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- ▶ **Work in Fishing Convention, 2007 (No. 188):
Netting Gains for Sri Lanka**

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2007 (No. 188):
Netting Gains for Sri Lanka**

November 2020

ILO Country Office for Sri Lanka and the Maldives

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Work in Fishing Convention, 2007 (NO. 188): Netting Gains for Sri Lanka

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Foreword

As an island nation, the significant role of the fisheries sector in shaping Sri Lanka's social and economic life is well established. With a coastal line of over 1,700km and an Exclusive Economic Zone of over 500,000km², fisheries continue to be a key building block of the country's food security and economy. In addition, the sector also creates direct and indirect employment for more than half a million people.

While there have been advancements in boosting marine fisheries through introduction of technology, specific government initiatives, and development interventions, the working conditions within the sector remain largely inadequate. A rapid erosion of traditional labour relations has also created the need for a formalized approach in what is a largely 'informal' sector.

In an environment marked by these factors, the Work in Fishing Convention, 2007 (C 188), is a tool that can promote decent work standards in the fishing sector. It addresses a range of issues from staff quarters on vessels, work agreements, occupational safety and health, to social security. C188 has provisions for progressive implementation, a flexibility, which provides a period of transition for achieving compliance with the convention. The benefits of ratification and compliance with C188 extends to all stakeholders including the crew, skippers, boat owners, and profits the sector as a whole. C188 facilitates improved labour retention and better working conditions, and therein greater social recognition of jobs in the sector, which by extension makes it a more attractive employment opportunity to youth. C188 also leads to increased productivity and greater accountability. The Convention sets the foundation for long-term growth and sustainability of the fisheries sector in Sri Lanka.

As the first step to support our tripartite partners to consider ratification of C 188, the ILO, specifically through the Local Empowerment through Economic Development and Reconciliation project (LEED+), commissioned the study 'Work in Fishing Convention, 2007 (C188): Netting Gains For Sri Lanka': the study examines the potential impact of C 188 ratification and compliance for stakeholders in the fisheries sector.

Funded by the Australian Government's Department of Foreign Affairs and Trade (DFAT) and the Government of Norway, the LEED+ project is part of ILO Sri Lanka's flagship programme – Jobs for Peace and Resilience (JPR), which aims to promote economic growth and sustainable livelihoods for conflict-affected communities

in the Northern and North-Central provinces. Working in the agriculture and fisheries sector, the project has a strong focus on creating inclusive, decent work opportunities. It is expected that the C 188 Convention, if ratified by the Government of Sri Lanka, will not only promote decent work conditions in the fisheries sector and create additional employment, but also generate significant economic returns to the country. The key findings from this study indicate that a number of requisites of the C188 are already in place in Sri Lanka, and sentiments amongst the stakeholders are largely positive. The study noted significant buy-in among fishers, skippers, and boat owners. While the study is comprehensive, additional research is planned in the form of a gap analysis to identify structural and systemic challenges, which will need to be addressed as part of the ratification process.

Simrin Singh

Director

ILO Country Office for Sri Lanka and the Maldives



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List of Abbreviations

OSH	Occupational Safety and Health
KPI	Key Person Interviews
IMUL	Inboard Multi-day boat
IDAY	Inboard Single-day boat
DFAR	Department of Fisheries and Aquatic Resources
EEZ	Exclusive Economic Zone
OFRP	Outboard Engine Fibre-glass Reinforced Plastic
MRTB	Motorized Traditional Boats
NTRB	Non-motorized Traditional Boats
UFFC	United Fishermen's and Fishworker's Congress
NAFSO	National Fisheries Solidarity Organization
RUUSA	Ruhuna University Union of Senior Academics
ICSF	International Collective in Support of Fishworkers
UNCLOS	United Nations Convention on the Law of the Sea
PSM	Port State Measures
CCRF	Code of Conduct for Responsible Fisheries
SLNPOA-IUU	Sri Lanka National Plan of Action to Prevent, Deter and Eliminate IUU Fishing
FARA	Fisheries and Aquatic Resources Act
WPFAR	Western Province Fisheries and Aquatic Resources
NARA	National Aquatic Resources Research and Development Agency
IUU	Illegal, Unreported and Unregulated
HACCP	Hazard Analysis and Critical Control Point
MFAR	Ministry of Fisheries and Aquatic Resources
IMO	International Maritime Organization
ILO	International Labour Organization
FAO	Food and Agriculture Organization
SSF	Small-scale Fisheries
SOLAS	Safety of Life at Sea
IOTC	Indian Ocean Tuna Commission
ISM	International Safety Management
CMM	Conservation and Management Measures
STCW-F	Standards of Training, Certification and Watch keeping for Fishing Vessel Personnel
CTA	Cape Town Agreement
UNIDO	United Nations International Development Organization
CFHC	Ceylon Fishery Harbours Corporation
FRMA	Fisheries Resources Management Assistant



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Executive Summary

The Sri Lankan fisheries sector is fundamental to the country's food security and employs about seven per cent of the total labour force. The latest government policy document on national development 'Vistas of Prosperity and Splendour' pays close attention to the fisheries sector, with plans to strengthen the sector to improve nutrition, increase foreign exchange earnings and provide employment and livelihood opportunities (page 32). The policy has a specific focus on developing the multi-day fishing sector, through the provision of infrastructure facilities. Combined with the strategic development plans of the Department of Fisheries and Aquaculture to encourage the multi-day fisheries sub-sector, especially targeting the international waters using vessels longer than 25m, paying specific attention to ensuring of decent working conditions and labour protection on board fishing vessels is timely.

In the fisheries sector, while traditional labour relations built on social norms, reciprocity, and trust provided some form of labour protection historically, the mechanization, modernization and globalization of the sector proves that the traditional norms may no longer be sufficient to protect its workers. These very same phenomena are making work in fishing even more hazardous and isolated, as fishing trips are becoming longer and the distance between the vessel owner and crew is becoming ever more pronounced. Despite modern technology, fishing remains one of the riskiest jobs in the world. In Sri Lanka, despite the important contribution that fish makes to the country's food supply, nutrition, trade and export earnings, the fisheries sector lacks recourse from a comprehensive legal framework that provides adequate social protection mechanisms, comprehensive protection against injury and death at sea and protection against any potential exploitative labour practices. This is particularly true with the expansion of deep sea fisheries using multi-day crafts which are quite small compared to deep sea fishing fleets of many other countries, yet are engaged in long fishing trips with little facilities for the crew on board.

Within this context, the ILO Country Office for Sri Lanka and the Maldives, commissioned this technical report on the Work in Fishing Convention, 2007 (No. 188), and to inform discussion by government, employers' and workers' organizations, on its possible ratification. This report draws on an extensive desk review, 19 virtual key person interviews (KPIs) and 12 focus group and individual discussions with crew members, skippers and owners of multi-day boats and one-day boats in Dewundara and Gandara in the Southern Province, in Valaichenai in the Eastern Province, and in Dikkowita and Negombo in the North-Western Province, focusing on the main objectives of this assignment.

Sri Lankan fishers are largely considered 'informal'. This categorization is largely driven by factors such as, the absence of an employment agreement, seemingly ad-hoc payment methods, ability to easily switch between boat owners/ skippers, non-regular or seasonal working hours/days, lack of opportunities for training and hence a lack of bargaining power in terms of skills. This categorization and the nature of the fisheries sector and labour relations, marked by a lack of a work agreement, (in other words an employment agreement) mean that fish workers are left vulnerable in case there is a labour related dispute. The fact that the fisheries sector in Sri Lanka faces a comprehensive labour law lacuna is compounded by the fishers nor boat owners making use of existing general labour laws within the country. This gap may hinder the country's plans to establish partnerships with foreign vessels for exploiting high seas fish resources using modern technology and constrain access to certain export markets (the latter is explained in detail below).

While certain aspects such as compliance and monitoring of high seas vessels and protection in terms of death is provided for in the existing legal frameworks for fishers, the biggest gaps in labour conditions remain on requirements for work on board fishing vessels (medical examination) and conditions of service (manning and hours of rest, crew list, fishers' work agreement, recruitment and placement, payment for fishers) and accommodation. Although fisher insurance schemes that include crew in multi-day boats have become mandatory in most cases in Sri Lanka, both through public insurance schemes as well as private schemes, recent studies among multi-day boat owners and crew show that claiming compensation still remains a challenge, mainly due to problems of informational asymmetries. The voluntary pension scheme and the housing and sanitation scheme targeting fishers remain under-funded and inadequate to meet the demand. The sector is also characterized by low adherence to occupational safety, although certain measures have been made compulsory, such as carrying life jackets and first aid kits on-board. Although fishers are expected to wear life jackets, they are not worn as regular practice, with the stated reason that fishing operations cannot be easily conducted when life jackets are worn. Knowledge of basic health issues and treatment is weak and communication with doctors on land in case of emergencies too remains an area needing improvement. Skipper licenses have been made compulsory and this is monitored by the High Seas Fishing Unit, however, there are no training programmes for fishers on the use of fishing equipment on board fishing vessels and the adoption of safety measures.

Benefits in the ratification of Convention No. 188 to fish workers:

- Providing the assurance of a safety net during old age such as an adequate pension scheme will increase the ability for fish workers and their families to plan for future finances and be financially independent.
- A well planned and executed social security scheme would benefit dependents and provide them with a cushioning effect while ensuring the general wellbeing of fisher families, in the near future and in generations to come.

- Providing protection in the case of work-related sickness, injury or death, especially payment as compensation for injuries at sea will lessen the burden on other family members to supplement household income.
- Improving facilities on board the fishing vessel such as accommodation and sanitation facilities that meet specific vessel design standards will increase labour productivity in the longer term, improve job satisfaction, enable a healthier work pattern and contribute to worker retention in the sector.
- Clearly laid out terms and responsibilities of the boat owner, skipper and crew members will minimize labour disputes which sometimes result in physical violence that leads not only to economic losses, but loss of lives as well.
- Introducing regular hours of work, in agreement with fishers and customized by fishing method, type of gear used, vessel type and other relevant factors, will minimize the image of fishing as an extremely physically grueling form of work. In conjunction with other conditions such as technical, regulated and recognized training, it will attract labour to the sector, without which the sector may not be sustainable beyond the near future.

Benefits in ratification of Convention No. 188 for boat owners:

- The boat is manned by a technically qualified skipper, thus minimizing the risk of damage to craft, equipment and crew.
- The crew is medically fit to perform fishing operations, thus leading to increased productivity.
- Disputes among crew and with the skipper are kept to a minimum because responsibilities and obligations are clearly laid down in the work agreement.
- An agreement will minimize losses incurred by them when fishers take an advance and do not show up for the fishing trip, as agreed. This would prove useful for informing fisheries authorities of such practices and to prevent the workers from engaging in a different fishing trip.
- A work agreement with a crew member will provide them with a basis to hold their crew accountable to any illegal activities in the sea.

Benefits in ratification of Convention No. 188 for the sector in general:

- An agreement that specifies responsibilities and roles of crew, skipper and boat owner, including in the case of loss or damage to the vessel, equipment or to life,

will provide a safety net for the fishers, given the extremely risky nature of their work. Such an agreement can form the basis for any kind of compensation for an accident at sea to the fisher and provide a safety net for his family back home.

- A work agreement, either written or oral, but standardized, and the resulting job security may bring in a new group of workers into the sector, and may displace others. It may prove especially attractive to certain youth, who would prefer to have a relatively longer term predictability of the income source.
- This will also provide important information and data of the particular fisher in terms of the longevity of their career and the amount of income he generated which will be important to develop a system for social security or a pension scheme.
- Clearly laid out terms and responsibilities of the boat owner, skipper and crew members will minimize disputes which sometimes result in physical violence and lead not only to economic losses, but loss of lives too. It will also encourage further local investment in the sector.
- The ratification of the Work in Fishing Convention, 2007 (No. 188), inclusive of the ground level conditions of Sri Lankan fisheries, will provide the overall legal framework to improve labour standards within the sector. It will also contribute towards improving the labour conditions of the sector, thereby attracting a steady supply of workers who aspire towards decent working conditions and contribute towards the sustainability of the sector.
- Currently, Convention No. 188 has been ratified by 18 countries, including seven EU member states (France, Estonia, Lithuania, Portugal, Poland, the Netherlands, and Denmark) as well as the UK and Norway. The Convention will be enforced for several of them by the end of 2020 or early 2021. An increasing number of EU countries are likely to ratify the Convention, since the EU has advised member countries to do so. In order to create a level playing field, the EU would normally expect countries exporting fish to EU countries to also ratify instruments that are already applied to the fishing industry of its members. If fish from marine capture fisheries of Sri Lanka are to enter the EU market, it would therefore make sense to ratify the Convention to proclaim that it upholds all its social responsibilities as a Flag State (Article 94 of UNCLOS on duties of the Flag State).

Potential challenges in the ratification of Convention No. 188

- Crew and skippers were in overwhelming support for the systematic implementation of a social protection programme, prevention of and protection against injury at sea, and improved living and working conditions on board the vessel. However, there was a clear lack of willingness to enter into work agreements.

- At a practical level, multi-day fishing opened up very appealing income generating options not only for the boat owners, but for the fish workers as well. A recent study conducted on the Southern Coast shows that multi-day boat fish workers earn on average 770,000-1,500,000 Sri Lankan Rupees (LKR) per annum, with about 11 fishing trips per year. However, their incomes fluctuate, given the inherent risky and uncertain nature of fishing activity. However, as a sector that provides flexibility of changing employers and colleagues, requires relatively less formal training, and looks more for the correct kind of aptitude and hands-on skills, work on multi-day boats have become attractive to certain groups of the society.
- The crew members found the idea of being tied to a certain group of people as crew or as a boat owner extremely unappealing, beyond one fishing trip. For most crew, the freedom to change boats, fellow crew and boat owners was one of the biggest attractions of the sector. On the other hand, the idea of sharing responsibility with the boat owner, especially for any form of accidents and loss of life at sea, proved appealing to crew.
- Boat owners and skippers were largely supportive of this arrangement since, (i) sharing responsibility in case of emergency was appealing to them, (ii) this will render some sort of precision in terms of recruiting crew members (iii) the possibility of preventing crew members' fraudulent behaviour of taking advances and joining a different boat and boat owner.
- These challenges will have to be carefully addressed if the work agreements are to be introduced. Therefore, as a start, a document in the form of an agreement, setting out basic information such as details of crew members, the period of the voyage, the respective skipper, boat owner for that particular trip, the money owed to the crew member from the relevant skipper and boat owner or vice versa, responsibility to protect his life in case of sickness or injury should be designed and discussed with crew, skippers and boat owners. The idea of sharing responsibility with the boat owner, especially for any form of accidents and loss of life at sea should be used as an entry point to this discussion with the crew and skippers.

1

Introduction

Sri Lanka's fisheries sector accounts for about 1.3 per cent of the national GDP and provides direct or indirect employment for about 540,000 people (seven per cent of the labour force). The sector employed 220,870 persons directly¹ while an additional "275,000 persons are estimated to be employed in several fishery-related economic activities, such as boat building; fish net manufacturing; ice production; processing, trading and marketing of fish; and in providing other services required by the industry, such as transport, repair of engines, and hull work"². The sector is also a fundamental pillar for the country's food security, providing 70 per cent of the animal protein consumed by the population. The sector also plays a leading role in Sri Lanka's trade balance, generating a foreign exchange income of around LKR240 million in 2017³ or 2.3 per cent of the national export earnings⁴. The annual production of the marine fisheries sector is about 449,450Mt of fish⁵. Eighty five percent of this production comes from marine fisheries, of which 60 per cent is landed in fishing ports (about 189,720Mt⁶). The sector underwent an export ban to the European Union from January 2015 to June 2016. Prior to the ban, the sector contributed 2.5 per cent (in 2013) and 2.4 per cent (in 2014) to the national export earnings, which declined to 1.8 per cent in both 2015 and 2016. With the lifting of the ban, exports have steadily increased, reporting a 2.3 per cent contribution to the national export earnings by 2017⁷.

With the increasing globalization of fish value chains, international trade actors are increasing their control over fish distribution and over fish production as well. Despite significant technological advances and mechanization in the fisheries sector, fishing still remains one of the riskiest occupations, characterized by irregular working conditions, including in countries like Sri Lanka. Injury and deaths are much higher for fish workers than for workers in other sectors in many countries. In Sri Lanka, according to the Department of Fisheries and Aquatic Resources data, 44 fishermen died at sea and claimed compensation in the year 2018 alone and the actual number of deaths that occurred at sea could be higher.

¹ Department of Fisheries and Aquatic Resources, Statistics, 2018.

² O. Amarasinghe, "Economics of Fishing by Multi-day Crafts of Sri Lanka' (unpublished, 2013).

³ Based on data provided by the Export Development Board

⁴ Department of Fisheries and Aquatic Resources, Fisheries Statistics, 2018.

⁵ Department of Fisheries and Aquatic Resources, Fisheries Statistics, 2018.

⁶ Department of Fisheries and Aquatic Resources, Fisheries Statistics, 2018.

⁷ Department of Fisheries and Aquatic Resources, Fisheries Statistics, 2018.

The ILO (2013) estimates that the fatality rate for fish workers is 80 per 100,000 workers, which is of concern and is much higher in comparison with other occupations⁸. On the other hand, as mechanization increases and the fishing effort and investment expands, fishing vessels are increasingly spending longer time periods out at sea, which raises concerns of inadequate accommodation facilities, sanitation, health care and so on. These factors combined, render fishers, especially fish workers, one of the most vulnerable worker groups that require social safety nets and other mechanisms for better working conditions and a better quality of life.

However, social protection policies that target fishers and their families, and regulations on decent working conditions at sea continue to remain inadequate in Sri Lanka. With non-communicable diseases among fishers being increasingly diagnosed at a relatively younger age and fish workers stepping out of multi-day fishing, social protection mechanisms that target fishers become crucial. Although fisher insurance schemes that cover crew in multi-day boats have become mandatory in most cases in Sri Lanka, both through public insurance schemes as well as private schemes, recent studies among multi-day boat owners and crew show that claiming compensation still remains a challenge. The voluntary pension scheme and the housing and sanitation scheme targeting fishers remain under-funded and inadequate to meet the demand.

Within this context, the ILO Country Office for Sri Lanka and the Maldives, commissioned this technical report on the Work in Fishing Convention, 2007 (No. 188), to inform discussion by government, employers' and workers' organizations, on its possible ratification.

The objective of Convention No. 188 is to ensure that fishers have decent conditions of work on board fishing vessels that meet minimum requirements with regard to work on board, conditions of service, accommodation and food, occupational safety and health (OSH) protection, medical care and social security. Its provisions address all these areas.

⁸ ILO, *Issues paper for discussion at the Global Dialogue Forum for the promotion of the Work in Fishing Convention, 2007 (No. 188)*, Geneva (2013) https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_208084.pdf

2

Approach to work

The objectives of this assignment were to identify and assess:

1. Benefits that would be accrued to the fishing community in comparison to the current status;
2. Potential paybacks (for example, greater access to export markets; brand reputation) that Sri Lanka and the national economy would receive upon ratification of this Convention and setbacks/losses Sri Lanka would meet if this Convention is not signed or if these conditions are not met;
3. Possible impacts (especially adverse) to other stakeholders (fishing boat owners, other connected sectors and businesses).

The table below sets out the research activities and tools and potential assessment questions proposed.

Table 1: Tools

Assessment topic	Potential broad assessment questions	Activities and tools
Benefits to the fishing community	<p>What is the status on?</p> <ul style="list-style-type: none"> - Minimum standards of work on board - Conditions of service - Accommodation and food - Occupational safety and health - Medical care and social security <p>How do these currently affect the fish workers and their families?</p> <p>How do the fish workers perceive the articles (to be explained) set out in the Convention? What are the benefits they foresee and are there any drawbacks?</p> <p>What are the additional benefits fishers would get or can be asked for, if this Convention is ratified by the GoSL?</p>	<ul style="list-style-type: none"> - A brief policy analysis and a review of international compliance - A brief analysis of legal provisions for labour in the fisheries sector - A review of other country case studies that ratified the Convention (based on policy and legal documents, Key Person Interviews and Focus Group Discussions) - Published and unpublished studies (research reports, Master's theses and so on) - Focus Group Discussions and Key Person Interviews - An analysis of the Convention to see any additional benefits that it could render

Assessment topic	Potential broad assessment questions	Activities and tools
Impacts on other stakeholders	<p>How do boat owners perceive the articles (to be explained) set out in the Convention?</p> <p>What challenges do they foresee for the implementation of the articles? How can these challenges be overcome?</p>	<p>- A brief mapping of all the stakeholders involved</p> <p>- A review of countries that have ratified the Convention</p> <p>(Desk research, Focus Group Discussions and Key Person Interviews)</p>
Paybacks/setbacks at trade and at macro- economic level	<p>What are reasons/points for the GoSL to ratify this Convention?</p> <p>What is the image of the Sri Lankan fishing industry among international traders?</p> <p>How can this be improved?</p> <p>What are the benefits to trade and exports as a result of the ratification of the Convention and strengthened labour standards?</p> <p>What new markets can be reached? How will these new market opportunities benefit the fisheries sector?</p>	<p>Key Person Interviews</p> <p>- Published and unpublished studies (for example research reports, Master's theses)</p>

Data sources and approach to data collection

The study team commenced the assignment on the 11th of March, under an agreement with the ILO. However, the prevailing COVID 19 related restrictions on travel and physical meetings resulted in the internal team meeting virtually, to commence the assignment and a virtual meeting with the ILO representative, on the 30th of March.

