

LEGAL PROTECTION OF MIGRANT WORKERS

(i) Introduction

The item "Legal Protection of Migrant Workers was taken up by the AALCC at its 35th Manila Session (1996) following upon a reference made by the Government of 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 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 (Tehran) focussed on some international trends in migration, the proposal for an International Tribunal and the UN Convention on the Protection of Migrant Workers.

Thirty-ninth Session: Discussions

The **Deputy Secretary General Dr. Ahmed Jassim Al-Gaa'tri** while introducing the Secretariat Report stated that the item was included on the agenda of the 35th (Manila) Session in response to a reference made by the Government of Philippines. 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 workers within the framework of the UN Convention and the relevant General Assembly Resolutions. He stated that, a preliminary framework of a model legislation was presented at the 37th (New Delhi) Session. Discussions at that Session revealed that as the topic was under consideration at other international fora, care should be taken that work is not duplicated, hence the Resolution adopted at the New Delhi (1998) Session directed the Secretariat to seek written comments from Governments on (i) the utility of drafting a model legislation for the 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 of the aforementioned mandate the Secretariat sought comments from member governments. Seven countries responded, namely Republic of Iraq, Islamic Republic of Iran, Nepal, Cyprus, Turkey, Jordan and Singapore. Among these the first five agreed on the establishment of an open ended working group for examining 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. The Government of Singapore has sought a thorough study on various issues before a final decision is made by Member States on whether a model legislation should be drafted and whether a Working Group be established. He also stated that at the 38th Session held in Accra, the item was briefly considered and although the Committee had decided to convene the meeting of the open-ended Working Group, such a meeting could not be held.

The Deputy Secretary General once again sought the views of the Member States regarding the course of future work on the item.

(ii) Resolution on the "Legal Protection of Migrant Workers"

(Adopted on 23.2.2000)

The Asian African Legal Consultative Committee at its thirty-ninth session

Having considered the Secretariat brief on the Legal Protection of Migrant Workers contained in Document No.AALCC/XXXIX/CAIRO 2000/S.4.

Having heard the statement of the Deputy Secretary General;

Mindful of the difficulties faced by the migrant workers;

Mindful also of the crucial issue of the protection of the basic human rights of migrant workers:

1. **Urges** Member Governments who have not yet done so to forward their comments to the Secretariat;
2. **Requests** the Secretary General to consider the possibility of convening an "Open Ended Working Group" for in-depth consideration of issues related to migrant workers; and
3. **Decides** to place the item "Legal Protection of Migrant Workers" on the agenda of its fortieth session.

(iii) Secretariat Study: Legal Protection of Migrant Workers

The Deputy Secretary General Dr. Ahmed Al-Gaatri while introducing the item during the 36th Session, stated that H.E. Fidel V. Ramos, President of the Republic of Philippines, while calling for a more sensitive approach by governments of their host countries proposed, 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 emerges among AALCC Member States, and a suitable mechanism or mechanisms brought into 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 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 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.

Mandate for the 37th (New Delhi, 1998) Session

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 Conventions¹[1] and recommendations,²[2] of the relevant UN

1[1] Some noteworthy International Labour Conventions open for ratification are (i) Convention (No.97 concerning migration for employment (revised 949); (ii) Convention (No.143) concerning Migrations in Abusive Conditions and the Promotion Equality of Opportunity and d Treatment of Migrant Workers, 1975; (iii) Convention (No.118) Concerning the Equality of Treatment (Social Security), 1962.

2[2] 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, 1995.

General Assembly Resolutions^{3[3]} 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 the work to collect 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 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 regularization 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 to 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 was sent 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 employers and workmen 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 considerably 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.

^{3[3]} GA Resolutions 51/85 and 51/65 dated 12 December 1996.

Mandate for the 38th (Accra 1999) Session

During the 37th Session of the AALCC held in New Delhi, one of the initiatives put forward by the Secretariat was the constitution of an "Open Ended Working Group", the basic objective of which was to examine the Secretariat's proposed Draft Structure of the Model Legislation on the Legal Protection of Migrant Workers in detail.

That Session had mandated the Secretariat to seek written comments from Member States on (a) the utility of drafting a Model Legislation on the Protection of Migrant Workers; and (ii) The constitution of an "Open Ended Working Group" for an in-depth examination of the issue. In pursuance of the mandate the Secretariat had urged member-States to transmit to the AALCC Secretariat their comments on the constitution of the Open Ended Working Group and the utility of drafting the model legislation on the Protection of Migrant Workers.

