

Why India should support the Proposed ILO Work in Fishing Convention?
By Sebastian Mathew

The Government of India is in the process of firming up its position on the proposed ILO Work in Fishing Convention that would come up for adoption at the 96th Session of the International Labour Conference in Geneva in June 2007. It is important that India unequivocally supports the adoption of this important Convention, which is of immense benefit to the commercial fishing sector of India. It would also benefit large number of Indians working on board fishing vessels in other countries.

In response to the fears expressed from some quarters that the proposed ILO Work in Fishing Convention is too prescriptive and difficult to implement, it is worth noting that the provisions for exclusions, exemptions and exceptions in the proposed Convention would provide sufficient flexibility to address the concerns about the implementation of the Convention in Indian waters.

There is no need to be unduly perturbed about the large number of subsistence fishers in India. They do not fall within the scope of the Convention. Any fear, therefore, expressed about subsistence fishing and the proposed ILO Convention does not appear to be relevant. Only commercial fishing, both small- and large-scale sub-sectors, is coming within its purview.

As we understand it, the ILO instrument is essentially an architecture in dots and lines. Wherever there are dots the Member country would be expected to connect them using the line of the Convention, once it is adopted. There are, however, several activities that are to be recognized by ILO Members whether or not they would constitute dots in a legal sense. It is the prerogative of the Members of ILO to decide about the scope of the Convention that would apply to fishing vessels below 24 metres in length. Considering that Indian fishing fleet comprises almost entirely of vessels below 24 m (there are only about 50 vessels that are above 24 m in length in the Indian waters), Government of India would have sufficient flexibility to decide about the scope of a national legislation on work in Indian fishing sector should the Convention be adopted and if India were to legislate a national instrument in accordance with the Convention.

Whatever apprehensions are harboured should be put to final rest keeping in mind the fact that an EU labour standard for fishing, for example, in lieu of an ILO instrument, would definitely be more difficult, and onerous, for a developing country such as India to comply with. And India should also take into account the significant number of Indians working on board fishing vessels of other flag States. The Labour, if not the fishery ministry would certainly be obliged to take into account the interests of this important category of migrant workers while taking a position on the proposed Work in Fishing Convention.

The proposed Convention, once adopted, would provide a framework to look at issues of working and living conditions in fishing. The reporting requirement would help any Member State not only to keep track of fishing operations that would fall within the

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purview of the Convention, but also to monitor all types of fishing operations that fall outside its scope. This would provide an opportunity to periodically keep track of trends in labour standards in marine fishing, in general.

To conclude, the proposed ILO Work in Fishing Convention, if adopted, would certainly provide a win-win situation for India to improve conditions of work of those who fall within, and outside, the scope of the Convention. It would also benefit emigrant Indian fishers to work under meaningful work agreements on board vessels of other flag States and to enjoy social security benefits. Considering its national significance it should be ensured that the Government of India, along with the representatives of fishing vessel workers and owners, votes for its adoption in June 2007.

Shore-based Fishers and the ILO Work in Fishing Convention: a Note from the Secretariat, ICSF

It has to be recognized at the outset that shore-based workers engaged in fishing was not the focus of attention of the proposed comprehensive standard, a Convention supplemented by a Recommendation, on fishing. Rather than to bring all commercial fishers, whether shore-based or vessel-based, the attempt was to bring fishers onboard all types of commercial fishing vessels irrespective of the size of the vessel in terms of length, tonnage, horsepower, or area of operation.

The ILO Questionnaire on Conditions of Work in the Fishing Sector addressed to national governments and other interested parties, for example, in preparation for the 92nd Session of the International Labour Conference 2004 included only questions of relevance to fishing vessels and fishers on board such vessels, and excluded any question on shore-based fishers [See 2003 Report V (1) *Conditions of Work in the Fishing Sector: A Comprehensive Standard (a Convention supplemented by a Recommendation) on Work in the Fishing Sector*]. The responses to the questionnaire were compiled by ILO (See 2004 Report V (2) *Conditions of Work in the Fishing Sector: The Constituents' Views*) and there again none of the constituents objected to the exclusion of shore-based fishers from the scope of the ILO instrument.