This report draws on these discussions, further virtual meetings, email based brainstorming, an extensive desk review, 19 virtual key person interviews (KPIs) and 12 focus group and individual discussions with crew members, skippers and owners of multi-day boats and one-day boats in Dewundara and Gandara in the Southern Province, in Valaichenai in the Eastern Province, and in Dikkowita and Negombo in the North-Western Province, focusing on the three main objectives of this assignment.

The desk review comprises a review of:

- Relevant International Conventions,
- Relevant labour law and policies with reference to the fisheries sector in Sri Lanka,

- Other country cases and lessons learnt from countries that have already ratified the Convention No. 188,
- Published literature in the form of journal papers and research reports,
- Unpublished research in the form of Bachelor's and Master's theses and reflections on the lack of ratification of Convention No. 188 by those who were engaged with the process of facilitating the ratification process (that failed) in Sri Lanka,
- Power point presentations summarising workshops and discussions held with fish workers and boat owners in 2004, leading to the adoption of Convention No. 188 in Geneva in 2007.

Primary data

Key person interviews

The 19 KPIs included the government fisheries officials at the national level and the district level, government labour officials at the national and district level, export and trade specialists in the public and private sector, fisher representatives and independent fisheries experts.

Focus group and individual discussions

As COVID 19 related travel restrictions gradually relaxed, the next round of data collection focused on consultations with fisher communities from three geographic locations of the country; Gandara/Dewundara, Valaichchenai and Dikkowita/ Negombo, completing a total of 12 such discussions. In consultation with the ILO, these three locations were selected to cover the diversity of the fisheries sector, based on the following factors:

- Geographic location, fleet and vessel size, ethnicity of the fisher communities and different labour relations,
- Availability of documented evidence and analysis of fishing practices and labour relations.

Four socio-economic groups were identified for primary data collection: crew members of multi-day boats, skippers of multi-day boats, wives of crew members and skippers, multi-day boat owners and skippers of multi-day boats (these groups are defined below). These groups were identified based on key person interviews, as the main stakeholders affected by the Convention, along with the relevant government departments and ministries.

The rest of this report documents the analysis and findings from the above sources. First, the report presents definitions of fishers, fishing vessels and the applicability of Convention No. 188 definitions. Next, the findings section is organised into four sub-sections; the first sub section introduces the fishing sector in Sri Lanka with a specific focus on the commercial deep sea sub-sector. It is followed by the second sub-section on the historical evolution of deep sea crafts, including changing labour relations and a brief analysis of the current labour relations in the deep-sea fisheries sub-sector. The third sub-section presents the laws, policies and conventions applicable to Sri Lankan fisheries linking to articles set out in Convention No. 188, highlighting legal gaps in relation to Convention No. 188. The final sub-section presents the status of the safety measures and worker protection mechanisms included within Convention No. 188, potential benefits to crew members, skippers, boat owners and trade related benefits linked to ratification. The report concludes with a sub-section on anticipated challenges for the ratification process.

3

Terms and definitions of fishers and fishing vessels and the applicability of the definitions of Convention No. 188

Crew member of a multi-day boat: This report defines a crew member of a multi-day boat as an individual (exclusively men in the case of Sri Lanka) that engages in catching fish on a boat that stays at sea for more than 24 hours, paid on a share basis of the revenue by the boat owner. They do not own the fishing vessel or fishing equipment used for fishing. Some of these crew members of multi-day boats own motorized or non-motorized boats that engage in daily fishing operations. They are recruited for a fishing trip or multiple fishing trips either by the skipper of the vessel or the boat owner, based on verbal agreements and often a cash advance is paid prior to the fishing trip, to be deducted from the revenue, upon return from that particular fishing trip. Often, multi-day boat crews do not engage in any other income generating activities.

Skipper of a multi-day boat: A skipper of a multi-day boat is defined as an individual (exclusively men in the case of Sri Lanka) who navigates a multi-day boat, often using satellite navigation systems and charts and holding a skipper license issued by the Department of Fisheries. The 2019 Regulation issued under the Fisheries and Aquatic Resources Act (defined in Section 5.7 of this Report) on Issuance of Certificates of Competence for Skippers (Local Fishing Board) defines a “skipper” as “the person having command of a fishing vessel and who provides instructions on the route, estimate of the catch and management of the boat workers and the crew and includes a Master or Captain who serves in the same capacity in a fishing vessel”.⁹ Skippers have not gone through a formal training in general, except the two week training provided by the Department of Fisheries prior to issuing the skipper license (the adequacy of this training is discussed in detail below). Discussions held with skippers for this research show that there are slight variations of the tasks performed by a skipper, based on the geographic location. For example, in Valaichchenai, the skippers are expected to manage the unloading and reloading of the boats and vessel repairs while they are anchored at harbour. In Negombo, the skipper (and the crew) unloads the fish catch upon return but does not get involved with the re-stocking/loading up of the boat for the next fishing trip. In the Southern harbours, the skipper (and the crew) do not engage in unloading fish nor re-stocking. Recruiting crew is a task assigned to the skipper on occasion. A skipper is recruited by the boat owner depending on his skills and knowledge based on verbal agreements on the revenue share basis. Apart from the share of a fishing trip, which is equal to other crew members, a skipper gets

⁹ Government of Sri Lanka, Gazette Notification-No. 2126/6 - June 03, 2019.

an additional payment of 2 to 10 per cent of the total revenue or of the share of the boat owner.

Owner of a multi-day boat: This report defines a multi-day boat owner as an individual (in most cases men, and in cases where women own a boat as per official documents, a male relative is involved in making decisions about the management of the boat) or a private company that has invested in purchasing a multi-day boat. These owners may own more than one such boat that engages in daily fishing trips.

In instances where boats are owned by individuals, some of these owners are ex-skippers or crew members or descendants of skippers or crew members. They often come from within the fishing communities because a deep understanding of the sector and its networks are required to engage in multi-day fishing. However, with the modernization and the mechanization of the sector, an increasing number of individuals who do not belong to traditional fishing communities are investing in multi-day boats. For example, during the COVID 19 related curfew, fisheries activities in areas like Valaichchenai were carried out relatively un-interrupted, and therefore, traders and merchants who own retail and wholesale businesses in the town have started showing interest in investing in multi-day boats.

As per primary data collected for this study, there are about 10 to 15 entities registered as private companies which own fishing vessels in Sri Lanka. Some of these companies own only one vessel, whereas there are companies that own (or co-own in partnership with international companies) as many as 18 vessels, including vessels longer than 25m. Information available about labour conditions on-board these vessels is scanty, especially for those exceeding 25m (for example, those operating from the Dikkowita harbour). The findings from the brief visit to the harbour are presented in Sections 4 and 5.4 below.

Fisher – Article 1 of the Convention defines a “fisher” as “every person **employed or engaged in any capacity or carrying out an occupation on board any fishing vessel, [emphasis added]** including persons working on board who are paid on the basis of a share of the catch but excluding pilots, naval personnel, other persons in the permanent service of a government, shore-based persons carrying out work aboard a fishing vessel and fisheries observers”.

However, the Sri Lankan fisheries sector is largely an informal set up of work arrangements that has been overlooked by the labour laws currently in force in Sri Lanka (discussed in detail in 5.5 of this report). Therefore, the reference to the terms “employed” or “carrying out an occupation” in the definition may perhaps render it difficult to apply to fishermen in the Sri Lankan context of ‘employment’. Interestingly, the Fisheries and Aquatic Resources Act is also silent in respect of the term ‘fisher’, and instead the Act makes a general application to ‘any person’ involved in fisheries related activities.

In this context, given the broad definition of the “fisher” in the Convention, the words “engaged in any capacity” may be used to encapsulate Sri Lankan fishers regardless of whether they are employed or not. In other words, by the use of terms ‘engaged in any capacity’ under the definition, the Convention has expanded its reach to capture any person engaged on board any fishing vessel.

One-day boat owners and crew: Article 2.3 of Convention No. 188 stipulates that “Any Member, after consultation, may extend, in whole or in part, to fishers working on smaller vessels the protection provided in this Convention for fishers working on vessels of 24 metres in length and over”. In the Sri Lankan fisheries context, these are the motorized and non-motorized boats engaged in fishing operations that do not exceed one-day in their fishing operations. Discussions held in the fishing communities for this study show that those who operate one-day crafts are in general older, more vulnerable groups of the fishing communities, who are indeed in need of the protection offered by Convention No. 188, particularly social protection and safety at sea. In consultation with the ILO, this study focused primarily on those who are part of the multi-day boat fishing sub-sector in the country. However, a brief discussion of the challenges and benefits of the ratification of Convention No. 188 in relation to small-scale one-day fishers and boat owners is provided below.

Further, the definition used by the Convention which indicates a limitation of the protection offered by the same to the workers ‘on board any fishing vessel’ leaves out a hitherto mostly invisible group in the sector: women. Women, in most parts of the country, engage in fishing in shallow coastal sea areas, gleaning for shell fish in coastal sea areas and lagoons, selling fish, and net mending. However, their roles remain invisible and undocumented, mainly because of the lack of sex disaggregated data; and therefore, unrecognized as an important stakeholder of the sector. Some of these women, especially the middle-aged to older women, rely completely on fisheries related livelihoods to support themselves and their families, yet remain vulnerable due to the complete lack of social and labour protection.

4

Types of fishing vessels in Sri Lanka and the applicability of Convention No. 188

At present, if ratified, the Convention No. 188 will be directly applicable to three types of vessels in Sri Lanka: Inboard Multi-day boats (IMUL), Inboard Single-day boats (IDAY) and the Flag State Vessels (vessels of 24m length or higher). Sri Lanka is believed to have one of the smallest multi-day fishing fleets in the world and this has direct implications on the discussions and decisions on the applicability of Convention No. 188.

The Sri Lankan multi-day fishing fleet and the sub-sector is diverse in terms of scale, length of the vessel, fishing methods and equipment used, length of stay at sea and labour relations. For example, there are no boats longer than 36 feet (11m) operating out of the Valaichchenai harbour, whereas in the Southern harbours such as Dewundara/Puranawella, the fleet at present is primarily between 38 feet (11.5m) and 45 feet (13.7m) feet. Vessels operating off the local vessel section of the Dikkowita harbour operate only long-lining boats while in the Southern harbours like Kudawella, the purse seine nets are the main method deployed. In terms of labour relations, in Valaichchenai, the crew and skippers are almost exclusively from the neighbouring communities, while in the Southern harbours there are more crew members from outside those districts. In Negombo/Dikkowita, the skippers and crew are primarily from within the district, however, fishers from these areas work in boats from outside the district. These diverse labour relations (explained in detail below) shape the way crew, skippers and boat owners perceive the benefits and challenges of Convention No. 188.

According to the Department of Fisheries and Aquatic Resources (DFAR, 2016), around 4,500 Sri Lankan flagged multi-day fishing boats (comprising High Seas Inboard Multi-day boats and Inboard Multi-day boats¹⁰) were operating in the exclusive economic zone (EEZ) and high seas, comprising about 7.5 per cent of the total fishing fleet. About 1300-1,600 boats of this multi-day fishing fleet operate in the high seas and these make up only about 2.3 per cent of the total fishing fleet in the country. There are only 36 flag state vessels registered in Sri Lanka, of which only 33 were operating at the time of data collection for this study in July 2020.

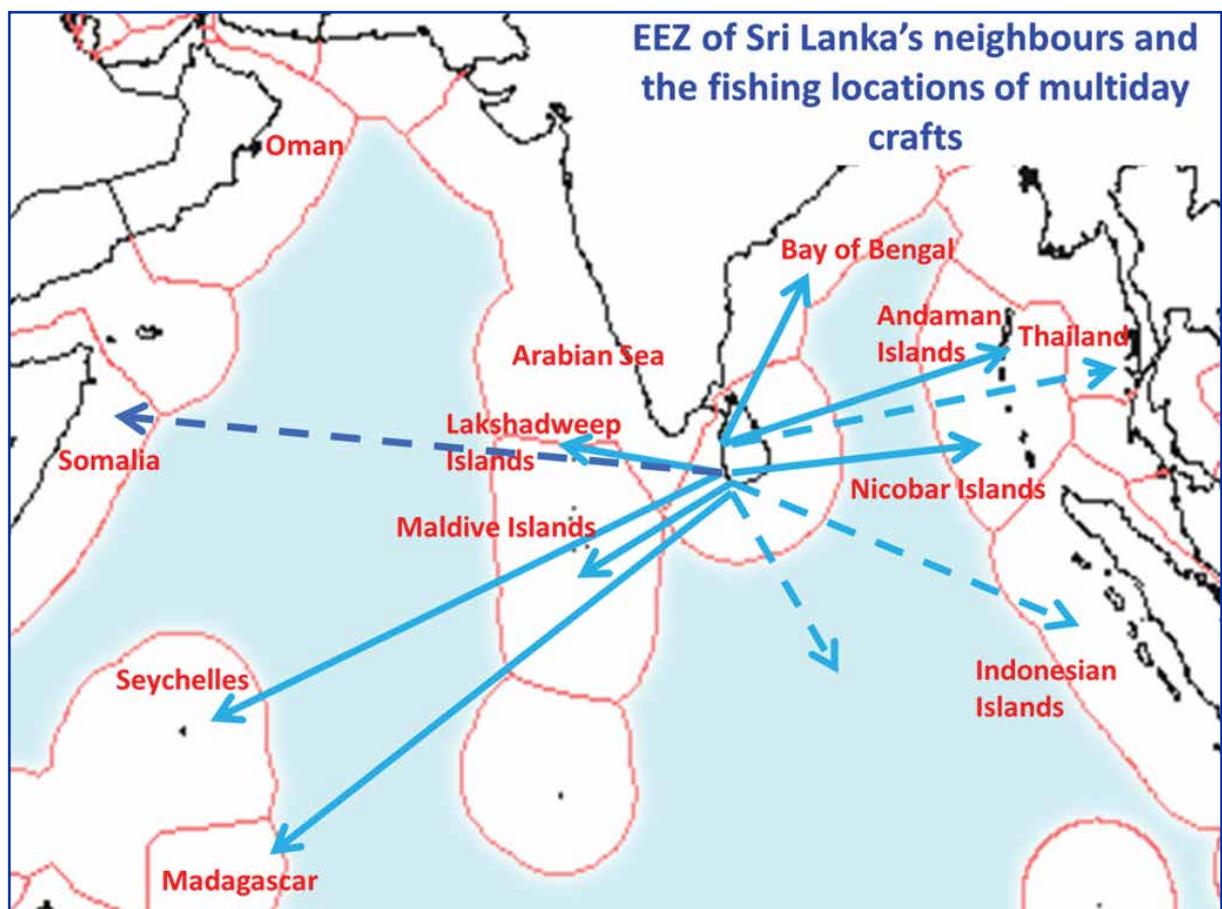
Multi-day boats, including high seas vessels used in Sri Lanka vary by length, starting from about 8.5m to 18.5meters. The fleet development plan (2016), aims to expand

¹⁰ Figures on Flag State vessels are not available in the public domain.

the current marine fishing fleet over the next five years by adding about 150 boats comprising about 125 long-liners mostly below 24m in length and about 25 ring-net purse-seiners again below 24m (DFAR, 2016).

As Figure 1 illustrates, multi-day crafts in Sri Lanka, in the 1990's and early 2000's, have been travelling long distances, and therefore often faced accidents at sea, being targets of piracy and at risk of arrest for poaching in EEZs of other countries, thus putting family members in a vulnerable position. However, with the introduction of wide-spread use of Vessel Monitoring Systems in 2014, and increasing numbers of arrests for poaching, incidence of poaching has reduced.

Figure 1: Fishing Locations of Multi-day Crafts



Source: Amarasinghe, 2011: 4

The rest of the fishing fleet in Sri Lanka, falls within the one-day craft categories of Inboard Single-day boats (IDAY), Outboard Engine Fibre-glass Reinforced Plastic boats (OFRP), Motorized Traditional Boats (MTRB) and Non-motorized Traditional Boats (NTRB). All of these smaller crafts engage in commercial operations, which is especially true for the OFRP category.

As per Article 2.3 of Convention No. 188, member states may extend the same set of protections, completely or in part, to these smaller one-day vessels as well. Based on the initial discussion had internally, the decision was to focus primarily on the multi-

day vessels for this report, with the inclusion of smaller one-day crafts, if and where possible.

The newest entrants to the fleet that operates under the Sri Lankan flag are the flag state vessels, operating off the Dikkowita harbour. There are three or four boats that are 100 per cent locally owned, whereas the rest of the 31 vessels operating off the Dikkowita harbour are owned on a 51:49 ratio between a local partner and an international investor. The international investors are Taiwanese or mainland Chinese. At present, the local labour on these vessels that operate out of the Dikkowita harbour are about 15 per cent to 25 per cent (three or four crew members) of the total labour (15 crew in total), the rest being foreign labour, primarily from Indonesia. The skippers are primarily Taiwanese.

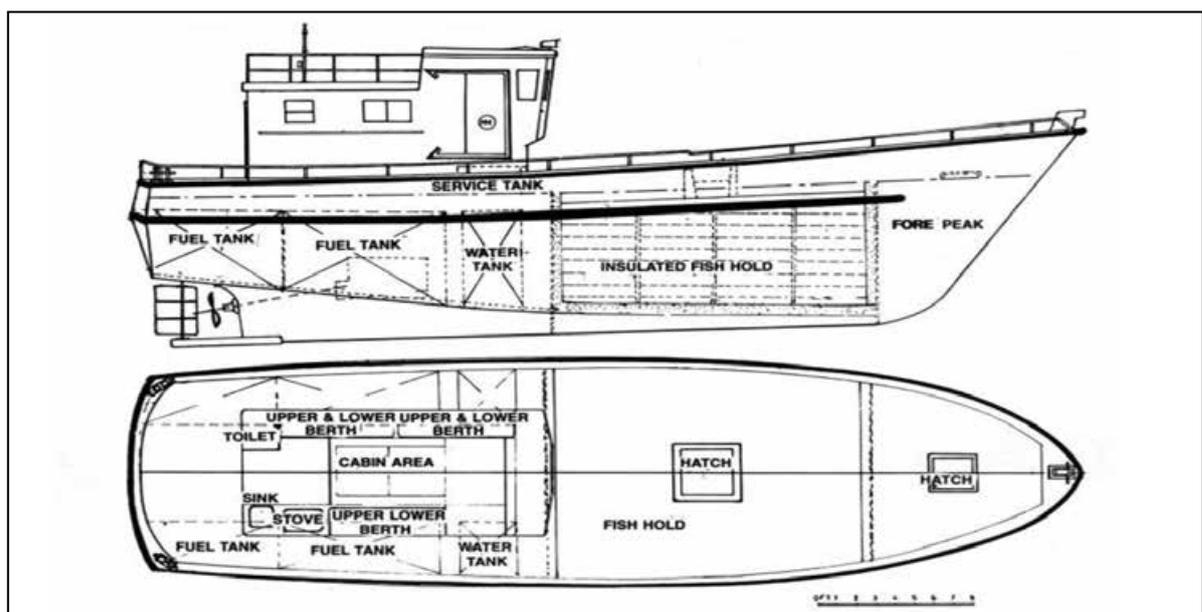
5

Findings

5.1 Brief historical overview of offshore crafts in Sri Lanka

In order to strategize advocacy for Convention No. 188, it is important to understand the broader socio-political context within which the fisheries sector and the fisher communities are embedded, including the historical view point. According to Amarasinghe (2011: 1-2), Sri Lanka's entry into offshore fishing is marked by the campaign spearheaded by the government to "modernize" fishing craft, "with the introduction of new mechanized crafts; fibre glass boats (17-21 feet/ 5-6.4m) with outboard motors and an offshore craft with an inboard engine—the 28 feet (8.5m), 3.5 ton planked boat". The unsuitability of these crafts for offshore multi-day fishing was rectified with the introduction of a plastic tank into the deck of the craft, by the early 1980s which enabled the boats to carry ice and stay at sea for up to seven days. By the late 1980s, these boats, called 'tank boats', "consisted of a built-in fish hold with ice, fuel tank, water tank and a cabin providing accommodation facilities for the crew and, in the early 1990's, they were equipped with SSB radio, GPS and other accessories to facilitate deep sea fishing". At present, off-shore or deep sea fish resources are harvested by the Inboard Single Day boats (IDAY) as well as the multi-day boats (IMUL).

Figure 2: A Detailed Diagram of the Multi-Day Boat



Source: Creech and Subasinghe, 1999: 28¹¹

¹¹ S. Creech and V. Subasinghe, The labour conditions of Sri Lanka's deep-sea fishworkers. United Fishermen's and Fishworkers' Congress (1999).

The increased globalization of fisheries value chains have resulted in increased globalization of the fishing fleet and the work force. As such, the newest entrants to the fleet that operates under the Sri Lankan flag are the flag state vessels. These are primarily foreign vessels, which are registered in Sri Lanka and therefore operate under the Sri Lankan flag, and are considered within Flag State control of Sri Lanka. These are crafts for which Sri Lanka has more than 51 per cent to 60 per cent of the share of a craft and are therefore under Sri Lankan authority. If the Convention No. 188 is ratified, it will be applied to these crafts as well. The majority of labour in these vessels are non-Sri Lankan, however, there is a quota of 25 per cent to 50 per cent allocated to local workers in these vessels (see section below for an analysis of the local labour recruitment for these vessels).

