

## **Conclusions on the promotion of decent work for migrant fishers<sup>1</sup>**

The Tripartite Meeting on Issues relating to Migrant Fishers,

Having met in Geneva from 18 to 22 September 2017,

Adopts this twenty-second day of September 2017 the following conclusions:

### **Introduction**

1. Decent work and productive employment in the fishing sector is fundamental to ensuring effective fishing operations, which themselves are critical to sustainable livelihoods and food security. Migrant fishers, as all other fishers, are entitled to decent conditions of work. Decent work in the fishing sector is critical for achieving several Sustainable Development Goals (SDGs), including SDG 2 on zero hunger; SDG 8 on decent work and inclusive economic growth, in particular target 8.7; SDG 10 on reduced inequalities; and SDG 14 on life below water. Working conditions of migrant fishers has been identified as an issue of growing public concern.

### **Issues, challenges and opportunities in ensuring decent work for migrant fishers**

2. The fishing sector provides livelihoods to 12 per cent of the world's population and contributes to sustainable development and reducing poverty.<sup>2</sup> While fishing operators generally provide decent conditions of work for fishers, a number of operators and recruitment agencies are engaged in abusive practices that fall into the category of forced labour and human trafficking. Migrant fishers in particular often endure the risk of forced labour and serious decent work deficits such as: abusive and fraudulent recruitment and placement practices, child labour, isolation and abuse of vulnerability, abandonment, absence of a written fisher's work agreement, underpayment and withholding of wages, retention of identity documents, blacklisting when asserting rights, violence and

<sup>1</sup> In accordance with established procedures, these conclusions will be submitted to the 332nd Session of the Governing Body of the ILO (March 2018) for its consideration.

<sup>2</sup> The Food and Agriculture Organization of the United Nations (FAO), *The State of World Fisheries and Aquaculture*, 2016.

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intimidation, illegal transfer of fishers at sea, excessively long working hours and other abusive working and living conditions.

3. In order to effectively address these serious violations of the rights of migrant fishers, there is an urgent need to not only identify and map these problems but also to fully understand their root causes. It is particularly essential and urgent to thoroughly investigate and address challenges relating to international recruitment operations and processes. Decent work deficits for migrant fishers on larger, distant water vessels are seen by some as the greater challenge. For others, the problem may also involve fishers on smaller vessels in coastal waters. There is a need for better data and information on the numbers of migrant fishers, their problems and where abuses take place. However, this need for data and information should not be used as a reason to delay immediate and effective action to address abuses. This is a global problem.
4. It is necessary to have effective enforcement of migrant fishers' fundamental rights at work, and access to justice, irrespective of their migrant status. Migrant fishers should be treated as regular status migrant workers and effective mechanisms should be in place to ensure that fundamental principles and rights at work are fully applicable to them. The adequate regulation of national and international recruitment and placement services concerns both parties engaged in matching demand and supply of employment as well as those employing fishers with a view to making them available to a third party. The role of informal labour brokers must also be investigated and regulated. A clear division of roles and responsibilities for enforcement, compliance and inspection between flag States, port States and labour-providing States is key. Furthermore, there is often a lack of coordination at the national level among government agencies which have a role in the protection of the rights of fishers, including migrant fishers. The slow pace of ratification by States of the Work in Fishing Convention, 2007 (No. 188), is reducing the effectiveness of actions addressing the challenges faced by migrant fishers.

### **Areas for improvement for ensuring decent work for migrant fishers**

5. Governments have put great efforts into the ratification and implementation of the Maritime Labour Convention, 2006 (MLC, 2006). However the same level of effort has been lacking with respect to the ratification and implementation of the Work in Fishing Convention, 2007 (No. 188). The International Labour Conference (ILC) 2017 recurrent discussion on fundamental principles and rights at work highlighted the need to enhance efforts to ensure fundamental principles and rights at work in the fishing sector.
6. Certain fisheries policies are found to be not aligned with labour provisions and legal requirements concerning safety at sea, for example, the considerations raised in the resolution concerning tonnage measurement and accommodation adopted by the ILC on 12 June 2007, and requirements to carry fishers from coastal States on board if these fishers do not comply with flag State requirements. These examples refer to possible conflicts with requirements concerning on board accommodation or training and certification of fishers.
7. Legislation is often not regularly monitored, and sanctions for those who are in breach of the legislation are often not imposed. There are insufficient inspectors and inspections of living and working conditions of fishers, and, where they exist, the inspectors often are not trained to detect forced labour, do not speak the languages spoken by migrant fishers and do not check such matters as passport confiscation, conditions of work, in particular hours of rest, accommodation and timely wage payments. Where inspections of fishing vessels are undertaken, they often are not coordinated or combined, which can create inefficiency and disrupt fishing operations. Where conditions of fishers are being regulated and monitored, the focus is often on large vessels, despite the need to address the conditions of all fishers.

