangladesh as an attached department of the then Ministry of Manpower Development and Social Welfare with specific purpose of meeting the manpower requirement of the country and for export of manpower as well. BMET is engaged for over all planning and implementation of the strategies for proper utilization of manpower of the country.

3. Bangladesh Association of International Recruiting Agencies (BAIRA)
BAIRA is an association of national level of approximately 800 member agencies in collaboration with and support from the Government of Bangladesh.
4. Bangladesh Overseas Employment Services Limited (BOESL)
BOESL is only the “State owned” Manpower exporting Company in Bangladesh. The Government of Bangladesh established BOESL in 1984 to earn more foreign exchange by way of exporting skilled & unskilled manpower. Its motto is to offer best services as a development partner based on mutual trust and to minimize migration cost in comparison to others. BOESL’s main objective is to provide “Right person for Right job” to valued foreign Employer. BOESL realise service charge from the selected workers as “No profit no loss basis.”
5. Women migration and the issue of gender discrimination
6. Welfare of the migrant and rights of the members of their families:
Remittances
7. Adjudication: Labour Court and arbitration

Thank You!

Situation of Migrant Workers in India

- Hon Justice KG Balkrishnan, Chairperson, NHRC-India

Millions of Indians are working abroad. India has been receiving the highest amount of remittance in the world. There are migrant worker from one state to another within India as well. Out of 60 percent of migrants, 20 percent are from the neighboring countries like Nepal and Bangladesh and they are working in various fields. India is trying to take obligation of them and legislations and mechanisms are there for their protection. But we know that everywhere there is problem of implementation.

Migration is important feature of human civilization. It reflects human endeavors to survive in most favorable conditions both natural and manmade. Migration in India has existed historically. But in the context of globalization and opening of world economy, it assumes special significance for the country and society. As consequences of historical and economic factors there are serious income disparities. The agrarian distrust and inadequate employment generation, vast growth of informal economy as a result of rural to urban, urban to urban and comparatively advance regions added disparities.

The migration is mostly influenced by social factors and patterns of developments because there is no uniform development in all the states. For example education, electricity and infrastructure is not adequately available in rural areas. In the rural areas housing facilities are not available and therefore people migrate to urban areas in search of job and other facilities. The uneven development is the main cause of migration. The disparities in the regional, amongst different socio economic classes, the landless poor who mostly belongs to lower caste indigenous community and economic backward regions constitutes major portion of migration.

In the some tribal regions of India, settlements by outsiders displacing local tribal people and deforestation also play a major role in migration. According to the study 77 percent of population that is 18 or 14 millions Indians is living with less than 20 rupees a day. Indian agricultural is non-remunerative job takes lives of hundred thousands peasants. Their suicides is widely reported.

Large number of people is in migration to Middle East countries they are skilled workers, semi skilled workers, medical practitioners, engineers, teachers, managers and so on. There is brain drain aspect also in this case. Migration in India is predominantly short distance 60 percent changing their residence within their districts of birth and 20 percent within their state and the rest move across their state boundaries.

The total migrants as per the census are gradually increasing. In 2001 about 40 million and now it is said that nearly 80 million migrants of whom 40 millions are

in construction work, 20 millions are domestic workers 2 millions are indulge in sex work or other work and large scale are engaged in mines like coalmines etc. The ninety percent of domestic workers are women, girls and children and 20 percent of these females are below 14 years as per the study conducted by organization called social alert.

There is a perceptible phenomenon in migration that is in tremendous increase of human workers migrating either enthusiastically, or in search of work, is travelling long distances even for certain employment in the absence of any prospect and promise of employment. This is disturbing trend as they are not getting employment and sometimes becomes the victims of sexual abuse. Even if they get employment they have to work in inhuman condition.

In terms of employment construction is the largest employment sector in India and agriculture is next. The most of the employees in the construction are migrants. The working hour is from sunrise to sunset in some parts of country the working day for women is 14-16 hours a day. There is labor legislation but in some parts of India they are not effectively implemented. There are 20 million domestic workers mostly migrants from rural India. New migratns enter into metro cities as Mumbai, Delhi in regular basis. Many of them are desperate to join in domestic works. They work for long hours and sometimes do not get payment. There are middle men who may collect some portion of salary.

There are deniel of social economic and cultural rights. They do not get the benefit to the public distribution systems. They are not getting the cards for buying food grains, kerosene etc. for that they have to purchase at market price. They are victims of constant verbal and sexual abuse at work without having griavance mechanism. The situation becomes worse by local governments when they are evicted from the vicinity of city area and shifted to nearby areas. This is not a happy picture in the field of migrant workers.

There are lots things have to be done. Sometimes when they commit crime there are denial of access to justice, they are not able to get justice, they do not get assistance of lawyer at court system. The government of India passed the welfare and other labor legislation but implementation are not very good. The contractor must take timely measures, provide suitable residential facilities, prescribe medical facilities etc. The Supreme Court through public interest litigation have given benefits to the migrant workers but there is no improvement in the working and living condition of the migrant workers. There are no structures to adequately address the basic issues of migrant workers.

The judiciary has given important decisions protecting the rights migrant workers. The judiciary has often come to rescue the migrant workers. The high court of Gujarat ship wrecking industries, majority of workers were interstate migrant

workers, they have had no home and proper medical facilities and trade union rights and High Court of Gujarat directed to take care of this and asked to provide health facilities and trade union rights. There are some efforts like this but are not strong enough to build pressures.

The non-government organizations are also working for the promotion and protection of migrant workers rights. The lending state should also do properly. Sometimes the remittance is not paid properly. The article 47-48 of the CMW states that in the lending states, migrant workers shall have the right to transfer their earnings and savings, in particular those funds necessary for the support of their families, from the state of employment to their state of origin or any other states. Such transfers shall be made in conformity with procedures established by applicable legislation of the state concerned and in conformity with applicable international agreements. Those working abroad should not be subject to double taxation. But there are provisions in local laws which do not help these migrant workers.

As regards the Indian workers abroad, in some states, the states are planning to make some legislations providing housing and other facilities for the NRIs by providing housing loan etc. If any matter is brought in notice of NHRC India, we try to help them in case of access to justice, or their minimum wages are paid. There is no distinction whether they are Indian citizens or foreign citizen or migrant workers. As regard of human rights violation we take care of seriously. If there is denial of minimum wages, we call for report and ensure that the minimum wages are paid. Public officers should take appropriate action based on the legislation.

(Prepared on the basis of the oral observation made by Justice KG Balkrishnan, Chairperson, NHRC-India)

Situation of Migrant Workers in Korea

- Prof. Byung Chul-hyun, Chairperson, NHRC-Korea

Introduction

Hon'ble Chairperson of the National Human Rights Commission of India, Justice K.G. Balakrishnan, Hon'ble Chairperson of the National Human Rights Commission of Nepal, Mr. Kedar Nath Upadhyay, Distinguished guests, Colleagues and friends,

I'm delighted to be invited to this prestigious international Conference on Cooperation Between NHRIs for the Promotion and Protection of Human Rights of the Migrant Workers.

I would like to take this opportunity to thank Chairperson Mr. Kedar Nath Upadhyay and other members of the NHRC Nepal for their efforts in preparing this timely and important event. I'm confident that under their leadership and dedication, this conference will bear fruitful results for all participants of this conference.

Given the time constraints and for the better understanding, please kindly understand that Mr. Jung, the Chief of the international human rights team of my Commission will present the remainder of the papers on behalf of me and the NHRCK.

Mr. Chairperson,

In my country, Korea, along with other nations, the society is rapidly becoming multi-cultural with a growing number of immigrant population. There are about 1.4 million foreigners in Korea, including migrant workers and marriage migrants and it is highly expected that the influx of migrants will be accelerated by the trend of low birth rate and fast ageing society in this country.

However, unfortunately, in Korea, migrant workers sometimes face poor social and economic conditions and, consequently, questions are often raised about their human rights conditions. It seems to me that the condition is getting better with the concerted efforts of the NHRCK, other colleague NHRIs, the Korean Government, NGOs and International Organizations. On the other hand, it is undeniable that we still have a long way to go to make a world that every migrant workers can fully enjoy their every human rights.

NHRCK Activities

The NHRCK, since its establishment as an independent national institution in November 2001 pursuant to the NHRCK Act and in compliance with the Paris Principles, has performed its duties to protect and promote human rights through policy recommendation, complaint handling, human rights education, and the cooperation among human rights stakeholders home and abroad.