5.2 Changing labour relations

Parallel to the “drive for modernization” and market demand trends in an increasingly globalized world, labour relations within the sector have changed. The introduction of new fishing techniques, gear and the entrance of larger business interests into fisheries sped up these changes to the labour arrangements within the sector. Prior to 1980, labour recruitment that was based on kinship networks, ensured employment security through unwritten contracts, risk management through kinship links, patron-client type of affective relations, reciprocal credit, and so on, and strong moral rules based on norms of reciprocity and the right to subsistence. However, within this system, a clear gap in terms of labour security meant that these community mechanisms could not provide old age benefits, disability benefits or survivor benefits.

However, with the entrance of ‘outside’ business interests that focused on accumulation of profit, these labour relations and conditions changed and ‘anonymous’ market and labour practices replaced kinship networks¹². As a result, labour relations in the fisheries sector at present is ‘in transit’ from one based on tradition, kinship networks, trust and reciprocity to one increasingly based on anonymity and business transactions, at least in certain cases.

The review of literature and KPIs with fisheries experts confirm that there are no comprehensively documented analyses of fisher labour relations and the changes that have taken place in the sector, in Sri Lanka. Amarasinghe (1989), and Creech and Subhasinghe (1999) do provide an analysis of the changes in the multi-day fishing sector, but they focus only on the capture fisheries of the mechanized craft and changes that have taken place in the sector, especially linked to the high sea fishing fleet. This lack of documented and up-to-date labour relations in the sector requires a certain level of primary data collection, in order to understand the application of Convention No. 188 at the worker level and potential benefits.

¹² O. Amarasinghe, *Economic and social implications of multi-day fishing in Sri Lanka*. International Collective in Support of Fishworkers (ICSF), (2003) p.192.

In the absence of up-to-date documented evidence of labour relations in the fisheries sector in Sri Lanka, both academically and in terms of fisheries policy, this report



Figure 3: A Flag State Vessel

analyzes the current labour relations in the deep sea fisheries sub-sector through primary data. Understanding the weight of these different labour relations is not possible based on the currently available data sources.

According to the KPIs conducted, these labour relations have changed based on the geographic area, size of the boat (those who work in vessels longer than 24m) and ownership type (single or shared private owner vs. corporate owner).

5.3 Brief outline of labour relations on craft owned by individuals

- There is a certain proportion of skippers who work for one boat owner for several years while the number of years a skipper works for a particular owner vary. The relations between the two could be based on kinship, friendship or be purely a market relationship. Some boat owners use the services of more than one skipper, given the need for shore leave for the skippers. Skilled skippers are in high demand, and therefore boat owners prefer to keep them working on their boats as long as possible. If a skipper is 'trusted' by a boat owner, the responsibility of handling the boat and the fish catch is handed over to him.
- In the instance the skipper is unknown/little known to the boat owner, a person trusted by the boat owner is sent in the boat as a crew member, to ensure that he is not cheated out of the fish catch and to prevent any mismanagement.
- A majority of crew members change the boat that they work in frequently. In a given context, only about two or three crew of one fishing trip would join the next trip and continue with the same boat owner. Crew members in areas like Chilaw, Tangalle and Kalmunai work in small groups. They could be related to each other

and/or working as crew in deep sea boats for an extended period of time. The preference of boat owners and skippers are to recruit such crew, as managing them while at work in the sea becomes easier. Discussions with fisheries representatives, government authorities and boat owners at the ground level reveal that most disputes at sea occur mostly when crew who have not worked together are out at sea. Crew members taking an advance from one boat owner and leaving on a fishing trip in the boat of a different boat owner is not uncommon in the fisheries sector. According to primary data collected for this study, crew members, skippers and boat owners stated that the 'new' boat owner does not pay off the debt of the previous boat owner as general practice.

- Recruitment of crew is mostly the responsibility of the skipper. In such instances, the boat owner pays an advance to the crew on the day before a fishing trip, upon recommendation of the skipper and the understanding that he will take responsibility for the crew, including ensuring their share based payment upon completion of the fishing trip. However, crew management and dispute resolution when at sea is not always seen as the responsibility of the skipper. Yet, he has to ensure that the crew works in harmony.
- The primary responsibility of the skipper is to ensure boat navigation, fishing operations and handling of communication and equipment. Not all skippers would necessarily have the authority or the 'legitimacy' to manage crew and resolve disputes. Physical violence while at work in the sea is not uncommon and may result in loss of lives as well.
- Tasks and responsibilities of the skipper show slight regional variations. For example, in Valaichchenai, the unloading of the fish catch, the (re)stocking of the boat for the next fishing trip, over-seeing boat repairs and maintenance and mending the net, becomes a responsibility of the skipper, along with the crew members. In the other harbours visited for this study, the crew and skipper were not responsible for these tasks.
- In general, the majority of the crew and skippers are from the traditional fishing communities and some others are migrant workers. Previous research conducted by the researchers of this team found that there are migrant workers, who work in the multi-day fishing crafts, from the interior parts of the country such as Monaragala and Nuwara Eliya and the labour relations of these workers with the boat owners and skippers would be very different to workers who come from the same community as the boat owners and the skippers. Apart from location/place of origin and past engagement with the sector, other socio-economic characteristics such as ethnicity and caste will also impact labour relations.

5.4 Labour relations in corporate owned vessels

- There is no documented analysis of labour relations for employees on these types of vessels and this section draws on a brief visit to the Dikkowita harbour as part of the study. There are 35 vessels that are longer than 60.6 feet (18.5m) operating from the Dikkowita harbour at present. While Sri Lankan companies own a small number of vessels that are less than 60 feet (18.2m); the 35 vessels that are longer than 18.2m are all corporate owned. All the jointly owned vessels flying the Sri Lankan flag are anchored in the Dikkowita harbour.
- For vessels longer than 60 feet (18.2m) that operate off the Dikkowita harbour, local labour is hired primarily through a man-power (private employment) agency and as of now, are paid LKR 75,000 per month. These workers have limited fishing experience and come from interior areas of the country. According to the KPIs conducted, fish workers with experience have been reluctant to work on-board these vessels mainly because of the length of the fishing trips (about two to three months), which they are not used to.
- The working conditions of the foreign and local workers on these flag state vessels and the regulations and laws that govern their working conditions and rights remain unclear.
- Foreign crews are usually granted a three month work visa by the immigration authorities, and following a health check-up by the Port Health Authorities and other necessary documentation, they can assume their fishing duties. The Indonesian Embassy in Colombo plays an active role in responding to any complaints by foreign workers.
- Local crews of these vessels leave for their home towns when they return from a fishing trip, however the foreign crew members remain inside the harbour premises or the fishing vessels until their next departure. They are not provided any facilities for rest on land by the respective companies and they continue to use the cooking, laundry, and sleeping facilities of the vessels while they are on shore.
- Therefore, what remains to be studied in more detail is the negotiation and bargaining powers between boat owners and skippers, skippers and the fish workers, and the fish workers and boat owners. A point to be noted is that these power relations and negotiations may also be shaped by those at home. The linkages and power dynamics will have a direct bearing upon the advocacy for ratification as well as any implementation of the ratified Convention. As such an analysis is also necessary in order to understand and analyze the existing national laws to ensure compliance, if Convention No. 188 is ratified. Any gaps will be discussed below in Section 5.5.

5.5 Conditions of service and work agreements of fishers in Sri Lanka

As mentioned above, this brief section discusses the applicability or lack thereof, of the existing labour laws to the fisheries sector. Based on information obtained from interviews with various stakeholders in the sector, the Sri Lankan fisheries sector is largely considered as 'informal', like the mining sector. This categorization is largely due to factors such as, absence of an employment agreement, ad-hoc payment methods, ability to easily switch between boat owners/ skippers (who can be identified as employers), non-regular or seasonal working hours/days, lack of opportunities for training and hence lack of bargaining power in terms of skills. This categorization and the nature of the fisheries sector and the labour relations, marked by a lack of a work agreement, (in other words an employment agreement) mean that fish workers are left vulnerable in case there is a labour related dispute. In such a legal environment, the ratification of Convention No. 188 would provide important protection to fish workers.

In Sri Lanka, a number of labour related legislation governs different aspects of labour related matters: The Industrial Disputes Act, The Shop and Office Employees' Act, The Wages Boards Ordinance, The Workmen's Compensation Ordinance, The Employees' Provident Fund Act, The Employees Trust Fund Act and The Factories Ordinance. The protections afforded under these legislations are mostly offered to employees who are specifically identified as 'employees' or 'workman'. Hence, a letter of employment plays an integral part in deciding whether he/she is an employee of the employer, or whether he is an independent contractor. In this context since the fisheries sector is categorized as an informal sector, it is important to understand the difficulty of applying these laws to the fishers. Interestingly, there are a number of slightly different ways of defining the "workman" and "employer" under these laws.

The Industrial Disputes Act defines "employer" and "workman" as follows;

"Unless the context otherwise requires, "employer" means any person who employs or on whose behalf any other person employs any workman. And "workman" means any person who has entered into or works under a contract with an employer in any capacity, whether the contract is expressed, or implied, oral or in writing, and whether it is a contract of service, or of apprenticeship, or a contract personally to execute any work or labour, and includes any person ordinarily employed under such contract, whether such person is or is not in employment at any particular time."¹³

The Workmen's Compensation Ordinance No.19 of 1934 has the following definitions:

"Workman" means any person who is employed on wages not exceeding five hundred rupees per mensem in any such capacity as is for the time being specified in Schedule II, whether the remuneration is calculated by time or by work done or otherwise, and whether

¹³ De Silva v The Associated Newspapers of Ceylon Ltd. 1978-9 2SLR 173

the contract of employment or service was made before or after the commencement of this Ordinance and whether such contract is expressed or implied, oral or in writing.

“Employer” includes the Republic of Sri Lanka and anybody of persons whether corporate or unincorporate and any managing agent of an employer and the heirs, executors or administrators of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract or service or apprenticeship, means such other person while the workman is working for him.

Other legislation also has slightly different variations on the definition of ‘workman’ and ‘employer’.

However, due to this reason, the Courts have often regarded that a master-servant relationship should exist between two people regarded as employer and workman. A ‘servant’ in this context is subject to the control and directions of his employer in respect of the manner in which his work is performed. There have been numerous instances in the past where the definition of Employer and Workman have been the subject of analysis. The Sri Lankan Courts have, even where there have been letters regarding the contract of employment which do not clearly draw out the distinction, looked into the realities of the situation and decided whether the workman falls within the relevant definition.

The Courts also look at the assignment of work, supervision and the degree of control the hirer has over the workmen in the execution of work. The test of ‘control’ and test of ‘integration’ are mainly used, among other tests, in deciding whether an employment relationship could be formed based on the circumstances of each case.¹⁴ While control tests assess how much control the employer has over the workman in executing his tasks, the integration test was developed to decide the importance a workman’s tasks, i.e. whether or not the workman’s tasks form an integral part of the business. In this instance, independent contractors whose work is ancillary to the business are eliminated from the definition of a workman. Accordingly, the workman is granted the relief he has sought, if a relationship between a servant and master could be established between the workman and the employer.

Accordingly, when workmen in informal sectors, such as fishers, seek relief in employment disputes in Sri Lanka, the Courts resort to examine the form of relationship between the workmen and the person who hired him, in the absence of an express contractual relationship. Since most of the boat owners and fishing companies hire labour on a casual basis, without having a regular work arrangement, the Courts may rely on factors that determine the wages and advances of the workmen, along with the tests named above.

¹⁴ Ceylon Mercantile Union v Ceylon Fertilizer Corporation, 1985 1 SLR 401

Nevertheless, all of these enactments governing labour aspects in Sri Lanka fail to expressly recognize the fishers' sector as having a form of employment that creates an employer-employee relationship. Technically although laws such as the Termination of Employment, Factories Ordinance and Industrial Disputes Act apply to casual labourers, due to the informal set up of the sector, most fishers do not seek legal protection or relief and neither are they aware of such entitlements. The KPIs reveal that in most circumstances, employment related disputes between workmen are solved among them with the help of community leaders such as religious leaders. Most fishers, including boat owners and skippers do not believe in the local police as a viable option to solve disputes. It is also pertinent to mention that, the low bargaining power of a regular, non-experienced fisherman vis-à-vis a skipper or a boat owner often leaves the fisherman vulnerable and the disputes are solved to their disadvantage. Hence, in practice they are deprived of the general legal protections offered to employees in a formal setting such as relief against unfair dismissal, furloughs and entitlements as in the case of bonuses, gratuities, allowances.

The fisheries sector in Sri Lanka is mostly regarded as an informal setup that is purely based on mutual understanding and trust. This is largely because the nature of the work involves prolonged periods of stay at sea demanding stable physical and mental fitness. Hence, the success or failure of the fish catch also depends on factors such as mutual understanding, amenability and control of crew members by the skipper, discipline and reliability. Because of these emotional aspects, the relationship between the skipper and the crew members run far beyond a documented arrangement, and the boat owner appears to have very little interaction with the crew members.

In such cases, the common understanding among the fishers is that the profits or the revenue is shared between the boat owner, skipper and the rest of the crew upon a mutual understanding. Usually, the share is fixed (50:50 between capital and labour). However, the skipper will get an additional payment (two to three per cent more for maneuvering the craft and managing the crew and fishing operations (and recruiting the crew as well)). The crew is paid a share of the catch, which is a method by which fishing risks are pooled among crew and the owner. In case of 'bumper' catches, the crew receives the benefits of higher income, while when catches are low; the owner does not have to incur losses by paying fixed wages to the crew. This risk pooling system is preferred by both owners and crew in multi-day crafts. Therefore, the payment mechanism in this sector is a unique system that depends on factors such as, among many others, the price at which the fish is sold on a particular day, the skipper's pre-agreed share, the relationship between the crew member and the skipper in an informal setting.

Fishers in multi-day boats operating in the high seas may perhaps fall under a regular workman category, due to the fact that they have been having long standing working relationships with the boat owners and skippers, due to kinship and occupation in the sector for generations. However, there is an entire class of 'casual or temporary' labour whose occupational patterns in the sector are irregular, on

demand, or seasonal. Since income from fishing (from the point of view of fishers) depends on a number of factors such as, the 'catchability' of fishing craft and gear (efficiency), skill of the skipper and crew, decision making by the owner and the skipper, various kinds of goods and services exchanged between the owner/skipper and the crew, harmony among crew members and their skills, the crew mostly prefer freedom of movement from a 'bad craft' to a 'good craft'. In such cases, short-term contracts might be preferred to long-term contracts, although the latter provides more security of employment.

The discussions with fishers and boat owners reveal that the labour issues are not confined to crew members. From the boat owners, and skippers' point of view, crew members are much more at liberty and possess more bargaining power when it comes to choosing their crew and skipper due to the flexibility a crew member has in terms of switching between boat owners and skippers. The working arrangement is informal to the extent that the crew members are free to switch between skippers and boat owners as they please, and it largely depends on the relationship between skipper and the crew member; how much they are being offered per trip as an advance and to a lesser extent the conditions of the boat and the willingness of the boat owner to advance cash. In most cases, crew members are the least responsible parties for the safety of the boat, or any other affairs on the trip. They bear no financial liability, nor any part of the damage caused to the vessel during the voyage. Their only responsibility is to catch as much fish as possible. Generally, the boat owner agrees with the skipper to purchase the fish stocks when the boat returns, and the skipper is then responsible to settle the dues to the crew members.

As a practice, all crew members of the multi day-boats are paid an advance before the departure. This is usually a generic sum depending on the relationship between the skipper and the crew member, and the norm ranges from LKR5000 to LKR20,000. Such cash advances help the families to sustain themselves during the period the fisherman or the 'breadwinner' is away at sea. Sometimes this advance payment is deducted from the crew member's share that is earned from the fish catch of that particular trip and in some cases, is overlooked by the skipper and boat owner, to maintain a good relationship with the crew member.

However, the principal complaint from boat owners and skippers is that, since the advance payment is undocumented, crew members deceitfully collect the advance payment from one boat owner promising to participate in that particular trip and then join another boat owner on a fishing trip. Some crew members are known to collect advance payments from several boat owners and abandon all of them at the last moment.

In such circumstances, the skippers and boat owners strongly suggested the Department maintains a list of crew members and their respective boat owner and skipper from whom advance payment in terms of a particular trip has been collected. This will oblige the crew members to stay with a particular skipper and boat owner for that particular trip, and prevent the cheating of boat owners by

giving false promises. Although this type of cheating is a crime punishable under the law, seeking the help of police is of little use in these circumstances since the payments are usually undocumented and the crew member cannot afford a repayment of that sum anyway, as a fine or even as a loan. Boat owners and skippers therefore, prefer to overlook such offences of crew members rather than face the hassle of a court procedure to recover the money. These are all consequences of having an undocumented, informal and unregulated employer-workman relationship.

In view of this, the work agreement contemplated under the Convention will be a good starting point to establish a contractual relationship between the boat owners and the fishers. Although at present, each crew member is documented with the Fisheries Inspector and the High Seas Unit in each district/at each harbour, prior to departure with their respective skipper and the boat owner, there is no responsibility from either party that is binding upon each other. On the other hand, boat owners are not responsible for the safety (although the boats usually carry the safety equipment), health, social security and other work benefits of the fishermen that employees in any other sector are otherwise entitled to. However, in general practice, the crew and skipper do depend on each other and they do care for their crew members when faced with an emergency or ill-health.

In terms of the employer-workman relationship, often fishers are hired as casual labour, and they are not confined to one particular boat owner. When fishers/workmen switch between different boat owners/ skippers depending on the demand and the payment they are offered, they sever the employer-employee relationship and relinquish their right for a secured contractual relationship. Therefore, a work agreement will bring some order to this informal working relationship that exists in the fisheries sector.

5.6 Brief overview of Sri Lanka's engagement in the work in fishing Convention, 2007 (No. 188)

This section at present draws from the documented reflections of the in-person engagement by the Advisor to this assignment, Professor Oscar Amarasinghe¹⁵, in the events and discussions starting from 2004 up to 2007 leading to the adoption of the Convention No. 188. Further details to this section will be added through the KPIs.

June 2004 - Proposal of new standards for fishing by the ILO

Based on the urgent need that was felt in the early 2000's, about 40 years since the ILO had developed standards for fishing, the ILO placed on the agenda of its 92nd Session held in June 2004 at Geneva, the proposal for a new standard, aiming at revising the existing seven ILO instruments on the subject

¹⁵ O. Amarasinghe, "The lost ILO convention on work in fisheries sector" (unpublished document shared by the author, n.d.).

Five conventions (on Minimum Age, Medical Examination, Article of Agreement, Accommodation for Crew and Competency Certificate) and

Two Recommendations (concerning Vocational Training and Hours of Work).

This was done within the context of revising ILO conventions (binding for countries that ratify them) and Recommendations (not binding, but providing guidance) adopted before 1985, in order to update and strengthen the standards-setting system of the ILO. The new standard was expected to be aligned with the FAO Code of Conduct for Responsible Fisheries with the expectation that the new standards would be acceptable not only to the respective governments, but also to the boat owners and fish workers.

March 2003 – Questionnaire to elicit views on the content of the new standards shared with member States

Towards developing a new standard for work in the fishing sector, the ILO circulated a questionnaire among member States in March 2003 to elicit views on the content of a comprehensive standard. Governments were requested to consult with the most representative organizations of employers and workers before finalising their replies to the questionnaire by August 2003. Of the ILO's 177 members, 83 countries responded to the questionnaire, of which 50 per cent were developing countries. Sri Lanka was among the countries that did not respond to the questionnaire at the state level.

March 2004 – Workshop held in Colombo titled 'Improving labour conditions in the fisheries sector' to respond to the ILO questionnaire

However, members of civil society concerned with fish worker welfare, sought to fill this gap. Several fishworker organizations in Sri Lanka, especially, the United Fishermen's and Fishworker's Congress (UFFC) and National Fisheries Solidarity (NAFSO), having identified the need for new standards in the fishing sector, joined hands with the Ruhuna University Union of Senior Academics (RUUSA) to organize a workshop in Colombo in March 2004 on "Improving labour conditions in the Fisheries Sector", with assistance from the International Collective in Support of Fishworkers (ICSF). More than 20 fishworker organizations from all over the country, along with officials from the Ministry of Labour, Ministry of Fisheries, and the representative of the ILO Country Office in Colombo participated in the workshop. At the end of the day, answers to the ILO questionnaire were furnished which included the revisions proposed for the five ILO conventions and two recommendations dealing with work in the fishing sector. Sea Safety, Health and Social Security, were three new areas that were to be considered in developing the new standard. The proposals were sent to the ILO for consideration at its 92nd Session held in Geneva in June 2004.

June 2005 – Work in Fishing Convention taken up for consideration

At the 93rd Session of the ILO held in June 2005, Work in the Fishing Sector was taken up as the fifth item on the agenda. A tripartite committee, consisting of Employers, Workers and Government Officials, of each member state was appointed to develop the new standard. Sri Lanka too was represented by all three groups and the Government was represented by officials from the Ministry of Labour. The new standard was discussed at length and the final report was presented on the 16th of June 2005 for adoption, which included a Convention and a Recommendation on Work in the Fishing Sector.

The new Convention was rejected by one vote majority. Only the workers' delegate from Sri Lanka voted for the new Convention.

May 2007 – Adoption of the Work in Fishing, Convention (No. 188) at the ILO General Assembly held in Geneva

5.7 Current policy landscape of Sri Lankan fisheries

International Conventions and Agreements

Sri Lanka is a party to many international Conventions and Agreements that govern the fisheries sector.

