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WORLD MARITIME UNIVERSITY

Malmö, Sweden

**Towards the ratification and implementation of
ILO Work in Fishing in Convention, 2007
in the Maldives**

By

Hussain Zameel

Maldives

A dissertation submitted to the World Maritime University in partial
fulfilment of the requirement for the award of the degree of

MASTER OF SCIENCE

In

MARITIME AFFAIRS

(Maritime Law and Policy)

2019

Declaration

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views and are not necessarily endorsed by the University.

(Signature): 

(Date): 22nd September 2019

Supervised by: Dr. Maria Carolina Romero

Supervisor's affiliation: Maritime Law and Policy Specialization

Acknowledgements

Alhamdulillah! I praise and thank Allah SWT for his greatness and for giving me the strength and courage to complete this thesis.

I want to express my utmost gratitude to the Sasakawa Peace Foundation for providing myself a scholarship for studying at World Maritime University. My heartfelt thanks to the supervisor, Professor Maria Carolina Romero, who guided me from the beginning of this journey, supported me with wise advice and particular knowledge to develop this work.

I appreciate my beloved parents, Mariyam Hussain and Ahmed Ali, my siblings Aneel, Shameel, Afza, my fiancée Aminath and my loving sister-in-laws Rahma and Sheena for giving all the support, strength, and motivation throughout my stay in Sweden.

I want to express sincere appreciation also to the Directors of MoFMRA, Adam Ziyad and Hussain Sinan, the Assistant Director Ahmed Shifaz for assisting myself to get here to the World Maritime University. It was the opportunities and the guidance given by my supervisors at work which helped to excel in my career.

Finally, thanks to all my colleagues here at the university and my friends back home!

Abstract

Title of Dissertation: Towards the ratification and implementation of ILO
Work in Fishing in Convention, 2007 in Maldives.

Degree: Master of Science

The potential effects of the occupational health and safety and labour rights of the commercial fishers in the Maldives are poorly understood. The Maldivian government focuses more on the sustainability of resources while giving less importance to the working conditions of the fishers. Thus it has increased the number of fatalities and also made fishers victims of forced labour and human trafficking. This research aims to enhance speedy ratification and implementation of the most comprehensive International instrument on labour rights and working conditions of fishers; the ILO Work in Fishing Convention, 2007. The literature review presents the Maldivian commercial fishing industry and the labour conditions of the commercial fishing industry in both the Maldivian and global perspectives. Also the Work in Fishing Convention 2007 will be presented with both benefits and barriers for the implementation. A comparative legal analysis of the Maldivian legislature against ILO Work in Fishing Convention 2007 will be carried out using the ILO's guideline to undertake a comparative analysis of the Work in Fishing Convention, 2007 and national laws, regulations or other measures. Followed by this, rising roles and obligations of national authorities will examine the current mandates of the authorities. A SWOT analysis will present the challenges and opportunities for Maldives in ratifying and implementing the Work in Fishing Convention. Finally, the research concludes with several recommendations for moving forward.

KEYWORDS: ILO, Work in Fishing Convention 2007, Ratification, Implementation, Commercial Fishing Industry, Maldives, Working Conditions, Occupational Safety and Health.

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List of Abbreviations

BOBP	Bay of Bengal Programme
FAO	Food and Agriculture Organization
ILO	International Labour Organization
IMO	International Maritime Organization
IOTC	Indian Ocean Tuna Commission
ITF	International Transport Workers Federation
IUU	Illegal Unreported Unregulated
LRA	Labour Relations Authority
MED	Ministry of Economic Development
MI	Maldives Immigration
MNDF	Maldives National Defense Force
MNDS	Ministry of Defense and National Security
MoFMRA	Ministry of Fisheries Marine Resources and Agriculture
MOU	Memorandum of Understanding
MPS	Maldives Police Service
MTA	Maldives Transport Authority
OSH	Occupational Safety and Health
SOP	Standard Operating Procedure
SWOT	Strength Weakness Opportunities Threat
SWOT	Strength Weakness Opportunities and Threat
TA	Transport Authority

List of Legal Instruments and Guidelines

Armed Forces Act, 1/2008

Commercial Fishing, Fish Processing for Exports and Aquaculture License Regulation, 2009

Constitution of the Republic of Maldives, 2008

Employment Agency regulation, 21/2016

ILO Guideline to undertake a comparative analysis of the Work in Fishing Convention, 2007 (No. 188) and national laws, regulations or other measures

ILO Work in Fishing Convention, 2007

Maldives Employment Act, 2/2008

Maldives Fisheries Act, 14/2019

Maldives Immigration Act, 1/2007

Regulation on Safety of vessels operating in Maldivian waters, 2015/R-229

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Chapter 1

This Chapter presents the preliminary aspect of the research, including the background of the study, the aims and objectives and the methodology used to conduct the research.

1.1 Introduction

Commercial fishing is declared as the most dangerous occupation in the world by the International Labour Organization (ILO), referring it to the number of fishers who lose their lives each year. While statistics on fatalities in the fishing industry are poorly maintained in most of the countries, ILO's Occupational Safety and Health (OSH) Branch states that 24,000 fatalities occur annually (FAO, 2001). In addition to the safety and health risks, migrant workers in the fishing industry are often victims of forced labour and human trafficking (ILO, 2017).

