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PROMOCIÓN Y PROTECCIÓN DE TODOS LOS DERECHOS HUMANOS, CIVILES, POLÍTICOS, ECONÓMICOS, SOCIALES Y CULTURALES, INCLUIDO EL DERECHO AL DESARROLLO

Información presentada por la Comisión Nacional de Derechos Humanos de la República de Corea[1]

Nota de la Secretaría

La Secretaría del Consejo de Derechos Humanos ha recibido la siguiente comunicación[2], que se reproduce a continuación de conformidad con el artículo 7 b) del reglamento que figura en la resolución 5/1 del Consejo de Derechos Humanos, según el cual "La participación de las instituciones nacionales de derechos humanos se basará en las disposiciones y prácticas convenidas por la Comisión de Derechos Humanos, incluida la resolución 2005/74, de 20 de abril de 2005".

[1] La institución nacional de derechos humanos que presenta la información tiene la acreditación de la categoría "A" ante el Comité Internacional de Coordinación de las Instituciones Nacionales de Promoción y Protección de los Derechos Humanos.

[2] Se reproduce en el anexo como se recibió, en el idioma original únicamente.

ANNEX

[ENGLISH ONLY]

Joint Submission by the Indonesian National Commission on Human Rights (Komnas HAM), the National Human Rights Commission of Korea, the National Human Rights Commission of Mongolia, the Philippines Commission on Human Rights, and the National Human Rights Commission of Thailand

1. The International Conference on Human Rights of Migrants and Multicultural Society– *Dignity and Justice for All Migrants* held in Seoul, Korea, 10-12 November 2008, was organized by the National Human Rights Commission of Korea (NHRCK) in consultation with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), the Asia Pacific Forum of National Human Rights Institutions (APF), and the Office of the United Nations High Commissioner for Human Rights (OHCHR) in commemoration of the 60th anniversary of the Universal Declaration of Human Rights.

2. As 2008 also marks the 60th anniversary of the founding of the Republic of Korea, the NHRCK is proud to have had this opportunity to bring together the participants at this special time. The Conference was devoted to the exchange of information, experiences, and good practices related to the promotion and protection of the rights of migrants in the emerging and established multicultural societies of Asia, including Korea.

3. Due to the importance of the issues, the Conference brought together 35 overseas participants from thirteen countries, including the commissioners and senior staff of eight NHRIs in Asia, human rights experts from Europe, the Americas, and Asia, and representatives of migrant communities and NGOs in Asia. The NHRIs in attendance included those of Indonesia, Korea, Malaysia, the Maldives, Mongolia, Nepal, the Philippines and Thailand. Also participating was the representative of the ICC and the secretariat of the APF. In addition, there were over 100 local and international participants, including those from government, NGOs and civil society organizations, universities and the general public. Twenty-five diplomats from the Embassies in Seoul also participated the opening session

4. The participants held active discussions on issues related to human rights and multicultural society as those topics relate specifically to migrant issues and the challenges faced by NHRIs in developing good practices. Theses discussions took place in a Panel Format organized under the following topics: International Processes on the Rights of Migrants and NHRIs; Experiences of Migration and Multicultural Policy; Concepts and Policies on Migration and Multicultural Society; Migration and Multicultural Policy in Korea; and Practices and Lessons Learned for NHRIs in Asia. A main outcome of the Conference was the adoption of the *Seoul Guidelines on the Cooperation of NHRIs for the Promotion and Protection of Human Rights of Migrants in Asia.*

OPENING SESSION

5. With over 200 people in attendance, the Opening Session of the Conference brought together all conference participants, dignitaries, and interested members of the general public. Attending dignitaries included the Prime Minister of Korea and Their Excellencies Ambassadors to Korea and their Representatives. Representatives of UN agencies with offices in Korea were

also in attendance. Attendees of the Opening Session from the general public included members of the migrant communities in Korea, representatives of civil society groups, various academics and professionals, and university students, both Korean and exchange. Finally, with the topic of migration and multiculturalism becoming a highly controversial topic in South Korea as late, the Opening Session was also attended by a large media contingent.

6. The Chairperson of the National Human Rights Commission of Korea and Professor of Seoul National University, Dr. AHN Kyong-Whan, began the proceedings by offering his Welcome Remarks to participants and attendees. This was followed by a Congratulatory Message (video) from the UN High Commissioner for Human Rights, Her Excellency Ms. Navanethem Pillay. The session concluded with the Prime Minister of the Republic of Korea, Dr. HAN Seung-soo, offering his Congratulatory Remarks to all those in attendance.

7. Professor Ahn opened the conference on behalf of the National Human Rights Commission of Korea (NHRCK) by welcoming all national and international participants. He expressed his belief that the Conference will be seen as the highlight of a series of special events carried out by the NHRCK in 2008 to mark the 60th anniversaries of the Universal Declaration of Human Rights (UDHR) and the founding of the Republic of Korea. Since Korea is now on the threshold of becoming a multicultural society, the conference is both timely and significant. Furthermore, with the rapid expansion of international migration, NHRIs must play a crucial role in guiding governments to develop human rights-based policies regarding migrants and their families. Experience shows that concerted efforts among nations is the effective way to move forward on a common agenda of promoting and protecting human rights. As such, this conference aims to provide an opportunity to share best practices in promoting and protecting human rights of labor migrants, marriage migrants and their families, and to draw up a guideline that NHRIs will take with them to implement in their home countries. Professor Ahn looked forward to a constructive discussion over the coming three days and to laying the groundwork for human rights-based multicultural policies.

8. In her congratulatory message to conference participants and attendees, Her Excellency Ms. Pillay congratulated the NHRCK for organizing such an important international conference. She believes the meeting was valuable and timely, since it resonates with the UN Secretary General's campaign to celebrate the 60th anniversary of the Universal Declaration of Human Rights on the theme "*Dignity and justice for all of us,"* and because it brings into focus the human rights dimension of migration. As this was her first official address to NHRIs as the new UN High Commissioner for Human Rights, she expressed her belief that NHRIs are in a unique position to focus on core protection issues faced by migrants.

9. Ms. Pillay explained that the way governments deal with migration often does not adequately protect migrants and their families. Asia, for example, has a long history of migration but relatively few countries in the region have ratified the Conventions which protect migrants and refugees. As a result of such a protection gap, migrants frequently have to confront discrimination on multiple grounds in many aspects of their daily lives. She believes that existing state practices to address irregular migration as a "law and order" or "border security" problem only exposes these vulnerable individuals to further violations. As an alternative solution, the OHCHR advocates that human rights should be central to any coherent migration policy. In this context, she believes NHRIs have important roles to play at both the national and international levels. Ms. Pillay was extremely pleased that this Conference was proposing to adopt guidelines

on international cooperation of NHRIs for the promotion and protection of migrant rights. She invited the participants to let this auspicious year be remembered for our deeds, rather than words. As the Secretary-General has said 'the world needs no new promises.'

10. In his congratulatory remarks, the Prime Minister of the Republic of Korea, HAN Seung-soo, reiterated Korea's commitment to an open society. According to Dr. Han, there are now seven million Koreans living overseas who have been treated humanely. In reciprocity, the Republic of Korea is committed to treating its immigrant population equally and with dignity. Toward this end, the Korean Government has begun to adopt policies to address the challenges of a multicultural society and to prevent discrimination against migrant workers. This kind of progress at the national level is consistent with Korea's commitment to respecting and promoting universal human rights norms and standards. In May of 2006, Korea was elected to the UN Human Rights Council and was reelected to a second term in 2008, which expires in 2011. As such, the Republic of Korea has a particular responsibility toward its obligations to protect and promote human rights for all. The Prime Minister added that the Republic of Korea is proud that its citizens have been given the confidence of the international community to play important leadership roles in UN forums. For example, it is well known that the UN Secretary General is a citizen of the Republic of Korea and that the Deputy High Commissioner of the UN Office of the High Commissioner is a also Korean citizen. As a result, the Korean government has an added responsibility to ensure that its performance on human rights is up to the expectations of the international community.

CONFERENCE BACKGROUND AND OBJECTIVES

11. Following the conclusion of the opening session, the Director-General of the NHRCK Human Rights Policy Bureau, Mr. LEE Seong-hoon, provided an overview of the context in which the conference was organized. At the international level, the conference is a follow-up to a series of International Conferences of National Institutions for the Promotion and Protection of Human Rights (ICNI), namely, the 7th ICNI – Conflicts and Countering Terrorism (Seoul, 14-17 Sept. 2004); the 8th ICNI – Migration (Santa Cruz, Bolivia, 24-26 Oct. 2006); and the 9th ICNI – Administration of Justice (Nairobi, 21-24 October 2008). In the Asian context, the conference is a regional follow-up to the ASEAN Declaration on the Rights of Migrants (Cebu, 13 January 2007) and the Jakarta Process on Domestic Migrant Workers and Irregular Migrants (Jakarta, July 2006).

12. Mr. Lee explained that the conference has four important objectives: First, the conference seeks to *assess* the human rights situation of migrants in Asia; second, to *identify* key human rights challenges facing migrants, both theoretical and practical; third, to *review* NHRI responses and actions; and fourth, to *develop* guidelines and strategies for international cooperation among NHRIs in Asia. As a supplement to conference deliberations, the NHRCK organized a field trip on day two of the conference allowing NHRI participants and invited guests to meet with their respective national migrant communities living in Gyeonggi Province, Korea.

KEYNOTE SPEECH BY DR. BERTRAND G. RAMCHARAN

13. After the presentation of the conference background and objectives, Dr. Bertrand G. Ramcharan, Professor of the Geneva Graduate Institute of International Studies and Former Acting UN High Commissioner for Human Rights, delivered the keynote speech for the

Conference. Dr. PARK Kyung-seo, Professor Emeritus of Ewha Women's University and Former First Human Rights Ambassador-at-large for Korea (2003-2006) moderated. A question and answer period followed the conclusion of Dr. Ramcharan's address.

14. Dr. Park noted that the rights of migrant workers and the rights of married foreigners in Korea are currently two burning issues in Korea. He stated that Korea had been a homogeneous society for the last 4000 years. With globalization and an increase in migrant influx resulting from various domestic demands, Korea is now at a critical juncture. He emphasized that this conference, organized by NHRCK, thus had very good timing. He then proceeded to introduce Dr. Ramacharan.