These are:

- United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS)
- Indian Ocean Tuna Commission
- UNCLOS relating to Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Fish Stocks Agreement)
- UN Port State Measures (PSM) in 2011
- Agreement to Promote Compliance with the International Conservation and Management Measures by Fishing Vessels on the High Seas
- ILO Maritime Labour Convention (2006) ratified by Sri Lanka in 2016

Among these, standards set out in UNCLOS are most relevant to the discussion on the ratification of Convention No. 188. Brief descriptions of the other Conventions are provided in Annex 3. The Maritime Labour Convention (2006) focuses on seafarers and not on fish workers.

United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS)

Sri Lanka ratified UNCLOS in 1994 and has since been committed to the sustainable use of marine resources and the conservation and management of fish stocks.¹⁶ The United Nations Convention on the Law of the Sea lays down a comprehensive set of laws in terms of governing all uses of the oceans and their resources. It sets out globally the provisions dealing with all matters relating to the laws of the sea and sets out rights and responsibilities with respect to utilizing marine resources in a sustainable way. The objectives of UNCLOS are to protect the economic, environmental, and national security concerns of Coastal States; strengthen Coastal State rights up to 200 miles offshore; protect the marine environment; protect freedom of navigation and maintain international peace.

Provisions relating to fisheries/ fishermen;

Nationals of other States fishing in the Exclusive Economic Zones shall comply with the conservation measures and other terms established by the Coastal State. In doing this, such regulations may relate to regulating the following aspects;

¹⁶ <https://www.un.int/srilanka/news/sri-lanka-represented-sdg14-oceans-conference>

- licensing of fishermen, fishing vessels and equipment, including payment of fees and other remuneration, and in case of developing States, adequate compensation in the field of financing, equipment and technology relating to the fishing industry;
- conducting specific fisheries research programmes and regulating the conduct of such research with the consent of the Coastal State;
- requirements for the training of personnel and the transfer of fisheries technology;

Sri Lanka has adopted a number of laws as a result of the development of the sector in the aftermath of UNCLOS. Such laws include the Maritime Pollution Prevention Act, No. 35 of 2008, Merchant Shipping Act No. 52 of 1971, Fisheries and Aquatic Resources Act, Coast Conservation Act, No. 57 of 1981, Regulations of Foreign Fishing Boats Act, No. 59 of 1979, and others. Some of these laws have been discussed below, to the extent they relate to the subject matter of this Report.

Accordingly, Sri Lanka through the enactment of the laws as mentioned above, regulates fisheries aspects such as:

- registration of fishermen residing or engaged in fishing in each fisheries management area, and formation of fisheries committees, overseeing functions such as formulating fisheries programmes, assisting members to obtain fishing gear, equipment, carrying out social infrastructure and welfare activities to improve living standards of the fishing community;¹⁷
- making regulations in respect of all matters regarding fishing boats, type, size and registration of boats, manner of marking registered boats, inspection of fishing boats, assessment of seaworthiness, imposing minimum standards of navigation and safety for engaging in fishing activities in Sri Lankan waters;
- inquiring into, summoning parties and settlement of fishing disputes;
- management, inspection, regulation, conservation and development of fisheries activities and aquatic resources in Sri Lanka;
- licensing of fishing operations, such as licensing of fishing boats, the name of the boat owners¹⁸, catching, landing, transporting, selling or buying, receiving or having in possession of fish or other aquatic resources;
- protection of fish and aquatic resources by penalizing activities such as use of any poisonous substances harmful for fish or other aquatic resources, carrying or possession of explosives material intending to harm aquatic resources.

¹⁷ Fisheries and Aquatic Resources Act, Section 32

¹⁸ Fisheries and Aquatic Resources Act

- the protection of foreign boats conducting fishing activities in the coastal waters of Sri Lanka, authorizing conducting of scientific experiments relating to fisheries resources in Sri Lankan waters;
- conservation and management of the coastal areas in the country by demarcating the conserved areas, authorizing protective activities along the coasts, issuing permits, etc.

In view of the above provisions, the current legislation in force in Sri Lanka appears to address some of the aspects of occupational safety that are considered under Convention No. 188. Such legal provisions which fall in line with the Articles stipulated in Convention No. 188 and the Articles of Convention No. 188 that need to be adopted in local legislation will be discussed later in the Report.

FAO's Code of Conduct for Responsible Fisheries (CCRF)

The FAO's Code of Conduct for Responsible Fisheries was adopted in Sri Lanka in 1995. This is a voluntary code, and is formed in line with the relevant rules of international law set out by UNCLOS, and taking a holistic approach in compliance with the international regulations such as the 1995 UN Fish Stocks Agreement, the 1992 Declaration of Cancun, the 1992 Rio Declaration on Environment and Development, and Agenda 21. In addition, the FAO Compliance Agreement is also an integral part of the Code.

The Code offers guidelines for responsible fisheries, establishing principles and standards applicable to the conservation, management and development of all fisheries, focusing on aspects including nutritional, economic, social and environmental importance to the fisheries sector. It also pays attention to the safety, living conditions, health and safety standards, education and training and search and rescue of fishers.

Sri Lanka has adopted a National Plan of Action to Prevent, Deter and Eliminate IUU Fishing (SLNPOA-IUU) which contains measures that are being implemented to combat IUU fishing, in Sri Lankan waters including the high seas. As such, Sri Lanka submits reports to the FAO on the progress of implementation of the SLPOA-IUU as part of the biennial reporting on implementation of the Code of Conduct of Responsible Fisheries (CCRF).

The CCRF is by far the closest standard which Sri Lanka has acceded to in respect of addressing the subject matters addressed in Convention No. 188. Although it is a voluntary commitment, the fact that Sri Lanka has drawn connections to the CCRF in drafting national policies, evidence Sri Lanka's willingness to comply with the Code. There is, however, no empirical evidence to prove how far these standards have been implemented in the sector.

Sustainable Small-scale Fisheries (SSF) Guidelines

Mention should also be made of the FAO Voluntary Guidelines for securing sustainable small-scale fisheries (SSF) in the context of food security and poverty alleviation. These guidelines emphasize the need for sea safety, social security protection and so on of small-scale fishers. Provisions made in Convention No. 188 could be extended to the SSF sector in providing for such needs.

National level Acts, Plans and Guidelines

The Fisheries and Aquatic Resources Act No. 2 of 1996, as amended Acts No. 4 of 2000, 22 of 2006, 35 of 2013, 2 of 2015 and 2 of 2016 (FARA) is the principal legislation which governs fisheries activities in Sri Lanka. This provides for management, conservation and development of fisheries and aquatic resources in Sri Lanka. The Department of Fisheries and Aquatic Resources (DFAR) is the mandated authority responsible for administration of the provisions of FARA and regulations made under it.

Department of Fisheries

The Department of Fisheries mainly focuses on promoting environmental fishing methods. The Department is the main institute that holds the responsibility for the development and management of the fisheries sector during different periods of time through various methodologies. The Department is focused on directing the fishers towards responsible and sustainable fishing in compliance with international conventions, laws and regulations.

As such, the Department has many divisions each with a specific objective:

The Fisheries Management Division is to attain sustainable development in the fisheries sector of Sri Lanka by way of conservation and management of fishery resources in seas, lagoons and reservoirs through community participation. It has functions such as the formulation and implementation of fisheries regulations and registration of fishing vessels.

The Fisheries Development Division has responsibility towards, the development of the fisheries industry through modern technology, implementation of Diwara Bank and Fisheries Co-operative Society programmes and co-ordination and supervision of them at national level.

The Fisheries' Products Quality Control Division, has the main objective of ensuring the high quality and safety of fish products exported to the international market by Sri Lanka for human consumption under the implementation of Fish Products (Export) Regulations published in 1998.

The Fisheries Operations Division has three units under it, namely the High Seas Fisheries Unit, Vessel Monitoring Unit, and Monitoring Surveillance and Control Unit. The High Seas Unit's main function is to issue relevant verification reports to ensure

internationally that the fish caught by registered fishing boats of Sri Lanka operating in the high seas have been caught appropriately free from IUU practices. The Vessel Monitoring Unit's functions include, installation of vessel monitoring system devices on multi-day boats, conducting awareness programmes for the boat owners and skippers, and so on. The Monitoring Control and Surveillance Unit's main objective is to protect the fishing community by way of providing radio communication transmission facilities in between fishing vessels engaged in fishing operations in and off the Exclusive Economic Zone of Sri Lanka and the land, rescuing fishermen and fishing crafts affected due to reasons such as engine trouble and accidents.

The Department also provides technical support for the fishermen to upgrade their boats and gears enabling them to transfer to more sustainable methods of harvesting. It also uplifts the socio-economic aspects of the fisher folk through community development programmes. Various services provided by the Department include, boat registrations, supplier registration, fisherman registration including issuance of the skipper ID License, divers permits, operation license for fishing, issuing import/export certifications, fishing trip verification including registration of crew members, inspection of the physical catch, taking legal actions against illegal border crossing and lagoon management among others.

In general, to a limited extent, laws and regulations are in place in Sri Lanka in the fisheries sector focusing on the provision of compliance and monitoring, especially of the High Seas vessels, and safety at sea.

In order to fill this gap, the research team initiated inquiries into the broader labour law frameworks in Sri Lanka, which will be followed up as well. This information is presented below, following the fisheries specific laws and policies.

Based on available secondary data and primary data collected for this study, the team briefly assessed the 'implementation gaps' of these policies and laws. Understanding the implementation gaps of the existing policies and laws will prove useful for strategizing the advocacy efforts for Convention No. 188 as well.

Fisheries and Aquatic Resources Act, No. 2 of 1996 (FARA)

Primarily being enforced by the Department of Fisheries and Aquatic Resources, the Act significantly deals with the protection of fisheries resources. It generally provides for many aspects in the fishing industry including licensing of fishing operations of local fishing boats on high-seas, prohibiting local fishing boats from fishing in waters under the national jurisdictions of other coastal nations, requiring that licenses issued for fishing in the high-seas be carried at all times on fishing boats and produced for inspection by authorized officers and so on.

There are also certain similarities between the Act and the Convention No. 188. That is, there are some provisions already embedded in the Act and the relevant Gazettes published, that provide for the governance of matters, although not very direct, relating to labour aspects in the fisher community or more specifically to the

Articles of Convention No. 188. Such provisions in the Act and the Gazettes, and the corresponding provisions in Convention No. 188 are also tabulated below.

The National Fisheries and Aquaculture Policy-2018

The National Policy was framed with the intention of boosting local and foreign investor confidence through the establishing of a solid national policy to oversee the fisheries and aquaculture sector in Sri Lanka. The policy along with the amendments, act as the main policy frame for the sector. However, the National Fisheries and Aquatic Resources Policy of 2018 is yet to be approved by the Parliament and the policy strategies are not well known yet. There have also been suggestions from the experts in the sector to improve the Policy by incorporating the relevant Small-scale Fisheries Guidelines.

The provisions in the Policy, relating to socio-economic aspects in the fisheries sector are as follows:

Safety at Sea and Occupational Safety- Sections 4.1.33 to 4.1.34

- Ensure safe, healthy and fair working conditions at sea and on land in accordance with international standards.
- Promote the establishment of insurance schemes concerning safety at sea and occupational safety.

Gender – Sections 4.5.15 to 4.5.18

- Promote equal opportunities for women's participation in the activities of the sector.
- Make gender mainstreaming an integral part of small-scale fisheries development strategies.

The biggest gaps in relation to the articles of Convention No. 188 and standards it covers, remain the minimum requirements set out for work on board fishing vessels and conditions of service (manning and hours of rest, crew list, fishers' work agreement, recruitment and placement, payment of fishers') and accommodation and food.

- Create conditions for both men and women to have equal access to resources and benefits.
- Encourage both men and women to participate jointly in finding solutions to their problems.
- Improvement of the Socio-Economic Conditions of the Fisher Communities – Sections 4.5.19 to 4.5.28

- Take measures to prevent alcoholism in fishing communities.
- Ensure that adequate compensation is provided to fisher communities who will be affected by development activities in the respective areas.
- Improve the social safety net and social security protection for the fishers and fish workers including women.
- Respect the tenure rights of the traditional, migrant, subsistence and artisanal fishing communities to land, waters and fish resources.
- Make rights holders responsible for sustainable use of the resources.
- Ensure safe, healthy and fair working conditions at sea, inland waters and on land.
- Involve fishing communities in designing, planning and implementation of fisheries management measures.
- Build the capacity of fishers and ensure their effective participation in fisheries management.
- Promote investment in human resource development such as health, education, literacy and digital inclusion in fishing communities.
- Progressively realize rights of the small-scale fishers and fish workers to an adequate standard of living in accordance with the national and international human rights standards.

Human Rights- Section 4.5.35

- Ensure that no human rights are violated in development and management of fisheries and aquaculture.

Fisher Organisations- Sections 4.5.37 to 4.5.38

- Recognize, empower and strengthen fisheries cooperatives in addressing issues in fisheries and fisher wellbeing, and in representing fishing communities at decision making platforms.
- Liaise with fisheries cooperatives in integrated coastal zone management

As a specific example, although 'equal treatment for women' in the sector is part of the policy, the MFAR/DFAR do not collect fisher related data disaggregated by sex. As a result, the women who are engaged in fishing related livelihoods are invisible to policy makers (Lokuge and Hilhorst, 2017)¹⁹. Women have increasingly played an important role in fishing communities, and their role is seen to be changing in the deep sea fisheries sector. While their menfolk are away on increasingly longer fishing trips, they manage the household finances, all the social obligations, care responsibilities and children's education and other needs. Given the way the fisheries sector, especially the multi-day fishing sector is organized in Sri Lanka, women continue to be excluded from the Work in Fishing Convention, 2007 (No. 188) as well.

Some of the socio-economic policy directives set out within the policy, such as occupational safety, establishing insurance schemes and to a certain extent strengthening fisher organisations, are being implemented within the sector. However, clear gaps remain within the socio-economic policy measures presented above and in their implementation, such as on gendered considerations in participating in fisheries related activities.

National Plan for the Safety of Fishers and Fishing Vessels at Sea 2013

The Sri Lanka National Plan for The Safety of Fishers and Fishing Vessels at Sea published in 2013 aligns closely with some of the Articles set out in Convention No. 188. The Plan states that it has taken special consideration in interpreting and drawing connections to provisions of the FAO's Code of Conduct relating to fishing operations.²⁰ Such provisions include:

- Facilitating equipment that ensure health, safety and fair working and living conditions and meet internationally agreed standards;
- Integrating fishing operations into maritime search and rescue systems;
- Enhancing education and training programmes that enhance skills of fishers to a professional standard;
- Maintaining records of fishers including certification of competency, qualifications;
- Ensuring compliance with safety requirements for fishing vessels and fishers in accordance with the international conventions.

The implementation strategies and effectiveness of this plan remains to be studied. Certain aspects within this Plan such as compliance with safety requirements for

¹⁹ Lokuge, G. and Hilhorst, D., 2017. Outside the net: Intersectionality and inequality in the fisheries of Trincomalee, Sri Lanka. *Asian Journal of Women's Studies*, 23(4), pp.473-497.

²⁰ <http://www.fao.org/3/a-bm042e.pdf>

vessels can be flagged as crucial for the safety of the fish workers, as several reports and studies have documented low standards on low-cost fishing craft which are manufactured in Sri Lanka²¹.

Minimum Standards for the citizens of Sri Lanka engaged in fishing operations in foreign flagged boats Regulations, Gazette No. 0945/7 of 2015.12.14

This Regulation provides information on age, identity card and other requirements to serve on a foreign flagged vessel. The salient provisions are:

Any citizen of Sri Lanka who desires to serve on a foreign flagged fishing vessel which operates within the Exclusive Economic Zone of Sri Lanka, High seas, or within the Exclusive Economic Zone of other coastal states shall:

- not be less than 18 years of age;
- obtain an identity card issued by the Director General of the Department of Fisheries, in addition to the National Identity Card;
- not be employed by a person who has been found guilty in illegal, unreported and unregulated fishing under the vessel monitoring systems maintained by the respective state.

It should be noted that, although this Regulation expressly applies to citizens of Sri Lanka onboard vessels carrying a foreign flag within the EEZ of Sri Lanka, this rule currently applies uniformly across all types of vessels, i.e. multi-day boats and one-day boats. The KPIs have revealed that this minimum age requirement of 18 years is strictly implemented with inspections carried out at the time of departure as well as registration in the log books before the departure. However, isolated incidents of those below 18 years of age working on-board multi-day fishing vessels were mentioned during community level consultations, as minimal compared to the situation in the recent past.

Fishers and Aquatic Resources Statute of Western Province, Gazette notification No. 2079/6 of 2018.07.12

This regulation allocates provisions to establish the Western Province Fisheries and Aquatic Resources Department (“WPFAR Department”). As stipulated by the regulation, the functions of the WPFAR Department include the following:

- Taking measures for professional and social welfare of fisheries professionals of the Western Province;

²¹ O. Amarasinghe, “Economics of Fishing by Multi-day Crafts of Sri Lanka” (Unpublished, 2013).

- With the objective of increasing income of fisheries professionals of the Western Province, introducing suitable strategies to boost up fish production within the Western Province;
- Preparing programmes to safeguard professional and other rights of fisheries professionals engaged in the fisheries industry of the Western Province;
- Implementation of training and development programmes for fisheries professionals engaged in the fisheries industry;
- Introducing suitable insurance schemes for fisheries professionals of the Western Province.

Note: The Regulation does not expressly define the term “fisheries professionals”. It is presumed that these professionals referred to are ‘fishers’ for the purposes of this Report.

The regulation also makes provisions to establish a Western Province Fisheries and Aquatic Resources Advisory Council, of which the functions include advising the Fisheries Director on steps to be taken to develop the fisheries industry of the province.

There may be similar regulations in other provinces that purpose to uphold the professional conditions, but we are yet to find any documentation in this regard.

We have, however, learnt that the above department (WPFAR) remains mostly dormant.

Issuance of Certificates of Competence for Skippers (Local Fishing Board) Regulations, 2019- Gazette Notification No.2126/6 of 2019.06.03

This regulation applies to persons who apply to serve as skippers of multi-day local fishing boats having a length of not less than ten decimals and three meters (10.3m).

Under this regulation, no person shall serve as a skipper in a multi-day local fishing boat having the abovementioned specifications, without obtaining a Certificate of Competence issued by the Director or a coxswain license issued by a recognized maritime training institute for the purpose.

The license applicant shall not be less than 18 years of age, shall have minimum experience of two years, and have completed a fishing vessel skipper training programme of not less than a week’s duration.

The application shall be supported by a fitness certificate; a certificate of competence issued by a recognized authority as stipulated in the regulation; proof that the applicant has undergone sufficient training including methods of fishing, sailing, radio communication, personal safety and life-saving, fire prevention, fire extinguishing,

emergency first aid at the sea, international obligations of high seas fishing and prevention of marine pollution.

However, it should be noted that during KPIs, severe criticism was made on the issuing process of the license. Several skippers complained that the assessment, training, and appraisal procedures involved in issuing the 'Certificate of Competence' are inadequate and corrupt, such that the whole system has become a folly. Some opined that the license has become a mere document that could easily be obtained for money. It was also alleged that the trainers are poorly qualified and incompetent to train the skippers.

High Seas Fishing Operations Regulations, No. 1 of 2014- Gazette Notification No. 1878/12 of 2014.09.01 as amended by 1945/6 of 2015.12.14

This regulation stipulates the licensing of the fishing operations in the High Seas. Every license holder shall comply with conditions imposed under the said license, which includes among many others;

- the skipper shall keep the license on board at all times, ready for inspection;
- the skipper/master shall always keep in possession an updated log book;
- fire extinguishers shall always be taken on board;

- life jackets should be stocked on board equivalent to the number of the crew on board, and should be ready to be worn by the crew in case of an emergency; However, we have been made aware in multiple occurrences during the KPIs that most fishers do not wear the jackets, although they carry them in the boat. The fishers have found it to be discomforting and uneasy to work with.

- a scientific observer should be onboard for each boat that meets specifications in the regulation.

Fishing Boats Safety (Design, Construction and Equipment) Regulations 2009- Gazette Notification No. 1600/13 of 2009.05.05

This regulation applies in respect of new decked and undecked fishing boats which are less than 24m (**emphasis added**) in length, and operating within Sri Lankan waters, excluding boats made for recreational and sporting activities.

While the Director General has been appointed as the Competent Authority to oversee the construction of the boats, the regulation details a number of specifications to adhere to during construction of the boats, making all boat designs, plans and other relevant information and documents to be submitted for the Director's approval.

Salient provisions include the following:

Emergency instructions

- The Competent Authority shall ensure that all boats are provided with clear instructions which shall be written where practicable, to be followed by the crew members in case of emergency, such as general preparation of life saving equipment, communication equipment and launching of survival craft.
- The Competent Authority should also ensure the crew members have received training and be certified in abandon ship training, landing and survival ashore and training in emergency procedures.

The regulations also provide for crew accommodation of appropriate size in decked boats, ensure adequate security protection against weather, sea, heat, cold, condensation, undue noise, vibration, fumes, odours and effluvia from other spaces. Sleeping rooms shall be placed aft of the collision bulkhead, if fitted.

Lighting, heat, and ventilation—all crew accommodation spaces shall be adequately lit as far as possible by natural light, heating facilities that adjust to climatic conditions etc.