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With respect to port State inspections leading to detentions of fishing vessels, the flag State authorities and the ILO should be informed. There is also a need to address the issues related to abandoned fishers.

8. Bilateral and/or multilateral agreements on labour migration are important means of addressing issues concerning migrant fishers, provided they are consistent with internationally recognized human rights – including fundamental principles and rights at work and other relevant international labour standards. They need to be negotiated and concluded between countries of origin, transit and destination and be based on tripartite social dialogue, be implemented effectively and be subject to monitoring. There is an absence of fishing sector-specific guidance on such agreements, though lessons could be drawn from the ILO's broader experience advising States on this subject.
9. Recruitment fees are still being paid by many fishers. Complaints mechanisms for migrant fishers are often insufficient. Procedures for fishing vessel owners to obtain clearance for use of migrant fishers are often bureaucratic and slow, often causing them to use irregular, rather than regular status, migrants. There is insufficient guidance available on international recruitment of fishers. There is a need for better collaboration between labour sending, transit and receiving States with a view to addressing the use of brokers, subcontracting agencies and manning agencies, and to facilitate safe, regular and orderly migration.
10. In many States there is insufficient coordination among key agencies that have a role in protecting the rights of fishers, including migrant fishers. However, there are also a number of good practices that should be shared. At the international level, the ILO, the Food and Agriculture Organization of the United Nations (FAO), the International Maritime Organization (IMO), the United Nations Office on Drugs and Crime (UNODC) and other agencies need to coordinate better, with the ILO taking the lead on labour matters.

### **How social dialogue can contribute to addressing the decent work deficits faced by migrant fishers**

11. Fishing is recognized as a hazardous occupation and the sector is vulnerable to decent work deficits such as excessively long working hours, informality, lack of social protection coverage, long periods at sea and complex employment relationships and remuneration systems. Many fishers are self-employed for whom adequate protection is often lacking. Non-standard forms of employment and engagement are common practice in the sector. Migrant fishers may face challenges not experienced by other fishers, including through the way they are recruited and placed, and are vulnerable to discrimination and other decent work deficits.
12. Legislative and governance gaps may exist because of ambiguity of the legal status of fishers in general and particularly of migrant fishers. Effective monitoring, inspection and enforcement systems to ensure compliance with laws and regulations is often challenging because of limited capacity and resources of governments, as well as the very nature of the sector, with larger vessels often at sea for long periods. The right to join unions in host countries is an effective way to help prevent and combat migrant labour abuse. However, even where migrant fishers can join unions, they may be prohibited from taking on positions of leadership. They may also be prohibited from forming their own unions. Furthermore, union density in the fishing sector is low and representative organizations of employers in the fishing sector are fragmented and dispersed.
13. Promoting social dialogue, in all its forms, based on freedom of association and the right to collective bargaining and other fundamental principles and rights at work, is an essential means for promoting good industrial relations, sustainable economic development and decent work in the fishing sector, including for migrant fishers. For example, the European

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Union (EU) social partners in fishing, supported by an institutional, legal and regulatory framework, engage in cross-border social dialogue and negotiate international framework agreements. Private compliance initiatives have been launched by individual fishing companies and trade unions. The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) and the UN Guiding Principles on Business and Human Rights are international frameworks that support compliance through social dialogue. The ILO's founding instruments recognize the need for social dialogue between governments, workers' and employers' organizations as key to the governance of work.