15. Dr. Ramcharan's address focused on the inter-linkages between three topics: the roles of NHRIs, the rights of migrant workers and the rights of their family members. He explained that since 1970s, the UN has emphasized the importance of national implementation of the various resolutions and standards setting it adopted at international levels. The UN's first attempt to formalize the important roles of the national mechanisms began with its first international seminar on the role of national human rights institutions in 1978. He explained that although UN standard setting provides a normative platform, at the end of the day, the de facto realization of human rights must be secured nationally. Notwithstanding the complex and unique national context in which the NHRIs are operating, the OHCHR has emphasized the importance of protection roles played by NHRIs in translating international norms into substantive human rights enjoyment domestically. He argued that if the human rights idea is to travel across countries, then it is important to look to the role of NHRIs.

16. UN programs to support countries in developing national protection mechanisms involve a 6-step assessment before a comprehensive strategy is ironed out. This involves asking six important questions: i) Are international human rights norms reflected in the national constitution?; ii) Are the international human rights norms codified in the national legislation?; iii) Can the national court draw on international human rights norms?; iv) Does a country have existing specialized institutions dealing with human rights issues?; v) Is a country providing training and/or teaching on human rights in relevant public/private spheres?; vi) Does a multicultural country have an effective early warning system?

17. Migration issues are now one of the key challenges to humankind in the 21st century. At the present time, some 190 million migrants, including migrant workers, refugees, asylum-seekers, permanent immigrants and others, currently live and work in a country other than that of their birth or citizenship. This figure represents 3 per cent of the world's population. Cautioning that human rights ideals must be grounded in reality, he invited the participating NHRIs to develop more strategies on effective measures to deal with the human rights of migrants in a transnational context, especially in terms of research operations and regional strategies.

18. Specifically, he suggested that NHRIs provide leadership in two priority areas: national assessments and national and/or regional consensus norms on specific problems related to human rights of all migrants. He emphasized that there are many existing sources upon which NHRIs can draw. He recommended that NHRIs look into the Migrant Workers Convention (MWC) and what the Committee's expert has said regarding the implementation of the Convention's articles. In events leading to the 2nd Global Forum on Migration and Development in October 2008, the Committee of the MWC made a submission to the forum advocating for a human rights based

approach to migration. Dr. Ramcharan concluded his address by reiterating the importance of the concept of national protection mechanisms and the challenge of realizing international norms in a multicultural context: “There is a great deal of idealism, a lot of hearts; but we still need smart strategies.”

PANEL SESSIONS

19. The Conference was divided into five panel sessions over two days. Panel A and Panel B met on the first day, Monday, November 11, 2008, and Panels C, D, and E met on the second day, Tuesday, November 12, 2008. The topics for each of the panels were as follows: Panel A – International Processes on the Human Rights of Migrants and NHRIs; Panel B – Experiences of Migration and Multicultural Policy; Panel C – Concepts and Policies on Migration and Multicultural Society; Panel D – Migration and Multicultural Policy in Korea; and Panel E – Practices, Lessons Learned and Strategies for NHRIs in Asia: International Perspectives.

PANEL A – INTERNATIONAL PROCESSES ON THE HUMAN RIGHTS OF MIGRANTS AND NHRIS

20. Dr. Leela Patak, Commissioner of the National Human Rights Commission of Nepal, served as moderator for Panel A. Papers and presentations were delivered by Mr. Sinapan Samydorai, Coordinator, Civil Society Task-Force on ASEAN Migrant Workers, Singapore; Ms. Kamala Chandrakirana, Chair, National Commission on Violence against Women of Indonesia; Mr. William Gois, Coordinator, Migrants Forum in Asia (MFA), Philippines; and, Dr. Javier Moctezuma, Executive Secretary, Human Rights Commission of Mexico (CNDH).

21. *The first presenter*, Mr. Sinapan Samydorai, delivered a presentation titled “ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.” In his presentation, Mr. Samydorai explained the achievements and shortcomings of the existing multilateral approach for the protection of migrant workers that is currently being pursued by the 10 member states of ASEAN. He cited as achievements the implementation of ILO core labour standards, the establishment of a timeframe through 2015 for the harmonization of labour legislation, and establishment of the Committee on the Implementation of the ASEAN Declaration in September 2008 charged with developing a legally binding instrument for the protection and promotion of the rights of migrant workers.

22. He explained that the ASEAN process fell short by not recognizing domestic work, the rights of families of migrant workers, or stateless children, and that it failed to deal with regularization of undocumented workers. Mr. Samydorai stressed that an additional problem in harmonization of labours laws within ASEAN is due both to the sending and receiving countries failure to recognize domestic work in their labour law. As a result, this raises questions of moral legitimacy for the sending country to pursue the receiving country to do the same on the principle of reciprocity. In addition, the whole ASEAN process is only conducted within the framework of a temporary work force, “guest workers,” and not migration as a whole.

23. *The second presenter*, Ms. Kamala Chandrakirana, shared her paper “The Jakarta Process on the Human Rights of Migrants: Putting Focus on Women Domestic Workers and Irregular Migrants in Asia.” Ms. Chandrakirana briefed the participants on the Jakarta Process, which is a regional initiative that has a special focus on the two most disadvantaged groups among

migrants, namely irregular migrants and women migrant workers. The Jakarta Process identified four critical gaps in the existing human rights protection mechanism for these vulnerable groups. They are i) lack of effective national and cross-border (transnational) complaints mechanisms; ii) absence of comprehensive human rights documentation and reporting systems on migrants' rights at the national and regional levels; iii) limited capacities of NHRIs to mainstream migrants rights into their work; and, iv) minimal inter-linkage between institutions (civil society & state) which support rehabilitation, redress, compensation and re-integration of abused migrants in all phases of the migration process.

24. As a way forward, Ms. Chandrakirana argued that a "comprehensive, integrated and multi-treaty approach to effective promotion and protection of the human rights of all migrants, applying the highest possible standards of human rights for migrant workers in an irregular situation and women migrant domestic workers" is needed. In her view, NHRIs have an important role to play in taking concrete measures on human rights protection for migrant workers in an irregular situation and women domestic migrant workers based on the principle of the universality of human rights

25. *The third presenter*, Mr. William Gois, in relation to his presentation "2nd Global Forum on Migration and Development (GFMD) – Manila," focused his comments on an assessment of the GFMD from a civil society perspective. Mr. Gois stated that the GFMD was created as a follow-up to the discussion on migration and development. While the GFMD is set-up as a non-binding forum, it is an important platform for practitioners seeking to address the human rights of all migrants since the discussion among member states is focused on migration policy. Nevertheless, the GFMD process is still fundamentally lacking in terms of a human rights framework in its overall discussion. As a result, the GFMD has become more of an "international market fair" which has lead to the commoditization of migrant workers.

26. Mr. Gois argued it is vital that the discourses around migration, including in forums such as the GFMD, are reoriented toward ensuring that migrants are not treated as a mere commodity and that the full realization of their human rights with dignity is preserved. However, practitioners advocating for change need to reframe their advocacy points in order to address the concerns and needs of both the countries of origin and destination to ensure effective intervention. Mr. Gois added that the text of the Migrant Workers Convention (MWC) carries many of the most well developed articulations on international human rights standards. For this reason, he argued that the MWC could become a comprehensive document that reflects the need for human rights protections and promotion in the 21st century: "Can this instrument provide a new opportunity for global human rights to transcend the conventional state sovereignty framework?"

27. *The fourth presenter*, Dr. Javier Moctezuma*,* presented his paper "Protection of the Human Rights of Migrants by National Human Rights Institutions in the American Continent." As Mexico is a country of origin, destiny and transit of migrants, addressing the multiple human rights issues raised has been the key focus of the CNDH. It has established a special unit for migrant issues and eight regional offices in strategic locations, and its produced several domestic initiatives on migrant issues. At the regional level, NHRI members of the Network of National Institutes for the Promotion and Protection of Human Rights in the American Continent have been cooperating closely to promote a greater respect in the application of human rights to protect migrant workers. Moreover, the adoption of the Santa Cruz Declaration (2006), has

served as a catalyst for the distillation of the important roles NHRIs have with respect to migration. In the Declaration, NHRIs agreed to take several measures to address the needs of migrant workers in a cooperative framework.

28. As a regional follow-up to the Santa Cruz Commitment (2006) to protect and promote human rights of all Migrant Workers and Members of Their Families, various institutional Collaboration Agreements have been signed between CNDH, as the Secretary General of the NHRIs Network of the American Continent, and several countries in the region. In addition, the CNDH has promoted the signing of the *Agreement for the Creation of a Regional Committee against Human Trafficking*. This resulted in the creation of a Committee in May 2008 consisting of the National Ombudsman of the signing countries. The Committee is planning a diagnostic study of the dimensions of Human Trafficking and it will monitor whether the authorities in each of the signatory countries are carrying out their international and regional commitments.

PANEL B: EXPERIENCES OF MIGRATION AND MULTICULTURAL POLICY

29. Lady Khunying Ambhorn Meesook, Commissioner, National Human Rights Commission of Thailand served as moderator for Panel B. Papers and presentations were delivered by Mr. Ciarán Ó Maoláin, Human Rights Consultant and Former Head of Legal Services, Policy and Research, Northern Ireland Human Rights Commission; Mr. Michael Miner, Regional Director, SEARCH (Southeast Asia Regional Cooperation in Human Development), Bangkok; and Ms. PARK Nansook, Director, Division of Multicultural Families, Ministry for Health, Welfare and Family Affairs, Korea. The panel was joined by three discussants who offered their insightful thoughts and opinions on the issues raised: Dr. Rajiv Narayan, Visiting Professor, Graduate School of International Studies, Yonsei University, Korea; Ms. Janice Lyn Marshall, Representative, UN High Commissioner for Refugees (UNHCR), Korea; and Ms. YANG Haewoo, Director, Korea Migrant Workers Human Rights Center.

30. *The first presenter*, Mr. Ciarán Ó Maoláin, in his presentation "Experiences of Migration and Multicultural Policy in Europe," shared practices on the ground in the multicultural, multi-ethnic societies of Europe, and how European and national institutions are striving to meet the needs of migrants and minorities. Mr. Ó Maoláin stressed that despite the difficulty of applying lessons learned in the multi-ethnic states of Europe to the rather different context of an historically mono-ethnic society such as Korea it is possible to extract some useful elements for further consideration.