Sleeping spaces shall be so planned and equipped as to ensure reasonable comfort for the occupants and to facilitate tidiness. Each crew member shall be provided with a berth. Suitable bedding shall be provided for each crew member and mattresses provided shall not be of a type that is liable to develop toxic fumes in cases of fire and not be of a type that will attract pests or insects.

Eating spaces and cooking facilities shall be arranged separate from sleeping spaces where possible, and shall contain adequate cooking utensils, an adequate number of cupboards, shelves, sinks and dish racks made out of rustproof material and with satisfactory drainage, and be fitted with fail-safe devices in case of emergency.

Sanitary facilities—sufficient sanitary facilities including toilets and washing facilities, shall be provided to the satisfaction of the Competent Authority. In general, toilets shall be situated convenient to, but separate from sleeping spaces, eating spaces and washrooms.

Fishermen's Pension and Social Security Benefit Scheme Act

The Fishermen's Pension and Social Security Benefit Scheme Act, No. 23 of 1990 (as amended), provides periodic pensions to fishers in old age, provides insurance against physical disability, or a gratuity in the event of the death of a fisher, through the Agriculture Insurance Board.

The Act establishes a scheme which shall be called the Fishermen's Pension and Social Security Benefit Scheme the objects of which is:

- (a) to provide social security to fishermen during their old age or disability;
- (b) to provide relief to the dependents of fishermen upon the death of such fishermen;
- (c) to encourage fishermen to continue in their occupation;
- (d) to attract young persons to the fishing industry; and
- (e) to inculcate the habit of saving and to promote thrift among the fishermen.

Under the provisions, a fisherman is entitled to a periodical pension of a prescribed amount, along with gratuity if disabled, or a death gratuity. The pension will be entitled to be drawn by the contributor upon his/her reaching the age of 60 years. The Act also establishes a Fishermen's Pension and Social Security Benefit Fund paid into by the sums of money as advanced by the Parliament for the operation of the Scheme.

However, consultations held with fishers since 2004 show that the Fisheries pension scheme may become dysfunctional as only 11 per cent to 15 per cent had contributed to the scheme so far, and the fund currently has no monies. As a result, no new pensions are provided at present. Membership in this pension scheme in 2009 had reached almost 70,000 with over 60,000 active contributors. However, the number of active members declined to 1,300 in 2016, while the number of pensioners increased to 3,700²².

Fishers seem to be not interested in these schemes and do not see the value of the schemes. Thus far, the information collected from KPIs indicate that the nominal sum offered, almost an insignificant amount, by a pension scheme is the primary reason for the fishers distaste towards contributing to a pension scheme. While those who joined early on in the scheme, are now able to draw a benefit of about LKR 3,000.00 per month, those who joined the scheme more recently are being paid only about LKR 1,000.00 per month, which the retired fishers consider woefully inadequate. Hence, they choose to forego that deduction from their current income in anticipation of a minor income in the future. Some also expressed the idea that most fishers are not sufficiently informed or made aware of the benefits of contributing to a social security scheme and plan their financial management accordingly.

Protection in the case of injury, illness or death

Following are some of the beneficial schemes that are currently in operation:

Fishers are covered under three insurance schemes: an accidental insurance scheme has been introduced for the fishermen free of charge by the government in 2016 with the coordination of the Department of Fisheries and Aquatic Resources and National Insurance Trust Fund. Fourteen beneficiary families were compensated by

²² Asian Development Bank (2019). *Growing old before becoming rich: challenges of an ageing population in Sri Lanka*.

the Trust Fund by 2018.²³ Claims up to one million can be made under this scheme for a death at sea that has occurred as a result of an accident. If the death was a result of a cardiac arrest, then the payment would amount to only about LKR 200,000.

The second scheme, **Divi Sayura Life Insurance Scheme** initiated in 2018, is provided by a tendering process of the DFAR to a private company and is currently provided by Allianz Insurance Lanka Ltd. For an annual fee of LKR 1,356.00, the fishers are provided with a one million life insurance cover, covering all life accidents (insured deaths, partial or permanent disability and disappearance) which may occur at sea and on the land. The number of fishing families which have obtained benefits from this insurance scheme for the year 2018 was 58.²⁴ The fishers are expected to show proof of this prior to departure, for deep sea fishing trips and in most cases, the insurance is paid for by the boat owner.

The third scheme forms part of the boat insurance and is obtained by the boat owner through a private insurance company for 'unnamed crew members'. A crew member's beneficiary can claim up to LKR 3,00,000 for loss of life at sea through this scheme.

Diyawara Piyasa Housing and Sanitary Facilities Improvement Programme implemented by the Department of Fisheries and Aquatic Resources was started in 2017 with the intention of providing housing and sanitary facilities for the fishers' families. Beneficiaries have been granted LKR 300,000 for constructing a new house and LKR30,000 per family to build sanitary facilities in each house. Initially the projects were launched in the Puttalam, Trincomalee and Tangalle districts, 427 families are targeted to be benefited by this scheme.

Diyawara Diriya Loan Scheme was introduced in 2010 with the support of the Bank of Ceylon with lower interest rates compared to other commercial loan facilities.²⁵ A report published in 2016 provides information about two insurance schemes that were in operation then, one is for LKR750 and the other is for LKR 1,500 per annum. Stage one of this scheme is reported to have been introduced in the hope of giving effect to The National Fisheries Plan, in which the Bank of Ceylon had released loan facilities worth LKR 1 billion under the scheme to more than 900 recipients. Under this scheme the fishing community could obtain loans for fishing boats including multi-day boats, OFRD boats and one-day boats, engines and fishing gear.

There have been various attempts at providing adequate training, knowledge and skills enhancing programmes for the fisheries community in the past with the collaboration of the Department of Fisheries, National Aquatic Resources Research and Development Agency (NARA) and the Ocean University of Sri Lanka.

²³ <http://www.nara.ac.lk/wp-content/uploads/2017/09/fisheries-industry-outlook-2018-converted-Copy.pdf>

²⁴ <http://www.nara.ac.lk/wp-content/uploads/2017/09/fisheries-industry-outlook-2018-converted-Copy.pdf>

²⁵ <http://www.nara.ac.lk/wp-content/uploads/2017/09/2016-Fisheries-Outlook-2018.01.18-new.pdf>

A 50 per cent subsidy scheme for upgrading the crafts was launched by the government to build fishing boats over 55 feet (16.7m) in length and equipped with modern devices to provide high quality and high fish yield in 2018. LKR 400 million was allocated for this purpose. In a similar programme, a 50 per cent subsidy was granted to upgrade new technology in fishing crafts such as long lines, winch machines and cooling systems.²⁶

At a practical level, the fisheries sector in Sri Lanka operates on a 'boat tying' system, where a boat owner or a fish dealer provides credit (which is an insurance substitute) to craft owners against their promise to hand over all future catches. This has been an age-old practice that has emerged under the conditions of an imperfect development of credit and insurance markets. The system of boat-tying ensures that fishers have access to interest free credit by offering future catches as collateral (which is easy to provide) while the fish merchants guarantee a regular supply of fish by tying down the craft owners.²⁷

Gaps in existing laws, regulations and local enforcement of work in fishing

In view of the provisions above, although not comprehensive, the existing regulations meet some of the aspects required under Article 8 (Responsibilities of fishing vessel owners, skippers and fishers), Article 15 (Crew List), Article 25, 26, 27 and 28 (Accommodation on board and food) and Article 31, 32 (Occupational safety and health and accident prevention).

However, for the identification of the gaps in the existing laws and regulations vis-à-vis the Convention, we have first set out the salient provisions of the Convention below:

1. **Article 9(1)-Minimum age**- The minimum age for work on board a fishing vessel shall be 16 years. However, the competent authority may authorize a minimum age of 15 for persons who are no longer subject to compulsory schooling as provided by national legislation, and who are engaged in vocational training in fishing.
2. **Article 12-Medical certificate proving fitness to perform duties** - The medical certificate of a fisher shall state, at a minimum, that:
 - a) the hearing and sight of the fisher concerned are satisfactory for the fisher's duties on the vessel; and
 - b) the fisher is not suffering from any medical condition likely to be aggravated by service at sea or to render the fisher unfit for such service or to endanger the safety or health of other persons on board.

²⁶ <http://www.nara.ac.lk/wp-content/uploads/2017/09/fisheries-industry-outlook-2018-converted-Copy.pdf>

²⁷ D. Dharmasiri, "Role of Market Interlinkages in Coping with Fishing and Climate Related Risks in Small-scale Fisheries: Evidence from Southern Sri Lanka" (unpublished Master's Thesis, 2019).

3. **Article 16– Articles of work agreements**

Each Member shall adopt laws, regulations or other measures:

- a) requiring that fishers working on vessels flying its flag have the protection of a fisher's work agreement that is comprehensible to them and is consistent with the provisions of this Convention; and
- b) specifying the minimum particulars to be included in fishers' work agreements in accordance with the provisions contained in Annex II.

4. **Article 26 and 27–Accommodation and food**

Article 26- Each Member shall adopt laws, regulations or other measures requiring that accommodation on board fishing vessels that fly its flag shall be of sufficient size and quality and appropriately equipped for the service of the vessel and the length of time fishers live on board.

Article 27 - Each Member shall adopt laws, regulations or other measures requiring that:

- a) the food carried and served on board be of a sufficient nutritional value, quality and quantity;
- b) potable water be of sufficient quality and quantity; and
- c) the food and water shall be provided by the fishing vessel owner at no cost to the fisher. However, in accordance with national laws and regulations, the cost can be recovered as an operational cost if the collective agreement governing a share system or a fisher's work agreement so provides.

5. **Article 13–Occupational safety and health**– Each Member shall adopt laws, regulations or other measures requiring that owners of fishing vessels flying its flag ensure that:

- a) their vessels are sufficiently and safely manned for the safe navigation and operation of the vessel and under the control of a competent skipper; and
- b) fishers are given regular periods of rest of sufficient length to ensure safety and health.

6. **Article 14 (b) -- Rest period on board** – for fishing vessels regardless of size remaining at sea for more than three days, after consultation and for the purpose of limiting fatigue, establish the minimum hours of rest to be provided to fishers. Minimum hours of rest shall not be less than:

- i) ten hours in any 24-hour period; and
- ii) 77 hours in any seven-day period.

7. **Article 13 (b)–Shore leave**– fishers are given regular periods of rest of sufficient length to ensure safety and health.

8. **Article 34 and 35–Social security protection**

Article 34- Each Member shall ensure that fishers ordinarily resident in its territory, and their dependents to the extent provided in national law, are entitled to benefit from social security protection under conditions no less favourable than those applicable to other workers, including employed and self-employed persons, ordinarily resident in its territory.

Article 35- Each Member shall undertake to take steps, according to national circumstances, to achieve progressively comprehensive social security protection for all fishers who are ordinarily resident in its territory.

The following table sets out in detail a comparison of the Articles in the Convention and the existing provisions in Acts and Gazettes in Sri Lanka that can correspond to that Article, with remarks.

Table 2: Comparison of the Convention Articles and Existing Acts and Gazettes in Sri Lanka

Relevant Article in Convention No. 188	Sections of diverse Acts and Gazettes that can relate to the Articles in the Convention	Provisions made in the said Acts and Gazettes	Remarks
<p>Article 6, 7 - Appointment of a Competent Authority, implementation and enforcement of laws, regulations or other measures to fulfill the commitments under the Convention.</p>	<p>Section 2, Section 3 and Section 4 of 1996 FAR Act (as amended)</p>	<p><u>Administration</u></p> <p>Appointment of the Director of Fisheries and Aquatic Resources;</p> <p>The Director as the responsible authority for administration of the Act;</p> <p>Establishment of Fisheries and Aquatic Resources Council with functions such as advising the Minister relating to regulation, management, conservation and development, advising the Director on all matters relating to the administration of the Act.</p>	<p>It is true that Sri Lanka already has competent authority that governs the sector in forming laws and regulations.</p> <p>However, what is indicated in the Convention is the need for a competent authority to enforce the Convention (<i>emphasis added</i>) like the High Seas Fishing Unit.</p> <p>The appointment of a Director of Fisheries and Aquatic Resources is for the Department to enforce the state Acts (FARA for example) and regulations. The Council is an advisory council which advises the minister. All these have little to do with the Convention. The Director General has an important role to play as the head of DFAR. Nevertheless, if the Convention is to be ratified, the Head of the High Seas Fishing Unit could become the competent authority.</p>

Relevant Article in Convention No. 188	Sections of diverse Acts and Gazettes that can relate to the Articles in the Convention	Provisions made in the said Acts and Gazettes	Remarks
<p>Article 8 -</p> <p>1. The fishing vessel owner has the overall responsibility to ensure that the skipper is provided with the necessary resources and facilities to comply with the obligations of this Convention.</p> <p>2. The skipper has the responsibility for the safety of the fishers on board and the safe operation of the vessel.</p>	<p>Issuance of Certificates of Competence for Skippers (Local Fishing Board) Regulations, 2019- <u>Gazette Notification No.2126/6 of 2019.06.03</u></p>	<p>This regulation applies to persons who apply to serve as <u>skippers</u> of multi-day local fishing boats having a length of not less than ten decimal three meters (10.3m).</p> <p>Under this regulation, no person shall serve as a skipper in a multi-day local fishing boat having the abovementioned specifications, without obtaining a Certificate of Competence issued by the Director or a coxswain license issued by a recognized maritime training institute for the purpose.</p> <p>The application shall be supported by a fitness certificate; a certificate of competence by a recognized authority as stipulated in the regulation; proof that the applicant has undergone sufficient training including methods of fishing, sailing, radio communication, personal safety and lifesaving, fire prevention, fire extinguishing, emergency first aid at the sea, international obligations of high seas fishing and prevention of marine pollution.</p>	<p>The licensing process of the skipper under the said Regulation and the responsibilities afforded to him thereunder, may be used to cover some aspects of Article 8 (2) of the Convention, such as:</p> <p>Facilitating on-board occupational safety, awareness and training; ensuring compliance with safety of navigation, watch keeping and associated good seamanship standards.</p>

Relevant Article in Convention No. 188	Sections of diverse Acts and Gazettes that can relate to the Articles in the Convention	Provisions made in the said Acts and Gazettes	Remarks
<p>Article 35 - Each country should take steps to achieve progressively comprehensive social security protection for all fishers.</p>	<p>Section 32 of FAR Act</p>	<p>Fisheries committees</p> <p>This section deals with the activities run by the fishermen. The section empowers registered fishermen residing or engaged in fishing in each fisheries management area or migrant fishermen to form themselves into a fisheries committee.</p> <p>The functions of the fisheries committee include;</p> <ul style="list-style-type: none"> - Carrying out social infrastructure and welfare activities with a view to improving the living standards of the fishing community of that area; and - Engaging in such other activities as approved by the Director as beneficial to the fishing community of the area. 	<p>Although Section 32 refers to the development of social infrastructure; neither the Fisheries Committees nor Cooperatives provide social security protection for fishers.</p> <p>The only scheme of social security protection is the Fishermen's Pension scheme, which is dysfunctional and insurance schemes. But the latter are severely constrained by informational asymmetries and one way to resolve this is to operate insurance schemes through fisheries cooperatives.</p>

Relevant Article in Convention No. 188	Sections of diverse Acts and Gazettes that can relate to the Articles in the Convention	Provisions made in the said Acts and Gazettes	Remarks
<p>Article 9 of the Convention - The minimum age for work on board a fishing vessel shall be 16 years.</p>	<p>Gazette - No. 1945/7 of 2015/12/14-</p> <p>Minimum standards for the citizen of Sri Lanka engaged in fishing operations in foreign flagged fishing boats Regulations No. of 2015.</p>	<p>Section 2 - The minimum age for engaging in a foreign vessel under the '<i>Minimum Standards for the citizens of Sri Lanka engaged in fishing operations in foreign flagged boats Regulations</i>' mandates <u>18 years of age</u>.</p> <p>Although this regulation applies to vessels carrying foreign flags, according to the KPIs the authorities implement this regulation as a principal law across all the vessels. As such, those who are below 18 years of age are not permitted to work as crew on any vessel. Based on the National Identity Card checks of crew members prior to departure, this is being regulated in practice.</p> <p>However, isolated incidents of boys below 18 years of age engaging in multi-day fishing were mentioned during the consultations, but these were clearly seen as exceptional cases by the fisher communities. Further, there are also other laws in place in Sri Lanka, for example, the Shop and Office Act, the Factories Ordinance, Employment of Women, Young Persons and Children' Act, that stipulates a range of provisions to set out the circumstances, the number of hours, and the lawful age that a child could be employed. However, the applicability of these enactments is questionable in the fisheries sector, for reasons explained further below in this report.</p>	<p>This minimum age requirement is strongly enforced in fishing operations. KPIs revealed that all the boats are checked or inspected by the armed forces and/or fishing operators for using under age employment prior to each departure.</p>

Relevant Article in Convention No. 188	Sections of diverse Acts and Gazettes that can relate to the Articles in the Convention	Provisions made in the said Acts and Gazettes	Remarks
<p>Article 34 and 35 of the Convention -</p> <p>These two Articles provides for social security protection of the fishers and their families.</p>	<p>No. 2079/67 of 2018/07/ 12-</p> <p>Fisheries and Aquatic Resources Statute of Western Province</p>	<p>Section 4 - The functions of the Provincial Director of Fisheries includes, taking measures for professional and social welfare of fisheries professionals of the Western Province.</p>	<p>Although this only applies to the Western Province, this exercise proves that there could be similar efforts taken by other provinces as well.</p> <p>However, the regulation has not expressly defined the term “fisheries professional”. Therefore, it is assumed the term is referring to the fishers.</p>
<p>Article 31 (a) of the Convention - the prevention of occupational accidents, occupational diseases and work-related risks on board fishing vessels, including risk evaluation and management, training and on-board instruction of fishers.</p>	<p>Gazette Notification No. 1600/13 of 2009.05.05</p> <p>Fishing Boats Safety (Design, Construction and Equipment) Regulations 2009</p>	<p>This regulation applies in respect of new decked and undecked fishing boats which are <u>less than 24m</u> in length and operating within the Sri Lankan waters.</p> <p>The Director General as the Competent Authority should oversee the construction of the boats. The regulation details several specifications to adhere to during construction of the boats, making all boats designs, plans and other relevant information and documents to be submitted for Director’s approval.</p> <p>Salient provisions include, emergency instructions, lighting, heat, and ventilation, sanitary facilities.</p>	<p>It should be noted that these regulation specifications do not apply to High Seas Vessels which are mostly vessels more than 24m in length.</p> <p>The implementation of these specifications is also not satisfactory according to the KPIs, as the fishers heavily criticized the bare minimum facilities inside the boats.</p>

5.8 Labour issues and risks faced by fishers and boat owners, and benefits of the ratification of Convention No. 188: Findings from primary data analysis

This section draws on KPIs, individual interviews and focus group discussions conducted as part of this study and secondary literature, and is organized according to the Articles set out in Part III–Minimum requirements for work on board fishing vessel Convention No. 188.

Minimum age–Article 9

There is a tendency for those below 18 years of age to engage in fish work in deep sea vessels, however this decreases with the length of the boat²⁸. KPIs with government fisheries officials at the national level as well as at the district level and with civil society actors who work closely with fish workers reveal that numbers of youth below 18 engaging in deep sea fishing have largely decreased and are currently minimal. The regular mandatory checks of copies of the National Identity Cards of all crew prior to issuing the departure card is identified by the government stakeholders as contributing to this decreasing trend. Instances where children and young people engaged in shore based activities such as cleaning boats however, could still be observed. The fishing community was of the opinion that these activities performed by children/adolescents were not hindering their education.

BENEFITS:

Continuation of education of the younger/next generation of fishing communities:

The fishers in general lament their coming into the sector at a very young age, which they perceive as limiting their livelihood choices and social mobility. The older generation—both men and women—were of the strong opinion that they prefer their children to move out of the fisheries sector, due to extremely difficult working conditions and the social stigma still attached to being a ‘fisher’. This will create a labour shortage within the sector, in the near future. Therefore, while ensuring the continuation/completion of the education of the younger education by enforcing a minimum age to engage in catching fish, the fisheries sector needs to be given recognition as a profession and ‘professionalised’ as a desirable career path including strong vocational training skills, for youth from both fishing and non-fishing communities.

Medical Examination–Articles 10, 11 and 12

According to the KPIs, medical certificates are not a pre-requisite for recruitment as multi-day crew. A survey conducted on the Southern coast focusing on harbours in 2019 highlighted a few incidents of cardiac emergencies while at sea. KPIs for the current study stressed the increasing incidence of non-communicable diseases among fishers and reported incidents of distress calls to send crew members with health issues to the shore. These emergency evacuations from boats in the high seas usually require the Navy to step in and proves costly for the Government of Sri Lanka. Therefore, a strong call was made to ensure medical certificates are mandatory for fishers and there was an indication from the fisheries authorities that there were already discussions underway to bring in necessary regulations to make this mandatory. However, fishers and boat owners have already expressed their opposition to this proposal due to the expense of obtaining the certificates. A solution has been

²⁸ B.H.N. P Priyanthi, (2011). “Guidelines for Formulating National Standards for Work in the Multi-day Fishing Sector” (unpublished Bachelor’s Thesis, 2011).

proposed by the fisheries authorities to make the services of a government medical practitioner available at the harbours, for the convenience of the fishers.

BENEFITS:

Promoting a healthier fisher population:

Provides for the rights of people for adequate medical care (Article 25 of Universal Declaration of Human Rights).

Bringing down evacuation costs brought about by illnesses linked to pre-existing health conditions such as high blood pressure.

