

The Tripartite Consultation on the Work in Fishing Convention (C. 188)

10 - 11 May 2018, Bangkok, Thailand

Objective: The Tripartite Consultation on C.188 was organized to enhance the tripartite constituents' understanding on C. 188 and to provide a venue to consult social partners regarding application of certain provisions of the Convention as well as potential solutions.

Participants: Representatives from the relevant government agencies,¹ workers' and employers' organizations (including vessel owners),² civil society organizations,³ ILO, and EU attended the consultation.

Process: The first day of the consultation started with an opening session by the Ministry of Labour, and a presentation on C. 188 and the flexibility clauses by an ILO consultant. In the afternoon, participants were divided into three groups with each group comprised of representatives from the government, workers' and employers' organizations as well as civil society organizations. To lead the discussion, a moderator in each group used a worksheet prepared by the ILO and guided participants to discuss 1) whether the draft Act is consistent with C.188; 2) whether there would be any difficulties in implementing the law and 3) whether any flexibility clauses could be used to address such difficulties. Participants were also asked to note relevant existing laws and any issues they may have. On the second day, each group presented the conclusion of the consultation to all participants and received their feedback. Participants also had an opportunity to consult with the ILO Senior Specialist on International Labour Standards and Labour Law ("ILO Specialist") on technical issues throughout the process. The conclusion of the consultation and the ILO interventions are summarized below.

Summary

Group 1: Labour Protection

Minimum age

A representative of an employers' organization proposed to change the draft law to allow children of artisanal fishers who are 15 years old and more, to be trained on fishing vessels in order to preserve the family's profession. A proof of relationship could be required to ascertain that only children of vessel owners are allowed. Representatives from civil society organizations raised some concerns that the existing Thai law has already set a minimum standard at 18 years old. They also raised the concern that it will be difficult to ascertain such relationship and to enforce this law due to the large number of artisanal fishers.

The ILO Specialist pointed out that C. 188 is flexible and the competent authority may authorize a minimum age of 15 for persons who are no longer subject to compulsory schooling and who are engaged in vocational training in fishing. In addition, it may also authorize persons

¹ The Department of Fisheries, Marine Department, Department of Health, Department of Medical Services, Department of Employment, Department of Labour Protection and Welfare, Social Security Office, Thailand Maritime Enforcement Coordinating Center.

² State Enterprises Workers' Relations Confederation (SERC) and the International Transport Worker's Federation, National Fisheries Association of Thailand (NFAT), Thai Overseas Fishing Association (TOFA), Thai Seafarer Association (TSFA), Thai Sea Fishing Association, Fishing Association of Kantang, Chumporn, Rayong, Samut Songkram, Panga, Pattani, Ranong and Phuket.

³ Human Rights and Development Foundation (HRDF), Migrant Working Group, SR Law, Raks Thai Foundation, Environmental Justice Foundation (EJF), Human Rights Watch.

of the age of 15 to perform light work during school holidays. It should also be noted that C.188 provides protection of young workers against night work and activities on board fishing vessels that are likely to jeopardize the health, safety or morals of young persons.

Hours of rest and crew list

A representative of an employers' organization proposed to record hours of rest of all fishers on the vessel in one single document as opposed to producing the record for each fisher. This is to avoid placing too much burden on some fishing vessels which have many fishers e.g., 'surrounding nets' fishing vessels. As for the crew list, the group agreed with what is prescribed under the draft Act.

Fisher's work agreement

The first group opined that the fisher's work agreement should be in the native languages of workers and there should be procedures for ensuring that a fisher has an opportunity to review and seek advice on the terms of the fisher's work agreement before it is concluded. The ILO Specialist explained that although C.188 did not specifically require the agreement to be in language of fishers, it prescribes that the agreement must be comprehensible to fishers. It could therefore be implied that fishers must understand the language used in the agreement.

Repatriation

A representative of the National Fisheries Association of Thailand (NFAT) raised a question whether C.188 requires fishing vessels in the Thai waters to repatriate fishers. Another representative from International Transport Workers Federation (ITF) suggested that all fishers should be repatriated back to their domiciles and a representative from the Department of Employment opined that not all fishers have to be repatriated.

The ILO Specialist explained that Article 21 of C. 188 refers to the right to repatriation from a foreign port but not from a national port. For example, fishers who work on a Thai fishing vessel which only returns to a Thai port do not have the right to repatriation. In response to a question on whether an exception could be made in the case of misconduct of fishers, the answer was negative since Article 21 is about the right to repatriation and make no reference to causes of termination.

