

A Milestone Reached

The Work in Fishing Convention, 2007 of the International Labour Organization (ILO) has received the required ratifications to enter into force

On 16 November 2016, shortly before World Fisheries Day, the ILO Work in Fishing Convention (No. 188) was ratified by Lithuania, bringing the number of ratifications to the ten needed for the Convention to enter into force in November 2017. The pace of ratification had been slow at first, but it has picked up following increased attention on the need to ensure better protection of labour rights of fishers and the recognition that the Convention is an important tool for putting such protection in place.

laws, regulations or other measures are in line with the provisions of the Convention. One way of achieving this is to undertake an analysis of how their national situation compares with the requirements of the Convention they are considering to ratify, generally referred to as a “gap analysis”.

There are many benefits to a “gap analysis”, even if a State decides not to pursue ratification. Perhaps the greatest benefit is that the Convention can be used as a mirror of sorts, helping States take a good, hard look at what legal protection is really in place. Its requirements cover the key issues that are important to ensuring good conditions on board fishing vessels. States may find that, in some areas, their laws, regulations or other measure exceed those of the Convention. On the contrary, they may find that something is missing or unclear, leaving what might be considered a hole in the net of protection for fishers.

Though a gap analysis may take a narrative form, it is useful to visualize it as a matrix. The rows set out the provisions of the Convention (for example, the requirement to have medical supplies on a fishing vessel). The column headings concern the Convention No. 188’s requirement, the possible national requirement (laws, regulations or other measures), the “gap” that is identified, and a suggestion on how to fill the gap (for example, by amending an existing regulation or adopting a new one). Because Convention No. 188 covers so many different issues (minimum age, medical examination, medical care, recruitment and placement, fishers’ work agreements, etc.) it is often necessary to look at many different laws and regulations (those normally

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Like all of the ILO’s international labour standards, the Work in Fishing Convention, 2007, is backed by a supervisory system that helps to ensure that countries implement the conventions they ratify. States must report regularly to the ILO on the implementation of each Convention they have ratified, indicating not only whether national laws are in conformity with the Convention in question but also informing the ILO regarding what has been done to make sure the Convention has had an impact on a practical level. For the ten States which have ratified Convention No. 188, their first reports will be due in November 2018.

The gap analysis: what protection is in place?

Prior to ratification, many States want to ensure that their national

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covering labour law, maritime safety, fisheries regulation, immigration, public health). This requires a review of those laws and communication among several ministries, agencies and departments, as well as reviewing relevant case law.

As a tripartite organization, the ILO emphasizes the importance of tripartite consultation and social dialogue. Therefore, the next recommended step in the gap analysis process is for the competent authority to ask representative organizations of fishing vessel owners and fishers to review and comment on the first version of the document. This is often done through a “validation” workshop or seminar. The final document, even if not immediately acted upon, provides an excellent reference point for future action.

What has been seen?

In some States, the exercise has revealed major gaps or at least

important areas where there is a lack of clarity in legal protection. The following are few of the substantial issues that have been raised:

Sometimes, it has been found that the main law protecting workers (for example, the “Labour Act”) specifically excludes certain categories of workers, including fishers. Often, there is a seemingly relevant national law or regulation concerning “seafarers” or “ships” but it is not clear whether “fishers” are considered “seafarers” or whether “fishing vessels” are considered “ships”. In such cases, it may be necessary to adopt new laws or regulation that specifically refers to fishers or fishing vessels.

A regularly occurring issue concerns whether laws or regulations implementing Convention No. 188 apply to “self-employed” fishers. Convention No. 188, however, does not exclude self-employed share fishers. In one gap analysis exercise, the national discussions on this issue led to amending existing legislation

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A *kyarr phong* fisherman on his bamboo raft in the Gulf of Mottama, Myanmar. All operations in the *kyarr phong* fishery along the value chain are undertaken by hired workforce

bringing a large number of formally “self-employed” fishers under the protection of the main labour law. Secondary legislation was adopted to address specific characteristics of work on fishing vessels.

There are often other challenging issues, such as moving from traditional oral agreements to written agreements, or setting requirements for minimal rest periods. This often leads to intensive discussions among all the concerned parties, and the use of some of the “flexibility” provisions of the Convention. In most cases, these flexibility provisions can be used only “after consultation” and, therefore, the gap analysis process itself creates opportunities for not only fishers and their organizations but also fishing vessel owners and their organizations to participate in the shaping of new laws, regulations or other measures. In some States, this has led to the need to strengthen the role of those organizations in order to ensure effective dialogue.

Another great benefit of the gap analysis process is that it helps to identify the roles and responsibilities of different authorities having influence and jurisdiction of living and working conditions on vessels.

Putting in place the system to ensure compliance

Equally important is to improve how States ensure compliance with the national laws, regulations or other measures that implement the provisions of Convention No. 188.

In 2015, following the requests from ILO’s tripartite constituents, the ILO convened a tripartite meeting of experts which adopted Guidelines on flag State inspection of working and living conditions on board fishing vessels. The Guidelines, among other things, address not only how to carry out such inspections but provide guidance on how to put in place or improve the system for inspecting labour conditions of fishers. They provide for the possibility of different approaches by member States. They leave it to the States to decide which authority or authorities are to undertake inspections for compliance

with national laws, regulations or other measures but address such matters as the need for clarifying who has legal authority to do so and how to ensure that inspectors, whether working as individuals or in teams, have appropriate training and experience. They also encourage co-ordination, where appropriate, with authorities responsible for enforcement measures related to forced labour and child labour.

The ILO is preparing tools to assist competent authorities to implement the Guidelines. These will be pilot-tested by mid-2017 and should be available in late 2017.

It is increasingly recognized that there are links between IUU fishing, maritime safety and unacceptable forms of work at sea. Responsible and sustainable fishing cannot be achieved without tackling all these issues, and this is best done in a co-ordinated manner. It is likely that we will see improvements in this co-ordination at all levels. Responsible and sustainable fishing now is seen to include ensuring decent work for fishers by adopting or updating national laws, regulations or other measures and by putting in place or updating the means of ensuring compliance. 

For more 

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Fisheries page of the ILO