In particular, for the purpose of protecting and promoting migrant worker's human rights, the NHRCK conducts investigations into the cases of complaints on human rights violations or discriminations involving migrant workers and takes remedial actions for the victims, conducts fact finding surveys, makes policy recommendations, provides education on migrant workers' human rights and raises public awareness on the rights of migrant workers.

In addition, with a view to ensuring that the work related to migrants should be performed in a coordinated, specialized and efficient way, the NHRCK has formed and operated the "Migrant's Human Rights Team" which is dedicated to the tasks of complaint handling, fact-finding surveys and policy recommendations for migrants.

In this vein, I would like to highlight some activities that the NHRCK carried out for the promotion and protection of human rights of migrants in Korea.

Firstly, the NHRCK has made investigations into complaints. The number of complaints related with migrant workers from 2010 to September this year amounted to total number of 135. The complaint cases for migrant workers are mainly related with issuance of visas, failure to comply with the lawful procedures in the course of detecting unregistered migrant workers, violence in the process of law enforcement, unfair dismissal of foreign workers, unfair dismissal on the ground of pregnancy, wage differences on the ground of nationalities, job allocation of migrant workers with no due consideration about their religious faith, human rights violations arising from the forced deportation of industrial accident victims, denial of summer holidays to migrant workers, discriminations in insurance compensation of particular accidents on the ground of nationalities, and sexual harassment against foreign workers.

Secondly, the Korean Commission has formulated "the Migrant's Human Rights Guideline" which is intended to serve as the guiding principles on migrants' human rights in the policy-making process, and recommended the Guideline to 11 government ministries and departments.

The Migrants' Human Rights Guideline provides for 90 core tasks in 30 sub-areas under seven (7) areas. The seven areas are: to strengthen the protection of migrant workers' human rights; to strengthen the protection of marriage migrants' human rights; to strengthen the protection of migrant children's human rights; to strengthen the protection of refugees' and stateless persons' human rights; to strengthen the protection of the human rights of Korean migrants overseas; to strengthen the protection of unregistered migrants' human rights; and to prevent racial discrimination and enhance public awareness about foreigners.

At present, NHRCK operates a monitoring team to monitor the compliance with the Guideline, while collecting and compiling the information and data on the compliance from the government, which will be used to make policy recommendations for protection and promotion of migrants' human rights and conduct investigations into relevant complaints in the future years.

Thirdly, NHRCK has made recommendations for the upgrading of the legislation, policies, institutions and practices concerning migrants. NHRCK's policy recommendations for migrants include, but are not limited to:

- Recommendation for improvements in the government's foreign workforce system (2002);
- Recommendation for policy improvements to enhance human rights of foreign workers in Korea(2003);
- Recommendation for improvements, including in the requirements for workplace change approval for foreign workers (2009);
- Opinion on the Act on the Prevention of Domestic Violence and Protection, etc. of Victims (2010);
- Opinion on the requirement of identity verification for marriage migrants' application for approval of extension of the length of stay (2011);
- Recommendation to guarantee unregistered migrant children the right to middle school education (2009);
- Recommendation for improvements to guarantee migrant children the right to education (2010);
- Recommendation for policy improvements to protect refugees' human rights (2006);
- Recommendation for human rights protection of the persons with a humanitarian stay permit (2008);
- Recommendation for improvements to address the ban on any activity to make a living during the refugee-status-seeking process (2011); and
- Recommendation for improvements to promote human rights of the stateless persons due to fraudulent marriage (2011)

Fourthly, the Korean Commission, has conducted several fact-finding surveys on migrants' human rights conditions in this country, which are titled 'Migrant Workers' Human Rights Conditions Survey', the 'Survey on the Regulation of Unregistered Foreigners and the Operation of Foreigner Protection Facilities', the 'Survey on Human Rights Violations Arising from the Process of Migration or International Marriage', the 'Survey on Migrant Children's Right to Education' and the 'Survey to Establish the Migrants' Human Rights Guideline'.

The outcomes of these surveys have served as a useful reference for the various policy recommendations that NHRCK has submitted to the government and, indeed, many of the recommendations have been incorporated by the government

for the purpose of policy and institutional improvements. In particular, in 2012, NHRCK completed two surveys: the one to identify human rights conditions of the migrant workers in domestic fishing business who had been hardly accessible for survey purpose before and the other to improve the social welfare benefit system for the migrants in Korea. Now, it is working on policy recommendations, based on the survey results.

Last but not least, the Korean Commission is enhancing international cooperation to promote and protect human rights of migrant workers.

In November 2008, NHRCK hosted the International Conference on Human Rights of Migrants and Multicultural Society in Seoul, in collaboration with the United Nations and APF and in celebration of the 60th anniversary of the Universal Declaration of Human Rights. This international conference adopted the Seoul Guideline on the Cooperation on NHRIs for the Promotion and Protection of Human Rights of Migrants in Asia. The ‘Seoul Guideline’ provides for a set of guiding principles for effective cooperation between Asian NHRIs in relation to migrants’ human rights. NHRCK also incorporated the principles of the Guideline into the ‘2nd Action Plan for Human Rights Promotion’ to proceed with the work to protect migrants’ human rights.

The Seoul Guideline of 2008 specifies in article 55 that “Interested NHRIs are encouraged to enter into MOUs on issues of mutual concern regarding the promotion and protection of the human rights of migrants”. In compliance with the provision, NHRCK concluded a series of MOUs with the NHRIs of other countries: that is, with the Mongolia Human Rights Commission in 2009; with the Indonesian National Commission on Human Rights (Komnas HAM) and the National Human Rights Commission of Nepal in 2010; and with the Philippines Commission on Human Rights in 2011.

These MOUs mainly provide for the exchanges and cooperation between the signatory commissions to protect and promote human rights of the migrants from the other country staying in its own nation. They have laid the foundation for bilateral partnership in protecting and promoting migrants’ human rights.

Conclusion

In conclusion, I would like to take a note that the NHRCK Act clearly stipulates the scope of the application, its personal jurisdiction, in Article 4 that this Act shall apply to all citizens of Republic of Korea and all foreigners residing therein.

It means that the NHRCK Act guarantees the foreigners in Korea the rights to make a complaint when they believe they suffered human rights violation or discrimination while staying in Korea. In addition, the NHRCK is making efforts to

extend its jurisdiction over human rights violation cases caused by private entities which is growing its power

The NHRCK will make consistent efforts to improve the human rights conditions of the migrant workers in Korea, working together with the colleague NHRIs in light of the spirit of the Seoul Guideline and with the noble aspiration enshrined in the Universal Declaration on Human Rights.

On this timely and meaning occasion of this Conference, I hope and expect that our discussion today will contribute the formulating concrete strategies and messages to realize a new vision for human rights for all migrant workers.

I would like to reiterate that the Korean Commission is committed to working with other member NHRIs toward our common goal of promoting and protecting of all human rights.

Thank you!

Situation of Migrant Workers in Maldives

(PowerPoint version)

- Hon. Mariam Azra Ahmed, Chairperson, NHRC- Maldives

Migrant Population

- 80,000 to 110,000 currently working in the Maldives
- about 31% of the population of the Maldives
- 40,000 – 50,000 undocumented workers

Maldives has not yet signed the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families

Legal Protection

- The Maldives constitution guarantees equal treatment and non-discrimination to all in the Maldives
- Migrants should receive the same type of treatment and protection as provided for the nationals
- Constitution recognizes the right to freedom of association and states explicitly that all rights and freedoms in the statute apply to “everyone” in the country, including migrant workers, and prohibits forced or compulsory labor
- There is no legislation yet that is specifically on non-discrimination

Non-discrimination

- The Constitution of the Republic of Maldives guarantees to all persons the same rights and freedoms and upholds the principles of equality and non-discrimination.
- “Everyone is entitled to the rights and freedoms without discrimination of any kind, including race, national origin, colour, sex, age, mental or physical disability, political or other opinion, property, birth or other status, or native island”.

Complaints lodged at HRCM

Article	Human Right	2011	2012 (Jan-Aug)
21	Right to life	1	1
23	Economic and social rights	1	
25	No slavery or forced labour	1	2
37	Right to work	17	3
42	Fair and transparent hearings	1	
43	Fair administrative action	5	2
50	Prompt investigation and prosecution	1	
51	Rights of the accused		1

54	No degrading treatment or torture		1
57	Humane treatment of arrested or detained persons		1
62	Retention of other rights	1	
	Non issues	1	
Total		29	11

Current Situation

- Migrant workers in the Maldives have contributed effectively in several ways.
- Migrants are employed in the construction and tourism sectors and as teachers and health professionals among others.
- Large migrant workforce in the country is mostly in unskilled labour.
- Also large presence of undocumented workers –which inadvertently creates social problems which have negative social and economic impacts as well.

