

DISCUSSION POINTS and DRAFT AGENDA

Tripartite consultation on FORCED LABOUR AND HUMAN TRAFFICKING IN THE FISHERIES SECTOR

Introduction

According to ILO's most recent count¹ about 20.9 million people are victims of forced labour, coerced and deceived by their recruiter or employer, and trapped in situations from which it is difficult to escape. Forced labour takes place on board fishing vessels because of the isolation of the work place, the fierce competition within the industry, and the ready supply of vulnerable workers, many of them migrant labourers.

In recent years media reports on forced labour in the fisheries sector has increased and a number of organizations have undertaken research into the matter. These reports have demonstrated the urgency of the problem and current lack of coordination to tackle this issue.

In 1998 the tripartite coalition of governments, workers' and employers' organizations adopted the ILO Declaration on Fundamental Principles and Rights at Work calling upon States to eliminate all forms of forced labour. ILO has taken a lead role in raising awareness; assisting governments to develop and implement laws, policies and action plans; developing training materials; and implementing innovative programs to curb forced labour. ILO has identified the fisheries sector as particularly vulnerable to coercive and deceptive labour practices.² In 2007 ILO adopted the Work in Fishing Convention (No. 188) that will together with other ILO standards contribute to curb forced labour and human trafficking in the fisheries sector.

With a broad mandate to protect workers from exploitative working conditions and its tripartite structure bringing together government, workers' and employers' organizations, ILO is well placed to convene a global consultation meeting to discuss effective strategies against forced labour and human trafficking in the fisheries sector and to facilitate an exchange among experts.

The objective of the tripartite consultation held 19 and 20 September 2012 in Turin, Italy, is to facilitate a holistic discussion on the legal, practical and technical modalities needed to form an effective and coordinated global strategy to prevent and combat forced labour and human trafficking in the fisheries sector. The consultation will use interactive methods of discussion to ensure that all participants have an opportunity to share their knowledge and to contribute to the development of the strategy.

This discussion paper is an abstract of a larger paper that is being prepared in the context of the tripartite consultation on forced labour and human trafficking in the fisheries sector. The purpose of the larger paper is to focus the discussion and ensure that relevant information or lessons learned are captured.

Structure of the consultation

Discussion point 1: What is the problem?

- **What is driving and allowing the use of forced labour and victims of human trafficking in the fisheries sector?**
- **What is the scope of forced labour and human trafficking in the fisheries sector and where do we lack knowledge?**
- **What are the costs to society and to the fisheries sector of using forced labour and victims of human trafficking?**

The 'fisheries sector' covers a range of economic activities related to the capture, harvesting, processing and trade of marine living resources³ at sea and in lakes, rivers, canals and coastal zones. Fish processing may in addition take place both on board fishing vessels and on

land. Vessels involved in the fisheries sector include those engaged in capture or harvesting operations, as well as in processing, packaging, and transport of fish transhipped at sea or in port. **The primary focus of the tripartite consultation is forced labour and human trafficking of fishers taking place at sea on board vessels engaged in commercial (as opposed to subsistence) fisheries.** 'Fishers' in this context refers to any person working on board sea-going commercial fishing vessels. For the purposes of the consultation, 'fishing operations' refers to capture or harvesting, transshipment, processing, packaging, and trade of marine living resources. Some fishing operations are structured as joint ventures where the joint venture entities collaborate on the various aspects of the fishing operation (such as crew, supplies, knowhow, infrastructure (vessels), and access to fishing licenses).⁴ 'Fishing operators' refers to the profit-making entities behind the fishing operation. The fishing operator may be the registered owner or charterer of the fishing vessel, a joint venture entity, or the fishing master on board the fishing vessel. Employment contracts are commonly entered into between fishers and fishing operators or fishing masters, often facilitated by recruitment agencies or brokers.

Over the last decade a number of studies have examined deceptive and coercive labour practices in the fisheries sector. Many of these focuses on labour exploitation, forced labour, and human trafficking in the Southeast Asian fisheries sector in the greater Mekong sub-region.⁵ In 2010 FAO and ILO organised a workshop on child labour in fisheries and aquaculture that examined the nature and scope, causes and contributing factors, as well as measures to address child labour in the fisheries and aquaculture sectors.⁶ In 2011 UNODC published an issue paper on transnational organized crime in the fishing industry with focus on amongst others human trafficking.⁷ The same year Stringer *et al* published a working paper on labour and human rights abuses aboard foreign fishing vessels in New Zealand waters.⁸ It is moreover anticipated that the International Organization for Migration (IOM) and Nexus Institute will publish a study on trafficking of Ukrainian seafarers including fishers in the near future. Whereas little is still known about the magnitude of forced labour and human trafficking in the fisheries sector globally, the few cross-sectoral studies that exist indicate that deceptive and coercive employment practices in the fisheries sector are experienced as comparatively more brutal and inhuman than other sectors.⁹