31. At the level of the Council of Europe (CoE), human rights instruments and institutions dealing directly or indirectly with the rights of migrants and minorities include the European Convention on Human Rights and its enforcement mechanism, the European Court of Human Rights; the Framework Convention for the Protection of National Minorities and its Advisory Committee; and, the Venice Commission. There are two additional CoE organs relevant to the protection of migrants: the European Commission against Racism and Intolerance, created to monitor and combat racism, xenophobia, anti-Semitism and intolerance, and the Parliamentary Assembly of the Council of Europe, which has frequently studied and discussed issues touching on the integration of migrants and minorities.

32. At the level of European Union (EU), the relaxation of controls on intra-EU migration has allowed migration to proceed almost unregulated. Nevertheless, all states retain some control

over migration policy and issues surrounding the admission and integration of non-EU migrants. Labour migration into and within the EU, as elsewhere, typically involves workers from poorer countries moving to wealthier countries, where they may experience problems of exploitation by agents, lower wages, poorer working conditions, lack of trade union organisation, marginalisation in the economy, and limited access to public services due to language barriers. The EU has also created the European Monitoring Centre on Racism and Xenophobia (EUMC) to document and analyse the causes and effects of racism, xenophobia, anti-Semitism, Islamophobia and related intolerance. In March 2007, the EUMC was absorbed into a new body, the European Union Agency for Fundamental Rights. The EU has also created financial instruments to support migrant rights. These include the European Social Fund, which recently launched a new six-year programme aiming to increase the participation of immigrants in employment as a means of enhancing their social integration, the European Fund for the Integration of Third-Country Nationals, and a European Refugee Fund.

33. At the national and domestic levels, every country has one or more rights-based agencies with a remit allowing action on matters affecting migrants and minorities. For example, the 17 UN-accredited NHRIs within the CoE area meet within the global network and as the European Group. They have collectively adopted the position that European countries should ratify the Convention on the Rights of Migrant Workers and Members of their Families. Many European based NHRIs explicitly emphasize that their services are open to migrants and citizens alike. Mr. Ó Maoláin stressed that while legislative and policy measures are important, education and building awareness to change attitudes are vital to achieving inclusion and acceptance through preventive strategies. For example, to promote multiculturalism, the EU conducted many hundreds of events under the slogan "Together in Diversity" in 2008, to mark the European Year of Intercultural Dialogue, and several European countries have developed national plans to promote intercultural and inter-ethnic relations. Throughout Europe there are also many positive examples of the use of formal and informal education systems to promote tolerance and mutual understanding.

34. In conclusion, Mr. Ó Maoláin suggested that there are some important lessons for Asian NHRIs from the European experience: (1) NHRIs must respond to the particular needs of migrants; (2) there is a potential role for a specialised anti-discrimination agency alongside the generic work of the NHRI, in countries where human rights protections are especially well advanced; (3) NHRIs should take a leadership role to promote inter-cultural dialogue in their own countries; and (4) NHRIs should take a unified stand to defend the needs for integration policies based on the principle of equality and to reject assimilation approaches.

35. *The second presenter*, Mr. Michael Miner, began his presentation by stating that on behalf of SEARCH/CIDA, he would like to join his distinguished colleagues from the participating National Human Rights Commissions and the OHCHR in thanking everyone for participating in this important dialogue on the promotion and protection of the rights of migrants in a globalized, multicultural world. He noted the particular significance of the approaching 60th anniversary of the Universal Declaration of Human Rights (10 December 2008) in light of the conference theme and objectives, namely "dignity and justice for all," particularly for migrants. Mr. Miner then briefly referred to Canadian multiculturalism, describing Canada as a country that reflects a vast diversity of cultural heritages and racial groups and as having a multicultural diversity which is a result of centuries of immigration. He noted that he was not suggesting that things are perfect, but that Canada continues to be associated with multicuturalism, and cultural pluralism.

36. Mr. Miner then proceeded to give an overview of the SEARCH (Southeast Asia Regional Cooperation in Human Development) project in which he and his wife are engaged. He explained that SEARCH works to promote and protect the rights of three target groups: children, ethnic minorities and migrant workers. To do this, SEARCH works with and through three SE Asian regional partners: the Working Group for an ASEAN Human Rights Mechanism; Forum-Asia, and UNIAP (the United Nations Inter-agency Project against Trafficking) which is the Secretariat for COMMIT (Coordinated Mekong Ministerial Initiative against Trafficking). Utimately, SEARCH is a SE Asian regional rule of law human rights program operating between 2004 and the end of 2010. Mr. Miner explained that the three regional partners have contributed to major new ASEAN developments including: the ASEAN Charter process; inputting into creation of the ASEAN Human Rights body; drafting the ASEAN Migrant Worker Framework and the ASEAN Women and Children's Commission.

37. Mr. Miner noted that Forum-Asia, an organizational network made up of 42 Asian Human Rights organizations, provided input to ASEAN's Vientaine Action Program (VAP) process and in particular is leading the Migrant Workers Taskforce which helped develop principles for the rights of migrant workers for the ASEAN Migrant Workers Framework. He also noted UNIAP/COMMIT's efforts at piloting a cross-border tracing of human trafficking victims in two of its six Greater Mekong Sub-region countries (Thailand, Laos PDR, Cambodia, Vietnam, China and Myanmar) which have signed inter-governmental MOUs. He explained that these efforts are seen as a model for regional cooperation and that its secretariat receives many queries from other parts of the globe on how to disseminate its findings and help other regions to set up a similar structure of engagement based on this exemplary Asian model. Finally, Mr. Miner explained that in cooperation with the Vietnam Lawyers Association, (VLA), SEARCH has helped to launch two projects related to migrant workers: A Legal Aid project which includes two legal aid consultancy centres, and a Migrant Workers project that has featured a national workshop attended by approximately 100 representatives of relevant government agencies, mass organizations, local non-governmental organizations, United Nations bodies, and seven international migration experts

38. Mr. Miner also submitted to the Conference a paper on Multiculturalism in Canada. That paper can be found in the Conference Journal. To give a sense of the official discourse on multiculturalism in Canada, Mr. Miner showed a 12-minute video clip from the fundraising campaign undertaken by the Canadian government to create a new Canadian Human Rights Museum. By presenting the oral history of twelve immigrants and minorities spanning half a century, conference participants witnessed the suffering these individuals endured as the result of Canada's trials and errors in managing multiculturalism and their eventual vindication as Canada rectified its past mistakes. The video ends by inviting viewers to reflect on the fact that "even though we are in different boats, we share the same river." In concluding, Mr. Miner reminded the participants that these developments were made in the context of Canada's long history of making mistakes. Notwithstanding such positive developments, there are new challenges and setbacks

39. *The third presenter*, Ms. PARK Nansook, presented the "Experiences of Migration and Multicultural Policy in Korea." She began by recognizing that there are diverse categories of migrants currently residing in Korea but explained that her presentation focuses only on female marriage immigrants since that is the focus of her Division at the Ministry. Ms. Park explained that Her division found the procedures in which international marriages are brokered often

violate human rights in the process. These human rights violations include sexist and degrading advertisement about women and misconceptions about the roles these women will play after marriage. The 10-minute blind dates organized by the brokers and the failure to provide detailed profiles of the potential spouses (such as criminal or psychological background) often result in cases of domestic violence and divorce, as well as other family and social problems.

40. To address these pressing issues, the Korean government has adopted policies that aim to address challenges potentially faced by female foreign spouses at all stages. At the pre-marriage stage, the Korean government regulates broker agencies to ensure that precautionary steps are taken, including the profiling of marriage candidates to ensure that potential spouses will be able to make an informed decision. At the marriage stage, a compulsory 4 hour human rights training is provided to ensure that couples respect the human rights of their partners. After marriage, the government provides various administrative support systems to international spouses to acquire the skills necessary to become self-sufficient in Korean society and to assist inter-cultural families in settling into a stable life in Korea with their children being raised in a friendly environment that is conducive to their full human potential growth.

41. For example, the Act to Support Multicultural Families Living in Korea was enacted in March of this year. The purpose of the Act is to provide institutional support to migrants who came to Korea for international marriage, and the children of such marriages, a better integration into Korean society. The provisions of the Act includes family counseling, marital and parental educational support, family living support, interpretation support, legal advice and administrative support. Park, however, acknowledged that there is still a long way to go due to prevailing prejudice and racism against foreigners in Korea by native Koreans.

PANEL B: DISCUSSANT SUMMARY

42. *The first discussant*, Dr. Rajiv Narayan*,* offered his comments on Mr. Maoláin's contribution to the panel. He agreed that it is difficult to transpose European practices into the Korean context. The notion of a 'multicultural' society is a relatively new phenomenon in Korea. According to Dr. Narayan, migrant worker issues are unique in Korea in that civil society has been active nearly from the beginning of the onset of such concerns when migrant workers protested for the first time in the early 1990s. However, these organizations lack the resources to adequately address the violations that migrant communities face in the larger context of Korean society – the prevailing prejudice and racism. Dr. Narayan noted the major criticism of the Employment Permit System (EPS) is that it has not been implemented in a rights-based manner by the Korean government. Dr. Narayan hoped that the NHRCK could play a more active role in ensuring that the Korean government implements the EPS in a rights-based manner. As Korea is also facing difficult economic circumstances, there is a risk of migrant workers and minority groups suffering from increasing racism and here the NHRCK should not only provide legislative and policy advice to government on issues ranging from anti-discrimination legislation and asylum and refugee issues, but also it should increase its efforts in the struggle against racism and xenophobia.

43. *The second discussant*, Ms. Janice Lyn Marshall*,* focused her discussion on how migrant issues are related to persons of the UNHCR's concern: asylum-seekers, refugees and others in need of international protection. Ms. Marshall stressed that while refugees and asylum-seekers share many of the same needs and challenges as other migrants, they are a very special and

distinct category of migrants. This is because Refugees and asylum seekers have been forced to flee or remain outside of their own countries and they cannot therefore safely return home. Most migrants make a personal choice to move somewhere else for their own individual reasons. Refugees do not have such a choice. However, once refugees are identified and allowed to resettle, they face the same challenges and problems that other migrants face in being able to exercise their human rights and have their human needs met. Ms. Marshall identified three important approaches to support refugee based migrants.