Manning and hours of rest–Articles 13 and 14

None of the existing fisheries specific regulations cover this aspect for the fisheries sector in Sri Lanka. Primary data collected for this study reveals that manning and rest on-board the vessel fall within a wide range, with the relatively smaller multi-day boats with smaller nets and shorter long lines requiring shorter manning hours and more frequent rests and the longer and larger nets and lines necessitating longer hours of manning and shorter rests periods.

In general, all the fishers consulted were of the opinion that fishing is an extremely tiring job, making great physical demands and testing mental strength to withstand the rough conditions at sea. Examples were given to us of many instances where they could not consume the meal that was prepared because of the rough seas or long working hours, as the following extract by a fisher in Valaichchenai shows:

“If we set the nets at 6pm, we have tea and then we lie down until 2 am. We can’t go to deep sleep, it’s only for the sake of sleeping that we lie down. It is difficult to sleep in a boat. You are moved here and there and sometimes fall off the bed also due to boat movement. Our sleep is like this. It’s not a real sleep.”

The hours depend on the type of fishing method and the size or capacity of the fishing equipment. Certain fishing methods provide the opportunity for comparatively longer hours of rest. For example, those who work on a 48 feet (14.6m) length boat using long lines (hook and lines) of 1400 hooks for fishing, using bait brought from the shore, spend about eight hours laying the hooks, rest for about 13-14 hours and then start reeling in the hooks, which would take on average about 12 hours. Then they rest for about 12 hours and repeat the process again.

However, those who use other methods of fishing, lack rest. For example, those who use live bait for long lining, work almost 24 hours at a stretch, catching the bait, hooking it and laying it. Those who use both the nets and long lines, in 36 feet (11m) vessels, spend about four to five hours catching live bait in the morning, rest for about six hours and then lay the net as night falls and lay the long lines around mid-night.

BENEFITS:

Introducing regular hours of work, in agreement with fishers and customized by fishing method, type of gear used, vessel type and other relevant factors, will



enable the right to enjoy favourable working conditions for the fish workers as per Article 23 of the Universal Declaration of Human Rights and minimize the image of the fisheries sector as an extremely physically grueling form of work. In conjunction with other conditions such as technical, regulated and recognized training, this will attract labour to the sector; a vital factor for sustaining the sector beyond the near future.

Figure 4: Hooks Used in Long-line Fishing

Crew list–Article 15

At present, a hard copy of the crew list per fishing trip, per boat is maintained at the High Seas Unit along with a copy of their National Identity Cards. While there still seems to be few isolated cases where unnamed crew members depart for a fishing trip, in general, the submission of a crew list to the authorities is practiced.

BENEFITS:

The boat owners were of the opinion that, if this list is digitalized and shared as a database across all the harbours in the country, coupled with a work agreement that includes financial transactions between crew, skipper and boat owner, the practice of taking an 'advance' from one boat owner and leaving on the boat of another boat owner could be prevented.

Fishers' work agreement–Articles 16-20

As discussed in the section titled 'Conditions of service and work agreements of fishers in Sri Lanka', none of the primary data and the available secondary literature points towards the existence of a written contract between the boat owner, skipper and the crew members. Verbal agreements still prevail and would include payment terms, including the amount advanced prior to a fishing trip, hours of work, approximate

duration of the trip, bonuses and any liability. This agreement is valid for the duration of a single fishing trip only.

At a practical level, multi-day fishing provided fish workers and craft owners the opportunity for higher returns to their labour/management or high incomes. A recent study conducted focusing on the Southern Coast shows that multi-day boat fish workers earn on average LKR770,000 to LKR1,500,000 per annum, with about 11 fishing trips per year. However, their incomes fluctuate, given the inherent risky and uncertain nature of fishing. However, as a sector that provides the flexibility of working with different teams and employers, requires relatively less formal training, and looks more for the correct kind of aptitude and hands-on skills, work on multi-day boats have become attractive to certain groups of the society. The crew members found the idea of being tied to a certain group of people as crew or as a boat owner extremely unappealing, beyond one fishing trip. For most crew, the freedom to change boats, fellow crew and boat owners was one of the biggest attractions of the sector. There are a number of economic and social reasons for this. The crew wants the freedom to shift from an inefficient craft (low capital productivity) to an efficient one, that will bring in higher returns. On the social front, the crew may want to shift to a craft that is well managed by a good skipper and with a socially applicable working environment. It is also true that, a 'good performer' would prefer shifting of crafts while a bad performer may not. On the other hand, the idea of sharing responsibility with the boat owner, especially for any form of accidents and loss of life at sea, proved appealing to crew. From the perspective of boat owners, crew members taking an advance and leaving for a fishing trip in the boat of a different boat owner continues to be a serious concern as discussed in detail in the section on conditions of service and work agreements of fishers in Sri Lanka.

Therefore, as a start, a document in the form of an agreement, setting out basic information such as details of crew members, the period of the voyage, the respective skipper and boat owner for that particular trip, the money owed to the crew member from the relevant skipper and boat owner or vice versa, responsibility to protect his life in case of sickness or injury should be designed and discussed with crew, skippers and boat owners. During the primary data collection and consultations with the fishing communities, the fishers including the owners and skippers were intimidated by the use of the word "Agreement", but we received a positive response when the contents of the agreement were explained in detail.

Boat owners and skippers were largely supportive of this arrangement since, (i) sharing responsibility in case of emergency was appealing to them, and (ii) this will render some sort of precision in terms of collecting the crew members. However, the crew members were largely against the introduction of a "work agreement". This was due to several reasons:

1. That this will prevent their capacity to switch from one boat owner to another at the last moment and cheat on the advance payment collected from the earlier boat owner;

2. That this will somehow bind the crew members towards bearing the responsibility of covering the expenses, damages to the boats, and other liabilities; and
3. Under the (mistaken) impression that once they enter into an agreement, they will have to stick with the same boat owner and skipper for more than one trip.
[**Note:** both skippers and crew members unanimously demanded that any form of agreement has to be on a per trip basis, enabling them to switch to a different boat owner, skipper and a crew on the next trip.]

These challenges will have to be carefully addressed if the work agreements are to be introduced. On the other hand, in relation to the crew, when they are attached to a well-known efficient boat with a good skipper, they may want to ensure security of employment for several trips. Then they would prefer a work agreement for better protection.

BENEFITS:

An agreement that specifies responsibilities and roles of crew, skipper and boat owner, including in the case of loss or damage to the vessel, equipment or to life, will provide a safety net for the fishers, given the extremely risky nature of their work. Such an agreement can form the basis for any kind of compensation for an accident at sea to the fisher and provide a safety net for their family back home.

A work agreement, either written or oral, but standardized, and the resulting job security may bring in a new group of workers in the sector, and may displace others. It may prove especially attractive to certain youth, who would prefer to have a relatively longer term predictability in the income source.

This will also provide important information and data of the particular fisher in terms of the longevity of their career, the amount of income he generated which will be important to develop a system for their social security or a pension scheme.

For the boat owners, a work agreement with a crew member will provide them with a basis to hold their crew accountable to any illegal activities in the sea. For example, incidents of illegal fishing or other illegal activities at present are the full responsibility of the boat owners, however, if there is some form of agreement with the skipper and the crew, they could also be held accountable for their actions out in the sea.

For boat owners, as explained above, such an agreement will enable minimizing of losses incurred by them when fishers take an advance and do not show up for the fishing trip, as agreed. This would prove useful to inform the fisheries authorities of such practices and prevent the worker from engaging in a different fishing trip.

Clearly laid out terms and responsibilities of the boat owner, skipper and crew members will minimize these disputes which sometimes turn into physical violence and result in not only economic losses, but loss of lives too.

Work agreements would ensure that each party would stick to its part of the bargain.

There is clear understanding of the conditions of service preventing any future disputes among parties.

Provides the workers with the required social security protection, which not only benefit fishers but their families as well.

The craft owner ensures that crew members would perform their responsibilities as stipulated in the work agreement while the crew ensures that the owner will provide all facilities as laid down in the agreement.

Recruitment and placement –Article 22

As explained above, in vessels that are owned by individuals, the recruitment takes place through the skipper and the crew usually form their own groups, and they could be related. In most cases, the relationships work to mediate any disputes especially out in the sea. Most disputes occur when the crew do not have any inter-linkages.

One recruitment/manpower agency was mentioned as facilitating the supply of local crew members to the flag state vessels that operate from the Dikkowita harbour. The standards and certifications followed and obtained by this agency and regulations that are being followed by this agency are unclear and based on the data collected for this study reveal to be almost non-existent.

BENEFITS:

Regulating and establishing licensing for recruitment agencies will improve decent working conditions on-board vessels and attract qualified local labour especially to the vessels that are longer than 60 feet (18.2m).

Payment of fishers–Article 23 and 24

Payment is on a catch-share basis, often 50-50 between the boat owner and the crew, after all the costs, including that of support services such as boat cleaners (*orukarayo* in Sinhalese) are deducted. Then the crew including the skipper would get equal shares of their 50 per cent share. The skipper would receive five to ten per cent from the share of the boat owner, as a '*vadikotaha*' (translates into 'extra portion') for the 'special' responsibilities that he has to carry out or LKR10 per kilo of fish caught. An exception to this share basis is when long lines are used with live bait. In Valaichenai, in such cases, the revenue, after deduction of costs is divided equally among boat owner, skipper and crew; the boat owner would also get 1/5th or 1/6th of the share, depending on the number of crew (certain boats carry five and others carry six crew). In Dewundara, the revenue from such long line fishing is divided into eight, three would go to the boat owner and the rest gets divided among the five crew. Long line

using live bait needs extra work, such as catching live bait, hooking and pulling, which are all difficult tasks, hence the share basis reflects this effort.

The crew members are present on the day the financial calculations are done, they are aware of the price of the fish and the quantities sold etc. The boat owner gives the 50 per cent of the crew's 'profit' to the skipper and the skipper distributes it among the crew members. The advance is paid on recommendation of the skipper, therefore, the skipper is expected to take responsibility for the crew and for paying them.

REPATRIATION-ARTICLE 21

Repatriation of fishers who had been rescued happens via the relevant government diplomatic missions and therefore, was not cited as a concern by the fishers nor the relevant government officials.

Accommodation and Food-Article 25-28

As per primary data collected, food on-board the vessels is of good quality and variety. Quality of accommodation and facilities, on the other hand varies. Most boats do not have toilets, none of the boats had facilities for showers and they comprise only about four bunk style beds. Accommodation facilities are contingent on the length of the boat, with the bigger boats providing better facilities for the workers. Sanitary facilities are only available in boats that are bigger than 44 feet (13.5m). KPIs revealed that these facilities and conveniences are increasingly sought after by young crew members, and therefore, the boat owners tend to provide these facilities,



Figure 5: A Toilet on a Multi-day Boat

in order to attract and retain skilled and reliable labour. Therefore, the benefits of providing these facilities are already emerging.

Field observations carried out for this study reveal that there are no sanitary facilities within the boats that operated from the Southern harbours such as Puranawella or in the East-Valaichchenai. However, the boats that are longer than 40 feet (12m) operating off Dikkowita harbour had basic toilet facilities on-board.

In general, sleeping spaces are extremely narrow and most of the fishers complained of having soreness in their arms due to uncomfortable sleeping positions.

BENEFITS:

Dedicated space for cooking can minimize hazards.

Risk of injury and loss of lives at sea due to unsafe sanitary practices (by hanging off the side of the vessel) can be reduced.



Improved sanitation on-board a vessel will contribute towards better quality of fish caught and transported in the vessel.

Improved sanitation facilities and accommodation will have a positive impact on the health of the crew and productivity and ensure peoples' right to enjoy favourable working conditions.

Improved living and working conditions on-board vessels will attract and retain workers in the sector.

Figure 6: Bunk Beds in a Multi-day Fishing Boat

Medical Care, occupational safety and health and accident prevention- Articles 29-33

Discussions with KPIs revealed the pressing need for increased awareness and training on basic medical care for the crew while at sea. Although basic medical supplies are taken on board a vessel, lack of knowledge on their use was seen to hinder any benefits. However, discussions with fishers revealed that they do possess the basic knowledge of medicine and in Dikkowita the fishers reveal how they arrange for the pharmacy to label the medicines and the illness for which it is to be taken. The enforcement of relevant articles under Convention No. 188 will rectify these concerns, at least to a certain extent.

While carrying life jackets on-board the vessels have been mandatory, use of the same while at work in the sea remains unsatisfactory. Clear messaging on its importance including steps to address the discomfort or non-viability of wearing the life jackets when engaging in fishing related tasks through dialogue with fishers and strict enforcement measures may prove beneficial. One KPI cited an instance where the crew of a boat that had capsized in the deep seas had been rescued because they were wearing life jackets.

Historically, the sector is primarily characterized by a fish worker new to the sector being taken on a few fishing trips and being trained while 'on the job' by the rest of the experienced crew, with very little formal skill transfer taking place. The only such formal training active at present is the training delivered prior to the provision of a skipper license and this was met with mixed feelings by the fishers/skippers. According to primary data collected for this study, this seven-day course focuses on First Aid, fisheries laws, and navigation. The experienced skippers found the training to be extremely inadequate while the relatively new entrants to the sector found the training to be useful. A clear need was expressed by the fishers across the board for a formalized and practical vocational training system, for crew of multi-day fishing.

BENEFITS:

Minimize accidents at sea and loss of lives.

Minimize discomfort at sea and enable carrying out fishing related tasks with minimum interruption to the working rhythm on board a vessel.

Increase both capital and labour productivity.

Attract trained and highly skilled fishing labour into the sector.

Social Security–Articles 34-37

Social security was expressed as one of the most important and severely inadequate aspects proposed to be introduced through this Convention by the fishers and boat owners alike. As discussed above, with an increasingly ageing fisher population, when age or physical limitations force them to refrain from engaging in deep sea fishing, they opt for fishing in one-day boats, which at present is considered their social safety net. The relatively risky and physically demanding fisheries activities are increasingly limiting fishers' ability to continue engaging in fishing beyond middle age and a lack of skills in other sectors make them economically vulnerable. Most of these fishers do not qualify for the targeted social security schemes such as Samurdhi, given their income levels. The pension of about LKR1000 to LKR3000 that some of the fishers above 60 receive, is woefully inadequate to cover their living costs at present and the suspension of new entrants to the pension scheme was seen as a serious loss by fishers, both young and old, and by the wives of fishers as well.

The present pension scheme is collapsing: rather than a member contributory scheme, the scheme is largely seen as a welfare scheme eating into public funds. Many insurance schemes like craft insurance schemes pay indemnities only when the fishers are dead in an incidence of complete craft damage. There are several flaws in the insurance schemes, which have become less attractive to fishers. No social security cover is provided for injuries at work or as disability benefits for fishers at present. During the consultations with fish workers for this study, the fishers expressed clear interest in being part of a member contributory pension scheme, with adequate benefits for them and their dependents. These issues will have to be looked into and the deficiencies of the schemes need to be corrected.

BENEFITS:

Providing the assurance of a safety net during old age, the ability to plan for retirement and the ability to be financially independent.

Ensuring overall fisher family wellbeing: Faced with failing health and lack of physical fitness to engage in deep sea fishing, fisher households may place the extra burden of ensuring household wellbeing on the women. This may lead to a compromise in the health and wellbeing of the women in fisher households, particularly in the latter stages of their lives. Youth may be required to abandon their higher education or professional training plans, faced with financial difficulties in their household, when the main income earner is unable to generate an income. This in turn will trap such households in lower or insecure income levels, constraining opportunities for upper social mobility and causing inter-generational poverty or socio-economic vulnerability. Therefore, a well planned and executed social security scheme would benefit dependents, and provide a cushioning effect and ensure the overall wellbeing of fisher families, in the near future and ensuing generations.

It is necessary to ensure that social security schemes, such as those that provide for old age security, disability benefits, medical care benefits, injury benefits are in place.

Protection in the case of work-related sickness, injury or death– Article 38 and 39

Most crew members do possess an insurance cover, as it has been made mandatory since 2014/2015. However, making claims was identified as a long drawn out process (for example, the waiting period of six months–one year since the death, for cases when the body is missing at sea). Further, the total claim of LKR 1 million through the private insurance provider was provided only for a death caused by an accident at sea, whereas for deaths caused by a pre-existing condition such as high blood pressure leading to a stroke, the claim was around LKR250,000. The inability to claim for injuries as a result of accidents at sea, was also highlighted by fishers as a main gap in the existing insurance scheme. Boat owners, especially in the South, highlighted the need for evacuation in case of an emergency illness or accident at sea. As mentioned above, there are many flaws in the insurance schemes.

The Development Division of the DFAR should probe into these issues and more effective social security protection schemes need to be designed.

BENEFITS:

At present, the insurance scheme supports the family, especially in case of a death at sea and provides a safety net for children, to continue their education.

Payment as compensation for injuries at sea will lessen the burden on other family members to supplement household income.

5.9 Benefits to the sector through strengthening labour conditions and standards

There is no generalizable empirical data to point towards inter-generational and within-lifecycle work patterns of fisheries. However, qualitative interviews conducted for this study and previous studies show that children of traditional fishers are aspiring to move away from the sector. Historically, fisheries had been a traditional, caste-based livelihood, characterized by close kinship networks and reciprocity, as discussed above. However, harsh working conditions, coupled with aspirations of higher socio-economic mobility and the strong need to break the socio-cultural bindings of social stigma attached to fisheries, is contributing to a loss of appeal for youth from traditional fishing families continuing in the sector.

A common thread that ran through all the primary data collection activities with the fisher communities was the high usage of drugs such as heroin among fishers. While this was not generalizable to all the fishers, this trend of drug abuse was highlighted by all fisheries sector stakeholders. This was seen to be most common along the Southern coast, but was found to be prevalent in the other coastal areas too. While use of alcohol was never a new phenomenon to the sector or the fishers, the continued and increasing trend of the use of drugs points towards a rapid deterioration of the quality of the labour force in the sector. This in turn is severely constraining parents' attitudes towards their children joining the sector.

At present Sri Lanka lacks a comprehensive legal instrument or an Act that sets out the labour standards for fish workers to ensure decent working conditions. As explained above, while certain aspects such as compliance and monitoring of high seas vessels and protection in the event of a death at sea is provided for in the existing legal frameworks for fishers, the biggest gaps in labour conditions remain with regard to work on board fishing vessels (medical examination) and conditions of service (manning and hours of rest, crew list, fishers' work agreement, recruitment and placement, payment of fishers) and accommodation.

The fact that fishers nor boat owners make use of existing general labour laws within the country is very clear. This gap may hinder the country's plans to establish partnerships with foreign vessels for exploiting high seas fish resources using modern technology and constrain access to certain export markets (the latter is explained in detail below). The ratification of the Work in Fishing Convention, 2007 (No. 188), inclusive of the ground level conditions of Sri Lankan fisheries, will provide this overall legal framework to improve labour standards within the sector.

Therefore, the labour standards introduced by the Work in Fishing Convention, 2007 (No. 188), will contribute towards improving the labour conditions of the sector, thereby attracting a steady supply of workers who aspire towards decent working conditions and contribute towards its sustainability.

Benefits to exports/international trade of fish

Adhering to international harvesting/production and trade standards boost up the country's export earnings by providing access to tariff concessions, opening up new markets and providing a premium price for products. Non-adherence to such standards, especially judged by international regulatory bodies or importing blocs, through a lack of national legal frameworks will penalize the whole sector.

The most recent and impactful example of this in the Sri Lankan seafood sector is linked to the EU export ban on sea food into Europe in 2015-2016. The EU was the biggest seafood export market for Sri Lanka, making up 68 per cent of its total seafood exports in 2014. With the ban, the seafood exports were severely hit. In the year 2015, Sri Lanka's seafood exports declined 35.5 per cent to US\$163.1 million compared to US\$252.7 million earned in 2014. Sri Lanka's fish exports to the EU at that point made up 68 per cent of the country's total fish exports²⁹ comprising mainly Tuna and Sword Fish. The results were felt all the way along the value chain, impacting fishers, both mechanized one-day craft fishers and multi-day craft fishers, with severe drops in fish prices. With the lifting of the ban, the exports have recovered and improved, recording LKR39,230 million in 2017³⁰.

The primary reason for the EU export ban, as stated by the European Commission, was the lack of legislation to prevent Illegal, Unreported and Unregulated (IUU) fishing. Since the ban, the Government of Sri Lanka had taken legislative measures to tighten regulation of IUU, through increased fines for violating of fisheries laws in international waters, in February 2015 and the implementation of a 'Road Map' comprising 57 tasks towards 'Responsible Fisheries'. Some of these regulatory actions taken towards the increasing compliance with international standards had resulted in the amendments to the Fisheries Act discussed above. However, improving fishers' labour conditions and job security had not been part of these measures, in any comprehensive manner.

At present, as the table below focusing on the top 20 seafood buying countries shows, the USA stands as the most important buyer of Sri Lankan seafood products, followed by Italy and the Netherlands in the EU. As a bloc, the EU continues to be a very important buyer of exported Sri Lankan sea food.

²⁹ <http://www.ft.lk/article/548996/European-Union-completely-lifts-ban-on-import-of-Sri-Lanka-seafood>

³⁰ Department of Fisheries and Aquatic Resources, Statistics, 2018.

