

## **X. LEGAL PROTECTION OF MIGRANT WORKERS**

### **(i) Introduction**

The item "Legal Protection of Migrant Workers" was taken up by the AALCC at its 35th Session held in Manila (1996) following upon a reference made by the Government of the Philippines. In its reference, the Government of Philippines had invited attention to the plight of migrant workers and the denial and abuse of their basic human rights. A preliminary study prepared by the Secretariat for the 35th Session had outlined some basic issues concerning migrant workers in Asia and Africa. Reference was also made to the available legal framework within the UN system and initiatives taken therein. At its Manila Session, the AALCC after exchange of views, urged member States to transmit their views to the Secretariat as to how legal protection to migrant workers could be effectively implemented. The study prepared for the 36th Session held in Tehran focussed on some international trends in migration, the proposal for an International Tribunal and the UN Convention on the Protection of Migrant Workers.

The Assistant Secretary General Dr. Ahmad Al-Gaatri while introducing the item at that Session stated that Mr. Fidel V. Ramos, President of the Republic of Philippines, while calling for a 'more sensitive approach by governments of their host countries' in order to facilitate a comprehensive programme of implementation and adherence to the international conventions and standards, had proposed the following: (a) survey of laws and mechanisms in receiving countries to protect migrant workers with a view to harmonizing them at a later stage; (b) bilateral arrangements; (c) system of legal assistance to migrant workers; and (d) constitution of an impartial international or regional tribunal with petitioning mechanism and procedures specific means by

which an aggrieved migrant worker may seek redress of his grievances.

These proposals he stated, could be deliberated upon, so that a general consensus emerged among AALCC Member States, and a suitable mechanism or mechanisms brought to existence for offering, willing and effective legal assistance and protection to migrant workers, by both sending and receiving countries. These proposals he felt, had an important key to reorienting policies both to make international migration more manageable and to promote efficiency in the world economy.

He observed that as a first step, Member States of the AALCC may consider the possibility of ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990). The proposed basic rights tribunal, on the other hand, needed thorough consideration. As pointed out by the delegation of the Philippines during the 35th Session of the AALCC, it would be worthwhile to examine laws and mechanisms in receiving countries with a view to harmonization at a later stage.

He further stated that the AALCC may wish to consider giving the Secretariat an appropriate mandate to draft a model legislation among AALCC member countries so as to protect the rights of migrant workers, if not more, at least within the framework of the existing conventions and recommendations. This would go a long way in facilitating the movement of the migrant workers, more particularly in the countries of the Asian-African region.

At the 36th Session held in Tehran, the Secretariat was mandated to study the utility of drafting a model legislation aiming at the protection of the rights of migrant workers within the framework of International Labour Conventions<sup>1</sup> and

<sup>1</sup> Some noteworthy International Conventions open for ratification by Member State are (i) Convention (No. 97 concerning migration for employment (revised 1949); (ii) Convention (No. 143) concerning Migrations in Abusive Conditions and the Promotion Equality of

recom-mendations,<sup>2</sup> of the relevant UN General Assembly Resolutions<sup>3</sup> and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. At the same time the Secretariat was cautioned that there should be no duplication of work. In pursuance of the mandate the Secretariat had urged member States to transmit to the AALCC Secretariat their comments and relevant national legislation on the protection of migrant workers.

### **Responses of Member States Received by The Secretariat after The Tehran Session**

The Secretariat expressed its gratitude to the five Member States i.e. People's Republic of China, Kuwait, Philippines, Qatar and Sri Lanka who had responded by sending their relevant national legislation and comments to the AALCC Secretariat and had appreciated the idea of a model legislation to protect migrant workers.

The Government of China while appreciating the work of the AALCC in the sphere of promotion and protection of the legitimate rights of migrant workers, supported the AALCC in its work of collecting comments of Member States in respect to the protection of migrant workers. In furtherance of this objective the Government of the People's Republic of China has

---

Opportunity and Treatment of Migrant Workers, 1975; (iii) Convention (N. 118) Concerning the Equality of Treatment (Social Security), 1962.

<sup>2</sup> Some important International Labour Recommendations which are non binding guidelines but which may guide National Policy and practice are: (i) Recommendation (No.86) concerning Migration for Employment, (revised 1949) (ii) Recommendation (No. 151) Concerning Migrant workers, 1975; (iii) Recommendation (No. 167) Concerning the Maintenance of Social Security rights, 1983; (iv) Recommendation (No. 100) concerning the protection of Migrant Workers in Underdeveloped Countries, 1955.

<sup>3</sup> GA Resolutions 51/85 and 51/65 dated 12 December 1996.

sent to the AALCC's Secretariat, the "labour law" and "the rules for the Administration of Employment of Foreigners in China".

The State of Kuwait had sent in the "labour law no 28 of the year 1969 (oil sector); labour law no 38 of the year 1964 (private sector); Ministerial Ordinance no. 617 of the year 1992 regarding the rules and regulation of employment offices; law no 40 of the year 1992 regarding the regularisation of the work of the employment offices and Ministerial Ordinance no 115 of the year 1996 regarding the organizing of the private employment offices.