Issues

- Most accommodation facilities are
- overcrowded,
- lacking proper ventilation,
- inadequate sanitary facilities
- limited accessibility to fresh water
- Payment and security issues
- Sometimes migrants work for long hours
- Some may not be paid for months
- Some are abandoned by employers to bring new workers
- Compensation mechanisms not in place
- Quite frequently passports of migrant workers are confiscated by employers and agents
- The government ministries continue to withhold the passport of expatriates for the purpose of safe keeping
- Many of migrant workers employed in the construction industry are often housed within the premises of the worksite, which restricts freedom of movement

Occupational Safety and Health



Construction workers working with no safety equipment or measures



Technicians with no safety equipment or measures - a common sight in Maldives

Complaints lodged by migrant workers to Labour Relations Authority (LRA)

Complaints lodged by Migrant Workers to Labour Relation Authority	2008	2009	2010	2011
Request for assistance to return back to country	1718	1487	302	505
Non-payment of wages	64	52	83	60
Request to change employer			2	67
Unable to obtain passport				2
Unable to obtain return ticket or wages in order to return back to the country		145	21	9
Food and accommodation issues	1	4	12	27
Delay in the payment of wages or hostile work environment			42	

Detention facilities

- NPM noticed a clear pattern with regard to the differential treatment towards undocumented migrant workers such as the overcrowded space they are kept in.
- Because this leads to various other issues such as access to sanitation resulting in spread of communicable diseases, HRCM has intervened by monitoring the situation, having consultative meetings with authorities, issuing reports and recommendations and doing follow-up visits.

Human Trafficking

- Maldives have been on the State Department's Trafficking in Persons tier two watch list for the past three years.
- Maldives is primarily a destination country for migrant workers especially from countries such as Bangladesh, India, Philippines and Sri Lanka
- Domestic servants sometimes subjected to forced labor
- Employment agents bring semi-skilled migrant workers to the Maldives under false terms of employment and upon payment of high fees
- Employers subject the migrants to conditions of forced labor upon arrival

Work of HRCM

- HRCM has allocated focal points within the Commission to work on migrant workers rights.
- Shares Human Rights concerns in these matters with the relevant authorities,
- Visits detention facilities, produce reports, monitor situation and make reports public.
- Focus more on solving the systemic issues and root causes of the problem as per the commission's recommendations
- Monitor and advocate the implementation of various commission recommendations relevant to this issue; and state commitments given to international bodies

HRCM Work

- Started production of educational materials on laws, procedures and rights in languages of the migrant population.
- Advocates signing Migrant workers convention
- Engage in contributing to drafting laws, comments on existing or new drafts and suggests new legislation
- Monitors implementation of relevant conventions and reports to treaty bodies
- Arranges forums and conducts Interactive dialogue with the state to learn about the problems, challenges, solutions, and to develop way forward
- APF and Diplomacy Training program provided training opportunities for staff in capacity building and for greater collaboration in the promotion and protection of rights of migrant workers.
- Developed benchmarks for protection of migrant rights.

- Built partnerships with Migrant Forum Asia and Solidarity Centre to conduct a training program for regional participants on the rights of migrant workers in South Asia.
- The participants of the workshop and study tour called for a multilateral approach to be undertaken among the South Asian countries in addressing the major gaps in the regulation and protection mechanisms of labor migration within the region.

Way Forward

- NHRI work with Authorities to ensure that the process of arrest, detention and extradition of undocumented migrant workers are in compliance with human rights obligations and standards.
- NHRIs work together through collaborative networks to help out in **solving the issues highlighted** and help expedite the process.
- State sign the International Human Rights Instruments including the ILO Conventions and Anti Trafficking protocols.

Prevention-State

- Maldives joined the IOM in 2011, a significant step towards improving the welfare and lifestyle of migrant workers
- State has acknowledged the existence of human trafficking and such issues faced by the migrant workers
- Approved an Anti-Trafficking plan in March 2012 established an Unit to deal with Human Trafficking and People Smuggling in January 2012.
- State is drafting a bill on human trafficking with the help of Australian Attorney General's Office.
- Maldives also agreed to ratify ICPRMWF

Thank You for your attention!

Situation of Migrant Workers of Nepal

- Bishal Khanal, Secretary, NHRC-Nepal

Introduction

Nepal is the home for around 28 million people. The 51 percent of population comprise women and 49 percent men. The 47 percentage of population comprises children below eighteen. Farming is the means to earn a living for 70 percent of people. Estimated sixty-five percentage of people in the country is literate. The seventy percent of people lives in rural areas. Around twenty-five percent of people lives below poverty line and most of them reside in rural areas. The 17 percentage of land coverage locates in the southern plain, 68 percentages in the middle hills/mountains, and 15 percent in upper mountains commonly called as Himalayas.

The NHRC was established in 2000 under NHRC Act of 1997. The Interim Constitution of 2007 elevated NHRC to a constitutional body. The Constitution provide broad mandate with responsibilities to contribute to the promotion, protection and respect for human rights. The Commission comprises a Chairperson and four commissioners appointed by the President upon the recommendation of the Constitutional Council and confirmed by Parliamentary Committee hearing.

The NHRC has a central office, five regional offices and three Sub-regional offices at various locations of the country. The NHRC performs mainly through Promotion, Protection/Investigation and Legal Affairs Divisions. The focal officer concerned initially takes up the issue of migrant workers.

Situation of Migrant Workers

Nepal has the long tradition of sending and receiving migrant workers. The movement of Nepalese migrant workers especially in neighboring India and China began in 15th century mainly for labor and business purposes. The British army commonly called Gurkha formed in 19th century was comprised of Nepalese youths who fought for Great Britain in various wars. India has Gurkha Brigades for a long time formed with the Nepalese youths who significantly contributed for the Indian security system. In addition, large number of Nepali used to work in India for an earning in both long term and on seasonal basis.

In the recent times, Nepal is sending around three million Nepali male and female in international job market. Nepalese migrant workers work in most of the countries across all the continents. The Government of Nepal has allowed working in 107 countries. Highest number of Nepalese go to work in India followed by Qatar, Saudi Arabia, Malaysia, Bahrain and Korea. Their earning constitutes around 24 percent

of GDP of Nepalese economy. The Nepalese workers travel abroad sometimes directly to the country of destination and sometimes via other countries as well.

The migrant workers in general are not free from fear. Work environment free from fear is very hard for them. At times they are forced to do the work that their conscience does not allow to do. Sometimes they are compelled to do the undesired things. A number of women migrant workers are the victims of sexual assault in helpless situations. Migrant workers are employed in illegal and immoral activities as well. As a result some of them are imprisoned in the receiving countries and some return home along with newborn or with pregnancy.

Sizeable number of Nepalese workers has been the victims of trafficking, drugs dealing and other unlawful activities. Many work in difficult and dangerous work environment and under hazardous conditions. At times, they are not assigned the work they were offered in the home country. Often children are employed, women sexually abused and some of them live in servitude.

The private sector entirely manages the work of sending migrant workers. The official data reveals that 2 million Nepalese work abroad. The estimated 1 million Nepalese go via other ways. The fifteen percentages of women comprises migrant work force who contribute to around 23 percentage of remittance.

The number stated above does not include Nepalese going to work in India. Estimated two million Nepalese work in India, and equal number of Indians works in Nepal. There is a tradition of free movement to and from Nepal and India. There is no visa requirement to travel in either country. In addition, no work permit required for the workers of both the countries. Therefore, there is no exact figure available of those working in either country. Most of them constitute undocumented migrant workers although that is legal.

The major reasons behind going to work abroad are for better lives, education, internal displacement, poverty and conflict. The violation of the rights of Nepalese workers abroad is considerably increased. The NHRC is seriously concerned on the violation of the rights of migrant workers, thus.

Nepal has not yet ratified the UN Convention on the Rights of Migrant Workers and their Families. The current situation reveals that many migrant workers are working whether abroad or in the country which needs to be aware on the rights of migrant workers and their families and the role and functions of the NHRC. It indeed helps respond to the violation and abuse of the rights of migrant workers. A few cases of migrant workers related issues are filed at the Commission.

