

Crewing agents in West Africa

Concerns, international standards, and responsibilities of fishing vessel owners

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International or cross-border crewing in fishing is a complicated matter requiring expertise and sense of responsibility from fishing vessel owners especially in West Africa.

Labour market services

- **There are concerns about the labour market services provided to fishers and fishing vessel owners by crewing agents in West Africa.**
- **These concerns are:**
 - Uncertainty in general about the services provided to fishers and fishing vessel owners.
 - Do fishers have to pay the provider a fee to get a job?
 - Does child labour take place?
 - Does Illegal employment take place?
 - Does debt bondage take place?
 - Does under- or non-payment of wages take place?
 - Does blacklisting take place?
 - &c.

Labour market services

- **Two systems of labour market services:**
 - public labour market services;
 - private labour market services.
- **Crewing agents provide private labour market services.**
- **Generally there are three types of private labour market services:**
 - intermediation between job-seekers and employers (vice versa),
 - in shipping and fishing this is called 'recruitment and placement';
 - making workers available to third parties while the service provider is/remains the formal employer – often called 'temporary agency work' or 'seconding' or '**posting**'; and
 - providing labour market information.
- **However, the distinction between these three types is not always been made by crewing agents.**

Private labour market services in fishing

- **Recruitment and placement service:**

- means any person, company, institution, agency or other organization, which is engaged in recruiting fishers on behalf of, or placing fishers with, fishing vessel owners;
- the objective of the service is a work agreement between the fisher and the fishing vessel owner.

- **Posting service:**

- means a service consisting of employing fishers with a view to making them available to a fishing vessel owner who assigns their tasks and supervises the execution of these tasks;
- the fisher has a work agreement with the posting service provider and *not* with the fishing vessel owner.

Private labour market services in fishing

- **A crewing agent in fishing could run:**
 - a recruitment and placement service;
 - a posting service; or
 - a hybrid form of labour market services, for example fulfilling, in addition to recruitment and placement, certain responsibilities on behalf of the fishing vessel owner, such as
 - payment of remuneration,
 - arranging training of fishers,
 - arranging medical examination of fishers.
- **The fishing vessel owner should assure himself of the type of service he takes from the crewing agent and should be aware of the consequences thereof for himself and the fisher.**

International standards

- **The International Labour Organization (ILO) sets standards on labour market services:**
 - Placing of Seamen Convention, 1920 (C9);
 - Fee-Charging Employment Agencies Convention, 1933 (C34);
 - Employment Service Convention, 1948 (C88);
 - Fee-Charging Employment Agencies Convention (Revised), 1949 (C96);
 - Recruitment and Placement of Seafarers Convention, 1996 (C179);
 - Private Employment Agencies Convention, 1997 (C181);
 - Maritime Labour Convention, 2006 (MLC);
 - Work in Fishing Convention, 2007 (C188),
 - Work in Fishing Recommendation, 2007 (R199);
 - General principles & operational guidelines for fair recruitment, 2016.

International standards

- **Placing of Seamen Convention, 1920 (C9):**

- Currently in force for **Cameroon** only.
- Not open for ratification anymore.
 - Revised by the Recruitment and Placement of Seafarers Convention, 1996 (C179).
- Profit making placement services not allowed.
- Applies to seamen except officers.
- Could have been applied to fishers if they were regarded to be seamen.
 - It is unknown what Cameroon has done.

International standards

- **Fee-Charging Employment Agencies Convention, 1933 (C34):**
 - Not in force for any West African country.
 - Not open for ratification anymore.
 - Revised by the Fee-Charging Employment Agencies Convention (Revised), 1949 (C96).
 - Does not apply to placing of seamen.
 - Could have been applied to fishers if they were not regarded to be seamen.
 - Regulates mediation (\approx recruitment and placement).
 - Concerns abolishment of commercial labour market services.

International standards

- **Employment Service Convention, 1948 (C88):**
 - Currently in force for **Guinea-Bissau, Sierra Leone, Ghana, and Nigeria.**
 - Concerns *public* labour market services only.
 - Applies to fishers.

International standards

- **Fee-Charging Employment Agencies Convention (Revised), 1949 (C96):**
 - Currently in force for **Mauritania, Senegal, Ivory Coast, and Ghana.**
 - Does not apply to placing of seamen.
 - Could be applied to fishers if they are not regarded to be seamen.
 - Concerns mediation (\approx recruitment and placement).
 - Part II concerns abolition of fee-charging employment agencies:
 - adopted by **Mauritania and Ghana;**
 - unknown whether applied to fishers or not.
 - Part III concerns strictly regulated fee-charging employment agencies:
 - adopted by **Senegal and Ivory Coast;**
 - unknown whether applied to fishers or not.