There are a number of reasons why fishers are particularly vulnerable to deceptive and coercive employment practices. Fishing vessels, especially in the long-distance fishing fleet, can stay at sea for several years at a time and tranship fuel, stores, crew, and fish at sea. Fishers on board these vessels will find it difficult to report abuse, injuries, and deaths, and seek assistance for their own protection. Also, relatively few fishers are members of trade unions. Fishers are frequently asked to surrender their identity documents to the master of the vessel whilst on board and their movements in foreign ports are restricted. Communication with family and friends whilst at sea is dependent on the availability and access to satellite, cell phone, or other communication equipment on board. The ability of family and friends to trace the fisher on a particular vessel will depend on amongst others the extent to which the fishing vessel releases radio or satellite signals.

The transnational nature of fishing operations taking place across multiple maritime zones means that fishers must often rely on the protection of the State where the vessel is registered. Some of these registries are unfortunately established in States that are unable or unwilling to adequately protect fishers and may have little connection with the fisher, the fishing vessel, or the fishing operator, leaving fishers in a vulnerable position. Capture fisheries are labour intensive, hazardous, hard, and difficult. Intensive periods of hard work will take place when fishing grounds are reached. Is it not uncommon to receive reports from fishers of 18-20 hours of work a day in adverse weather conditions whilst operating hazardous machinery.¹⁰ In addition fishers frequently suffer seasickness and rashes and are dependent on the availability of adequately nutritious foods and medical supplies to avoid malnourishment and deceases.

Globalisation has meant that fishing vessels are increasingly operated with crew from diverse countries speaking different languages, with migrant unskilled and sometimes illiterate labourers from low-income regions occupying junior and less advantageous positions. Rigid lines of authority and lack of communication between senior and junior crew can fuel conflict and abuse on board fishing vessels. Moreover, the recruitment process in which migrant labourers are sourced by recruitment agencies in one jurisdiction and employed by fishing operators in another means that fishers can easily be deceived by recruitment agencies or fishing operators and be

coerced into accepting employment contracts or agreements on lesser terms when embarking the fishing vessel. Fishers may also be required to pay their own way to the port of departure and repatriation from the port of disembarkation. If debt is incurred to meet the vessel or no payments reach the fisher or the fisher's family during the employment period, then the fisher may be unable to return home when the employment contract is terminated and could be trapped in an abusive working relationship.

Fishers on board vessels engaged in illegal fishing are particularly vulnerable to abuse.¹¹ Vessels engaged in illegal fishing are often substandard due to the possibility that the vessel may be detained or seized. These vessels will also not have a government appointed scientific observer who could otherwise have served as a neutral third party presence on board. Fishers on board these vessels are less likely to know who their employers are as fishing operators engaged in illegal fishing will try to hide their identity behind shell companies and secrecy jurisdictions. These fishing operators also frequently register their vessels in States that are unable or unwilling to adhere to internationally accepted safety and labour standards and exercise their law enforcement jurisdiction over the vessel. Fishers are moreover vulnerable to sanctions by coastal States for their participation in illegal fishing activities as it is often the vessel, and not the fishing operator, that is targeted by fisheries law enforcement agencies.

Discussion point 2: Existing standards and activities

- **What standards and activities exist to address forced labour and human trafficking in the fisheries sector?**
- **Who are the necessary actors in efforts to address forced labour and human trafficking in the fisheries sector?**
- **What are the lessons learned from legal approaches, including existence of laws & regulations and their implementation (e.g., vessel inspection, labour inspection, and port state control ('PSC') in fisheries and other sectors)?**
- **What tools and activities exist to address forced labour and trafficking in the fisheries sector, including policies, programmes, projects, trade union campaigns, NGO campaigns, certification schemes, and market-based initiatives?**

The vulnerability of fishers to deceptive and coercive labour practices means that labour standards and control mechanism are important to prevent and combat forced labour and human trafficking in the fisheries sector. Unfortunately the fisheries sector is subject to significantly fewer internationally agreed legal regulations and coordinated control measures than for instance merchant shipping. The Work in Fishing Convention, 2007 (No. 188) ('C.188') will be an important contribution towards enhanced minimum labour standards in the fisheries sector. C.188 is supplemented by the ILO Work in Fishing Recommendation, 2007 (No. 199) ('R.199'). When it enters into force and is widely ratified C.188, together with R.199, will lay down binding and non-binding minimum standards for conditions for work on board fishing vessels; conditions of service (e.g., manning and hours of rest, crew lists, fisher's work agreements, and repatriation); recruitment and placement; accommodation and food; and medical care, health protection and social security. The Maritime Labour Convention, 2006, though aimed at merchant shipping, may also provide important protection for fisheries sector processing and transport vessels.