44. First, refugees need the same sorts of support and attention to their ability to exercise their rights as other migrants do. Second, in addition to the "regular" difficulties that all migrants have faced, refugees need specific help, counseling or treatment to deal with the aftermath of their traumatic experiences. Ms. Marshall suggested that services for refugees who have survived torture, rape and other egregious violations of their right are needed, which could be provided by counseling centres, specialist departments at universities or children's hospitals and other such mechanisms. On this point, Ms. Marshall took the opportunity to introduce an important handbook, *International Handbook to Guide Reception and Integration of Refugees* (2002) available on UNHCR's global website. Finally, Ms. Marshall proposed that the integration of refugees needs to largely mirror that of other migrants by extending to the refugee community the same services available for the greater integration of nationals and migrants. UNHRC's experience has shown that this is normally the most cost-effective and efficient way to meet the human rights needs of refugees, plus it has the added value of promoting the quicker integration of the refugees into the larger community.

45. *The third discussant*, Ms. YANG Haewoo, provided feedback on the implementation of Korea's migrant policies on the ground. According to Ms. Yang, the key problem with Korea's multicultural policies is that the policies apply only to marriage immigrants and not to migrant workers. Such narrow application of multiculturalism restricts the focus of Korean authorities to around 12,000 international marriage couples or married immigrants. As a result, there is a discriminatory element in the law and it will be one of the biggest challenges for Korea regarding the development of a genuine multicultural society. Yang further criticized the existing government program on integration as it only teaches women how to be obedient and to better serve their husbands, disregarding the universal appreciation of gender equality and forcing them to adhere to values that even contemporary Korean women do not follow anymore. Another weakness in the existing Korean laws regards the acquisition of nationality. Spouses of Korean nationals are entitled to apply for Korean nationality through naturalization after two years of marriage. However, it takes take up to four years before nationality is actually granted. As a result, these women face a long process of potential threats and uncertainty, if they are married to violent partner.

46. Regarding migrant workers, despite eight years of lobbying and NGO demands, Korea's laws on migrant workers do not distinguish between regular and irregular migrants. As a result, there are no protections for irregular migrants in Korea. Irregular migrant workers are often vulnerable to overdue pay, unfair treatment, poor working conditions, seizure of passports by employers, and human rights violations in the process of arrest, detention and deportation. There are also unreasonable crackdowns on undocumented migrant workers which include excessive use of restraining devices and long-term detention at detention centers under internment orders.

47. There are also many areas for improvement in the existing laws related to regular migrant workers. The current Employment Permit System (EPS) restricts migrant workers' working period in Korea to a maximum of three years to prevent their settlement in Korea. With a such a short duration, accompanying family members are banned. Therefore, the EPS includes principles which are contradictory to multicultural policies since they do not guarantee all basic rights nor do they promote a multicultural society. Finally, Yang pointed to the fact that there are too many duplicate researches and studies on multicultural society in Korea by different government agencies with no clear direction. As a result, many women migrant workers have complained that research interviews disturb their lives and work.

PANEL C: CONCEPTS AND POLICIES ON MIGRATION AND MULTICULTURAL SOCIETY

48. Dr. Datuk' Chiam Heng Keng, Commissioner of the Human Rights Commission of Malaysia, served as moderator for Panel C. Papers and presentations were delivered by Mr. Vijay K. Nagaraj, Research Director, International Council on Human Rights Policy (ICHRP), Geneva; and Mr. R. Joseph Harte, Assistant Professor of Law at Kyung Hee University, Korea. The panel was joined by three discussants who offered their insightful thoughts and opinions on the issues raised: Mr. Nur Kholis, Commissioner, Indonesian National Commission on Human Rights; Mr. Banuar Falcon, Attorney, Legal & Investigation Office, Philippines Commission on Human Rights; and Mr. CHA Yong-ho, Deputy Director, Social Integration Team, Ministry of Justice, Korea.

49. *The first presenter*, Mr. Vijay K. Nagaraj, in his presentation entitled "Human Rights-based Approach to Migration and Multicultural Policy," provided an in-depth conceptual presentation on how migration and multicultural policies could be formulated from human rights-based perspective. According to Mr. Nagaraj, multiculturalism is a contested concept and is comprised of two important dimensions. The first is the sociological dimension and the second is the policy dimension. He further added that multiculturalism is intertwined with the manifestation of culture and the realization of human rights for different groups and individuals. As human rights are not a culture-free zone, culture cannot be a human rights-free zone. A human rights approach to multiculturalism recognizes both the collective rights of a particular group and the individual autonomy of members within that group. There are however limits to recognising differences that arise from culture. First, difference must arise out of and express the normative aspirations of an integrated and ordered community. Second, claims of difference should be honored only when groups themselves honor the principles of difference they assert. On the question of determining what differences should justify a differentiation in treatment, Mr. Nagaraj proposed four important principles.

50. He also suggested three fundamental solutions to the evaluation of justice claims in a multicultural context. According to Mr. Nagaraj, genuine recognition is the first step. The second step is an effective and acceptable redistribution to rectify economic injustices. And finally, the third step is political participation as it is important to address the lack of political representation in decision making. Mr. Nagaraj then proceeded to distill some important international human rights standards related to the preservation of cultural rights with an emphasis on Article 27 of the ICCPR. According to Mr. Nagaraj, the rights protected under Article 27 are individual rights,

but positive measures by states may also be needed to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion.

51. Shifting the deliberation on the human rights framework for the treatment of national cultural groups to migrant communities, Mr. Nagaraj proposed four principles to mitigate the tensions that arise from efforts to implement comprehensive multicultural policies that deal with both citizen and non-citizen groups or individuals. First, he argued that migration policy needs to be established not only to manage irregular migration flows but also to optimize benefits which international migration can bring to a country's development. Second, he stressed that discrimination is not only linked to cultural and historical xenophobia, but also to the ignorance of the cultures, histories and value systems of the migrant communities concerned. Third, broader efforts need to be made to prepare society for the arrival and integration of persons with different traditions, ensuring respect for their culture, religion and customs. And fourth, the promotion of multiculturalism is the most appropriate way to transform this challenge into an opportunity for enriching society through increased diversity and intercultural dialogue.

52. *The second presenter,* Mr. R. Joseph Harte, focused his presentation on the linkage between human rights law and multicultural policy outcomes. In his paper, "Cultural Homogeneity and National Identity: The Transformational Impact of Human Rights Law," Mr. Harte identified and explored various models of discourse on human rights and multiculturalism and applied one of those models to the issue of diversity and national identity. Mr. Harte argued that it is important for NHRIs to clarify the link between human rights law and multicultural outcomes as the NHRI mandate is based specifically on human rights protection, rather than multicultural policy per se. A better understanding of the human rights/multicultural policy link can assist NHRIs in formulating human rights policy that supports and promotes national multicultural initiatives.

53. Mr. Harte suggested that discourse on human rights and multicultural policy can be described by the use of three models. The first he called an "arising out of" model; the second a "culture issues" or "overlap" model; and the third a "functional impact" model. Discourses that follow an "arising out of model" proceed by identifying human rights issues that arise out of the simple fact that a given society is multicultural in its make-up, or is an emerging multicultural society. Discourses that follow a "culture issues" model look for overlaps between the human rights framework and the issues related directly to culture. Finally, discourses that follow a "functional impact" model seek to identify or explain the mechanism by which human rights law may directly influence multicultural outcomes.

54. According to Mr. Harte, the "arising out of" model is the broadest of the three since it seeks to "catalogue" the various human rights issues of migrants in a multicultural society. The problem with this model, however, for purposes of discussions on "human rights of migrants and multicultural society," is that the deliberation becomes exclusively a discussion of migrant *rights*, which, he argued, is of course an important discussion, but it is not necessarily a discussion on the link between the protection of those rights and multicultural outcomes. The second model is narrower in scope since it asks which human rights norms are specifically related to multicultural issues in the strictest sense. That is, it looks at the rights of migrants that are related to religion, language, cultural rights, and so forth. The limitation of this model is that, similar to the first model, it remains exclusively a discussion of migrant rights, vis-à-vis migrant

culture rights. Finally, the third model takes a more functional approach to human rights and multiculturalism discourse. According to Mr. Harte, this kind of discourse results in a discussion of the mechanisms by which human rights norms and multicultural policy are linked. This is because it explores how human rights law and policy specifically generate multicultural outcomes, and vice versa. It looks at the relationship between human rights and multicultural society from both the broad and narrow sense of the first two models, but it also identifies and explores the mechanisms by which the protection of those rights impact multicultural society. Mr. Harte suggested that this model is best for NHRI discussions on human rights protection in the context of multicultural policy.

55. Applying the functional model to the often-cited multicultural policy objective of "diversity in unity," Mr. Harte proceeded to suggest a mechanism by which human rights law can have a transformative impact on traditional notions of nation-state identity. Because the application of human rights law in a context of cultural diversity places the state in the role of "guarantor of fair treatment" between members of the same culture group and between members of different culture groups, the identity of the nation-state naturally expands beyond the classic model of unified notions of cultural homogeneity and national identity. Simply put, the State's very act of applying human rights law in the context of a diverse cultural demographic results in an expansion of national identity beyond classical concepts of nation-state/cultural homogeneity. This creates a space between cultural homogeneity and national identity in which the identity of a multi- or polyethnic state can take root, thereby allowing for the recognition of the unique cultural traits of the many groups that make up a society while each maintains a sense of inclusion in the larger community. For NHRIs intending to align their human rights mandate with multicultural policy in the context of migrant rights, or to initiate such policies in their own capacity, Mr. Harte suggested that they evaluate and prioritize their migrant rights initiatives based on the likelihood of strengthening the link between human rights policy and 'multicultural society' policies as expressed in terms of an expanded notion of national identity. In addition, NHRIs should lobby government agencies that have multicultural mandates to establish a single overarching multicultural policy that is centered on this expanded view of the nation-state.

PANEL C: DISCUSSANT SUMMARY

56. *The first discussant*, Mr. Nur Kholis, Commissioner from the Indonesian National Commission on Human Rights (KOMNAS HAM), shared with participants the human rights issues that have arisen from its national migration policies. He divided his comments into three parts: discussions of the term "multiculturalism;" a comparison between Indonesia and the "globalizing" world; and questions addressed to Mr. Nagaraj and Mr. Harte. In Mr. Kholis's opinion, the term multiculturalism is used in order to apply the ideology or paradigm of racial culture, or ethnicity, within the democratic system of a specific place. In this context multiculturalism advocates for a system of equal status in the pluralistic culture of origin. He cited as an example, the Indonesian national motto, "United in Diversity," explaining that term is used as a tool to unite the country.