International standards

- **Recruitment and Placement of Seafarers Convention, 1996 (C179):**
 - Currently not in force in any West African country.
 - Not open for ratification anymore.
 - Revised by the Maritime Labour Convention, 2006 (MLC).
 - Could have been applied to fishers if they were regarded to be seafarers.
 - Now codified in the Maritime Labour Convention, 2006 (MLC) which does not apply to fishers.

International standards

- **Private Employment Agencies Convention, 1997 (C181):**
 - In force for **Morocco** only.
 - Does not apply to recruitment and placement of seafarers.
 - Does apply to fishers.
 - Concerns:
 - labour mediation (\approx recruitment and placement);
 - posting; and
 - information on labour market services.
 - Provides for licencing, certification, or other form of regulation of private employment agencies within a legal system of requirements.

International standards

- **Maritime Labour Convention, 2006 (MLC):**
 - Currently in force for **Morocco, Liberia, Ghana, Togo, Benin, and Nigeria.**
 - Applies to seafarers.
 - Does not apply to fishers.
 - However, some flag States apply the MLC to large fishing vessels (e.g. Germany)
 - Regulation 1.4 concerns public and private recruitment and placement.
 - Does not regulate posting.

International standards

- **Work in Fishing Convention, 2007 (C188):**
 - In force from 16 November 2017 for **Morocco** only.
 - Does exclusively apply to all fishers.
 - Article 22, paragraphs 1-3, concerns public and private recruitment and placement services:
 - provides for licensing, certification, or other form of regulation of private recruitment and placement services within a legal system of requirements;
 - prohibits blacklisting; and
 - prohibits services to charge fees from fishers.
 - Article 22, paragraphs 4-6, concerns posting by private employment agencies:
 - allowed only if the flag State has ratified C181;
 - flag State shall allocate C181 and C188 responsibilities between agency and the fishing vessel owner; and
 - fishing vessel owner is liable in case the agency, in its capacity of employer, defaults on its responsibilities under C188.

International standards

- **CI 88, Article 22, paragraphs 4-6, in conjunction with CI 81, Article 12:**
 - Allocation by the flag State of the respective responsibilities of posting services provider and of fishing vessel owners in relation to:
 - collective bargaining;
 - minimum wages;
 - working time and other working conditions;
 - statutory social security benefits;
 - access to training;
 - protection in the field of occupational safety and health;
 - compensation in case of occupational accidents or diseases;
 - compensation in case of insolvency and protection of workers claims;
 - maternity protection and benefits, and parental protection and benefits.

International standards

Country	C9	C88	C96	C179	C181	MLC	C188
Morocco				D	X	X	X
Mauritania			X (Pt II)				
Senegal			X (Pt III)				
Gambia							
Guinea-Bissau		X					
Guinea							
Sierra Leone		X					
Liberia						X	
Ivory Coast			X (Pt III)				
Ghana		X	X (Pt II)			X	
Togo						X	
Benin						X	
Nigeria	D	X		D		X	
Cameroon	X						

International standards

- **West African coastal States do not seem to legislate private labour market services in fishing very well.**
- **In any case, not many West African coastal States have ratified ILO labour market instruments.**
- **What, then, are the responsibilities of EU fishing vessel owners?**

Fishing vessel owner responsibilities

- **The international standards applying to fishing do not place any labour market responsibilities upon fishing vessel owners directly.**
- **Flag and Coastal States should legislate first.**
 - So far only Estonia (FS), France (FS), Lithuania (FS) and Morocco (CS) have ratified C188.
- **EU fisheries partnership agreements place certain labour market responsibilities upon fishing vessel owners or their coastal State's agents.**
- **In the absence of legislation, fishing vessel owners could take responsibilities upon themselves voluntarily, taking guidance from:**
 - flag State's national law;
 - the Maritime Labour Convention, 2006 (MLC);
 - the Work in Fishing Convention, 2007 (C188); and
 - the General principles & operational guidelines for fair recruitment, 2016.

Fishing vessel owner responsibilities

- **Responsibilities under (sustainable) fisheries partnership agreements between the EU and third countries:**
 - Obligation to take a number of local fishers on board from an official list.
 - The list often does not exist.
 - Employment agreements shall be drawn up between the fishing vessel owner's agent and the local fishers or their trade unions in consultation with the coastal State's competent authority.
 - Does this prescribe the use of posting services?