Recruitment and placement

A representative of a civil society organization proposed to the Government to clearly specify the term "expenses under the responsibilities of fishers" under section 38 of the draft Act.

Payment

The group opined that salary receipts should be in native languages of migrant workers and workers should also be informed and trained regarding the importance of the receipt. The ILO Specialist pointed out that C. 188 does not specifically require employers to issue the salary receipt but it makes sense to produce it.

Group 2: Accommodation, Food and Water

Manning

The second group opined that there are duplicate regulations regarding manning. One was issued by the Marine Department while another was issued by the Department of Fisheries.

Accommodation

A representative of an employers' organization raised a concern on whether Annex III will apply to his existing fishing vessels and suggested that the draft Act should clarify which requirements related to accommodation apply to existing fishing vessels and/or new fishing vessels. The ILO Specialist clarified that Annex III only applies to new fishing vessels and, in case there are substantial problems, two flexibility clauses under Articles 28 and 3 could be used.

The group also proposed to employ broad terms in prescribing provisions related to accommodation e.g. instead of prescribing "sleeping place", the law should prescribe "sleeping place that is appropriate with the condition of the vessel".

Equivalence in measurement

The second group consulted and agreed to use length overall (LOA) rather than length (L) as the basis of measurement. They also expressed that it is difficult to use measurement in meter and would prefer using gross tonnage.

Group 3: Medical care, Occupational safety and health and social security

Medical certificate

The participants from the third group discussed and agreed that there should be three types of medical certificates namely 1) fishers of fishing vessels remaining at sea for not more than three days; 2) fishers of fishing vessels remaining at sea for three to thirty days and 3) fishers of fishing vessels remaining at sea for more than thirty days. The first group of fishers will not be required to have a medical certificate while the second group will be required to have a medical certificate that addresses five diseases (as required in the health checkup of migrant workers), the hearing and sight of the fishers. Only the last group will be required to have medical certificate attesting to fitness to perform their duties. They also agreed to adjust the medical certificate (1 year) to be coordinated with the work permit (2 years).

Risk evaluation

A representative of the third group asked the ILO Specialist whether the Port In Port Out system (PIPO) operated by the government could be considered as the risk evaluation required by the Convention. The ILO Specialist clarified that the risk evaluation under the Convention refers to an evaluation of the risk in fishing work, as opposed to an evaluation of the vessel by PIPO or an evaluation of a factory.

Social Security

Representatives of employers' organizations pointed out challenges in having fishers registered to the social security system i.e. the current law allows fishing to operate for 7 - 8 months only while the social security system requires contributions throughout the year. The group agreed that social security is an important issue and proposed to require fishing vessel owners to purchase private insurance against injuries, disability and death for fishers, in addition to the compulsory health insurance from the Department of Health. After one to two years, another consultation should be held to review this requirement and its implementation. Representatives from civil societies raised their concerns regarding this solution: that the fishing vessel owners may still be required to pay compensation to fishers twice, i.e. if the private insurance could not cover all compensation required under the Workmen Compensation Act, the Social Security Office may still order fishing vessel owners to pay the difference to the fishers. They then proposed a study on social security for fishers which includes data on fishers who are insured under social security system, challenges, and proposals for change.

The ILO Specialist suggested that it would be the best if fishers are entitled to benefit from social security protection under conditions no less favourable than those applicable to other workers. This does not have to be accomplished on 'day one' but the coverage could be achieved progressively.

Other issues

- Representatives of an employers' organizations shared that they have to provide advance payment to fishers due to the labour shortage. After fishers received the advance payment, many escaped or are disappeared.
- The ILO Specialist suggested that the draft Act should define artisanal fishing and it should also be decided on whether subsistence and artisanal fishing will be excluded from the application of C. 188.

Conclusion: The ILO Specialist expressed that he was impressed with the depth of discussion and that the ILO will be available to offer further technical assistance regarding C.188. The representative from the Ministry of Labour informed participants that the opinions and the results from the consultation will be taken into account in the process of amending the draft Act. The subcommittee on the drafting law to ratify the ILO Work in Fishing Convention (C. 188) will then review the revised draft and the draft will be the subject of a public hearing. The draft then will be revised as per comments and submitted to the Cabinet for its consideration along with the proposal for ratification of C. 188.