The ILO Forced Labour Convention, 1930 (No. 29) ('C.29') defines 'forced or compulsory labour' ('forced labour') as 'all work or service which is exacted from any person under the menace of any penalty and to which the said person has not offered himself voluntarily'. 'Work and services' includes all types of work, employment or occupation whether legal or not. 'Any person' refers to adults and children of any nationality. 'Menace of penalty' embraces all forms of criminal sanctions and other forms of coercion, including threats, violence, retention of identity documents, confinement, non-payment of wages, or debt bondage. The test is whether a person is free to leave employment without losing any accrued or fundamental rights or privileges. 'Voluntary' means that workers must give their free and informed consent when entering employment and during the employment relationship. Free and informed consent is negated by deception or coercion of the employer or recruiter. The Declaration on Fundamental Principles and Rights at Work stipulates that 'forced labour' is one of four core labour standards all ILO

member States must respect, promote, and realize, even if relevant Conventions have not been ratified.

The factual conditions amounting to forced labour will in most cases also be definable as 'human trafficking' or 'trafficking in persons'. 'Trafficking' refers to illicit movement, trade or dealings in persons or goods. 'Human trafficking' is a criminal offence carried out by criminals referred to as 'human traffickers'. Human traffickers could be brokers, recruitment agencies, employers or anyone else (such as senior crew on board a vessel or corrupt port or border officials) who recruits, transports, transfers, harbours or receives a person for the purpose of human trafficking.¹² The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Conventions against Transnational Organised Crime of 2000 ('the Trafficking in Persons Protocol') aims to prevent and combat trafficking in persons.¹³

The focus of ILO's forced labour instruments and other fundamental and sector specific standards and activities is to regulate employment relationships to suppress the use of forced labour through standard setting, awareness raising, technical support, and strategic tripartite partnerships with governments and employers' and workers' organizations. The focus of the Trafficking in Persons Protocol is to prevent, investigate and prosecute criminal human trafficking offences and offenders (often in conjunction with other criminal offences such as document fraud, money laundering, and corruption) and human trafficking carried out by transnational organised criminal groups. As such the two definitions, legal frameworks and institutional activities serve distinct yet complimentary purposes and form a holistic international legal and institutional response to the problem of deceptive and coercive employment practices.

Discussion point 3: Strategy forward

- **What strategies and mechanisms can be put in place to improve the fight against forced labour and human trafficking in the fisheries sector, including coordination of international organizations and others? What action can be taken at the regional and national level?**
- **What action can be taken between countries (e.g., bilateral actions) to address the issue?**
- **What are the roles of employers'/fishing vessel owners' and workers' representative organizations in addressing forced labour and human trafficking in the fisheries sector?**
- **What are the possible roles of certification schemes and other market approaches in addressing forced labour and human trafficking in the fisheries sector?**
- **What are the roles of NGOs at the international, regional and national level in addressing these issues?**
- **How can work to address forced labour and human trafficking in the fisheries sector be better communicated to the industry, consumers, and the general public?**

A chief objective of the tripartite consultation is to examine what measures ILO, its constituents, and its partner organisations can take to address the issue of forced labour and human trafficking in the fisheries sector. By seeking advice from selected participants from key fishing States, international organizations, social partners and other actors and experts on forced labour, human trafficking, and the fisheries sector it is hoped that the tripartite consultation will:

- provide support for the continuation of research capacity building efforts in the area of forced labour and human trafficking in the fisheries sector;
- allow our tripartite constituents, partners, experts, and civil society to share their opinions and views on measures needed to strengthen capacity of governments, employers' and workers' organizations and other actors to effectively address forced labour and human trafficking in the fisheries sector;
- lead to the identification of key stakeholder that will be instrumental to achieve a coordinated global approach to addressing forced labour in fisheries; and
- provide opinions, insights and views on priorities for follow up activities.