Fishing vessel owner responsibilities

- **Responsibilities under (sustainable) fisheries partnership agreements between the EU and third countries:**

- Employment agreements shall guarantee the fishers social security cover applicable to them, including life insurance and sickness and accident insurance.
 - The cover social security systems provide is *not* a competence of the EU;
 - C188 prescribes social security is a responsibility of the coastal State.
 - The flag State may take responsibility for social security of coastal State's fishers through a bi- or multilateral agreement.
 - C188 prescribes fishing vessel owner responsibility for compensation in case of work-related sickness, injury or death.
 - The flag State may have placed 'safety net' responsibilities upon fishing vessel owners.
- Copies of the employment agreements shall be sent by the fishing vessel owner or his agent to the coastal State's competent authority.

Fishing vessel owner responsibilities

- **Responsibilities under (sustainable) fisheries partnership agreements between the EU and third countries:**
 - The ILO Declaration on fundamental Principles and Rights at Work shall apply as of right to local fishers taken on board EU fishing vessels. This concerns in particular freedom of association, effective recognition of the right to collective bargaining, and elimination of discrimination in respect of employment and occupation.
 - These principles and rights already apply universally
 - Every single human being has them, always and everywhere...

Fishing vessel owner responsibilities

- **Responsibilities under (sustainable) fisheries partnership agreements between the EU and third countries:**
 - The local fishers' wages shall be paid by the fishing vessel owner.
 - Directly or indirectly?
 - The wage conditions *granted* to the local fishers shall not be lower than those for local fishers working on the coastal State's own fleet and shall comply with ILO standards and under no circumstances be below these standards.
 - There are *no ILO standards* on levels of wages of fishers.
 - C188, Annex II, paragraph (i), prescribes that a fisher's work agreement shall contain the amount of wages, or the amount of the share and the method of calculating such share, or the combination of both, and any agreed minimum wage.
 - There *is* an ILO *recommendation* on levels of wages of fishers.
 - For vessels of 24 metres in length and over, all fishers should be entitled to minimum payment in accordance with national laws, regulations or collective agreements (Work in Fishing Recommendation, 2007 (R199), item 15).

Fishing vessel owner responsibilities

- **Responsibilities under (sustainable) fisheries partnership agreements between the EU and third countries:**
 - These requirements are inadequate and urgently need revision by alignment with international standards for fishing.
 - The ‘social paragraph’ in the current Protocol to the agreement with Mauritania is a step in the right direction.

International standards

- **General principles & operational guidelines for fair recruitment, 2016:**
 - Non-binding instrument.
 - Defines general principles.
 - Defines operational guidelines for
 - governments,
 - public labour market services,
 - private labour market services, and
 - employers.
 - The Tripartite Meeting on Issues Relating to Migrant Fishers held in Geneva from 18-22 September, 2017 invited the ILO:
 - to develop, on basis of these general principles and operational guidelines, similar but specific guidelines for the fishing sector and model service contracts for (cross border) labour market services to fishers and fishing vessel owners.

Fishing vessel owner responsibilities

- **In case of recruitment and placement services:**

- The fishing vessel owner is the employer of the fishers.
- The fishing vessel owner ensures through a written contract with the crewing agent that the latter:
 - does not blacklist any fisher;
 - does not charge any fees from the fisher;
 - does not provide loans to the fisher;
 - compensates the fisher for any costs incurred for obtaining medical certificate and muster book;
 - informs the fisher about his rights and duties under the fisher's work agreement;
 - offers the fisher a fair chance to study the work agreement and ask for advice;
 - ensures that the fisher disposes of the qualifications the vessel owner requires;
 - keeps a register of fishers recruited and placed.

Fishing vessel owner responsibilities

- **In case of posting services:**

- The posting services provider is the employer of the fishers.
- Only allowed if the flag State has ratified the C181,
 - within the Union, *inter alia*, **France, Lithuania, Netherlands, Poland, and Spain.**
- The fishing vessel owner ensures through a written that the service provider:
 - does not blacklist any fisher;
 - does not charge any fees from the fisher;
 - does not provide loans to the fisher;
 - compensates the fisher for the cost of medical examination and of a muster book;
 - ensures that the fisher disposes of the qualifications the vessel owner requires;

Fishing vessel owner responsibilities

- informs the fisher about his rights and duties under the fisher's work agreement;
- offers the fisher a fair chance to study the work agreement and ask for advice;
- signs his written fisher's work agreement with the fisher which complies with the ILO Work in Fishing Convention, 2007 (C188);
- provides the fisher with a signed copy of the fisher's work agreement;
- provides the fisher with any other document available which detail the fisher's rights and duties;
- fulfils all employer duties which have not been transferred to the fishing vessel owner by the flag State, including
 - timely payment of any remuneration,
 - provision of proper written statements on payment of remuneration,
 - payment of social security contributions;
- has complaint procedures;
- keeps a register of fishers posted.