The Government of Philippines had reiterated the positive utility for Member States to have a draft model legislation aiming at the protection of migrant workers in consonance of international instruments, because upholding the rights of these workers could maximize their economic contributions to the host countries and minimize sources of friction and discord among the sending and receiving states. The Secretariat received the "Republic Act 8042 entitled "Migrant Workers and Overseas Filipinos Act" as well as pertinent provisions of the Philippine labour code and Immigration Act on the employment of alien workers.

The State of Qatar in a note on the "Situation of Foreign and Migrant Workers in the State of Qatar" had stated that the policy with regard to migrant workers in Qatar is based on principles aiming to diversify the sources of national income through expanding industrial and agricultural production bases. Apart from these projects, Qatar is among the major leading oil producing nations. The State has been opening the corridors for large number of migrant workers from different origins and of numerous categories, in recognition of man powers' importance to the process of building the nation, and as an important factor in implementing the states' plans. It had sent to the AALCC Secretariat "Law no 14 of 1992' concerning foreigners coming to work for other employers. Immigration laws; "law no 15 of 1997" by virtue of which foreigners working in Qatar can bring in their families, and "labour law no (3) of 1962 which regulates the rights and duties in any contractual

relationship existing between an employer and workman in the State of Qatar.

In view of the Government of the Democratic Republic of Sri Lanka drafting of Model Legislation aimed at the protection of the rights of migrant workers, would help them to gain recognition of their rights and considerable alleviate hardships that migrant workers are undergoing at present. Sri Lanka has acceded to the UN Convention on the Protection of Migrant Workers. Further the drafting of a Model Legislation will help formulate a framework for their protection in the labour and recipient countries.

### **Thirty-eighth Session : Discussion**

The Assistant Secretary General Dr. Ahmed Al-Gaatri while introducing the Secretariat Report on the topic stated that the item had been included on the agenda of the 35th (Manila) Session of the AALCC in response to a reference made by the Government of Philippines. Further, during the 36th Session held in Tehran, the Secretariat was mandated to study the utility of drafting a model legislation aimed at the protection of the rights of migrant worker within the frame work of the UN Convention and the relevant General Assembly resolutions. He stated that, a preliminary framework of a model legislation drawn up by the Secretariat was presented at the 37th Session held in New Delhi. Deliberations at that session revealed that as the topic was under consideration at other international fora care should be taken that there was no duplication of work on the subject hence Resolution 37/7 adopted at that session directed the Secretariat to seek written comments from Governments on (i) the utility of drafting a model legislation for protection of migrant workers; and (ii) the constitution of an open ended working group for an in-depth consideration of the issue.

He informed the meeting that in pursuance to that mandate the Secretariat sought comments from Member Governments, and response was received from seven countries namely Republic of Iraq, Islamic Republic of Iran, Nepal,

Cyprus, Turkey, Jordan and Singapore. Among these the first five are agreeable on the establishment of an open-ended Working Group for an in-depth examination of the issue. In view of the Government of Cyprus ratification of existing instruments by the member States of AALCC would minimize the need, either for drafting a model legislation or the constitution of an open ended working group and Singapore has asked for a through study on various issues before a final decision is made by member states whether model legislation should be drafted and whether a working Group should be convened to study the issue. Referring to the inaugural address at the present Session made by the President of Ghana, Flt. Lt. J.J. Rawlings, he stated that the President observed that it was necessary to protect the Human Rights and dignity of migrant workers in their countries of temporary residence. Furthermore, humanitarian principles should be employed to ensure that they are not exploited. Flt. Lt. J.J. Rawlings has called on Member States to come out with concrete suggestions and legislation to deal effectively with the issue. At the same time it was necessary that the rights of these workers are protected and they be given the same treatment as is accorded to nationals. He urged Member States to ratify the UN Convention relating to protection of migrant workers and their families.

The *Delegate of Indonesia* noted that the Indonesia Government was considering harmonization of its domestic laws and regulations on the matter before ratifying the UN Convention on the protection of migrant workers and their families. He urged other Member States of the AALCC to do so.

The *Delegate of India* was of the view that the flow of migrant workers within Asia and Africa had certain unique features. Within Asia, she said there were Countries which send a large number of migrant workers to their neighbouring countries. Because of the close proximity of the sending and receiving countries, such movement of labour is regulated through available framework at bilateral level. In this context the AALCC proposal to outline model legislation should be examined.

The proposed model legislation should be able to fill the gaps left in the UN Convention. Hence, it is crucial to study and survey the laws and mechanisms in receiving countries to protect migrant workers, with a view to harmonizing the same at a later stage. She further stated that deliberations undertaken by the Working Group constituted by the UN General Assembly to finalize the UN Convention, could immensely help in assessing the position and problems faced by various Countries.