The media, both print and electronic, frequently carry the news of violation of the rights of Nepalese migrant workers particularly in the gulf countries. Majority of victims are women, and nature of violation includes job termination, eviction from

the house, sexual abuses, rape, confiscation of property and labor exploitation. Considering the situation the government policy limits women to work in some countries on personal safety grounds. Majority of Nepalese going abroad fall under the category of less skilled workers. Lack of knowledge on their rights among the workers is another issue due to which they hardly place their claims before the Commission.

In order to respond to the situation, NHRC encourages the government to ratify UN Convention on the Rights of Migrant Workers and their Family. In addition, NHRC holds dialogues and advocacy programs aiming to familiarize the issues of the rights of migrant workers among the senior government staff, police personnel, sending agencies, workers and their families. Likewise, NHRC work with I/NGO, CSO on dialogue and advocacy programs.

The NHRC receives complaints on the abuse of the rights of migrant workers. In addition the NHRC can take action non the basis of suo-motu cognizance in the event of flagrant violation of the rights of migrant workers. The reports show that major forms of violation of the rights of Nepalese migrant workers abroad include murder, serious bodily harm, torture, rape, sexual abuse, state of servitude, denial of wages, dismissal and forceful eviction from residence.

Legal and Policy Arrangements

The Labor Act, Foreign Employment Regulations and Labor Rules are the major legal instruments that provide rights and remedial measures against the violation of the rights of migrant workers in Nepal. Some issues relating to the rights of migrant workers have been addressed through some sectoral policies. Those policies include the safety and security of workers.

The Ministry of labor along with the Ministry of Women Affairs has developed a policy that prevents women to go abroad unless adequate security measures are arranged. The policy clearly stipulates that only approved or certified agencies would be eligible to send the workers abroad. In the recent times, government has undertaken a policy to conclude labor related MOU or agreements with receiving countries to regulate the process of sending Nepalese workers broad. The government has inked the MOU with a number of countries that includes Bahrain, Korea, Malaysia and UAE.

The NHRC has not directly intervened on policy issues. However, at times NHRC has recommended the government to make adequate policy on safety and security of workers and their property. The recommendations are made in response to complaints received on suffering with serious bodily harm, denial of wages, premature termination of contract and forceful eviction from houses, mainly to the female workers. The Commission therefore has encouraged the government to adopt a policy on the migrant workers in general and rights of migrant workers in particular.

Challenges as a Sending Country

The major challenges on the protection, promotion and respect for the rights of Nepalese workers abroad are as below.

1. Safety and security of life and property, mainly of women and children
2. Employment in illegal and unethical work as prostitution, transport of drugs
3. Labor exploitation in terms of remuneration and excess workload
4. Premature termination or dismissal from work
5. Coercive eviction from residence without alternative residence
6. Diverting workers to another countries with ulterior motives
7. Inadequate training on language and knowledge of culture of receiving countries
8. Unreliable and illegal role of sending agencies
9. Poor legal and remedial measures
10. Lack of labor related agreements with many receiving countries
11. Inadequate and untimely response from the responsible institutions of the receiving countries

Challenges as a Receiving Country

The major challenges as a receiving country are as below.

1. Increased hideous crimes as kidnapping, armed robbery, explosion, drugs dealing, human trafficking, rape, arms deals, counterfeiting currencies
2. Attempts to give undue influence to the law enforcement and policy level staff
3. Attempts on giving influence and showing concerns on sensitive issues of national interest as integrity and security
4. Performing job other than specified one, that may include advocating for particular religion and culture
5. Increased number of illegal immigrants
6. Increased number of native unemployment

Rights Abuses of Nepalese Workers: Sample Cases

In August 2004, twelve Nepalese workers were shot dead at a single incident in Iraq that stunned the entire world of the communities of the migrant workers and the rest. A Malaysian Court sentenced to death to a migrant worker named Darji and currently waiting for execution. A female worker in gulf named Dolma was sentenced to death in 2007. A Nepalese worker was executed in Indonesia after he was sentenced to death by an Indonesian court in 2007. The news reports show that two Nepalese workers were hanged till death in China.

Noteworthy of it is that none of them would be the subject to death penalty in their home country as if they committed serious of all offences. The death penalty is abolished by the Constitution in Nepal. We therefore keep the firm opinion that awarding death sentence to all and in particular to the nationals of countries

where death penalty does not exist must be taken into serious consideration by the government and courts of sentencing countries.

A well known daily reported that 100s workers want to return home from Saudi Arabia once they fell seriously ill due to excess work hours. Some of them were assigned to work continuously for 27 hours in Saudi industrial establishments. The same daily reports that some 250 Nepalese workers stayed under a bridges for months in Jeddah. It happened when the employees were denied their wages on time and later unilaterally dismissed from the jobs and evicted from houses.

According to a recent news report, thousands of migrant workers including Nepalese were removed from the job once the Saudi Arabia undertook a policy of reservation for job to Saudi nationals in Saudi enterprises. A number of enterprises were closed due to the increased expenses to pay to the Saudi nationals. The employers denied the payment and therefore hundreds of Nepalese are stranded in public places. They lack expenses to return home.

Currently thousands of Nepalese workers are detained in jails and prisons of various countries. Hundreds of women are living at the state of servitude as they are used as bonded labor followed by incidents of rape and other forms of sexual abuses. In the recent times, a number of women have come back home with newborn without the father's name being identified. They, along with their child in hand, are denied integration into their family back home. Some of them stay at the shelters sponsored by the private sector and some are left in lurch in helpless situation. Others who return in suffering due to various reasons as physical or sexual assaults have also met the similar fate.

Many workers return home empty handed. A number of them mainly women returnees with have trauma and serious psychological and mental health consequences. In average, two deceased migrant workers have been fetched back to the home country. The whereabouts of hundreds of male and female migrant workers is knot known for years. In some cases, there is no hope of their union with family, as they are assumed killed.

Work With NHRCs Abroad

The NHRC-Nepal in past endeavored to work with NHRCs of a number of countries aiming to protect and respect for the rights of Nepalese migrant workers. The NHRC Nepal has had several dialogues with NHRIs, governments and leading CSOs of South Asian (SAARC) countries, both at Commissioner and senior staff level mainly on the issues of trafficking in human persons, especially on girl and children.

The NHRC Nepal requested NHRC-Malaysia to monitor the case and look into the possibility of withdrawing death sentence imposed on Dargi, a Nepalese migrant

worker waiting for execution. The NHRC along with Nepalese human rights NGOs campaigned and sought cooperation of NHRI Jordan for the withdrawal of death sentence imposed on a Nepalese migrant worker. The NHRC Nepal sought cooperation of NHRC-Indonesia to monitor the suspicious murder of a Nepalese migrant worker named Indra in 2006.

Key Efforts by NHRC- Nepal

The following are the key efforts of NHRC-Nepal to contribute for the protection and promotion of the rights of migrant workers

1. Recommended to the Government of Nepal for the ratification of Convention on the Rights of Migrant Workers and their Families
2. Advocated and encouraged for the adoption of national policy of migrant workers without delay
3. Widely and largely advocated to end the culture of impunity, even if migrant workers involved
4. Helped to negotiate with employers to pay wages and other benefits available to both national and migrant workers
5. Held dialogues with the Labor Ministry, Labor Department and other relevant agencies of government of Nepal, at different levels, on the rights and interests of migrant workers
6. Held periodic interactions with NGOs working on the migrant workers issues and advocate for the respect for the rights of migrant workers
7. The National Report on the Situation of the Trafficking in Persons develop, publish and disseminate on annual basis.

Remedial Measures and Mechanisms

The Labor and Employment Promotion Department can receive and decide upon complaints of individual victims or companies on the violation of rights, non-fulfillment of obligations and breach of agreements done between the workers and sending agencies. The Department has received around one thousand complaints against sending individuals and companies. The appeal against the decision of Labor and Employment Promotion Department may be filed at the Labor Court. The cases also be filed at respective district (trial) courts, and the Court of Appeal would hear an appeal upon the decision of the district courts. The above measures would hardly be effective in the rights violation abroad.

Ways Forward

The NHRC Nepal shall endeavor to take initiatives in the following, along with NHRIs abroad.