57. For his second part, he suggested that the term multiculturalism be divided into two parts: (1) domination and (2) the "poor city" or "poor people." He explained that Indonesia's position in the global context could be understood as multiculturalism along these lines. He suggested that when we talk about multiculturalism, International Law, or international norms, or values, come from the dominant economic and political system, and that sometimes International Law is

not enough to protect the minority. He cited as an example Indonesia's struggle with multinational corporations for land, forest, and mining rights. For his last part, Mr. Kholis asked Mr. Nagaraj and Mr. Harte for their opinions on this situation. Specifically, how to reduce the situation in a context to develop International Law, especially Human Rights Law? Because if we don't touch the structure of the words, he explained, the law as so produced is hegemonic law from the big powers to the small, but big size countries.

58. *The second discussant*, Mr. Banuar Falcon, an attorney from the Philippines Commission on Human Rights (PCHR), thanked the presenters for having enlightened the participants on the various trends now and theories surrounding multiculturalism and on the expanding role of the state with respect to trying to make themselves more sensitive towards migrant communities within their jurisdiction. He then provided a succinct description of the Philippine context with regards to the difficulties of pursuing a multicultural policy. As the Philippines is largely a country of origin in terms of international migration issues, and as it has yet to deal with the kind of stress related to "outsiders versus insiders," or "us versus them," Banuar argued that there is less incentive for the Philippines government to take it as a priority for policy formulation. As a result, it was difficult for the PCHR to actively lobby the government to adopt a multicultural policy. Citing a point made by Mr. Maoláin in a previous panel, Mr. Falcon directed his question to Mr. Harte. He asked how Mr. Harte would reconcile the practical part of the state being the protector of people's right with the idea that certain kinds of integration policies should be based on whatever the demand is on the part of the migrant community.

59. *The third discussant*, Mr. CHA Yong-ho, Deputy Director of the Social Integration Team, Ministry of Justice, Korea, gave an account of the challenges the Korean government is facing in dealing with migration issues. Mr. Cha cited the difference in experience between the U.S., which has a 250-year history of immigration, and Korea's short history beginning, according to Mr. Cha, as recently as 1993. Mr. Cha argued that South Korea is therefore still experimenting with different measures for managing migration. While a naturalization policy focusing on marriage immigrants was adopted in 2005; there is yet to be an educational curriculum on migration at different levels of the Korean public education system to prepare native-Korean citizens to cope effectively with the different societal issues as the society becomes more multicultural in its demographics.

60. Mr. Cha stated that the majority of mainstream newspapers reporting in Korea still carry overtones implying that the Korean government is enacting laws and policies to defend the rights of 1.1 million foreigners in Korea. However, the Korean media has got it wrong, he argued. According to Mr. Cha, the Korean government is at the moment only dealing with marriage immigrants, now totaling, approximately 100,000 persons, who form the nucleus of multicultural families in Korea. Mr. Cha admitted however that foreign workers sometimes adapted better than marriage immigrants but they are not currently included in official government policy for multicultural society. In Mr. Cha's opinion, there is still a long a way to go before Korea is ready to embrace a full-fledged multicultural society

PANEL D: MIGRATION AND MULTICULTURAL POLICY IN KOREA

61. Dr. SHIN Heisoo, Member of the UN Committee on the Elimination of Discrimination Against Women (CEDAW) and Former Commissioner of National Human Rights Commission of Korea (2005-2007), served as moderator for Panel D. Papers and presentations were delivered

by Dr. SEOL Dong-hoon, Professor of Sociology, Chonbuk National University, Korea; and Dr. KIM Hyun Mee, Professor, Department of Cultural Anthropology, Yonsei University, Korea. The panel was joined by two discussants who offered their invaluable thoughts and opinions on the issues raised: Ms. Norma Kang Muico, Researcher, Amnesty International, East Asia Team, UK; and Mr. RI Seok-jun, Director, Migrants' Rights Team, National Human Rights Commission of Korea.

62. *The first presenter*, Dr. SEOL Dong-hoon, in his paper and presentation "Migrants' Citizenship in Korea: With Focus on Migrant Workers and Marriage-based Immigrants" discussed the different treatment given to migrant workers and marriage-based immigrants on the question of citizenship in Korea. According to Dr. Seol, the dominant perception among Koreans that Korea is an "ethnically homogeneous society" and "non-immigrant country" is the biggest challenge to efforts at making Korea a truly multicultural country. He listed four models of migrant incorporation which can serve as a reference to map the Korean government's policy response to multicultural circumstances. The first model is the multiculturalist and laissez-faire model (salad bowl) practiced in countries such as the United States. The second model is the multiculturalist and state intervention model (ethnic mosaic, or rainbow coalition) practiced in countries like Canada. The third model is the assimilationist model (melting pot) implemented in countries such as France. The final model is the differential exclusionary model, which enforces a 'no immigrant' policy substituted by a guest (migrant) worker program. According to Dr. Seoul, Germany and many Asian countries are firm advocates for this last model.

63. Dr. Seol described the ITTP Training Program of 1991 and the Employment Permit Program which replaced the ITTP in 2004. Many of the controversial provisions under the ITTP that violated core labour rights were removed. However, the EPP does not facilitate a possibility for migrant workers to acquire Korean citizenship. Instead, EPP only facilitates *status of worker* for less-skilled foreign migrant workers. At the same time, there are serious problems with the existing mechanism for arranged international marriages with Korean citizens. According to Dr. Seol, more than one-fifth of the foreign wives complained that the information they received about their husbands before marriage was not true. In Dr. Seol's opinions, contrary to the treatment of migrant workers, the Korean government is more willing to devise comprehensive measures to support naturalization of marriage-based immigrants and their families. According to the "Grand Plan" (2006), the Ministry of Gender Equality and Family took the lead coordinating position, with the required participation of other ministries, including the Ministry of Justice, Labor, Health and Welfare, and local government departments, in the Plan's vision for "social integration of foreign wives and an attainment of a multicultural society."

64. Notwithstanding the fact that the target group of the Korean government's integration policies is limited to foreign and not guest workers, Dr. Seol viewed the introduction of the EPP as the right step toward in harmonizing Korean domestic laws and policies with international standards on the rights of migrant workers. At the same time, he believed that the National Human Rights Commission of Korea has an important role to play in this regard.

65. *The second presenter*, Dr. KIM Hyun-mee, in her paper and presentation "Integration for Whom? Marriage Migrant Women Policies in Korea and Patriarchal Imagination," analysed the debates raised by feminists centering around Korea's existing policies on marriage migrant women as an instrument to impose patriarchal values to which not even contemporary Korean women are willing to adhere. According to Dr. Kim, the policy to encourage cross-border

marriage first appeared as a local government strategy to alleviate low marriage rates among rural Korean farmers in the 1990s. Dr. Kim explained that critics denounced the state-led 'multiculturalism' policy for treating marriage migrant women as a solution to the low birth rate, high divorce rate and an imbalance of the marriage related gender ratio in Korea, while ignoring the full range of human rights of the marriage migrant women as dignified persons.

66. Dr. Kim argued that this official position on state-led 'multiculturalism' was reaffirmed when the Korean government launched its campaign for a "transition toward a multicultural, multiethnic society" in 2006. Subsequently, three measures have been promulgated by the government to materialize this vision. The first was the Act on Regulations of the International Marriage Brokerage (June 2008). The law was an effort by Korean government to deal with 'the increasing abuses and exploitations caused by disguised marriages, scam marriages, and false information'. However, Dr. Kim is concerned that there is an element discrimination in the law which over stresses the 'consumer rights' of Korean men instead of protecting migrant women. In this sense, the law projects a purely commercial perspective on a triangle relationship between the Korean man as 'consumer', the migrant woman as 'product or services' and the broker as 'provider'.

67. The second measure was the Multicultural Family Support Law (2006-September 2008). Dr. Kim commented that the law is very narrow in its definition of 'multicultural family,' which includes only families formed between legally residing marriage migrants and foreign workers or Korean citizens through marriage, or adoption. According to Dr. Kim, the law makes a hegemonic demand that marriage migrant women live a life as expected from 'Korean Society' while neglecting the need for home country cultural preservation/manifestation. The third and most recently approved measure is the Social Integration Program Completion Policy (September 2008). This policy, which aims to "exempt migrants who wish to settle in Korea from the citizenship acquisition test when s/he finishes certain Korean education courses on 'understanding multiculturalism' authorized by the Minister of Legislation" has sparked contestation between practitioners and policy makers.

68. Dr. Kim claimed that existing integration policy is moulded along the 'Patriarchal Family-Oriented Welfare' model. "The gender ideology within this model imagines women as labor power that replaces reproductive labor, and subjects them under the frame of forming, maintaining, and reproducing the 'family,' despite their various roles and practices. Social services are provided for women to fit into this ideology," said Dr. Kim. She argued that when marriage migrant women's reproductive labor is seen as a natural process of adjustment, the women are forced to drop their cultural identity in order to adjust themselves to the expected gender roles. This forces the marriage migrant women to go through many conflicts and negotiations. Dr. Kim believes that question remain to be answered on how Korean women and migrant women can unite in this matter. The eventual recognition of migrant women as 'new citizens' enjoying the same de facto rights as Korean women is the eventual desired outcome.

PANEL D: DISCUSSANT SUMMARY

69. *The first discussant,* Ms. Norma Kang Muico, Researcher, Amnesty International, East Asia Team, UK, explained that since she was currently working on a project addressing migrant workers in Korea, commenting on Professor Seol and Professor Kim's papers was an enlightening process. She agreed with Professor Seol that the high number of irregular migrant

workers in South Korea was indicative of the failure of both the ITTP and WATP work schemes. But she extended this failure to include the current employment permit system or EPS. Regarding citizenship for migrant workers, she argued that if Korea is to genuinely embrace the concept of multiculturalism, then the value on a homogenous society must be challenged.