## **Recommendations for future action by the International Labour Organization, governments, employers' and workers' organizations and others to ensure decent work for migrant fishers**

### **14. Constituents in the fishing sector should:**

- (a) raise awareness on the vulnerability of migrant fishers to potential decent work deficits;
- (b) actively promote and engage in effective social dialogue in its various forms, including cross-border social dialogue where possible, in order to promote decent work and productive employment in the fishing sector and to ensure that the fundamental principles and rights at work and relevant ratified international labour standards protect and apply to all fishers, including migrant fishers;
- (c) take all necessary and appropriate measures to prevent and/or eradicate abuses faced by migrant fishers during the recruitment and placement process and to eliminate the charging of recruitment fees and related costs to migrant fishers, taking into account relevant international labour standards and other ILO guidance, and ensure that these measures are also efficient and expeditious;
- (d) ensure policy coherence in public and private compliance initiatives and partnerships, and align them with relevant international labour standards and other relevant tools; and
- (e) ensure migrant fishers, irrespective of their presence or legal status in a State, have access to free or affordable complaint mechanisms in cases of alleged abuse of their rights, and that effective and appropriate remedies be provided where abuse has occurred.

### **15. Governments of flag States, port States, labour-sending and labour-receiving States and coastal or market States should:**

- (a) ratify and effectively implement the Work in Fishing Convention, 2007 (No. 188), and other instruments relevant to the fishing sector through tripartite consultation and ensure coordination among agencies both at the national and international levels;
- (b) respect the fundamental principles and rights at work of migrant fishers, including the right to organize and to bargain collectively;
- (c) communicate the expectation that all actors in the fishing sector within their jurisdiction respect fundamental principles and rights at work for all migrant fishers and promote the application of the UN Guiding Principles on Business and Human Rights throughout the fishing sector;

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- (d) strengthen labour administration and inspection systems to ensure compliance with laws and regulations; ensure the availability of a sufficient number of qualified inspectors; consider the use of recognized organizations; and ensure the existence of effective complaint mechanisms;
  - (e) when developing and implementing bilateral, regional and multilateral agreements and arrangements relevant to migrant fishers, ensure the engagement of social partners and that those agreements are consistent with relevant international labour standards; and
  - (f) have harmonized migration policies consistent with international labour standards.

**16.** The International Labour Office should:

- (a) promote the ratification and effective implementation of international labour standards relevant to the fishing sector, in particular the Work in Fishing Convention, 2007 (No. 188), for which a campaign should be developed, and promote respect for the fundamental principles and rights at work and build capacity of constituents through development cooperation, the development and dissemination of tools and training materials and through the International Training Centre of the ILO (Turin Centre). Tools and training materials should include inter alia guidance on medical examination and certification of fishers; on the recruitment and placement of migrant fishers; on occupational safety and health on fishing vessels; and guidance on flexibility built into Convention No. 188;
- (b) actively promote its Global Action Programme against forced labour and trafficking of fishers at sea (GAPfish);
- (c) pursue a sectoral approach in the Global Alliance to Eradicate Forced Labour, Modern Slavery, Human Trafficking and Child Labour (Alliance 8.7), including with respect to the fishing sector;
- (d) provide technical assistance to member States to review their national laws and practices through gap analysis and other means, and assess if existing ILO programmes and instruments provide a sufficient framework for ILO constituents to promote decent work for migrant fishers and what additional guidance is needed;
- (e) advise States engaged in bilateral, regional and multilateral agreements concerning migrant fishers, with a view to ensure that such agreements are based on social dialogue and are consistent with relevant ILO standards and fundamental principles and rights at work;
- (f) reinforce and expand partnerships with international organizations and inter-agency mechanisms working in the fishing sector, such as, the FAO, IMO, the International Organization for Migration (IOM), the International Criminal Police Organization (INTERPOL), UNODC and UN Oceans; regional organizations such as the EU and Association of Southeast Asian Nations (ASEAN); and all other partners, to foster policy coherence in order to ensure decent work for migrant fishers, with the ILO leading on decent work-related matters; and consider participation as a third and full member in the FAO/IMO Ad Hoc Joint Working Group on Illegal, Unreported, and Unregulated (IUU) fishing;
- (g) undertake, together with constituents and other UN agencies, research and comparative analyses; monitor, assess and map good practices and share statistics and knowledge on trends and developments in the fishing sector and on efforts that have supported and continue to support the protection of the rights of migrant fishers;

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- (h) provide guidelines for collecting data and global statistics regarding migrant fishers;  
and
  - (i) take into account these conclusions as a contribution to the process leading to the adoption and implementation of the United Nations Global Compact for Safe, Orderly and Regular Migration by the member States at the United Nations General Assembly in 2018.