1. To strengthening of mutual cooperation between NHRIs through MOU/ treaty, whatever applicable
2. To work with other NHRIs to create an effective mechanism to learn from each other's best practices
3. To work for capacity building of NHRIs through information sharing, training, exchange programs, among others

Situation of Migrant Workers in Qatar

- Hon. Essa Rashid M Al Kabib, Member, NHRC-Qatar

Hon Essa Rashid M Al Kabib observed that National Human Rights Committee consists of 40 members. It has sub committees as well. The annual objectives and plan are set and Committee work to achieve our objectives in order to help promoting human rights. The committee also opens dialogue with government authorities and non government agencies in order to look upon the issues of workers. The Committee also have put the system in place and can receive grievances through email, hotline etc. They work with the appropriate authorities to resolve them.

Committee visits different agencies including health, education, labor related and also prisons. Committee meets and tries to deal with the issues hold dialogues with those agencies. The Committee encourages the state to enter any agreement which has relation to human rights.

The NHRC- Qatar do arrange number of serious workshops as human rights education. Qatar is a labor receiving country. As a receiving country they need lot of educational and awareness programs for the migrants and officials dealing with the issue of migrants. A number of people are given training of foreign languages. We want to help them to know their rights by going to their work place. Also the Committee make campaigns via newspapers as Committee want them to know their rights. We produce reeding materials in different languages and go to their place and try to educate them.

We would like to see that the sending countries should provide pre departure training, because pre departure is very important in settling the issue. The Committee educates the workers about their rights and duties during their work. We also encourage about the contract because the contract is signed by the embassy of the country or labor office. We ensure that the labor office know about the nature and type of work and list of things before they are coming.

We encourage that the sending countries should establish labor offices in their embassy. Because the labour office would help them by informing the condition of work, nature of work, salery and benefits and other required support, among others.

From the part of the Committee they have lot of awareness programs for migrant workers. We go and educate them about their rights. Also ensure that migrant workers have right skills and if there is mismatch wherever possible we try to resolve the issue at the spot. We go to different agencies and open dialogue and resolve the issues. As the NHRC we have the power to go to different places, nobody would question about their visits to those agencies.

This type of conference will help cooperation and build up strategies. We wish for the success of the conference. *(Prepared on the basis of oral observation made by Hon Essa Rashid M Al Kabib)*

Situation of Migrant Workers in Sri Lanka

- Hon. Justice Priyantha Perera, Chairperson, NHRC - Sri Lanka

Context

The Human Rights Commission of Sri Lanka which is vested with the power of monitoring Human Rights situations is deeply concerned with the promotion and protection of Migrant workers rights. The Commission identified the importance of the institutional framework for labor migration provided by the Ministry of Foreign Employment Promotion and Welfare which is the primary regulatory body for overseas migration. The Sri Lankan diplomatic missions in labor receiving countries are also equipped with a mandate and facilities to provide for the protection and welfare of all Sri Lankan workers overseas. While appreciating the key roles played by the other key government institutions and agencies in the process of protecting and promoting the rights of the migrants in the Sri Lankan context, we as the National Human Rights Commission of Sri Lanka has its major concerns over the role played by the Sri Lankan Embassies and their consulates in looking after the interest of its citizens in the countries of destinations.

The Diplomatic Missions, Embassies, Consular and Labour Welfare Officers all play a crucial role in respect of its citizens when discharging their duties in protecting the rights of migrant workers in host countries. In the light of the above, the Commission is very keen to monitor the developments in regard to the guidelines mentioned below.

1. Establish networking systems on migrants in detention and accurately informed of the status of their cases and of their right to contact a consular of embassy representative and members of their families and to have a follow-up procedure.
2. Establish a regular visiting mechanism to safe houses or centers where the irregular migrants are kept and to develop and continue assistance programmes to migrants deprived of their liberty, including legal assistance, translation services to fill the gaps on communication, social and psychological assistance.
3. The Sri Lanka Bureau of Foreign Employment (SLBFE) and the Ministry of External Affairs must design a system to enable the consular/welfare officers to check periodically on the well being of house maids who go as low skilled migrant workers especially to the Gulf Continent Countries.
4. Consular / Labour Welfare Officers be give adequate resources for the performance of all required activities for protecting the rights of migrant workers and for organizing cultural events for the migrant workers to maintain their cultural links with Sri Lanka.
5. A Female Labour Welfare Officer be appointed to serve in every mission in order to address gender related problems of women migrant workers who would be effectively at ease in communicating with a female officer.
6. The SLBFE and the Ministry of External Affairs should evaluate the current training programme in order to ensure the adequacy of the training provided

- for the particular Consular / Welfare Officers before they are posted overseas.
7. Ensure that the consultancy or expertise through a consultant takes place to analyze existing training curricula and draft a comprehensive training manual for representatives of the bureau attached to Sri Lankan Missions.

The Human Rights Commission is keen that the above criteria should be adopted as the working mechanism through out all the respective Diplomatic Missions placed in Host Countries.

General Situation

According to Article 2.1 of the International Convention on the protection of the rights of all migrant workers and members of their families, a 'Migrant Worker' is defined as a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a National. This includes both documented and undocumented workers and permanent and temporary migrant workers from a country to foreign countries and migrant workers from foreign countries working in that country.

In the case of Sri Lanka we do not have many migrant workers from foreign countries working in Sri Lanka and the very few available are skilled and semi skilled workers category. There had been no problem in this sphere and no violation of human rights and workers rights have been reported. However, the Sri Lanka migrant workers in foreign countries mostly in the Middle East as unskilled category have faced a lot of problems in the recent past.

The globalization of labour markets includes thousands of workers to seek their fortunes upon foreign soil each year and sell their labour. These are the migrant workers of the world. Sri Lanka is no stranger to this phenomenon. In 2010 over 1.8 million Sri Lankan migrants worked abroad with total number of departures for foreign employment has increased by 8% from 247,126 in 2009 to 266,445 in 2010 (males 135,502 and females 130,943).

The preponderance of this labour outflow is to the Middle East for unskilled and semi skilled work, and by May 2010, there were over 1.2 million migrant workers in this region alone. Until the 1970s and the oil boom in the Middle East economic migration consisted primarily of professional or skilled migrants to European countries.

From 1988 till 2008 the majority of migrants going abroad were female domestic migrant workers. In 2010, with a push by the government for males to go abroad, there was a slight increase of male migrants (50.86%) over females (49.14%) Numerous protection and welfare issues affecting female migrant workers within the host country and social and cultural issues they face at home as well as efforts made by successive governments to change migratory patterns to ones of skilled male labour have been responsible for this change.

The role and rights of these migrant workers need to be analyzed within the framework of their contribution to the economic development of the country. The remittances of this invisible workforce have been one of the cornerstones of the Sri Lanka economy; a fact which was highlighted during the recent recession. According to Central Bank, Sri Lanka reports migrant worker remittances in 2009 amounted to USD 3.3 billion which increased to USD 3.6 billion in 2010.

Unfortunately, the enormous contribution that Sri Lankan women in general and migrant women in particular make to the Sri Lankan economy remains unacknowledged. Not only are their contribution underappreciated, but they are subjected to social and cultural discrimination in both host and sending countries.

The Abuse of Female Migrant Workers

Violations of the rights of female migrant workers are not uncommon in the migrant process from the pre-departure stage to the re-integration phase.

Abuse by Agents and Other Officials

Physical and sexual abuse of female workers in the host country is a much publicized topic. Most migrant complaints relate to the period of employment and residence in the host country. These complaints are wide ranging-non payment of wages, long hours, prohibitions of freedom of movements, lack of communication with consular officials, agents and family members, sickness and related lack of health care, physical and sexual abuse, non repatriation after the end of the contract, being standard through lack of reception or false promises by agents, premature termination of contract, breach of contract including forcing the workers to toil for several employers or households, illegal money transactions and even death through unnatural causes. 14,704 complaints of above categories received in 2010, as compared to 12,060 complaints in the year 2009.

Abuse by Employer

Housemaids are often expected to be on call 24 hours per day and are subject to brutal treatment. Physical abuse includes, but is not limited to, severe beatings, scalding with boiling water and oil, burnings with hot implements, deprivation of food and water, and restriction of movement. Many migrant workers report experiences of sexual abuse by employers or other national and migrants. With some sexual abuse is a one off incident, with others, they are expected to provide sexual services as part of their employment.

Children Born to Migrant Workers Abroad

Many cases exist where migrant women conceive and give birth to children while working abroad. In some cases conception is due to rape, but in other instances it is through mutual consent. Nonetheless severe social taboos or marital status prevents migrant workers from bringing these children back. In most cases, these children are not accorded the host country nationality, unless proof exists that the

father is a national of the given host country. However Sri Lankan law does allow mothers to pass on citizenship to their children regardless of the father's nationality. Sri Lankan embassy officials are mandated to assist Sri Lankan women with the correct procedures. However this information needs to be made both available to Sri Lankan embassies and migrant workers.