Table 3: Top 20 Seafood Buying Countries

	Quantity	Value-LKR
United States	2,900,650 Kg	35,808,873
Italy	2,443,095 Kg	29,260,045
France	1,898,193 Kg	22,096,902
Netherlands	1,061,717 Kg	17,659,576
Hong Kong	811,587 Kg	15,271,577
Japan	1,660,904 Kg	15,072,843
United Kingdom	1,648,091 Kg	14,019,945
Germany	851,710 Kg	13,536,540
Canada	1,407,128 Kg	12,085,002
Taiwan, Province of China	1,928,108 Kg	10,243,864
Thailand	763,048 Kg	7,719,655
Saudi Arabia	1,434,071 Kg	7,155,186
Israel	426,850 Kg	6,971,233
China	1,367,374 Kg	6,776,565
Viet Nam	1,736,134 Kg	6,195,372
Switzerland	693,742 Kg	5,756,556
Malaysia	422,910 Kg	5,224,487
United Arab Emirates	845,308 Kg	4,517,799
Singapore	365,743 Kg	4,327,662
Spain	476,046 Kg	4,103,817
Maldives	381,472 Kg	3,482,978

Source: Export Development Board

KPIs conducted for this study highlight the important role certification processes play in international markets by building a certain image of the country's seafood sector. According to the KPIs, some of the Sri Lankan export companies have already been successful in certifying their products through third party certification companies such as the British Retailers Consortium (UK) and Global Aquaculture Alliance (USA) and ISO28000:2007, Hazard Analysis and Critical Control Point (HACCP, USA). According to the KPIs, out of the 72 registered seafood export companies in Sri Lanka, 34 already follow EU standards and therefore are approved by the EU markets.

These third-party certification processes are not mandatory, nor are they regulatory, in the current context. However, they are driven by the market and by consumer demand. Most of these certification processes cover sustainable harvesting of seafood, food safety and hygienic food processing, and some do cover labour standards as well. The SA8000 Standard by Social Accountability International is

focused specifically on labour standards in production. It covers child labour, forced or compulsory labour, health and safety, freedom of association and right to collective bargaining, discrimination, disciplinary practices, working hours, remuneration and management systems. In Sri Lanka, there is one seafood company that is certified in SA8000. However, these standards apply only to the workers within the processing facility and they exclude fish producers/fishers.

KPIs highlighted that these certification processes ensure continued access to export markets in countries such as the USA, EU and increasingly Eastern markets such as China and Japan as well. While their ability to bring in a premium price for the products was unclear, as per KPIs, these certifications and compliance to international standards are increasingly becoming a requirement rather than a choice, to stay in these markets. The ratification of a convention such as Convention No. 188, which focuses specifically on labour standards and improved working conditions for the fish producers, will clearly expand market access for Sri Lankan seafood products.

Other certification processes such as FAIRTRADE-Network of Asia and Pacific Producers³¹ focus on bringing fair trade premiums 'back' to the producers/workers and at present is in place in the tea sector in Sri Lanka. The FairTrade USA-Capture Fisheries Programme³² focuses specifically on the fisheries sector, and includes discrimination and abuse prevention, freedom from forced labour and human trafficking, protection of young persons and children, freedom of association, conditions of employment, occupational health and safety, fishery documentation, data collection, stock health, biodiversity and ecosystem protection, water management, governance, product traceability and contracts and agreements. This certification stipulates that the registered fishermen are the recipients of the FairTrade Premium and therefore ensures that the producers are directly benefiting from the premium.

Currently, Convention No. 188 had been ratified by 18 countries, including seven EU member states (France, Estonia, Lithuania, Portugal, Poland, the Netherlands, and Denmark) as well as the UK and Norway. The Convention will be enforced by several of them by the end of 2020 or early 2021 while many more EU countries are likely to ratify the Convention, since the EU has advised its members to do so. In order to create a level playing field, EU member nations would normally expect countries exporting fish to the EU to also ratify instruments that already apply to the fishing industry of its member countries. If fish from marine capture fisheries of Sri Lanka are to enter the EU market, it would therefore make sense to ratify the Convention to proclaim that it upholds all its social responsibilities as a Flag State (Article 94 of UNCLOS on duties of the Flag State).

³¹ <https://www.fairtradenapp.org/products/>

³² https://www.fairtradecertified.org/sites/default/files/filemanager/documents/CFS/FTUSA_STD_CFS_EN_1.1.0.pdf



Conclusions

The Sri Lankan fisheries sector is fundamental to the country's food security and employs about seven per cent of the total labour force. While traditional labour relations built on social norms, reciprocity, and trust provided some form of labour protection historically, the mechanization, modernization and globalization of the sector prove that the traditional norms may no longer be sufficient to protect the workers. These very same phenomena are making work in fishing even more hazardous and isolated, as fishing trips are becoming longer and the distance between the vessel owner and crew are becoming ever more pronounced.

Despite modern technology, fishing remains one of the riskiest jobs in the world. In Sri Lanka, despite the important contribution that fish makes to the country's food supply, nutrition, trade and export earnings, they lack recourse from a comprehensive legal framework that provides adequate social protection mechanisms, comprehensive protection against injury and death at sea and protection against any potential exploitative labour practices. This is particularly true with the expansion of deep sea fisheries using multi-day crafts which are quite small compared to deep sea fishing fleets of many other countries, but engaged in long fishing trips with little facilities for crew on board.

Sri Lanka has a fishing fleet of about 60,386 crafts of which nearly 5,500 crafts are involved in offshore and deep sea fisheries, including high seas fisheries. Of the total annual fish production of 531,310 MT, 189,720 MT are produced by this offshore and deep sea fleet. This sub-sector's contribution to production has doubled during the past decade, while the small-scale capture fisheries have shown a levelling off.

The fisheries sector is important for Sri Lanka's current macro-economic performance and for future trends. The fisheries sector plays a leading role in Sri Lanka's trade balance, generating a foreign exchange income of around LKR240,649,150 in 2017 or 2.3 per cent of the national export earnings. With other sources of foreign exchange such as the apparel sector and remittances reducing in global crisis situations such as the COVID 19 Pandemic, essential food products such as fish continues to be in demand.

The fisheries sector is fundamental for the country's food security. The sector provides 70 per cent of the animal protein consumed by the nation's total population. Of the annual total fish production, 85 per cent of this production comes from marine fisheries, of which 60 per cent is landed at fishing ports (about 280,000 annual

tonnes). Among the predominantly Buddhist population of Sri Lanka, fish is preferred to meat and the country's meat consumption is on the decline in relation to the consumption of fish, showing the growing importance of fish in the Sri Lankan diet and protein nutrition.

The fisheries sector employs seven per cent of the country's labour force. Sri Lanka's fisheries sector provides direct or indirect employment for about 540,000 people. The sector employs 220,960 persons directly and an additional 275,000 persons are estimated to be employed in several fishery-related economic activities, such as boat building; fish net manufacturing; ice production; processing, trading and marketing of fish; and in providing other services required by the industry, such as transport, repair of engines, and hull work'.

Traditional labour relations and resultant reciprocal practices within the sector are changing, creating a need for formalized systems, standards and forms of labour protection. The socio-economic characteristics of those engaging in fishing are also changing. The fisher population is ageing and will be falling out of the sector without a strong safety net. Globalisation of fish value chains is changing the composition of fisheries labour and the sector as a whole in Sri Lanka. However, Sri Lanka is not fully equipped to deal with the implications of these trends on fisheries labour.

Despite technological advancements, fishing remains an extremely risky and precarious form of work. Fish workers do not get covered through Sri Lanka's general labour laws and therefore are left vulnerable. A comprehensive legal framework for labour in fisheries is lacking and may constrain plans for the upgrading of the sector via international partnerships. Therefore, there are clear gaps in decent work standards, safety at work and social protection for fishers. Further, the sector is characterized by low adherence to occupational safety and health measures.

Benefits of the ratification of ILO Work in Fishing Convention, 2007 (No. 188)

To skippers and crew workers

- Provide social security to workers in the fisheries sector and their families,
- Provide protection in the case of work-related sickness, injury or death,
- Improve facilities on-board the fishing vessel which will increase labour productivity in the longer term,
- Improve job satisfaction, enable healthier work patterns and enable access to decent working conditions,
- Minimize labour related disputes and provide labour protection,
- Improve social recognition for the jobs offered by the sector.

To Boat Owners

- Provide a work agreement that sets out employment conditions, roles and responsibilities among crew, skipper and boat owners to facilitate labour dispute resolution,
- Facilitate increased labour productivity and ensure continuous supply of labour,
- Minimize risk to the craft and minimize costs in maintenance of craft.

General to the sector

- Ensure the sustainability of the fisheries sector,
- Provide Human Rights protection to workers: the right to enjoy favourable working conditions,
- Facilitate trade related benefits through providing labour protection and decent working conditions to the fish workers.

The ratification process

- a. The process of ratification might take a period of two years at the minimum.
- b. First a Competent Authority will have to be identified to lead the ratification process and to finally serve as the authority to enforce the Convention.
- c. All fishers: skippers and crew workers, will have to be registered at the competent authority and identity cards be issued.
- d. Tripartite discussions will have to be held in a number of locations, with Fisheries Officials (government), boat owners and skippers, which is especially important in drafting a work agreement.
 - First round: discussions among Government officials, boat owners and crew members at locations such as Dikkovita, Trincomalee, Beruwala and Kudawella (large harbours).
 - Second round: an advisory committee consisting of experts in the field of fisheries and labour relations, prepares a policy document indicating the Articles in the Convention to be adopted, which is to be submitted to the ILO for comments. Requests for progressive implementation can be given here.
 - Third: a final Tripartite meeting along with the ILO, to finalize the ratification process and means of implementation, including work agreements.
- e. Inefficiencies in the current insurance schemes will have to be corrected before making insurance compulsory. The Fisheries Development Division of the

Department of Fisheries needs to have discussions with all relevant parties including insurance companies and boat owner associations and fishers.

- f. The Fishermen's Pension scheme will have to be re-designed, should be based on member contributions and be effectively managed. This responsibility too, lies with the Development Division of the Department of Fisheries.
- g. There is also a need to introduce appropriate boat design and to develop boat standards, to ensure adequate facilities are available on boats for accommodation, sanitation, work performance, etc.
- h. It may not be feasible to adopt all relevant Articles of the Convention No. 188 at once. One may make use of provisions made under Article 4.3 to 'progressively implement' some of the articles, such as those on medical certificates (10) and risk evaluation (33).

Required conditions for ratification

1. The process of ratification involves correcting deficiencies in respect of the fisheries insurance schemes. This involves a series of discussions among the government actors, fishers, boat owners, insurance companies and insurance experts.
2. A new Fishermen's Pension scheme has to be designed, that will depend on member contributions rather than becoming a drain on state funds. Here the government has to negotiate with fisher organizations.
3. Tripartite discussion at diverse locations are quite important to explain the advantage of adopting the Convention to different parties. These discussions should be mediated by independent experts, such as university academics / researchers. This is especially important, given the fact that fish workers seem somewhat reluctant to enter into written agreements with a specific boat owner and therefore, may resist attempts at ratification.
4. The High Seas Fishing Unit has to be vested with the authority of monitoring the implementation process and guiding the process of progressive implementation of the respective articles. Thus, this unit will need to be strengthened with staff recruitment and training.

Expansion into excluded sectors (to undecked vessels in Small-scale Fisheries)

The same provision for progressive implementation could be utilized to gradually extend the coverage of the Convention No. 188 to undecked vessels (ex. small mechanized crafts with outboard motors), especially in providing the fish workers with social security protection.

Annex 1

Ratification of ILO Work in Fishing Convention, 2007 (No. 188)

Key Person Interview Question Guide

Note: Relevant sections will be used, based on the identified KPIs

Data requirements

What is the latest data on number of vessels by type and district (including foreign/flag state vessels), number of active fishers, disaggregated by sex (if available) and number of fishing families?

What is the latest available data on fish production, local and export fish trade, by sector (coastal and deep sea) if available?

What is the latest available data on number of insurance policies taken by boat owners and fish workers for people and crafts?

What are the fisher insurance schemes in operation at present and how many fishers are being insured through these?

What are the social security schemes in place such as fisher pensions and how many fish workers are benefiting through these?

What are the other social benefits being offered to fish workers such as housing schemes and so on, and how many fishers are benefiting from these?

Questions

Minimum standards of work on board

- What are the current laws and regulations in place to ensure minimum standards of work on board? (minimum age and medical certificate)
- What are the informal rules and norms in place and how can these be strengthened?
- *Minimum age*
 - What is the minimum age of work on board a fishing vessel?

- Are you aware of instances where those below 15 engage in fisheries related work? In what ways?
- *Medical examination*
 - Do the fishing crew obtain medical certificates as part of the insurance process or otherwise? Do you think obtaining a medical certificate is a requirement for the fisheries sector? Why?
 - If the fishers are required to provide a medical certificate, which government authority do you think would be considered as the competent medical examiner?
 - How often do you think such medical certificates should be obtained?
 - What do you think would be the challenges in obtaining such certificates from the point of view of the fishers and issuing them from the point of view of the relevant government authorities?

Conditions of service

- What are the main concerns that a fish worker faces in terms of work conditions on-board a vessel? How can these concerns be addressed?
- *Manning and hours of rest*
 - What are the competency levels of skippers and fishers? What are the skill and knowledge gaps?
 - How can these skill and knowledge gaps be filled?
 - How is the number of crew for manning a vessel decided? What are these numbers by length of boat?
 - Is the number of crew sufficient to ensure safe and efficient functioning of the vessel?
 - How many hours of rest does a fisher get during a fishing trip?
 - How long is their rest period in-between fishing trips?
 - How are these rest periods decided?
- *Crew list*
 - Do all crafts provide a crew list at present? Are there any gaps in this process?
 - Which authorities hold the copies of such lists at present?
- *Fishers' work agreement*
 - Do any of the vessels at present provide a fishers' work agreement? How are these work arrangements decided? Have there been changes to the way the work arrangements are done over the years?

- On what basis are fishers paid? Are there any records maintained?
- What are the challenges associated with providing such work agreements? How would the boat owners react to such a requirement and how would the workers react to such a requirement?
- How do conflicts/disputes between boat owners and fish workers get settled at present? How can this process be strengthened?
- *Repatriation*
 - What are the laws and regulations on repatriation being applied by the relevant government of Sri Lanka authorities?
 - What are the laws and regulations on repatriation being applied to Sri Lankan fishermen, that you know of?
 - Do the vessel owners bear the costs of repatriation at present? Are there any challenges in this process?
 - Does the government bear any costs of repatriation at present?
 - In general, what are the challenges associated with repatriation at present?
- *Recruitment and placement*
 - How does recruitment and placement take place at present? Is there anyone that plays the role of a 'recruitment agent'? (for example, do the skippers handle the recruitment process?)
 - Are there any government agencies playing a role in such recruitment practices? Are there any private recruitment agencies (ex: man-power agencies)?
 - Is there a negotiation taking place between the boat owner, skipper and crew? How does this usually happen? What are the terms of negotiation?
 - Are there any fees associated with recruitment?
- *Payment of fishers*
 - How are the payment terms decided? How much of negotiation power do the fish workers have in deciding the payment terms?
 - How do the fish workers perceive their payment terms? Do they see it as fair and just?
 - How do the boat owners perceive their payment terms? Do they see it as fair and just?
 - In what form do the fish workers receive their payments? Are there any transaction costs involved?
 - What are the advantages of fishers receiving a regular payment at a monthly or other suitable interval?

Accommodation and food

- Accommodation
 - What is the process followed for the approval of boat construction at present? Who is the approving authority?
 - How are the vessel standards decided? What are the accommodation and safety measures being considered now? Are there any gaps?
 - What are the current specifications for ventilation, cooling/heating, lighting, mitigation of excessive noise and vibration, location, size, construction materials, furnishing and equipping of sleeping rooms, mess rooms and other accommodation spaces, sanitary facilities, including toilets and washing facilities, and supply of sufficient hot and cold water?
 - What are the challenges that the boat building industry faces at present? How can these be mitigated?
 - If the fish workers have any complaints about their accommodation and food, who do they complain to? How do these complaints get handled at present?

- Food
 - Is the food served on board vessels of adequate nutritional value and are the quantities sufficient?
 - How are these food related decisions taken?
 - How are the complaints regarding food handled?
 - How are the food related costs paid/shared?

Occupational safety and health and accident prevention

- Medical care
 - Do the vessels carry adequate medical supplies on-board and clear comprehensible instructions on how to use them?
 - Is there a person who is trained in first aid and medical care on-board a vessel?
 - Do fishers have access to medical advice via satellite radio and when ashore?
 - How are safety measures handled at present? Who is the authority in charge? How are the safety measures monitored?

- *Occupational safety and health and accident prevention*
 - What are the measures currently in place to prevent accidents at sea and ensure occupational safety?
 - What are the gaps and how can they be filled?

- Are there risk assessments being done at vessel level/by craft type/geographical location? Who is part of these assessments? Are they being used to take necessary action/mitigation measures?
- What are the training requirements about use of equipment, navigation, handling GPS and other electronic equipment on-board, communication etc.? Are these training requirements being fulfilled at present? How?
- Are there any trainings provided on risk assessment and mitigation to all the fishing stakeholders including boat owners? How? How are these assessments being used?
- What is the role of 'on the job training' for fish workers? How does this happen at present? How can this be strengthened?
- Is there provision of adequate safety equipment for fish workers? Are these equipment being used?
- How are the fishing accidents reported and who compiles the data? What actions are taken based on this data?
- Are there any committees set up to ensure occupational safety? What are the duties and responsibilities of these committees?
- *Social security*
 - What are the social security schemes available for fish workers?
 - How effective is the fishers pension scheme?
 - Are there any employment injury benefits, family benefits, unemployment benefits provided to the fishing communities and households?
 - What are the gaps and challenges in the existing social security schemes and how can these be overcome?
- *Protection in the case of work-related sickness, injury or death*
 - Do fish workers have access to appropriate medical care?
 - What are the formal/institutional insurance schemes in place? How effective are these? How are they being used by the boat owners and fish workers?
 - What are the informal insurance systems in place (for example through the boat owner)? How effective are these?
 - How does formal and informal borrowing operate among the fishing communities? Does borrowing act as a substitute for insurance?
- *Social issues faced by fishers and their families*
 - What are the social issues faced by fishers? What is the role of alcoholism in fishing communities as a social and economic 'issue'?

- What are the issues and challenges faced by women and children in fishing communities? How can these issues be addressed?

Compliance and enforcement

- Do the fishing vessels carry a certificate of compliance from a competent authority at present? How is this issued? Are there any gaps in this process?
- Who is the competent authority at present? Is the number of staff allocated to this adequate?
- Does the competent authority inspect living and working conditions on-board a vessel and provide a certificate?
- Is there a mechanism set up for handling complaints with regards to fishing operations at present? How does this function? Is there sufficient coordination among different stakeholders including relevant international bodies and actors?

General Principles

- *Implementation, competent authority and coordination*
 - Who do you think would be a competent authority to implement and enforce laws under this Convention if and when ratified?
 - How do you think the inter-agency coordination mechanism be structured?
 - How should the compliance steps be monitored in Sri Lanka?
- *Responsibility of fishing vessel owners, skippers and fishers*
 - How do you think the lines of command work before, during and after a fishing trip? In general, how much commanding power/say over things, does a skipper have? How does the change among different skippers affect you? (for example, experienced vs. non-experienced)
 - In case of a dispute/disagreement on board a vessel while at sea, how does it get resolved? How can this process be strengthened?
 - What is the general relationship between the boat owner and the skipper?
 - How should a skipper be strengthened to ensure safety on board a craft for his crew? What are the challenges and what needs to change?
 - What should be done to encourage adoption of safety and health measures by the fishers?

Engagement with Convention No. 188 (for those who had been part of the process from the MFAR and Department of Labour)

- What were the main steps involved leading up to the adoption of Convention No. 188 in 2007?
- What were the gaps?
- What is the Government of Sri Lanka's current stand on ratification of Convention No. 188?
- What do you think are the challenges to the ratification in Sri Lanka?

Fish trade and exports

- Who are the main sea food exporters in Sri Lanka? What are the standards and guidelines that they follow at present?
- What are the main fish and fish product buying countries?
- Who are the main clients?
- What are the qualities and standards that they look for in sea food?
- Are there any fair trade or decent work agreements that are in place and being used by fish exporters to reach markets?
- What is the image of Sri Lankan fishing industry among international traders? What are the areas that need to be improved?
- How can this be improved?
- What are the benefits to trade and exports as a result of the ratification of the Convention and strengthened labour standards?
- What are the future trends in the sea food exports?
- What are the new markets available? How will these new market opportunities benefit the fisheries sector?

Annex 2

Ratification of ILO Work in Fishing Convention, 2007 (No. 188)

Focus Group Discussion Question Guide-DRAFT

Note: This will be adjusted and applied to both men and women from fishing communities.

Conditions of service

- What are the main concerns that you face in terms of work conditions on-board a vessel? How can these concerns be addressed?
- *Manning and hours of rest*
 - Do you feel that you lack skills and knowledge when engaging in fishing?
 - How can these skill and knowledge gaps be filled?
 - In what ways can provision of skills development help you?
 - How is the number of crew for manning a vessel decided? What are these numbers by length of boat?
 - Is the number of crew sufficient to ensure safe and efficient functioning of the vessel?
 - Please describe your work routine on a fishing trip to us...
 - How many hours of rest do you get during a fishing trip?
 - How long is their rest period in-between fishing trips?
 - How are these rest periods decided?

