

Kathmandu Declaration on Addressing Impunity and Realizing Human Rights in South Asia

11 April 2018

The International Conference on *Identifying Challenges, Assessing Progress, Moving Forward: Addressing Impunity and Realizing Human Rights in South Asia* was held from 9 to 11 April 2018 in Kathmandu, Nepal. The representatives of National Human Rights Institutions (NHRIs) of Afghanistan, Bangladesh, India, Maldives, Nepal, Pakistan and Sri Lanka, as well as the National Women's Commission of Bhutan, participated in the conference hosted by the NHRC of Nepal. NHRIs from Jordan, Malaysia, Myanmar, Mongolia and Philippines also participated along with a broad range of human rights organisations (HROs) and journalists from the South Asia region. The United Nations Office of the High Commissioner for Human Rights, the United Nations Development Program (UNDP)-Kathmandu and a number of international human rights organisations also participated.

The President of Nepal, Mrs. Bidya Devi Bhandari inaugurated the Conference in a special ceremony.

The NHRC of Nepal expressed its sincere thanks to the Governance Facility, UNDP-Kathmandu and the Asia Pacific Forum of NHRIs (APF) for the support they extended to organize the Conference. Participants of the Conference expressed their appreciation to the NHRC of Nepal for the excellent manner in which the Conference was organized and for the hospitality extended to all delegates.

The conference unanimously adopted the following Kathmandu Declaration as follows:

Recalling the international instruments agreed upon by States to promote and protect human rights and fundamental freedoms, including the Charter of the United Nations; the Universal Declaration of Human Rights (UDHR); the International Covenant on Economic, Social, and Cultural Rights (ICESCR); the International Covenant on Civil and Political Rights (ICCPR); and the Rome Statute of the International Criminal Court; as well as the Agenda 2030 and the Sustainable Development Goals, alongside the Charter of the South Asian Association for Regional Cooperation (SAARC) and its Convention on [Preventing and Combating the Trafficking in Women and Children for Prostitution](#); Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia and the Regional Convention on Suppression of Terrorism;

Noting that the year 2018 marks the 70th anniversary of the UDHR, which is celebrated worldwide;

Reaffirming that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing, and that all human rights must be treated fairly, equally and with the same level of attention;

Recognizing that core international human rights instruments make provisions for and require States to undertake measures to protect their populations, including from threats of an exceptional nature, but this must be within the framework of respect for human rights, fundamental freedoms and the rule of law;

Recalling that human rights, development, and peace and security are interrelated and mutually reinforcing;

Recognizing the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights adopted by General Assembly resolution 48/134 on 20 December 1993 (Paris Principles) as international standards guiding the work of NHRIs and noting that the year 2018 marks the 25th anniversary of the endorsement of the Paris Principles by the UN General Assembly. In particular, we draw attention to the need for states to ensure that National Human Rights Institutions (NHRIs) are given adequate resources and capacity to function independently and effectively, in full conformity with the Paris Principles;

Recalling the 2004 Seoul Declaration, 2015 Mérida Declaration, and 2015 Kiev Declaration as well as the outcome Statement issued by the GANHRI 2017 Annual Meeting on the roles of NHRIs in early warning, during conflict and transition to peaceful societies;

Recognizing that NHRIs play a major role in encouraging ratification and integration of international human rights norms and standards in national legislation and practices, monitoring national human rights situations, investigating and documenting human rights violations, promoting human rights education and awareness, providing protection to individuals, providing constructive advice and guidance to authorities, and calling on states to respect human rights at all times, especially in conflict and post-conflict contexts;

Recognizing also the importance of the collaboration between NHRIs, as well as their collaboration with civil society, in addressing issues related to conflict and its consequences;

Bearing in mind the Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity (Updated Principles to Combat Impunity, UN Doc. E/CN.4/2005/102/Add.1) including norms and standards regarding the duty to prosecute, the right to the truth and the right to remedy and reparation;

Alarmed by the regular recurrence of crises and conflict in the region, including armed conflict, the crackdowns on the right to freedom of expression and assembly and other fundamental freedoms, the rhetoric of divisive politics leading to hate speech, targeting of religious and ethnic minorities resulting from the lack of accountability, and existence of impunity, which represent threats against peace;