Incarceration in Detention Centres and Welfare Camps

Female migrant workers who attempt to flee situations, at times, are subsequently incarcerated in detention centres or welfare camps. Other times they are forced to return to their employers and complete their contract. Unlike some detention centres, welfare camps are really another form of detention with a dearth of health and sanitation facilities where social workers are prohibited from visiting.

“Kafala” or Sponsorship System

A root cause for violations of migrant workers' rights has been the kafala system of sponsorship prevailing in most Middle East countries (it was recently banned in Bahrain). Under the kafala programme in the Middle East, an employer is required to sponsor a migrant worker's visa and assume full economic and legal responsibility for him/her during the contracted period. Legally the sponsored worker can work only for his/her sponsor. In the case of a domestic worker, the programme makes it mandatory for her to remain in their employer/sponsor's home.

While the Kafala system was created to provide the government with a way to regulate foreign labour flows, critics charge that the system can lead to the exploitation of migrant workers in general and women domestic workers in particular.

Sharia Law and Gender Discrimination

Sharia Law, also known as a “way” or “path” in Arabic, is believed to be God's law by many Muslims. It is derived primarily from the Quran. Punishment and quality are two important areas governed by Sharia Law. There are five hadd crimes (Hadd crimes are crimes which are prescribed a special punishment in the Quran) and punishments include: flogging, stoning, amputation, exile, or execution. Due to its views on adultery, victims of sexual violence are rarely served justice in Sharia courts. Saudi Arabia, Kuwait and Bahrain, countries with great numbers of Sri Lankan migrant workers, adhere to this law. An example of the danger this situation poses to migrant workers was highlighted in the controversial case of Rizana Nafeek, a 17 years old Sri Lankan girl who was working as a babysitter when she was accused of choking an infant who she was trying to feed. A child herself at the time of the incident, a Saudi court sentenced her to death by beheading. Due to public concerns expressed internationally and locally and due also to the speedy intervention of a regional human rights body the death sentence was delayed in its implementation. Her case is still pending.

However, despite some problematic laws, host countries have also shown a resolve to strengthen the protection accorded to migrant workers in general, and domestic workers in particular. In April 2007, the UAE issued a standardized contract for domestic workers which explicitly spells out their rights and entitlements: Jordan soon followed, and Lebanon is planning to do so. In Bahrain, the newly established Labour market Regulatory Authority has amended existing laws to accord greater freedom to migrant workers to change jobs following the completion of their initial contracts. Other positive responses include the recognition by the Jordanian government of domestic work in its labour works.

Lack of Medical Care

As domestic workers in most of the Middle East fall outside local labour laws (with the exception of Jordan), in many instances they are also denied access to health care. Often their only access to such services is to pay for it themselves or through their employers who have to provide them residency permits. There have been instances of private and public hospitals turning migrants away whom they suspects of remaining in the country irregularly. Yet, at times, due to the Kafala system migrants are often not in possession of their passport or related visas.

Long working hours without overtime pay

This is a recurrent complaint of many domestic workers. Whilst labour laws in Middle East countries specify standards for daily work and rest and have clear provisions for overtime pay, these laws remain inapplicable to domestic workers.

Unpaid Salaries

Whilst many migrant workers are forced to work long hours, and under difficult conditions many employers do not pay them on time, pay the agreed wages or, in worst cases, pay them at all. Statistics for the 'non payment of agreed wages' category in 2010 remained the highest category of complaints according to the SLBFE. Sri Lanka Bureau of Foreign Employment Annual Report for 2010 (2875 complaints).

Problems facing the families left behind

Another important facet of migration is the family members workers leave behind. The impact of the separation, especially on children is life shattering. Children are left behind to be cared for by the father, grandparents or extended family. Most children will be neglected for lack of a family unit with a resultant breakdown in education, health and nutrition. There are however many instances when remittances have assisted to obtain better education and health care as well. Sexual and physical abuse by fathers – due to the abuses of their partners or by others- due to lack of protection is not uncommon. Studies have linked separation with psychological trauma for these children. Husbands often heavily rely on wives earnings, and subsequently give up working or not seek work themselves. With an excess of free time and money husbands often turn to drinking, gambling and adultery.

Legislation

There is a growing awareness on national and international levels of the necessity for more comprehensive legislation for the regulation and monitoring of all aspects of the migration process. International bodies and governments want to safeguard the rights of migrant workers and their families as well as the economies of both labour-receiving and labour-sending countries. The present national legislation for migrant workers in Sri Lanka consists of the Sri Lanka Bureau of Foreign Employment Act No. 21 of 1985 and its Amendment Acts-No. 04 of 1994 & No. 56 of 2009.

In 1996 Sri Lanka acceded to the International Convention of the Protection of All Migrant Workers and their Families which came into force in 2003. Sri Lanka has ratified 40 ILO Conventions to date with 31 in force.

The main goal of this Convention is to promote the human rights of all migrant workers and their families taking into consideration the principles, standards and conditions set forth in the Universal Declaration of Human Rights (UDHR), International Convention on the Elimination of All Forms of Racial Discrimination (CEARD), International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), International Labour Organization (ILO) Convention and various UN Resolutions on Migrant Workers.

The Sri Lanka Bureau of Foreign Employment Act, 1985 is the first major legislative recognition of labour migration. Sri Lankan migrant workers overseas do not fall within the purview of national labour laws that govern and protect workers within Sri Lanka, and thus the Sri Lanka Bureau of Foreign Employment Act is the primary piece of legislation that applies to Sri Lankan workers migrating for overseas employment. The Sri Lanka Bureau of Foreign Employment is within the purview of the Ministry of Foreign Employment Promotion and Welfare.

The Sri Lanka Bureau of Foreign Employment Act provides for all categories of migrant workers. The primary function of the legislation is to establish the Sri Lanka Bureau of Foreign Employment and provide for its functions which are set out in the detailed objectives and general powers. The Act confers upon the SLBFE the legal mandate to be the governing authority for Sri Lanka's migrant labour force and to act as the head agency for overseas employment administration. The Sri Lanka Bureau of Foreign Employment which was set up in 1986 operates as a semi government body and receives its power, duties and obligations from the Sri Lanka Bureau of Foreign Employment Act.

The Sri Lanka Bureau of Foreign Employment is managed by a Board of Directors consisting of 11 members, all of whom are appointed by the Minister of Foreign Employment Promotion and Welfare. The law empowers the SLBFE to manage the emigration of workers through specific organization functions, among them, the

licensing of employment agencies, data collection on migration workers, setting of standards and negotiation of employment contracts and the provision of welfare measures for the protection of overseas Sri Lankan workers. Section 15 of the Act sets out the objectives which can be summarized as follows:

- To set standards for and to negotiate contracts of employment
- To enter into agreements with relevant foreign authorities, employers and employment agencies in order to formalize recruitment agreements.
- To formulate and implement a model contract of employment which ensures fair wages and standards of employment.
- To examine the authenticity of documentation issued to Sri Lankan recruits outside Sri Lanka going abroad for employment.
- To undertake the welfare and protection of Sri Lankans employed outside Sri Lanka.
- To provide assistances to Sri Lankans going abroad for employment.

Owing to the independency of the SLBFE Act in protecting migrant workers' rights, the Government of Sri Lanka (GoSL) saw fit to propose the National Policy on Migrant Workers in 2008 which is yet to be completely and effectively implemented.

The Sri Lanka National Policy on Labour Migration is developed by the Ministry of Foreign Employment Promotion and Welfare to articulate the State Policy regarding Sri Lankan citizens engaged in employment in other countries. The policy has the following goals.

- To develop a long-term vision for the role of labour migration in the economy.
- To enhance the benefits of labour migration on the economy, society and the migrant workers and their families and minimize its negative impacts.
- To work towards the fulfillment and protection of all human labour rights of migrant workers.

The Sri Lanka National Labour Migration Policy has been developed with the full and active participation of key stakeholder in the process. The policy outlines Sri Lanka's commitment to a process of labour migration consistent with good governance, protection of the rights of migrant workers and development objectives. The policy has addressed a range of issues and challenges in the process of migration for employment from the perspective of a labour-sending country and identified practical, yet strategic plans of action to meet these challenges.