70. In terms of international marriages, she suggested that a contributing factor to the rise of international marriages in South Korea may be explained by the fact that after the introduction of the EPS system, the number of female migrant workers under the E-9 work scheme had decreased due to gender discrimination in the hiring of migrant workers. Also, she pointed out that governments "Grand Plan" addresses only one side of the marriage equation, since the plan fails to recognize that Korean husbands also need support and orientation. Commenting on Professor KIM Hyun-mee's paper, she noted that Professor Kim calls the integration program patriarchal and sexist. Acknowledging that there are certainly elements of both, Ms. Muico explained that she saw it more as ethnocentric, and thus the antithesis of multicultural values. The program promotes solely the interests of the Korean family, such as the Korean husband and the Korean mother-in-law. She also pointed out that the general public and the media often refer to female immigrants in Korea as "foreign wives" or "foreign daughters-in-law."

71. In concluding, Ms. Muico argued that the exclusion of foreign husbands in integration programs is crucial in understanding the reasons behind so much government money and societal interest being invested in these initiatives. In a patriarchal society, the women take care of the children. When it comes to migrant wives, the state and society may not place full trust in foreign mothers to understand what it takes to educate children in this country. The ultimate fear may be that children born from multicultural families will become disadvantaged and create a permanent underclass. Unless there are genuine attitudinal changes, there is very little hope that any integration programs will succeed in such a monocultural context.

72. *The second discussant,* Mr. RI Seok-jun, Director of the Migrants' Rights Team, National Human Rights Commission of Korea (NHRCK) gave a comprehensive stocktaking on the relevant legal and human rights provisions important for the mandates of NHRCK in promoting and protecting the rights of all migrants in Korea. Mr. Ri explained that Article 6(2) of the Korean Constitution provides that the status of foreigners is guaranteed in compliance with international laws and treaties. In addition, Article 4 of the National Human Rights Commission Act provides that the scope of its application shall include foreigners. The Act stipulates that the government is obligated to protect foreigners residing in the country and to guarantee their rights.

73. According to Mr. Ri, the Korean government has improved its legal and institutional systems in order to integrate migrants, especially international marriage couples, and biracial people into Korean society. This was achieved through enactment and implementation of legislation supporting multicultural families and other foreigners who are lawfully residing in Korea. However, he is concerned that the category of migrant workers, particularly undocumented migrant workers, and their family members, still face limitations on their basic rights and are excluded from the multicultural policy initiatives of the Korean government. In addition, while Korea has ratified a range of key international human rights and labor treaties, which provide for the rights of all migrant workers regardless of their legal status, Korea has yet to sign the Migrant Workers Convention. To bridge these promotion and protection gaps, the NHRCK conducts programmes and interventions that cater to the needs of special categories of

migrants which include irregular migrant workers, families of migrant workers, migrant women, and refugees. Special thematic focuses include the right to health and the right to education, especially for the children of migrants.

74. Mr. Ri concluded with three important tasks for the NHRCK in protecting the rights of all migrants in Korea. First, the NHRCK will strengthen its monitoring of government conduct during crackdowns on irregular migrants to ensure that such operations are compliance with due process. Second, the NHRCK will enhance its promotion activities to contribute to the establishment of infrastructure necessary to support a multiracial and multicultural society. Finally, the NHRCK will refine its advocacy component to lobby for the establishment of legislative and institutional groundwork. According to Mr. Ri, this will involve lobbying for the enactment of a comprehensive law related to migrants, the setting up of a service system for migrant communities, and cooperation with local government. In Mr. Ri's opinion, the NHRCK should play a coordinating role in assisting the Korean government in the development of national legislation that is in accordance with international human rights standards.

PANEL E: PRACTICES, LESSONS LEARNED AND STRATEGIES FOR NHRIS IN ASIA: INTERNATIONAL PERSPECTIVES AND DRAFT COMMENTS ON THE SEOUL GUIDELINES

75. Mr. Ifdal Kasim, Chairperson of Indonesian National Commission on Human Rights (Komnas HAM); and Mr. LEE Seong-hoon (Anselmo), Director-General, Human Rights Policy Bureau, NHRCK served as moderators for Panel E. Papers and presentations were delivered by Ms. Katharina Rose, Interim Representative to the UN for the International Co-ordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), Geneva; and Ms. Suraina Pasha, Project Manager of the Asia Pacific Forum of National Human Rights Institutions (APF). Regarding NHRI practices, due to constraints resulting from the time needed to discuss the Seoul Guidelines, participating National Institutions were unable to make their presentations on their national practices. Submitted materials were nonetheless incorporated into the Seoul Guidelines and those materials are available in the Conference Journal.

76. *The first presenter*, Ms. Katharina Rose, provided a presentation on "Strategies for NHRIs in Engaging with International Human Rights Mechanisms to Promote, Protect and Monitor Human Rights of Migrants." In her working paper, submitted earlier for Conference deliberation, Ms. Rose specifically emphasized that international human rights bodies and mechanisms provide an additional opportunity for NHRI advocacy, which yet remains under-explored by NHRIs. She explained that NHRIs can make systematic use of their right to submit oral and written documentation to international bodies, both individually and jointly within a group of NHRIs, or through their regional and international coordinating bodies. They may also host parallel events on the sidelines of Human Rights Council sessions. The recommendations resulting from these international bodies may complement NHRIs advocacy, and provide further authority to NHRI activities. Ms. Rose proposed that NHRIs systematically disseminate these recommendations and link them with their advocacy campaigns at national levels. At the same time, country visits by the Special Rapporteur on Human Rights of Migrants are a crucial occasion to analyze and assess the situation of migrants based on first hand information. Ms. Rose also urged NHRIs to strengthen their cooperation with international NGOs and migrants' associations who are actively involved in advocating the ratification of the Migrant Workers Convention (MWC).

77. Ms. Rose provided additional background information on the structure and mechanisms of the ICC, and updated conference participants on the follow-up to the important resolutions adopted by NHRIs at international forums related to the protection of human rights of all migrants. A special focus was given to the Santa Cruz Declaration (Bolivia 2006). That Declaration expressly recognized the "unique role played by NHRIs in the implementation of international human rights standards at the national level, thereby ensuring sustainability of human rights protection." The Declaration outlines a series of areas whereby NHRIs may intervene in connection with the international human rights machinery to promote and protect the rights of migrants. Ms. Rose pointed to the important commitments made by NHRI representatives in the Declaration which include: establishing mechanisms to define a concrete plan of action for implementation of the Declaration; develop and implement within institutions a strategy to address migration processes; develop plans of action among NHRIs; and make use of international human rights mechanisms. Ms. Rose believed that the expected Seoul Statement and Seoul Guideline from this International Conference on Human Rights of Migrants and Multicultural Society organized by NHRCK would form an important backbone for cooperation among Asian NHRIs on the promotion and protection of the rights of all migrants.

78. As a way forward, Ms. Rose briefed the participants on ICC plans to support NHRI interaction with international bodies and mechanisms. Among the highlighted action plans were included: ICC advocacy for universal ratification of the Migrant Workers Convention, and the integration of a human rights based approach on migrants in international deliberations; strengthening of work relations between ICC and OHCHR task force on migration; strengthening of work relations between ICC and treaty bodies and Special Procedures; strengthening of ICC Geneva Representative roles; and the establishment of mechanisms for coordination and follow up.

79. *The second presenter*, Ms. Suraina Pasha, provided a presentation on "Asia Pacific Forum for National Human Rights Institutions (APF): Perspectives and Experiences," which focused on possible strategies for NHRIs in utilizing available regional mechanisms and arrangements to promote, protect and monitor human rights of migrants. According to Ms. Pasha, the APF has a long history of deliberations in its annual meeting of NHRIs on various human rights issues related to migration. Many of the resolutions adopted are of particular relevancy to the Asian NHRIs. In the 1st Annual Meeting of the APF (Darwin 1996), the Asian NHRIs agreed "to respond effectively and promptly to requests from other national institutions to investigate violations of the human rights of their nationals present in a country that has a national institution." In the 3rd Annual Meeting (Jakarta 1998), the forum adopted the resolution to discuss "the role of NHRIs in protecting the rights of refugees, internally displaced persons (IDPs) and migrant workers." In the 11th Annual Meeting (Suva 2006), the forum reiterated "the relevance of the ILO and ILO Conventions to the work of NHRIs." In the recent 13th Annual Meeting (Kuala Lumpur 2008), the forum again "noted the call for regional standard setting on the human rights of migrants in irregular situations and migrant domestic workers."

80. Ms. Pasha also added that the issue of trafficking was considered specifically during the following APF Annual Meetings. In the 4th Annual Meeting of the APF (Manila 1999), the forum considered the role of NHRIs in addressing trafficking of women and children. Again in the 6th Annual Meeting (Colombo 2001), the forum further decided to hold regional workshop on trafficking, to develop practical projects to combat trans-border trafficking, and finally to ask the Advisory Council of Jurist of APF to draft a legal reference on trafficking. In the 7th Annual

Meeting (New Delhi 2002), APF further decided to adopt the trafficking recommendations by ACJ, to strengthen regional cooperation on trafficking, and to recommend for the reinvigoration of the trafficking focal point network. Finally during the 9th Annual Meeting (Seoul 2004), the forum decided that the Australian HRC would host a regional APF trafficking workshop the following year.

81. As human rights issues of trafficked persons sometimes overlap with the human rights issues faced by irregular migrant workers, Suraina gave detailed accounts on the four core elements of the APF anti-trafficking plan of action – which she believes would be of useful reference for NHRIs to formulate a similar action plan to protect and promotes rights of migrants. According to Ms. Pasha, the first core element of APF action plan would include recommendations relating to education, monitoring and advocacy. The second core element of APF action plan would include recommendations relating to administrative and legal processes. The third core element of APF action plan would involve recommendations regarding victim support, recovery and repatriation. The fourth and final core element of APF anti-trafficking action plan emphasized the strategies among NHRIs themselves. As one immediate follow-up from this conference, Ms. Pasha informed the participants that APF has scheduled a regional training on the Migrant Workers Convention in 2009. Ms Pasha congratulated the NHRCK for its landmark initiative in conceptualising the Seoul Process for cooperation amongst NHRIs for the protection of migrants and migrant workers in Asia, and concluded her presentation with some general comments and observations in relation to the draft Seoul Guidelines.