Summaries of the Replies Received since the 37th Session held in New Delhi

The Secretariat expresses its gratitude to the seven member States i.e. Republic of Iraq; Islamic Republic of Iran; Nepal; Cyprus; Turkey; Jordan and Singapore who have responded to the Secretariat request by sending their comments.

The Government of the Republic of Iraq has supported the utility of drafting a model legislation on the Protection of Migrant Workers as well as the constitution of an "Open Ended Working Group", for an in-depth examination of the issue. Further, they have sent to the AALCC Secretariat, the Iraqi labour law No.71 of 1987 along with law No.39 of 1971 concerning Migrant Workers.

The Islamic Republic of Iran has informed the Secretariat that it supports the establishment of an Open Ended Working Group for comprehensive examination of the subject and is of the view that the utility of drafting a model legislation could be discussed in the Working Group.

The State of Nepal has informed the Secretariat that it does not have any specific legislation on the subject of protection of Migrant Workers. Nevertheless it approves the decision of the AALCC to constitute an Open Ended Working Group to study the matter in greater detail for formulating suitable legislation to deal with the issue of the Protection of Migrant Workers.

The Republic of Cyprus in its communication to the Secretariat, has supported the idea that states should ratify the international instruments for the protection of migrant workers, (i) The ILO Migration for Employment (Revised) Convention, 1949, No.97; (ii) The ILO Migrant Workers (Supplementary Provision) Convention, 1975, No.143 and (iii) The ILO Discrimination (Employment and Occupation) Convention, 1958, No.111. In their view the ratification of the above instruments by Members States of the AALCC, would be in their own best interest and would also minimize the need, for the Committee, for either drafting a model legislation on the Protection of Migrant Workers, or the constitution of an Open Ended Working Group for an in-depth examination of this subject.

The Republic of Turkey in its communication, informed the Secretariat that, the texts of the "European Social Charter" of 1961 and "International Convention on the Protection of the Rights of all Migration Workers and Members of their Families" should constitute the basis for drafting the Model Legislation. Furthermore a note on Turkish Migration Policies was also received by the Secretariat.

The Government of the Hashemite Kingdom of Jordan proposes the establishment of a working group, to study and follow up all the comments received from various Governments and to find out a standard model text, "which will be able to protect the migrant workers in the receiving countries. Further, the term of reference of this working group should not be limited by a period and it should be given all the necessary time and mandate to find solutions of any problems which may arise after implementing this "standard model text".

The Government of Singapore in its communication to the Secretariat has stated that the issue of Migrant Workers is already being discussed in other fora, such as the International Labour Organization (ILO) and the UN. As such, there may be duplication of work if an AALCC Working Group were to address the same issue. The creation of a new international instrument to deal

substantively with the same topic may not be appropriate at this time, particularly as only twelve countries have thus far ratified or acceded to the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. These 12 countries do not include the labour importing countries. The existing mechanisms have, therefore, not had the opportunity for qualitative analysis.

Singapore has thus proposed that before a final decision is made as to whether model legislation is drafted, a detailed analysis be first conducted on the existing national legislation of Member States to determine common trends, in imposing burdens, privileges and protective mechanisms for migrant and indigenous workers. Singapore has stated that there must be recognition of the fact that the laws and regulations governing citizens and residents of the host country are equally applicable to the migrant worker. From the analysis and supporting documentation of national laws, the Secretariat may proceed, if the Member States deem it appropriate, to propose a draft model law for evaluation and discussion. The note further states that there should be no duplication of work on this issue and that the ILO is the most logical forum for dealing with this matter. However, if the Member States determine that discussion on this topic should continue, a Working Group may need to be convened to analyse national legislation and to discuss and propose the appropriate language for the model legislation. Singapore has stated that various issues will then have to be addressed and included in the model legislation including the distinguishing of legal and illegal migrant workers and the fact that rights and privileges accorded to migrant workers should not be more than those accorded to citizens and residents of the host state.

Singapore has suggested that membership of the Working Group should reflect the diverse legal systems of AALCC Member States (civil law, common law and socialist law) and should have equitable representation from both labour importing and exporting countries. The Working Group, if established, should also have pre-determined life span correlating with the conclusion of work on the model legislation. The mandate of the Working Group initially be to collect and analyse the various national laws and mechanisms of Member States relating to the employment and protection of workers, migrant and indigenous. They could then compile reports to identify common trends. From these common trends, the Working Group may then propose themes for inclusion into the model legislation. Finally, subject to approval by Member States and agreement that model legislation should be drafted, the Working Group may then propose appropriate and acceptable language for the model legislation.