In addition a Ten Year Plan for Development and the National Action Plan for Decent Work' has recognized the importance of labour migration of the economy. The Ten Year Plan highlights 'safe, skilled migration' as the basic strategy to guide overseas labour migration. The creation of a separate Ministry for Foreign

Employment Promotion in February 2007, the Ministry of Foreign Employment Promotion and Welfare is another indication of the priority assigned to labour migration in Sri Lanka.

MOUs and Bilateral Agreements

At this juncture it is important to have some understanding of the MOUs and bilateral agreements existing between Sri Lanka and various host countries.

An MOU is a written statement detailing the preliminary understanding of parties who plan to enter into a contract or some other agreement; it is not meant to be binding. A bilateral agreement is a contract between two parties creating obligations that are enforceable or otherwise recognized by law.

Sri Lanka has signed MOUs with the governments of Jordan, Qatar, UAE, South Korea and Malaysia. Currently, a bilateral agreement is being discussed with Lebanon. MOUs provide inadequate protection as they are legally unenforceable in the event of non-compliance. Unfortunately, almost all agreements with host countries are currently in the form of MOUs.

Some MOUs contain provisions which are contrary to the Migrant Workers Convention. The MOU between Sri Lanka and Malaysia, signed in June 2006, has several such provisions, for example, Article 8 allows the employer to keep the worker's passport in their custody to be handed over to the high commission in the event the worker absconds. This violated Article 39(1) of the Migrant Workers Convention on the worker's right to freedom of movement. Even existing MOUs therefore need to be revised and strengthened.

ALFEA and Foreign Employment Agencies

With the increase in the number of migrant workers bound for the Middle East, the number of registered foreign employment agencies has also increased from a mere 139 in 1985 to 626 in 2008. This is mainly due to the large numbers of unskilled workers requiring third party intervention in accessing foreign job opportunities.

In a positive response to reports of abuse of migrant workers, the Sri Lanka is attempting to regulate and monitor these agencies through increasingly stringent legislation and regulatory framework. This includes: SLBFE approval of the initial job order, SLBFE registration of all prospective migrant workers, pre-departure medical examinations, and SLBFE compulsory 15 days pre-departure trainings or domestic migrant workers going to the Middle East.

However, there continues to be vast discrepancies between the information disseminated by agencies, the employment contract approved by the Bureau and the actual working conditions. The efforts made to regulate sub-agents continue to be insufficient.

SLBFE Projects

Over the past few years, the Bureau has initiated many projects and services for the welfare of prospective migrant workers, their families and returnee migrants. These services include: insurance schemes; pre departure, housing and self employment loan schemes, scholarships and financial assistance for migrant workers' children; a welfare centre for returnee migrants; and skills training.

Other services covered are:

- Dispute settlement: the Bureau is required to liaise with embassies and resolve employment disputes arising abroad.
- International relations: to enhance relations with embassies / high commissions in order to settle issues swiftly.

Migrant workers are however, often left to languish for months in embassies or shelters, with all the hardships this entails before they are repatriated. At the moment there are almost 200 migrant workers languishing in safe houses in Jordan pending repatriation.

Issues faced by GOSL and SLBFE

This will be a brief outline of the primary causes for abuses of migrant workers' rights which come within the domain of the GOSL and SLBFE. National and international migrant workers legislation is ineffectual in the face of a lack of corresponding legislation in host states. Most Middle East states have not ratified international conventions and many still adhere to shariah laws and the *kafala* system. Their national labour laws exclude domestic workers from key protections such as minimum pay, limits to working hours, restrictions on salary deduction, rest days and decent working conditions. However, Jordan amended its Labour Laws in 2008 to include domestic workers and Bahrain has modified the *kafala* system. The Sri Lankan consular missions in these countries also appear to be ill-equipped in protecting these workers against abuse, legal charges or disaster. Overseas missions remain understaffed to deal with the volume of complaints, and do not have specialized staff, such as social workers and lawyers, or staff conversant in host country languages. They often fall short in meeting minimum requirements to provide temporary shelter, case management, and other services to domestic workers.

There is ineffective networking at an international level or irregular migration and trafficking. National legislation on trafficking is also inadequate to combat this problem.

The Kathmandu Resolution

Outcome Document of the International Conference on Cooperation between National Human Rights Institutions for the Promotion and Protection of the Rights of Migrant Workers

26-27 November 2012, Kathmandu

The *International Conference on Cooperation between National Human Rights Institutions (NHRIs) for the Promotion and Protection of the Rights of Migrant Workers* was held in Kathmandu, Nepal on 26-27 November 2012 with an outcome document known as *Kathmandu Resolution, 2012*. The Conference organized by the National Human Rights Commission of Nepal with participants from NHRIs, National and International Non-Governmental Organizations (I/NGOs), independent experts, civil society organizations and academics from the Asia-Pacific countries discussed in-depth the prospects and opportunities for international cooperation towards the promotion and protection of the rights of the migrant workers. The Conference had a look at the prevailing situations of the migrant workers in the receiving, sending and transit countries and examined the existing protection framework. A strong need was felt towards the establishment of a relevant cooperation mechanism taking into account existing national, regional and international human rights mechanisms, including those under the mandate of the United Nations.

Welcoming the initiative taken by the National Human Rights Commission of Nepal to convene an International Conference on Cooperation between NHRIs for the Promotion and Protection of the Rights of Migrant Workers in the Asia Pacific Region in Kathmandu on 26-27 November, 2012,

Reiterating the need for closer mutual cooperation between NHRIs in capacity building and promotion of human rights awareness,

Reaffirming the Universal Declaration of Human Rights (UDHR) which reiterates the fact that human rights are universal, indivisible and mutually reinforcing and also proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without discrimination of any kind, in particular as to race, colour, sex or national origin,

Recalling the commitments expressed through the Programme of Actions including Vienna Declaration and Programme of Action (1993), Beijing Platform of Action (1995), Durban Plan of Action (2001) and Johannesburg Programme of Action, 2002 and their linkage to the protection of the rights of the migrant workers,

Welcoming the entry into force of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990, reaffirming its importance as a baseline for migrant workers' rights, and recognizing the important work of the Committee on Migrant Workers,

Recognizing the important role played by the human rights organs of the United Nations, including the guidance and jurisprudence of the treaty bodies, the Human Rights Council, and special procedures including the Special Rapporteur for the promotion and protection of the human rights of migrant workers,

Recognizing the importance of the human rights-based approach to the migration, as well as the full participation of NHRIs in the Global Forum on Migration and Development process,

Noting also that the situation of migrant workers and their families has become a critical contemporary human rights issue worldwide, particularly in relation to exploitation by traffickers, smugglers of human being, unscrupulous recruitment agents and employers, and associated corrupt practices; deaths and injury in transit; discrimination and xenophobia; various forms of exploitation including sexual abuse; subjection to forced labour, slavery, practices akin to slavery; and bad working conditions; and inhumane treatment in cases of arrest, detention and deportation,

Urging the continued enhancement of the role and participation of NHRIs in international human rights mechanisms, such as the Human Rights Council, Universal Periodic Review and Special Procedures and Human Rights Treaty Bodies, as well as in regional human rights initiatives,

Reaffirming that NHRIs in the Asia-Pacific region should continuously play an active role in promoting and protecting human rights in the region, with special efforts to advocacy for the human rights approach to migration and to promote the establishment of NHRIs in countries where they are not yet established,

Welcoming the initiatives of the existing regional human rights mechanism including the European, African, Inter-American and establishment of the ASEAN Inter-Governmental Commission on Human Rights (AICHR) and their work on human rights and the rights of the migrant workers,

Welcoming outcome of the Conferences of NHRIs including Zacatecas Declaration (2004), Santa Cruz Declaration (2006), Rabat Declaration (2008) and Seoul

Guideline (2008) which recognize the urgent need to develop strategies and action-oriented guidelines to strengthen and promote cooperation among NHRIs in Asia , *Recalling* the provision of the Charter of the South Asian Association for Regional Cooperation(SAARC) which stipulates ‘strict adherence to the principles of the United Nations Charter’ to provide all individuals with the opportunity to live in dignity and to realize their full potential,

Recognizing the growing track record of SAARC member States ratifying the core international human rights treaties and related protocols,

Acknowledging the Colombo Process, Abudhabi Dialogue, EU Dialogue and Bali Process as important regional initiatives towards cooperation in labour migration process which could be evolved as an important vehicle for the promotion and protection of the rights of the migrant workers in the Asia-Pacific Region,

Recalling the standards developed under International Labour Organization (ILO) through Conventions and Recommendations including the Convention 189 on Decent Work for Domestic Workers (2011),