Appedix I

SEOUL GUIDELINES
on the Cooperation of NHRIs for the Promotion and Protection of
Human Rights of Migrants in Asia

Preamble

The International Conference on Human Rights of Migrants and Multicultural Society—Dignity and Justice for All Migrants held in Seoul, Korea on 10-12 November 2008,

Reaffirming the Universal Declaration of Human Rights which 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 distinction of any kind, in particular as to race, colour or national origin,

Recalling the universal instruments agreed upon by States to safeguard human rights and fundamental freedoms, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), the International Convention on Rights of Persons with Disabilities (ICRPD), relevant International Labour Organization conventions, and regional instruments,

Welcoming the entry into force of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1 July 2003), reaffirming its importance as a baseline for migrant workers' rights, and recognizing the important work of the Committee on Migrant Workers,

Welcoming the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions,

Recognizing that these instruments establish a framework for the protection of the rights and fundamental freedoms of all human beings,

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, notably, the Special Rapporteur for the promotion and protection of the human rights of migrants and his visits to Asian countries such as Indonesia, South Korea, and the Philippines,

Reaffirming the Durban Declaration and Programme of Action (DDPA), adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

(WCAR) in Durban, South Africa, September 2001, as a landmark document in global efforts to eradicate racism, racial discrimination, xenophobia and related intolerance,

Welcoming the convening of the Durban Review Conference (DRC) which is to take place in Geneva on 20-24 April 2009, and the establishment of the International Coordinating Committee (ICC) of National Institutions for the Promotion and Protection of Human Rights Working Group on the DRC at the 9th International Conference of National Institutions (ICNI) in Nairobi, Kenya, October 2008,

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

Welcoming the timely adoption on 5 November 2008 of General Recommendation No. 26 of the Committee on the Elimination of Discrimination Against Women (CEDAW) on Women Migrant Workers who may be at risk of abuse and discrimination,

Noting that migration can be a positive social force as migrants make valuable contributions to economic growth and development in both home and host countries, including poverty reduction, and as migrants contribute to the vitality of a diverse society and to more enlightened relations among peoples,

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, people smugglers, recruitment agents, and corrupt officials; 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 intolerable working conditions; and inhumane treatment in cases of arrest, detention and deportation,

Recognizing the unique role played by NHRIs in applying international human rights standards at the national level, thereby ensuring their independence and effectiveness in accordance with the Paris Principles, which enables them to contribute to the promotion and protection of migrant rights through dialogue between public authorities and civil society groups at the national level,

Urging therefore 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 protecting and promoting human rights in the region, with special efforts to advocate for a human rights approach to migration and migration management, and to promote the establishment of NHRIs in countries where they are not yet established,

Welcoming the efforts and progress made by the Asia Pacific Forum of National Human Rights Institutions (APF) concerning migration issues, in particular, trafficking of women and children

Welcoming the efforts made by the ASEAN NHRI Forum to contribute to the development and establishment of an intergovernmental human rights body in accordance with the ASEAN

Charter, and the contributions of the Civil Society Task-Force on ASEAN Migrant Workers to the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (Cebu 2007),

Recalling the key concerns and issues identified by the Jakarta Process Review related to existing legal, institutional, and policy frameworks in the countries studied which are considered detrimental to the human rights of migrants in an irregular situation and migrant domestic workers,

Expressing solidarity with the Jakarta Process Review—Appeal to the Asia Pacific Forum in its Call for Regional Standard-setting on the Human Rights of Migrants in an Irregular Situation and Migrant Domestic Workers (Kuala Lumpur 2008),

Noting the importance of inter- and intra-regional relationships among NHRIs given the nature of migration and the capacity to share information and support when dealing with migrants and specific migration issues,

Reaffirming the need for increased cooperation and sharing of information and best practices, including the development of specific joint programs and mechanisms, among NHRIs at regional and international levels,

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 transnational cooperation and to make use of their networks to communicate on migration issues, and to make recommendations to strengthen cooperation between NHRIs to ensure the promotion and protection of all human rights of migrants,

Welcoming the outcome of the Seoul Conference on Human Rights of Migrants and Multicultural Society (Seoul, 10-12 Nov. 2008) which recognizes the urgent need to develop strategies and action-oriented guidelines to strengthen and promote cooperation among NHRIs in Asia in addressing challenges identified during the Conference,

Recalling the Seoul Commitment to "promote, where relevant, regional cooperation among NHRIs" in order to implement the Seoul Declaration of the 7th International Conference of National Institutions for the Promotion and Protection of Human Rights held in Seoul on 14-17 September 2004,

Welcoming the establishment of the Seoul Process as a framework for cooperation among NHRIs and other stakeholders,

adopts the following guidelines on the cooperation of NHRIs for the promotion and protection of the human rights of migrants in Asia.

SECTION I
Principal Areas of Action

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

International Human Rights Mechanisms and Processes

1. Standard-setting on women migrant workers at the international and regional level,
2. Promoting universal ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, particularly among destination countries in Asia,
3. Promoting universal ratification and implementation of all other international UN human rights treaties and ILO conventions relevant to migrant issues,
4. Promoting ratification of the 2nd Palermo Protocol to the UN Convention against Transnational Organized Crime,
5. Ensuring regular reporting on and implementation of the concluding observations and recommendations associated with the human rights treaties above,
6. Encouraging removal of reservations to ratified human rights treaties,
7. Strengthening of cooperation with the Special Rapporteur on the human rights of migrants and other Special Procedures established by the Human Rights Council (HRC),
8. Participating in the Universal Periodic Review (UPR) mechanism and ensuring implementation of its recommendations,
9. Participating in the Global Forum on Migration and Development,
10. 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,
11. Enhancing cooperation with international organizations, in particular, International Labor Organisation (ILO), UN High Commissioner for Refugees (UNHCR) and International Organisation for Migration (IOM),
12. Institution-building related to the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (January 2007),

National Implementation of International Human Rights Standards

13. 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),
14. Strengthening of NHRI mandates with regard to the human rights of migrants,
15. Developing and implementing National Action Plans (NAP) that include the human rights of migrants, and ensuring the implementation of such NAPs,

16. Harmonizing national legislation and policies in conformity with international human rights standards,
17. Improving policy coordination among government agencies in addressing issues of migration based on human rights principles,
18. Enhancing cooperation and collaboration with relevant government agencies,
19. Enhancing cooperation with stakeholders such as NGOs, academia, media and other civil society actors,
20. Ensuring participation of migrants in the policy decision-making process and policy implementation,

Remedies and Services

21. 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,
22. Providing legal aid or paralegal assistance and services,
23. Promoting and ensuring equal access to education, medical, social security, judicial and legal services for migrants and their family members,

Education, Training, and Awareness-building,

24. Developing human rights education and training modules and materials in all appropriate languages,
25. Campaigning for raising public awareness of the human rights of migrants,
26. Educating migrants on their rights at the time of pre-departure in the country of origin and at post-arrival in the country of destination,
27. Educating and training government officers on human rights related to migrants, particularly immigration officers, the police and correctional officers,
28. Promoting a culture of human rights, meaning the promotion of tolerance, respect for cultural diversity, and inter-cultural understanding in order to combat racism, racial discrimination, xenophobia and related intolerance,
29. Carrying out collaborative studies, survey and research on issues related to migrants,

Migrant Workers

30. Improving national policies on employment of foreign laborers and personnel, including company recruitment activities and the activities of recruitment agencies, in conformity with international human rights standards,
31. Establishing a set of minimum standards on working conditions and workplace policies including safety and health, overtime and irregular hours, fair and adequate pay, clear

information regarding work duties, the reduction of language barriers, respect for cultural and religious beliefs in the assignment of work duties and schedules, job termination and forceful dismissal,

32. Taking legislative initiatives aimed at greatly increasing the penalty for a violation of national labor and employment laws, or recruitment policies,

33. Establishing a set of minimum standards for the living conditions associated with employer supplied housing for migrant workers, and their families, where appropriate, including requirements for the provision of basic amenities, such as shelter, running water, heat, and lighting,

34. Taking legislative and administrative initiatives aimed at securing the application of domestic labor and employment laws to migrant workers in a manner that is equal to that of the national labor force including the provision of medical services, participation in the national pension system, worker's accident and disability compensation, the right to join and form unions, and the right to legal remedies for unpaid wages,

35. Enhancing the right to change employer, especially in cases of exploitative or otherwise unjust working conditions,

36. Conducting joint research, development, and publication of model contracts for migrant workers which are industry specific and take into account relevant national contract laws,

37. Monitoring the human rights situation of irregular migrant workers during periods of intensified government enforcement of national immigration laws and increased detention and deportation of irregular workers, including amnesty and repatriation actions,

38. Enhancing the right of asylum seekers to support themselves through temporary employment or other adequate means of livelihood while awaiting determination of their status,

39. Ensuring decriminalization of the victims of smuggling and trafficking,

Migrant Women

40. Securing the safety, security and dignity of women migrant workers in their intended workplace before departure from the country of origin, while in transit, and after arrival in the country of destination,

41. Setting minimum standards applicable to the employment and treatment of women domestic workers, including a minimum entitlement to one day of rest per week,

42. Improving national policies regarding international marriage brokerage activities, including specific policies aimed at preventing, identifying, and, where appropriate, prosecuting activities that mislead women into marriage or violate the human dignity of women by inhuman and degrading treatment,

Children of Migrants and Child Migrants

43. Securing the right to education regardless of the immigration status of the children themselves or their parents,

44. Preventing discrimination and prejudice against the children of migrants and international marriages, and child migrants, in schools and in the classroom,

45. Promoting cultural and social integration regarding the children of nationals abroad, and social and educational reintegration of the children of returning migrants,

46. Encouraging birth registration and granting of the appropriate nationality under the laws of both the country of origin and the country of destination, in particular the registration of newborn children of irregular migrants without fear of arrest or detention,

47. Enlarging social service programs that grant financial assistance for child care and medical services regardless of immigration status,

48. Protecting human rights of children of migrants in detention facilities.

SECTION II
Working Structure

Seoul Process

The Seoul Process, which is a framework for cooperation among NHRIs and other stakeholders with the purpose of implementing the Plan of Action set forth in Section III of these Guidelines, is hereby established in accordance with the following:

49. The National Human Rights Commission of Korea (NHRCK) is appointed as the convener of the Seoul Process,

50. The convener is requested to organize, in cooperation with the APF, the next meeting of the Seoul Process to be held in 2009 (Seoul Process 2009),

51. The convener shall cooperate closely with the Jakarta Process, which focuses on the human rights of migrants in an irregular situation and migrant domestic workers,

52. The APF is requested to provide necessary assistance and support, including financial, for the Seoul Process in relation to the implementation of these Guidelines,

53. The UN Special Rapporteur on the human rights of migrants shall be invited to join the Seoul Process 2009,

54. A focal point within each NHRI shall be created to serve as the primary channel for all cooperative efforts related to the implementation of these Guidelines,

55. Interested NHRIs are encouraged to enter into MOUs on issues of mutual concern regarding the promotion and protection of the human rights of migrants,

56. Interested NHRIs are encouraged to develop staff exchange programs to address issues of mutual concern in relation to the implementation of these Guidelines,

57. A proposal shall be made to the APF Councilors for the creation of a Working Group on Migration as decided at the 8th International Conference of National Institutions for the Promotion and Protection of Human Rights (Santa Cruz, Bolivia, 24-26 Oct. 2006),

58. A proposal shall be made to the APF Councilors to consider taking up the issue of migration as the Advisory Council of Jurists (ACJ) theme of study and recommendation for the year 2009/10.