Consideration of the Item During the 38th (Accra, 1999) Session

Pursuant to the Resolution 37/7 adopted at the New Delhi Session, the Secretariat by its two letters dated 25th April and 29th September 1998 had sought written comments from Member States on (i) the utility of drafting a model legislation on the item and (ii) constitution of an open ended Working Group for an in-depth examination of the issue.

The Secretariat received comments from seven Member States, namely, Republic of Iraq; the Islamic Republic of Iran; Nepal; Cyprus; Turkey; Jordan and Singapore. Among the replies received the member states of the Republic of Iraq, the Islamic Republic of Iran, Nepal, Turkey and Jordan are agreeable on the establishment of the open ended Working Group for an in-depth examination of the issue. Cyprus does not agree and Singapore has asked for a thorough study on various issues first before a final decision is made by Member States whether model legislation should be drafted and whether or not Working Group should be convened to study the issues.

In view of the responses received, the Secretariat would like to seek directions from the Member States on how to further proceed with the topic and an appropriate mandate in this regard.

Deliberations at the Accra Session

The Deputy Secretary General Dr. Ahmed Al-Gaatri while introducing the Secretariat Report gave a brief introduction. Referring to the inaugural address at the Session made by the President of Ghana, Honourable Flt. Lt. Jerry John Rawlings, he stated that the President noted that the topic was of concern to a number of African as well as Asian Countries. Migrant Workers contributed

immensely to the economies of the countries to which they travel to work and also to their home economies. Their remittances enabled their families back home to set up small-scale enterprises, educate their children, care for the old as well as the aged. The protection of their human rights and dignity in their countries of temporary residence is therefore very essential.

The President had stated that humanitarian principles must be employed in dealing with Migrant Workers to ensure that they are not exploited. The proposed legal regime should therefore include the relevant mechanisms for redressing their grievances, he called on the Member States to come out with very 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 are given the same treatment as is accorded to nationals. He urged Member States to ratify the UN Convention relating to the protection of Migrant Workers and their families.

The Delegate of Indonesia noted that the Indonesian Government is 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 Asian and Africa has certain unique features. Within Asia, she said there are 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 of bilateral level. In this context the AALCC proposal to outline a model legislation should be examined.

The proposed model legislation should be able to fill the gaps left in 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 latter stage. She further stated that deliberations undertaken by the Working Group constituted by the UN General Assembly to finalize the UN Convention, could be of immense help in addressing the position and problems faced by various countries.

Consideration of the Item at the 39th (Cairo 2000) Session

Resolution 38/4 entitled "Legal Protection of Migrant Workers" adopted at the Accra Session *inter alia* requested the Secretary General to convene an "Open Ended Working Group" for an in-depth consideration of issues related to migrant workers. Such as meeting could not be convened during the inter sessional period. Thereafter the Secretariat once again sent a note verbale dated 29 November 1999, to the Member States, wherein the Secretariat sought the views of the esteemed member States on the aforementioned constitution of an open-ended working group.

ANNEX

The Proposed Draft Structure of the Model Legislation

1. Preamble
2. Definition of "Migration Worker" and categories of migrant workers.
3. Procedure for "Migrant Worker" status determination.
4. Principle of family unity and dependency status.
5. Non-discrimination.
6. Human Rights.
7. Protection of women migrant workers.
8. Conditions of employment.
9. Conditions of work.
10. Employment policy.

11. Social security.
12. Education.
13. Conditions of return.
14. Legal remedies.
15. Taxation and Financial issues.

This is infact the initial framework, which if approved by the Committee will be further elaborated, after a study of all existing international and national legislation on migrant workers, and present a comprehensive piece of legislation which could be of immense benefit to the member States. There is an urgent need for international legal instruments to be implemented at national level and further be supplemented and enforced through national legislation.

- 4[1] Some noteworthy International Labour Conventions open for ratification are (i) Convention (No.97 concerning migration for employment (revised 949); (ii) Convention (No.143) concerning Migrations in Abusive Conditions and the Promotion Equality of Opportunity and d Treatment of Migrant Workers, 1975; (iii) Convention (No.118) Concerning the Equality of Treatment (Social Security), 1962.
- 5[2] 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, 1995.
- 6[3] GA Resolutions 51/85 and 51/65 dated 12 December 1996.
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