Recalling that the absence of the rule of law may give rise to violations of civil, political, economic, social and cultural rights, as well as to authoritarian rule and conflict;

Recognizing the need for comprehensive approaches to deal with gross human rights violations and abuses of the past, to fully realise the rights to truth, justice, reparation and guarantees of non-recurrence, including through investigations and prosecutions, truth-seeking, reparation programs, and vetting; and that any such combination of processes must be in conformity with international norms and standards, while taking into account national context;

Recognising further the unique and critical contributions being made by NHRIs, especially those in line with the Paris Principles, in post-conflict and transitional justice processes, in order to ensure accountability, serve justice and achieve reconciliation, and in advancing broader institutional reform necessary to

address the root causes of conflict, including by realising economic, cultural and social rights; and considering that this role could be further strengthened;

Underlining the need to promote political and economic good governance as the basis of a peaceful democratic society;

Being aware of the foregoing, the South Asian NHRIs resolve to:

General

1. *Recall* the General Assembly and Human Rights Council resolutions on NHRIs and urge all member states to implement these resolutions; in particular we encourage member states to give due consideration to recommendations and advice from NHRIs; to respect the Paris Principles to ensure strong and effective NHRIs; and to refrain from unduly interfering with the independence and autonomy of NHRIs.

2. *Strongly reaffirm* the need for full adherence to the Paris Principles and to actively work towards this, including through seeking legislative reform ensuring the integrity of the NHRIs through effective nominations and selection processes and financial independence.

3. *Call* on all states to sign, ratify and implement all international human rights instruments as well as the Rome Statute for the International Criminal Court, and ensure their implementation at the national level, and reaffirm our commitment as NHRIs to supporting, advising and monitoring our respective states in this endeavor.

4. *Call* on all states to meet their periodic treaty-body reporting requirements, in accordance with their international human rights treaty obligations.

5. *Reaffirm* that in the combat against impunity, as in other human rights endeavors, NHRIs must reach out and collaborate and cooperate with civil society in a clearly inclusive manner.

6. *Urge* states to bring an end to violence and hate crimes based on caste, religion, ethnicity, political affiliation, regional origin, and gender.

Impunity and Transitional Justice

7. *Restate* that the rule of law signifies that all individuals (including women, children and minority groups and marginalized communities) are protected by the justice system equally and without discrimination.

8. *Reaffirm* that the state's failure to fulfill its duty to investigate and, where necessary, prosecute gross human rights violations perpetuates a culture of impunity, which is in turn a major obstacle to the political stability required for full enjoyment of human rights and economic prosperity.

9. *Ensure* that truth, criminal justice, reparations and measures to prevent non-recurrence (including institutional reforms) are intimately linked as pillars of transitional justice and are mutually supportive.

10. *Ensure* the full participation of victims' groups, civil society and NHRIs in any transitional justice process through a consultative and transparent engagement from the start.

11. *Reaffirm* that prosecution is one of the central elements of an integrated transitional justice strategy, aiming at moving a society beyond impunity and a legacy of human rights abuse, in compliance with the requirements of due process of law and the principles of non-discrimination.

12. *Reaffirm also* that security personnels that were complicit in violations need to be transformed into institutions of integrity that sustain peace and uphold and promote human rights and the rule of law. Public officials and employees who are personally responsible for gross violations of human rights or serious crimes under international law should not continue to serve in State institutions, in line with Principle 36 of the Updated Principles.

13. *Reaffirm* that NHRIs should play a key role in ensuring the establishment of effective vetting processes that exclude persons with serious integrity deficits from the administration of justice, law enforcement and security forces, in order to re-establish civic trust and re-legitimize these institutions. Any removal of persons should comply with the requirements of due process of law and the principle of non-discrimination.

14. *Understand* the role that transitional justice plays in helping countries emerging from conflict restore the rule of law and ensure a sustainable peace, through the pursuit of truth-seeking, justice and reparations processes and institutional reforms to prevent the return to situations of conflict.