Noting with great interest similar calls for cooperation among NHRIs in other regions, including the creation of mechanisms for communication and coordination between human rights institutions, a call for NHRIs to engage in international cooperation and to make use of their networks to communicate on rights of the migrant workers, and to make recommendations to strengthen cooperation between NHRIs to ensure the promotion and protection of human rights of migrant workers and their family members,

Hereby adopts the following *Principal Areas of Cooperation* and *Plan of Action* for the promotion and protection of the human rights of migrant workers in Asia Pacific Region:

SECTION I: Principal Areas of Cooperation

NHRIs in Asia Pacific region are encouraged to take action in the following areas for the purpose of promoting and protecting the human rights of migrant workers:

Establishment of regional cooperation mechanism among the respective NHRIs of the Asia Pacific Region to enhance mutual cooperation and advocacy for the protection of the rights of the migrant workers through national, regional and international human rights mechanisms and processes,

Standard-setting on women migrant workers in the international and regional levels,

Promoting the regional cooperation towards the universal ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, including among destination countries in Asia, Promoting universal ratification and implementation of all other international UN human rights treaties and ILO conventions relevant to migrant issues,

Strengthening of cooperation with the Special Rapporteur on the human rights of migrants and other Special Procedures established by the Human Rights Council (HRC)

Enhancing cooperation with the Office of the High Commissioner for Human Rights (OHCHR), particularly with the National Institutions Unit (NIU) and Asia and the Pacific Unit

Enhancing cooperation with international organizations, as well as regional organizations in particular, International Labor Organization (ILO), UN High Commissioner for Refugees (UNHCR), International Organization for Migration (IOM), South Asian Association for Regional Cooperation (SAARC) and ASEAN Inter Governmental Commission on Human Rights (AICHR)

Encouraging and supporting establishment of independent NHRIs in conformity with the Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights (Paris Principles) and Strengthening of NHRI mandates with regard to the human rights of migrant workers,

Encouraging development and implementation of National Human Rights Action Plans (NHRAP) that include the human rights of migrants, and ensuring the implementation of such action plans,

Cooperating towards providing effective remedies such as complaints-filing, counseling, investigation, etc., regarding human rights violations against migrants, in particular, irregular and undocumented workers, victims of trafficking, smuggling and sexual abuse with special emphasis to adopt the special measures to insure human rights of the migrant workers under high risk and vulnerable situations as per 4R Approach (Rescue, Repatriation, Rehabilitation and Reintegration) with shared responsibilities among the sending, receiving and transit countries respectively.

Section II: Plan of Action

NHRIs in Asia Pacific are encouraged to undertake the following actions for the purpose of promoting and protecting the human rights of migrants:

Monitoring of the human rights situation of migrants in each country and develop strategy for the development and strengthening of remedies to address human rights

violations committed against migrants, especially undocumented and irregular migrant workers,

Establishing bilateral or multi-lateral frameworks of cooperation for the protection and promotion of the rights of the migrant workers among NHRIs of Asia Pacific region through mutual cooperation, exchange of information and making of joint action, where appropriate, to address issues of mutual concern that require an internationally coordinated response,

Initiation of an international campaign for the universal ratification of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 1990; and other related human rights treaties,
Development of training modules and materials related to the human rights of migrants for developing capacity of the NHRIs, NGOs and organizations working in the area of rights of the migrant worker

Monitoring and participation in the regional standard-setting and institution-building processes related to the human rights of migrants.

Engage with a broad range of stakeholders including Government, NGOs, Trade Unions, Business and Labour Supplying Agencies, Academics and other concerned agencies for the promotion and protection of the rights of migrant workers,
Undertake advocacy and public awareness for introduction, reformation and effective implementation of Law, Policy and plans of action for the rights of the migrant workers,

Develop cooperative relations with stakeholders, especially NHRIs in other labour-sending and labour receiving countries to undertake research, share information and exchange expertise.

Designate and strengthen the capacity of the NHRIs staff within their institutions to act as ‘focal points’ on the rights of the migrant workers

Active engagement of NHRIs in all phases of preparation, submission and follow-up of the reporting of the implementation of recommendations of the Treaty Bodies including the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

Kathmandu, 27 November 2012



Participants during the endorsement session on the Kathmandu Resolution on the last day of the Conference

Annexure

List of Participants

S.N.	Name	Designation	Organization
1	Mr. Najibullahabrazkzai	Coordinator of AIHRC Child Rights Protection and Promotion Unit	AIHRC-Afghanistan
2	Mr. Hussain Ali Moin	Coordinator of AIHRC Monitoring and Investigation Unit	AIHRC-Afghanistan
3	Hon'ble Mr. Mizanur Rahman	Chairman	NHRC-Bangladesh
4	Hon'ble Prof. Niru Kumar Ch akma	Honorary Member	NHRC-Bangladesh
5	Mr. Kazi Arfan Ashik	Private Secretary to Chairman	NHRC-Bangladesh
6	MD Tajul Islam Chowdhury	Secretary	NHRC-Bangladesh
7	Hon'ble Justice K.G. Balakrishnan	Chairperson	NHRC-India
8	Hon'ble Justice Govind Prasad Mathur	Member	NHRC-India
9	Mr. Rishi Pal	Sr. Officer	NHRC India
10	Hob'ble Mr. Hyun Byung Chul	Chairperson	NHRC-S. Korea
11	MrHwang, sung yong	Human Rights Investigation Officer	NHRC-S.Korea
12	Mr. Yunkul Jung	Chief, International Human Rights Team	NHRC- S. Korea
13	Hon'ble Ms. Mariyam Azra Ahmed	President	NHRC-Maldives
14	Mr. Shamun Hameed	Secretary General	NHRC-Maldives
15	Hon'ble Justice Kedar Nath Upadhyay	Chairperson	NHRC-Nepal

16	Hon'ble Justice Ram Nagina Singh	Member	NHRC-Nepal
17	Hon'ble Mr. Gauri Pradhan	Member	NHRC-Nepal
18	Mr. Bishal Khanal	Secretary	NHRC-Nepal
19	Mr. Keshab Prasad Banstol		OPMCM
20	Mr. Surya Prasad Bhandari		Department of Foreign Employment
21	Mr. Bed Prakash Lekhak	Chief Immigration Officer	Department of Immigration
22	Mr. Dipak Dhital		Ministry of Foreign Affairs
23	Mr. Sambhu Koirala		Ministry of Home Affairs
24	Mr. Shom Luitel	Chair	National Network for Safe Migration
25	Ms. Manju Gurung	Vice chair	National Network for Safe Migration
26	Ms. Shesh Chand Tara	Chairperson	National Women Commission
27	Dr. Ganesh Gurung		Specialist/Academia
28	Dr. Renu Rajbhandari	Chairperson	Women Human Rights Defender National Network
29	Hon'ble Essa Rashed M A Al-Kaabi	Member	NHRC-Qatar
30	Mr. Jaber Salih H A Almarri	Head of the Legal Department	NHRC-Qatar
31	Hon'ble Mr. Priyantha Rajkumar Paulinus Perera	Chairman	NHRC-Sri Lanka
32	Hon'ble Mr. Thangarajah Edward Anandarajah	Commissioner	NHRC-Sri Lanka

Preparatory Committee

1.	Mr. Bed Prasad Bhattarai, Director	-	Convener
2.	Mr. Subarna Kumar Karmacharya, Director	-	Member
3.	Ms. Durga Khadka, Deputy Director, Investigation Division	-	Member
4.	Mr. Surya Bahadur Deuja, Head, Collective Rights Division	-	Member
5.	Ms. Samjhana Sharma, Head, Promotion and Advocacy Division	-	Member
6.	Mr. Bir Bahadur Budha Magar, Head, Legal Affairs Division	-	Member
7.	Mr. Jayashwor Chapagai, Head, Policy & Planning Division	-	Member
8.	Mr. Dipak Shrestha, Project Manager, SCNHRC Project	-	Member

Support Team

1. Mr. Basudev Bajagai, Human Rights Officer,
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2. Mr. Sri Ram Adhikari, Human Rights Officer,
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3. Mr. Suresh Malla, Human Rights Officer,
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7. Ms. Nirjala Bhattarai, SCNHRC Project
8. Mr. Yam Bahadur Dura, SCNHRC Project
9. Mr. Nawin Chandra Gurung, SCNHRC Project
10. Ms. Archana Thapa, SCNHRC Project

Glimpses of the Conference - 2012