References

- ¹ ILO/SAP-FL *ILO Global Estimate of Forced Labour: Results and Methodology* (2012), available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf.
- ² See Pearson *et al*/ILO *The Mekong Challenge: Underpaid, Overworked and Overlooked: The Realities of Young Migrant Workers in Thailand* (2006), available at <http://www.ilo.org/public/english/region/asro/bangkok/child/trafficking/downloads/underpaid-eng-volume1.pdf>.
- ³ 'Marine living resources' includes fish, shellfish, marine mammals, sea plants and corals.
- ⁴ This practice and its problems in the context of labour abuse are well documented in New Zealand. See, e.g., Stringer *et al*, 'Not in New Zealand's Waters, Surely? Labour and Human Rights Abuses aboard Foreign Fishing Vessels' 11-01 *New Zealand Asia Institute Working Paper Series* (2011).
- ⁵ Pearson *et al*/ILO *The Mekong Challenge: Underpaid, Overworked and Overlooked: The Realities of Young Migrant Workers in Thailand* (2006), available at <http://www.ilo.org/public/english/region/asro/bangkok/child/trafficking/downloads/underpaid-eng-volume1.pdf>; Pearson *et al*/ILO 'Chapter 3: Fisheries' in *Mekong Challenge: Underpaid, Overworked and Overlooked: The Realities of Young Migrant Workers in Thailand (Volume 2)* (2006), available at <http://www.no-trafficking.org/content/pdf/ilo-fishing-vol2-eng.pdf>; Robertson/IOM *Trafficking of Fishermen in Thailand* (2011), available at <http://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/countries/docs/thailand/Trafficking-of-Fishermen-Thailand.pdf>; Cruz and Ratana *Understanding Children's Work in Cambodia: Mapping & Costing Current Programmes Targeting the Worst Forms of Child Labour* (2007), available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/06/06/000333038_20080606013812/Rendered/PDF/440840WP0BOX321n0Cambodia111PUBLIC1.pdf; UNIAP *Exploitation of Cambodian Men at Sea: Facts About the Trafficking of Cambodian Men onto Thai Fishing Boats* (2009), available at http://www.no-trafficking.org/reports_docs/siren/siren_cb3.pdf; and Solidarity Center *The True Cost of Shrimp* (2008), available at http://www.solidaritycenter.org/files/pubs/True_Cost_of_Shrimp.pdf (also Bangladesh). From Indonesia, see Davis 'E. Other Forms of Exploitation and Trafficking' in Rosenberg (ed) *Trafficking of Women and Children in Indonesia* (2003) 110 at 110-111, available at http://www.icmc.net/system/files/publication/trafficking_of_women_and_children_in_indonesia_51332.pdf.
- ⁶ FAO 'Report of the FAO Workshop on Child Labour in Fisheries and Aquaculture in Cooperation with ILO, Rome, 14-16 April 2010' 944 *FAO Fisheries and Aquaculture Report* (2010), available at <http://www.fao.org/docrep/013/i1813e/i1813e00.pdf>.
- ⁷ De Coning/UNODC *Transnational Organized Crime in the Fishing Industry: Focus on Trafficking in Persons, Smuggling of Migrants, Illicit Drugs Trafficking* (2011), available at http://www.unodc.org/documents/human-trafficking/Issue_Paper_-_TOC_in_the_Fishing_Industry.pdf.
- ⁸ Stringer *et al*, 'Not in New Zealand's Waters, Surely? Labour and Human Rights Abuses aboard Foreign Fishing Vessels' 11-01 *New Zealand Asia Institute Working Paper Series* (2011).
- ⁹ De Coning/UNODC *Transnational Organized Crime in the Fishing Industry: Focus on Trafficking in Persons, Smuggling of Migrants, Illicit Drugs Trafficking* (2011), available at http://www.unodc.org/documents/human-trafficking/Issue_Paper_-_TOC_in_the_Fishing_Industry.pdf.
- ¹⁰ See, e.g., Robertson/IOM *Trafficking of Fishermen in Thailand* (2011), p. 27 *et seq*, available at <http://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/countries/docs/thailand/Trafficking-of-Fishermen-Thailand.pdf> and EJF *All at Sea: The Abuse of Human Rights Aboard Illegal Fishing Vessels* (2010), available at <http://www.ejfoundation.org/page682.html>.
- ¹¹ See, e.g., de Coning/UNODC *Transnational Organized Crime in the Fishing Industry: Focus on Trafficking in Persons, Smuggling of Migrants, Illicit Drugs Trafficking* (2011), available at http://www.unodc.org/documents/human-trafficking/Issue_Paper_-_TOC_in_the_Fishing_Industry.pdf (Chapter 5); High Seas Task Force *Closing the Net: Stopping Illegal Fishing on the High Seas* (2006), available at <http://www.illegal-fishing.info/uploads/HSTFFINALweb.pdf>; Whitlow/ITF *The Social Dimension of IUU Fishing* (2004) AGR/FI/IUU(2004)15, available at <http://www.oecd.org/dataoecd/32/32/31492524.PDF>; Gianni and Simpson/WWF/ITF *The Changing Nature of High Seas Fishing* (2005), available at <http://www.wwf.org.uk/filelibrary/pdf/flagsofconvenience.pdf> and EJF *All at Sea: The Abuse of Human Rights Aboard Illegal Fishing Vessels* (2010), available at <http://www.ejfoundation.org/page682.html>.
- ¹² Article 3(a) of the Trafficking in Persons Protocol defines 'trafficking in persons' as 'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs'.
- ¹³ Article 2(a) of the Trafficking in Persons Protocol.