Minimum standards of work on board

- *Minimum age*
 - What is the minimum age of work on board a fishing vessel?
 - Are you aware of instances where those below 15 engage in fisheries related work? In what ways?
 - What do you think of those below age 15 engaging in fish work?
 - What would be the benefits and draw-backs to the youth and their families if they are prevented from going for fishing?
- *Medical examination*
 - Do you obtain medical certificates as part of the insurance process or otherwise? Do you think obtaining a medical certificate should be made a requirement? Why?

- What are the benefits that you see?
- What do you think would be the challenges in obtaining such certificates from the point of view of the fishers and issuing them from the point of view of the relevant government authorities?
- *Crew list*
 - Do all crafts provide a crew list at present? Are there any gaps in this process?
 - Which authorities hold the copies of such lists at present?
- *Recruitment and placement*
 - How does recruitment and placement take place at present? Is there anyone that plays the role of a 'recruitment agent'? (for example do the skippers handle the recruitment process?)
 - Are there any government agencies playing a role in such recruitment practices? Are there any private recruitment agencies (for example: man-power agencies)?
 - Is there a negotiation taking place between the boat owner, skipper and crew? How does this usually happen? What are the terms of negotiation?
 - Are there any fees associated with recruitment?
- *Fishers' work agreement*
 - Do any of the vessels at present provide a fishers' work agreement? How are these work arrangements decided? Have there been changes to the way the work arrangements are done over the years?
 - On what basis are you paid? Are there any records maintained?
 - What do you feel about entering into a work agreement?
 - How do conflicts/disputes between boat owners and fish workers get settled at present? How can this process be strengthened?
 - What are the benefits and pitfalls in such a work agreement?
 - What should such a work agreement include?
- *Repatriation*
 - What are the laws and regulations on repatriation being applied by the relevant government of Sri Lanka authorities?
 - What are the laws and regulations on repatriation being applied to Sri Lankan fishermen, that you know of?
 - Do the vessel owners bear the costs of repatriation at present? Are there any challenges in this process?
 - Does the government bear any costs of repatriation at present?

- In general, what are the challenges associated with repatriation at present?
- *Payment of fishers*
 - How are the payment terms decided? How much of negotiation power do you have in deciding the payment terms?
 - How do you perceive their payment terms? Do you see it as fair and just?
 - How do the boat owners perceive their payment terms? Do they see it as fair and just?
 - In what form do you receive their payments? Are there any transaction costs involved?
 - What are the advantages of you receiving a regular payment at a monthly or other suitable interval? Are there any disadvantages? What?

Accommodation and food

- *Accommodation*
 - What is the process followed for the approval of boat construction at present? Who is the approving authority?
 - How are the vessel standards decided? What are the accommodation and safety measures being considered now? Are there any gaps?
 - If you have any complaints about their accommodation and food, who do you complain to? How do these complaints get handled at present?
- *Food*
 - Is the food served on board vessels of adequate nutritional value and are the quantities sufficient?
 - How are these food related decisions taken?
 - How are the complaints regarding food handled?
 - How are the food related costs paid/shared?

Occupational safety and health and accident prevention

- *Medical care*
 - Do the vessels carry adequate medical supplies on-board and clear comprehensible instructions on how to use them?
 - Is there a person who is trained in first aid and medical care on-board a vessel?
 - Do you have access to medical advice via satellite radio and when ashore?
 - How are safety measures handled at present? Who is the authority in charge? How are the safety measures monitored?

- How do you think these should be improved?
- What are the benefits of having adequate medical care on-board?
- *Occupational safety and health and accident prevention*
 - What are the measures currently in place to prevent accidents at sea and ensure occupational safety?
 - What are the gaps and how can they be filled?
 - Are there risk assessments being done at vessel level/by craft type/geographical location? Who is part of these assessments? Are they being used to take necessary action/mitigation measures?
 - What are the training requirements about use of equipment, navigation, handling GPS and other electronic equipment on-board, communication etc.? Are these training requirements being fulfilled at present? How?
 - Are there any trainings provided on risk assessment and mitigation to all the fishing stakeholders including boat owners? How? How are these assessments being used?
 - What is the role of 'on the job training' for you? How does this happen at present? How can this be strengthened?
 - Is there provision of adequate safety equipment for you? Are these equipment being used?
 - How are the fishing accidents reported and who compiles the data? What actions are taken based on this data?
 - Are there any committees set up to ensure occupational safety? What are the duties and responsibilities of these committees?
- *Social security*
 - What are the social security schemes available for you?
 - How effective is the fishers pension scheme?
 - Are there any employment injury benefits, family benefits, unemployment benefits provided to the fishing communities and households?
 - What are the gaps and challenges in the existing social security schemes and how can these be overcome?
 - How would fishers, their families and the community in general benefit from such social protection measures?
- *Protection in the case of work-related sickness, injury or death*
 - Do you have access to appropriate medical care?

- What are the formal/institutional insurance schemes in place? How effective are these? How are they being used by the boat owners and fish workers?
- What are the informal insurance systems in place (for example: through the boat owner)? How effective are these?
- How does formal and informal borrowing operate among the fishing communities? Does borrowing act as a substitute for insurance?
- *Social issues faced by fishers and their families*
 - What are the social issues faced by you/fish workers? What is the role of alcoholism in fishing communities as a social and economic 'issue'?
 - What are the issues and challenges faced by women and children in fishing communities? How can these issues be addressed?

Compliance and enforcement

Do the fishing vessels carry a certificate of compliance from a competent authority at present? How is this issued? Are there any gaps in this process?

Who is the competent authority at present? Is the number of staff allocated to this adequate?

Does the competent authority inspect living and working conditions on-board a vessel and provide a certificate?

Is there a mechanism set up for handling complaints with regards to fishing operations at present? How does this function? Is there sufficient coordination among different stakeholders including relevant international bodies and actors?

General Principles

- *Responsibility of fishing vessel owners, skippers and fishers*
 - How do you think the lines of command works before, during and after a fishing trip? In general, how much commanding power/say over things, does a skipper have? How does the change among different skippers? (for example, experienced vs. non-experienced)
 - In case of a dispute/disagreement on board a vessel while at sea, how does it get resolved? How can this process be strengthened?
 - What is the general relationship between the boat owner and the skipper?
 - How should a skipper be strengthened to ensure safety on board a craft for his crew? What are the challenges and what needs to change?
 - What should be done to encourage adoption of safety and health measures by the fishers?

Annex 3

1. **Policy analysis on international compliance and comparison with Convention No. 188**

The International Maritime Organization (IMO), the International Labour Organization (ILO) and the Food and Agriculture Organization (FAO) are the three specialized agencies of the United Nations that deal with matters relating to the safety of fishermen at sea.

While the IMO is responsible for improving maritime safety and developing maritime legislation, the ILO formulates international labour standards in the form of Conventions and Recommendations. These Conventions and Recommendations include the issues of minimum age, medical examination, competency certificates, accommodation and training. The FAO has the mandate to raise levels of nutrition and it has conducted a number of projects related to the fisheries sector such as improving the quality of design, construction and equipment of fishing vessels and working directly with fishing communities. The following description will outline the international standards that are currently in force in Sri Lanka and the extent to which they address the aspects that are being considered under Convention No. 188.

Safety of Life at Sea (SOLAS)

Safety of Life at Sea (SOLAS), is the first international Convention concerning safety at sea, adopted after the Titanic disaster in 1911. SOLAS specifies minimum standards for the construction, equipment and operation of ships compatible with their safety. These standards are equivocally accepted by the United Nations Law of the Sea Convention as generally accepted regulations.

However, SOLAS does not stipulate standards for fishing vessels. Instead it provides for passenger vessels and other commercial ships such as the ones used to load cargo.³³

Since the objective of the SOLAS Convention is to ensure safety of the vessels, the Convention deals with many aspects such as, fire protection, life-saving appliances and arrangements such as life boats, rescue boats, and it also deals with the management of the safe operation of the ships. The Convention mandates compliance with the International Safety Management (ISM) Code. Sri Lanka acceded to the SOLAS Convention in 1984 and has since complied with the protections that have been imposed on vessels.

³³ <http://www.fao.org/3/x9656e/X9656E01.htm>

Agreement for establishment of the Indian Ocean Tuna Commission (IOTC)³⁴

The Agreement was entered with the desire of promoting the peaceful use of the seas and oceans and the equitable utilization and conservation of their living resources, specially tuna and tuna like species in the Indian Ocean and promoting their optimum utilization and the sustainable development of the fisheries.

A Commission was established to achieve the abovementioned purposes. Accordingly, the Commission includes the following functions;

- to review the conditions and trends of the stocks and to gather, analyze scientific information, and other statistics for the conservation and management of the stocks and to maintain fisheries based on the stocks covered by the Agreement;
- to encourage, recommend and coordinate research and development activities in respect of the stocks and fisheries;
- to review the economic and social conditions/aspects of the fisheries based on the stocks covered by the Agreement in the interests of developing coastal states;
- to encourage other activities such as transfer of technology, training and enhancement, with due regard to ensuring the equitable participation of the Commission Members;
- to adopt on the basis of scientific evidence, Conservation and Management Measures (CMM), and ensure the conservation of the stocks covered by the Agreement and to promote the optimum utilization of those measures taken.

Recent developments at IOTC meetings (2019 Report):

The Commission has noted complications in data collection and analysis for several coastal fisheries and species, specifically neritic tunas. The Commission identified that this affects the Scientific Committee's ability to provide management advice for the identified species and fleets. Hence, Coastal states were encouraged to reflect on the problems they have in terms of data collection.

The IOTC, as part of its efforts to combat illegal fishing, reviews information provided by its member states on activities of fishing vessels that could undermine the effectiveness of the IOTC's conservation and management measures.

Vessels that are confirmed to have conducted such activities are then listed in the 'List of Vessels Presumed to have conducted illegal, unregulated and unreported fishing', also referred to as the 'IUU list'. Sri Lanka implements measures against IUU fishing directly through the fisheries management mechanism that has been established by the Government or in co-operation with other coastal States or indirectly through the IOTC or FAO by providing the necessary support including information as appropriate.

³⁴ http://www.fao.org/fishery/docs/DOCUMENT/iotc/Basic/IOTCA_E.pdf

Tuna fishery in Sri Lanka occurs mainly within the EEZ and is limited to the high seas. The offshore fisheries are confined to the area beyond 40km up to 200 nautical miles and beyond in high seas fishing. The majority of offshore and high seas operating vessels target tuna and tuna like species.³⁵ The development of offshore and high seas fishing and improving the on-board fish handling practices to reduce post-harvest loss, has been the main fishery policy in the recent past. The legal framework has been strengthened to expand high seas fisheries as per the international conventions and regional obligations.

However, issues have been experienced in the industry regarding high operating costs due to fuel prices, and poor catch. As a result, a substantial number of vessels make limited trips and boats are constantly anchored in harbours although they have obtained an operational license for high seas.³⁶ There is limited knowledge at the time of writing this report, whether any concrete solutions have been discussed to resolve this issue.

Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Fish Stocks Agreement).

Sri Lanka ratified the UN Fish Stocks Agreement on 24 October 1996. The Agreement sets out principles for the conservation and management of fish stocks and establishes that such management must be based on the precautionary approach and the best available scientific information.

“It promotes good order in the oceans through the effective management and conservation of high seas resources by establishing, among other things, detailed minimum international standards for the conservation and management of straddling fish stocks and highly migratory fish stocks; ensuring that measures taken for the conservation and management of those stocks in areas under national jurisdiction and in the adjacent high seas are compatible and coherent; ensuring that there are effective mechanisms for compliance and enforcement of those measures on the high seas; and recognizing the special requirements of developing States in relation to conservation and management as well as the development and participation in fisheries for the two types of stocks mentioned above.”³⁷

Note: to adhere with the IOTC, UN Fish Stocks Agreement, UNCLOS and FAO Port State Measures Agreement, Sri Lanka enacted regulations in 2014³⁸ prohibiting

³⁵ Sri Lanka Report to the Scientific Committee of the Indian Ocean Tuna Commission, 2018. <https://www.iotc.org/documents/SC/21/NR25>

³⁶ Sri Lanka Report to the Scientific Committee of the Indian Ocean Tuna Commission, 2018. https://www.iotc.org/documents/SC/21/NR25_pg.3

³⁷ https://www.un.org/Depts/los/convention_agreements/convention_overview_fish_stocks.htm

³⁸ <http://extwprlegs1.fao.org/docs/pdf/srl161907.pdf>

the following operations in the high seas in contravention of conservation and management measures by the aforementioned international standards:³⁹

- Purse seine fishing operations,
- Long line fishing operations,
- Gillnet cum long line fishing operations,
- Gillnet fishing operations,
- Pole and line fishing operations,
- Hand-line fishing operations,
- Trolling fishing operations.

Code of Safety for Fisherman and Fishing Vessels 2005

This is more of an educational tool, that is developed to guide national laws and regulation framers. While, Part A – Safety and Health practices for skippers and crews was developed in 1968, Part B – Safety and Health Requirements for the construction and equipment of fishing vessels was adopted in 1974. Its application is limited to fishing vessels of 24m in length and cover, excluding recreational fishing vessels and processing vessels.⁴⁰

Part A in particular provides guidance on the development of national codes and fishermen's education and training manuals and guidance on the safety and health of fishermen. Authorities are encouraged to make use of the contents of the Code in the production of safety and health, training materials.

Voluntary Guidelines for the design, construction and equipment of small fishing vessels

Since there was lacuna in the safety standards applicable to fishing vessels under 24m in length, and in consideration of the fact that a majority of the vessels in developing countries were smaller than 24m in length at that point in time, voluntary guidelines were prepared in 1980 with the collaboration of the FAO, IMO and ILO. It largely deals with the design, construction and equipment of fishing boats between 12m and 24m in length, based on the guidelines in the safety codes. However, these guidelines on safety are not intended to substitute for national laws or regulations, but rather they intend to serve as a guide to the framers of the legislators of coastal nations.

³⁹ <http://extwprlegs1.fao.org/docs/pdf/srl161856.pdf>

⁴⁰ <http://www.fao.org/3/x9656e/X9656E01.htm>

Standards of training, certification and watch keeping for fishing vessel personnel (STCW-F Convention)

The STCW-F Convention was enforced in 2012. It deals with requirements concerning skippers and watch keepers on vessels of 24m in length and over, chief engineers and engineering officers on vessels of 750 KW propulsion power or more, and personnel in charge of radio communications. It intends to contribute to the reduction of casualties and increase the safety of the vessels in the industry. The Convention has been ratified by 15 states so far including Canada, Denmark, Iceland, Syria, Spain, Russian Federation and Norway.

Voluntary Guidelines for Flag State Performance

This guideline provides guidance to strengthen and monitor compliance by Flag States with their international duties and obligations regarding the flagging and control of fishing vessels. Fisheries management, registration and records of vessels, authorizations, MCS and cooperation between Flag States and Coastal States are among the central components of the Guidelines.⁴¹ It stipulates a series of actions that countries can take to ensure that vessels registered under their flags do not conduct IUU fishing (Illegal, Unreported, and Unregulated) including monitoring, control and surveillance activities.

Torremolinos Convention and the Torremolinos Protocol

The Torremolinos International Convention is the first international convention on the safety of fishing vessels, framed on the lines of SOLAS, that was adopted in Spain. The Convention contains safety requirements for the construction and equipment of new, decked, seagoing fishing vessels of 24m in length and over. By the 1980s, however, the Convention gained less popularity in implementation due to some technical difficulties.

The Convention was then superseded by the 1993 Torremolinos Protocol but that also was superseded by the Cape Town Agreement 2012 (Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977).

Cape Town Agreement (CTA)

CTA, adopted by the ILO, stipulates fishing vessel standards and includes regulations designed to protect the safety of crews. The Agreement was signed in 2012 in Cape Town, and will come into force once 22 states with a combined 3600 eligible fishing vessels ratify or accede. The CTA updates, amends and replaces the Torremolinos Protocol of 1993, and the Torremolinos International Convention 1977. Once in force, it will set minimum requirements on the design, construction, equipment, and inspection of fishing vessels 24 meters or longer that operate on the high seas. It will also empower States to conduct safety inspections that could be conducted with fisheries and labour agencies, to ensure better transparency fishing and crew activities.⁴²

⁴¹ <http://www.fao.org/iuu-fishing/international-framework/voluntary-guidelines-for-flag-state-performance/en/>

⁴² <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/10/the-cape-town-agreement-explained>

Annex 4

List of Key Person Interviews and Focus Group Discussions-completed

	Dep of Fisheries and Aquatic Resources	Status
1	Development Division-Director	Done
2	Quality Control Division- Director	Done
3	Operations Division- Director	Done
4	High Seas Fishing Unit-FRMA	Done
	Others	
5	Harbour Manager - Foreign Fishing Vessels, Dikkowita	Done
6	Harbour Manager, CFHC, Dikkowita	Done
7	Ministry/Department of Labour - Senior Assistant Secretary	Done
8	Assistant Commissioner- Department of Labour, Chilaw	Done
	Sri Lanka Export Development Board- Deputy Director, Export Agriculture Division	Done
	Independent fisheries expert	Done
	Sri Lanka Forum for Small-scale Fisheries	Done
	National Fisheries Solidarity Organization (NAFSO)	Done
	Southern Fisheries Organization	Done
	ICSF	Done
	Assistant Director, DFAR Chilaw	Done
	Assistant Director, DFAR Tangalle	Done
	Senior labour lawyer- Ms. Shyamali Ranaraja	Done
	Labour lawyer- Lakmali Hemachandra	Done
	FAO	
	UNIDO	Done
	Fisheries official -Valaichchenai	Done
	High seas fishing unit -Valaichchenai	Done
	Sri Vimukthi Women's Society, Negombo (Executive Committee member SLFSSF)	Done
	FGD with crew members and boat owners of multi-day boats- Gandara	Done
	FGD with skippers in Dewundara	Done
	FGD with boat owners of one-day boats in Gandara	Done
	FGD with wives of skippers and boat owners of multi-day and one-day boat owners (Gandara)	Done
	FGD with crew members in Valiachchenai (Tamil crew members)	Done

► **Work in Fishing Convention, 2007 (No. 188):
Netting Gains for Sri Lanka**

	Dep of Fisheries and Aquatic Resources	Status
	FGD with boat owners in Valaichchenai (Tamil boat owners)	Done
	Individual interview with a skipper in Valaichchenai (Tamil)	Done
	Individual interview with a boat owner in Valaichchenai (Muslim)	Done
	FGD with wives of skippers in Valaichchenai (Tamil)	Done
	Individual interview with a skipper in Valaichchenai (Muslim)	Done
	Individual interviews with skippers in Dikkowita harbour (Sinhala)	Done
	Interview with seafood processing company representative (Dikkowita)	Declined

Annex 5

Lists of Acts and Gazettes referred to in the report

Conventions

- United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS)
- Indian Ocean Tuna Commission
- UNCLOS relating to Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Fish Stocks Agreement)
- UN Port State Measures (PSM) in 2011
- Agreement to Promote Compliance with the International Conservation and Management Measures by Fishing Vessels on the High Seas
- FAO's Code of Conduct for Responsible Fisheries (CCRF)
- Safety of Life at Sea (SOLAS)
- Agreement for establishment of the Indian Ocean Tuna Commission (IOTC)
- Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Fish Stocks Agreement).
- Code of Safety for Fisherman and Fishing Vessels 2005
- Voluntary Guidelines for the design, construction and equipment of small fishing vessels
- Standards of training, certification and watch keeping for fishing vessel personnel (STCW-F Convention)
- Voluntary Guidelines for Flag State Performance
- Torremolinos Convention and the Torremolinos Protocol
- Cape Town Agreement (CTA)

Acts

- Maritime Pollution Prevention Act, No. 35 of 2008, (as amended)
- Merchant Shipping Act No. 52 of 1971, (as amended)
- Fisheries and Aquatic Resources Act, No. 2 of 1996 (as amended)
- Coast Conservation Act, No. 57 of 1981, (as amended)
- Fisheries (Regulations of Foreign Fishing Boats Act, No. 59 of 1979 (as amended)

- Fishermen's Pension and Social Security Benefit Scheme Act, No. 23 of 1990 (as amended)
- Industrial Disputes Act, No. 53 of 1973 (as amended)
- The Shop and Office Employees' Act, No. 7 of 1975 (as amended)
- The Wages Boards Ordinance, No. 27 of 1941 (as amended)
- The Workmen's Compensation Ordinance, No.19 of 1934 (as amended)
- The Employees' Provident Fund Act, No. 15 of 1958 (as amended)
- The Employees Trust Fund Act, No. 46 of 1980 (as amended)
- The Factories Ordinance, No. 45 of 1942 (as amended)

Gazettes

- Minimum Standards for the citizens of Sri Lanka engaged in fishing operations in foreign flagged boats Regulations, - Gazette No. 1945/7 of 2015.12.14
- Fishers and Aquatic Resources Statute of Western Province No. ... of 2018- Gazette notification No. 2079/6 of 2018.07.12
- Issuance of Certificates of Competence for Skippers (Local Fishing Board) Regulations, 2019- Gazette Notification No.2126/6 of 2019.06.03
- High Seas Fishing Operations Regulations, No. 1 of 2014- Gazette Notification No. 1878/12 of 2014.09.01 as amended by 1945/06 of 2015.12.14
- Fishing Boats Safety (Design, Construction and Equipment) Regulations 2009- Gazette Notification No. 1600/13 of 2009.05.05

Other national policies and national plans

- The National Fisheries and Aquaculture Policy
- National Plan for the Safety of Fishers and Fishing Vessels at Sea 2013

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