The need to include shore-based workers within the scope of the proposed Work in Fishing Convention was first raised at a workshop organized by ICSF in Sri Lanka in March 2004 to disseminate the content of the Convention to small-scale fishers. The beach seine fishers of Sri Lanka said they work under an employer-employee arrangement and they should be brought under the scope of the Convention.

At the ILC, the issue of shore-based fishers was raised for the first time by the Government member of Brazil, supported by the Government member of Chile (although, Chile said it is an issue specific to Brazil). He proposed protection under this Convention to be extended to "fishers who do not work aboard a vessel". According to Brazilian legislation, workers working in aquaculture, as well as persons catching crabs in swamps or picking oysters were also considered as fishers. The member States should be given discretion to extend the cover of the Convention to other groups of workers they considered fishers, he said.

The Government Member of Norway pointed out that fish harvesters were not treated as fishers under Norwegian legislation and that they were covered by regulations for shore-based workers. The amendment proposed by Brazil, he feared, would lead to two alternative definitions of fisher and he could not therefore support it. Member States could, in any case, extend the protection to other types of workers, if they so wished, he observed. The Government member of Greece as well as the Employer and Worker Vice-Chairpersons, although sympathized with the proposed amendment of Brazil, did not support the amendment proposed by Brazil.

The representative of the ILO Secretary-General addressed the concern of the Government member of Brazil. She referred the Committee to article 19, paragraph 8, of the ILO Constitution, which allowed governments to apply more favourable conditions than those provided for in a Convention or Recommendation. On that basis, the Government member of

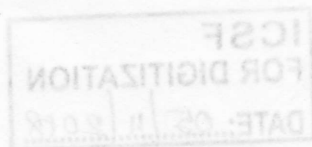
Brazil withdrew the amendment (Source: *International Labour Conference 92nd Session, Geneva, 2004, Provisional Record 21*).

Later, the issue of including shore-based workers within the scope of the Convention was raised at the WFFP General Assembly in Kisumu, Kenya, November, 2004, where the issue of shore-based fishers, particularly women employed in gathering shell fish, was raised. The WFFP General Assembly also passed a resolution on this issue.

During the 92nd Session of the ILC the statement of ICSF was mainly on extending our support to the inclusion of small-scale fishing vessels and fishers on board such vessels within the scope of the Convention. This was a demand made by an ICSF delegation (comprising Nalini Nayak, Pierre Gillet and Thomas Kocherry, the then Chairperson of National Fishworkers' Forum, India) in 1988. The issue of shore-based fishers was not highlighted.

Drawing from the Sri Lanka meeting as well as the WFFP General Assembly resolution on ILO labour standards in fishing, ICSF made an intervention during the general discussion on Work in the Fishing Sector (Second discussion) during the 93rd Session of the International Labour Conference, Geneva, 2005, how "certain types of fishing were excluded from the instrument, such as commercial beach fishing and diving. The provisions on health care, in particular, needed to be extended to cover workers in these areas. To this effect, the definition of fisher needed to be broadened to include persons employed in shore-based fishing operations who did not necessarily work on board a fishing vessel" (Source: *International Labour Conference 93rd Session, Geneva, 2005, Provisional Record 19*). ICSF also spoke during the plenary (Seventeenth Sitting, Ninety-third Session of the International Labour Conference, Geneva, 2005), "We hope that the scope of these labour standards, especially for social security, is broadened also to accommodate shore-based fishers who do not necessarily use a fishing vessel. This will have significant benefits to the women participating in fishing".

Health care and social security are the areas where shore-based workers could mainly benefit from the proposed Convention. Since most of the provisions of the proposed Convention are relevant only to fishing vessels and those who work on board such vessels and considering that article 19, paragraph 8, of the ILO Constitution allows governments to apply more favourable conditions than those provided for in a Convention or Recommendation, is there a need for ICSF to take up a campaign to address issues of health and social security benefits to shore-based fishworkers at the ILO? Would it not be sufficient to work at the regional/national level after the Convention is adopted to ensure that national legislation developed in accordance with the Convention do accommodate shore-based fishworkers in countries where they are active? Of course, that does not preclude us from drawing attention to this lacuna in our statements on the floor during the 96th Session of the ILC in May-June 2007.



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