National Security and Security Sector Reform

15. *Urge* all states in the South Asia region to review national security and counter-terrorism laws and policies are in compliance with constitutional and international norms and standards, to ensure that they do not infringe on fundamental rights, including among others that mass surveillance measures are proportional and strictly necessary to address legitimate national security threats.

16. *Hold* non-state actors accountable for gross human rights abuses, even if they are approved and backed by civilian stakeholder communities, keeping in mind that the state response must always be proportionate and respect human rights.

17. *Recognizing* the right of states to call a state of emergency when national security is genuinely in peril, call on states to ensure that any derogation of rights is legitimate, proportional and strictly necessary, in conformity with Article 4 of the ICCPR, and that under no circumstances will the use of torture or derogations of the right to life be justified.

18. *Underline* the centrality of security sector reform, with a focus to ending extrajudicial executions, disappearances and torture.

19. *Urge* states to ratify the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment along with its Optional Protocol, and the Convention for the Protection of All Persons from Enforced Disappearance.

20. *Stress* the need to have effective accountability mechanisms to vet security forces for internal promotions and for deployment to UN peacekeeping missions.

Migration and Livelihood; Refugees and Asylum Seekers

21. *Stress* the right of freedom of movement, including migration in search of employment. Recognising the economic benefits of migrant labour to destination and origin countries alike, encourage cooperation between origin and destination countries to ensure that the rights of migrants, particularly women, are realized, to avoid serious abuses such as those that occur under the *kafala* system.

22. *Call* on governments to cooperate to bring about necessary legal and administrative measures to protect rights of migrants, in both countries of origin and countries of destination, according to International Labour Organisation standards, including the monitoring and regulation of recruiters, and assuring access to justice.

23. *Call upon* all states in the region to ratify the Convention on Refugees.

24. *Deeply concerned* by continuing gross violations of human rights in the region, such as the mass expulsion of Rohingyas from Myanmar, calling for an end to the violations, and to holding the perpetrators of the most serious violations accountable.

Experiences and Challenges of Human Rights Organisations in Advocacy and Work against Impunity, and Best Practices, including Collaboration with NHRIs

25. *Express* concern that global trends indicate a threatening environment for human rights defenders in all regions, including staff of NHRIs, and media personnel, with human rights defenders increasingly subjected to harassment, restrictions and reprisals amid an overall shrinking democratic space.

26. *Stress* that the work of human rights defenders and independent media is essential to promote and protect human rights and the rule of law, including in preventing conflicts and violence. Remind states that they have an unconditional responsibility to protect all human rights defenders and the media, without whom there is no democracy.

27. *Call on* states to ensure, that human rights defenders and independent media can operate in a safe and enabling environment, and implement effective measures for their protection, in line with the recommendations from the UN Special Rapporteur on the Situation of Human Rights Defenders.

28. *Reaffirm* the UN Declaration on Human Rights Defenders and resolve to promote its implementation in our respective countries.

Commitments to future cooperation

29. *Promote* active cooperation between NHRIs of the South Asia region in order to:

1. *Support* each other through exchange of information on a regular basis to share challenges, lessons learned, and best practices, as well as technical assistance and capacity building;
2. *Establish* a mechanism or designate a focal point within each NHRI with the mandate of information exchange and coordination of activity;
3. *Undertake* a study to explore the possibility of establishing a regional human rights mechanism in the SAARC region;

4. *Lobby* SAARC governments on issues of key concern to NHRIs in the region in a coordinated manner including on issues that cross borders such as protection of refugees and economic migrants and victims of trafficking and cooperation on responses to abuses against South Asian workers abroad;

5. *Address* human rights violations linked to the environment and climate change;

6. *Promote* efforts to protect civil and political (ICCPR) and economic, social and cultural rights (ICESCR);

7. *Ensure* that all investments in economies in the region, including by international financial institutions, are human rights-friendly and compliant with the UN Guiding Principles on Business and Human Rights (Ruggie Principles);

8. *Welcome and encourage* further efforts by GANHRI and APF to support capacity-building, sharing of experiences and good practices, as well as knowledge management with and among NHRIs, and by all governments in the region to mobilize resources to that effect.