SECTION III
Plan of Action

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

59. Development of mid-term action plans for the implementation of these Guidelines at the regional level,
60. Development of concrete action plans in line with these Guidelines as an integral part of each NHRI's annual work plan from 2009 onwards,
61. Monitoring of the human rights situation of migrants in each country,
62. Development and strengthening of remedies to address human rights violations committed against migrants, especially undocumented and irregular migrants,
63. Taking of joint action, where appropriate, to address issues of mutual concern that require an internationally coordinated response,
64. Production of an annual report on the implementation of these Guidelines,
65. Establishment of joint research projects among NHRIs in Asia on the causes, processes and consequences of international migration,
66. 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, and other related human rights treaties,
67. Working towards the inclusion of migration initiatives in the National Action Plans (NAP) of the NHRIs' respective governments,
68. Development of training modules and materials related to the human rights of migrants,
69. Initiation and implementation of public human rights campaigns on migrant issues aimed at awareness building,
70. Initiation and implementation of human rights education and training programs for migrants at the time of pre-departure from the country of origin and at post-arrival in the country of destination,
71. Initiation and implementation of human rights training programs for government officers, in particular, law enforcement agencies, including immigration, police and detention facilities,
72. Monitoring and participation in the regional standard-setting and institution-building processes related to the human rights of migrants.

Appendix II

SEOUL STATEMENT

The International Conference on Human Rights of Migrants and Multicultural Society–*Dignity and Justice for All Migrants* held in Seoul, Korea, 10-12 November 2008, was organized by the National Human Rights Commission of Korea (NHRCK) in consultation with the International Coordinating Committee (ICC) of National Institutions for the Promotion and Protection of Human Rights, the Asia Pacific Forum of National Human Rights Institutions (APF), and the Office of the United Nations High Commissioner for Human Rights (OHCHR) in commemoration of the 60th anniversary of the Universal Declaration of Human Rights.

As 2008 also marks the 60th anniversary of the founding of the Republic of Korea, the NHRCK is proud to have had this opportunity to bring together the participants at this special time. The Conference was devoted to the exchange of information, experiences, and good practices related to the promotion and protection of the rights of migrants in the emerging and established multicultural societies of Asia, including Korea.

The Conference brought together commissioners and senior staff members of eight NHRIs in Asia, human rights experts from Asia, Europe and the Americas, as well as representatives from migrant communities and NGOs in Asia. The NHRIs represented included Indonesia, Korea, Malaysia, the Maldives, Mongolia, Nepal, the Philippines and Thailand. The participants held active discussions on issues related to human rights and multicultural society as those topics relate specifically to migrant issues and the challenges faced by NHRIs in developing good practices related to these issues.

These discussions took place in a Panel Format organized under the following topics: International Processes on the Rights of Migrants and NHRIs, Experiences of Migration and Multicultural Policy, Concepts and Policies on Migration and Multicultural Society, Migration and Multicultural Policy in Korea, and Practices and Lessons Learned for NHRIs in Asia. A main outcome of the Conference was the adoption of the *Seoul Guidelines on the Cooperation of NHRIs for the Promotion and Protection of Human Rights of Migrants in Asia*.

The key issues identified in the course of the deliberations of the Conference are as follows:

1. Migration is a global phenomenon shaped by wider economic, social and political processes. Hence, policy discussions about migration must be located within a normative framework that recognizes the full range of all human rights of all people.

2. Regional and sub-regional cooperation arrangements are vital in promoting human rights in advancing dignity and justice for all migrants. At the same time, it is also vital that all countries move toward ratifying the Convention on the Protection of the Rights of all Migrant Workers and their Families to ensure that national and regional policies are consistent with international standards. Countries of origin, transit and destination all have significant obligations toward the protection of rights of all migrants.

3. In Asia, cross-border mobility and migration have greatly increased. Across the region men, women and children migrate in search of livelihood and opportunities to escape impoverishment and all forms of deprivation. A large number of migrants are extremely vulnerable to human rights violations owing to their irregular status, whether they migrate in connection with employment, marriage or otherwise.

4. While several international forums have addressed the issue of the human rights of migrants, they are ultimately realized at the national level. NHRIs thus have a key role to play with respect to protecting and promoting the rights of migrants not only in terms of filling the domestic protection gaps but also in terms of serving as a critical link between migrant communities, the state and international human rights mechanisms. There have been many processes and initiatives across Asia on this subject but the challenges remain significant. Thus, a renewed commitment is required.

5. Migration gives rise to a range of civil, cultural, economic, political and social rights concerns of particular relevance not only to migrant communities themselves but also to the wider society in countries of origin, transit and destination.

6. Migrant communities; national, regional and international human rights mechanisms; governments and public authorities in countries of origin, transit and destination; private and public sector employers in the formal and non-formal sectors; and civil society organizations are important stakeholders in the process of securing migrant rights.

7. It is vital that the discourses around migration, including in forums such as the Global Forum on Migration and Development, are reoriented to ensure that they are more than just a negotiation between countries of origin and destination on the most effective global arrangements to meet market demands for supply of human resources. Such discourses lead to commoditization of migrant workers and pave the way for a range of human rights violations.

8. Migration as a phenomenon is intricately connected to patterns of economic development and availability of social opportunities in both countries of origin and destination. A very large number of migrant workers, owing to their poverty and disenfranchisement, and the gap in protection in countries of origin and destination, are often not subject to the protection of fair labour standards and are vulnerable to several forms of exploitation.

9. In many countries across Asia, contrary to international law, the immigration status of people tends to result in the denial of basic human rights. In particular, the criminalization of irregular workers including their arrest, detention and deportation without due process is widely prevalent. The situation of women migrants, including those who migrate as a result of transnational marriage, and children deserve particular attention in terms of their special vulnerability to discrimination and violence. Migrant workers are also vulnerable to high levels of discrimination and xenophobia due to prejudices, ignorance and other attitudes intolerant of difference and plurality.

10. Notwithstanding ASEAN initiatives, existing intergovernmental processes within Asia have failed thus far to effectively protect most migrant workers, especially irregular and women domestic workers, as they continue to lie outside of any effective human rights protection

system. Migration policies of states need to be reoriented toward enabling protection of all migrant workers in order that they can contribute more effectively to society and the economy.

11. In many Asian countries, irregular migrant workers are criminalized, subjected to prolonged administrative detention and denied due process especially in determining whether they have been victims of human smuggling or trafficking. This makes it near impossible for irregular migrants to access basic health and welfare services.

12. Notwithstanding the near universal ratification of the UN Convention on the Rights of the Child in Asia, the dominant practice in many countries is to keep children of arrested migrants in overcrowded detention centers. The failure of host countries to register and issue birth certificates to the children of migrant workers creates a vicious cycle of stateless children living in a state of limbo.

13. The increasing spread of transnational crime, including the trafficking and smuggling of persons, poses a range of further challenges to migrants who are often victims of such organized crime. Trafficking and smuggling in persons poses significant challenges to states, national and international human rights actors, and civil society organizations.

14. The presence of conflicts and various forms of persecution have resulted in an increased flow of refugees and asylum seekers. Notwithstanding their distinct status in international human rights and humanitarian law, refugees and asylum seekers may face many of the same problems as other migrants do in terms of accessing economic and social opportunities, as well as securing the protection of their civil, cultural and political rights.

15. International human rights law, particularly international human rights treaties, declarations, and standards set by treaty bodies and the work of special procedures, must be the fundamental starting point for addressing the challenges of the future, including the challenge of securing the protection of dignity and justice for all in the context of migration and its social and cultural impacts. These impacts are significant not just in countries of destination but also in countries of origin, which often witness important demographic changes that call for informed and concerted action to protect migrants and their families.

16. There is no “one size fits all” solution for managing the cultural diversity resulting from migration, a highly contested and evolving reality. Human rights and culture are not mutually exclusive. All actors, state and non-state, have a responsibility to give due recognition to all migrants as bearers of both culture and rights. To the extent that culture embodies similarities and difference, all societies embody diversity and pluralism. Cultural change is constant and migration contributes to cultural change and transformation in both countries of origin and destination.

17. Nevertheless, a human rights approach requires recognition of cultural diversity within the context of internationally recognized standards. The non-recognition of cultural difference and plurality, and demands for assimilation, can result in significant human rights violations. Prejudice and ignorance often fuel intolerance and acts of hate toward migrants. While legislative and policy measures are important to counter-act such attitudes, education and awareness-building to change attitudes are vital to achieving inclusion and acceptance.

18. The continued development of national human rights standards and the consistent application of human rights law by the state in a context of competing cultural identities can directly contribute to the expansion of national identity as experienced by local stakeholders. This expanded identity brings within its scope all ethno-cultural groups within the state's jurisdiction, thereby contributing to the development of social and political cohesion in emerging multicultural societies. This expansion supports policies of cultural, economic and political justice not only between ethno-cultural groups but also within them.

19. A comprehensive, integrated and multi-treaty approach, applying the highest possible standards of human rights for migrant workers, including those in an irregular situation and women migrant domestic workers, is necessary to ensure the effective promotion and protection of the human rights of all migrants.

20. The further development of cooperative arrangements among the peoples, governments and institutions of the Asia-Pacific to protect the rights of all migrants would further advance the realization of the vision of the Universal Declaration of Human Rights. To this end, the Conference adopted the *Seoul Guidelines on the Cooperation of NHRIs for the Promotion and Protection of Human Rights of Migrants in Asia***.**