ILO, the significant organisation which deals with the labour rights of workers all around the world, has the jurisdiction of creating Internationally binding instruments to ensure Occupational Safety and Health for workers. Since 1920, ILO has developed International labour standards specifically to the fisheries industry. By 2000, ILO had developed several instruments related to Occupational Safety and Health, but they apply to mainly to seafarers. Only a few of them had provisions which apply to fishers under particular circumstances (ILO, 2008).

Recognising these circumstances and severe labour rights-related risks faced by fishers, in 2004 during the 92nd session of the International Labour Conference an item was placed on the agenda on the discussion of developing an all-inclusive Instrument for the industry. Three years later, in 2007 at the 96th session of the International Labour Conference with overwhelming support from member states the ILO Convention No. 188 Work in Fishing Convention, 2007 (Convention No. 188) was adopted and entered into force in November 2017. According to the latest information on the ILO website, only fourteen countries have ratified Convention No. 188. Developing countries which have ratified the convention are Angola, Argentina, Bosnia and Herzegovina, Congo, Estonia, Lithuania, Morocco, Namibia, Senegal, South Africa and Thailand. The only developed countries which have ratified the convention are France, United Kingdom and Norway while Thailand is the only Asian country which has ratified the convention (ILO, 2019).

The main objective of the Convention No. 188 is “*to ensure that fishers have decent conditions of work on-board fishing vessels with regard to minimum requirements for work on board; conditions of service; accommodation and food; occupational safety and health protection; and medical care and social security*” (Preamble of Convention No. 188) (ILO, 2007).

1.2 Background

The Maldives is well known for its Commercial Tuna Fishery. The pole and line tuna fishery concept in the Maldives is the most eco-friendly method of tuna fishing globally, due in part to its low by-catch levels (Robert Stone, 2009). The Ministry of Fisheries Marine Resources and Agriculture (MoFMRA) plays leading role in regulating and management of capture fisheries in Maldives which is governed by the Fisheries Act of Maldives, 2019 (AGO, 2019). Fisheries Management measures set by MoFMRA have helped the fishing industry to improve transparency and traceability. These efforts are backed by Regional Fisheries Management Organizations (RFMOs) and have helped the Maldivian fishery to achieve Marine Stewardship Certificate (Hohne-Sparborth, 2013). The fishing industry employs 20% of the total labour force (FAO, 2015). The fisheries industry represents 99% of the real exports, which was worth 139.76 million US dollars by trading countries across North America, Europe and East Asia. (OEC, 2018). In addition to this the fish remains as the primary basis of protein for the population (FAO, 2012).

Though the fishing industry is very significant for the country’s economy, there are rising concerns over the Occupational Safety and Health and other labour rights. According to Maldives National Defence Force (MNDF) between 2008-2018, there were 271 marine incidents reported by fishing vessels to the National Coast Guard. This includes 41 incidents of Diving Decompression Sickness and 30 fatalities that happened on-board fishing vessels (MNDF, 2019). In July 2019, MoFMRA stopped issuing a license to the longline fleet after they were alerted by the European Commission about human trafficking and forced labour activities involved. The European Commission warned Maldives that if human trafficking and forced labour activities continue the country may face a ban for its products in the European countries. (Peoples Majilis, 2019; MOFAMR, 2018). The European Union is the biggest importer of fisheries and aquaculture products in the world. The European Commission has developed several standards and regulations on importing fishery products to European countries. Thus each country exporting fisheries products to any European country requires to follow the standards of the European Commission. Facing a ban to export fisheries products to

European markets will have a huge impact on Maldives economy as the country is the leading non-European supplier of fresh tuna to Europe (European Commission, 2018; EEAS, 2016).

While focusing on the legislature of Maldives on employment, the primary law governing the rights of employers is the Employment Act, 2008. The Act was formed after several years of discussions among government agencies and with ILO consultation in the drafting process. However, fishers are among the group of workers excluded from the provisions of the Act which addresses issues related to working hours, overtime, holidays, dismissal without cause (Wisham, 2018).

Maldives got ILO membership in 2009 and is a party to the ILO ‘core conventions’ on the most fundamental labour rights. Maldives have ratified the eight fundamental ILO Conventions dealing with fundamental principles and rights at the workplace. This includes the Forced Labour Convention, 1930 (No. 29); the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87); the Abolition of Forced Labour Convention, 1957 (No. 105); the Equal Remuneration Convention, 1951 (No. 100); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Minimum Age Convention, 1973 (No. 138); the Right to Organize and Collective Bargaining Convention, 1949 (No. 98); and the Worst Forms of Child Labour Convention, 1999 (No. 182) (ILO, 2019).

Maldives plays a vital role at the Indian Ocean Tuna Commission (IOTC), which works on managing resources and eliminating the Illegal Unreported Unregulated (IUU) vessels. The country is also a member of the Bay of Bengal Programme (BOBP) which focuses on providing technical support for the sustainability of fisheries resources and management of small scale and fisheries in the region (BOBP; IOTC, 2019). As a member of the Food and Agriculture Organization (FAO) of United Nations, Maldives enjoys receiving assistance towards strengthening food security and fisheries development. The Fisheries Act, 2019, which entered into force on 16th of September 2019, was developed by the technical assistance from FAO (JICA, 2018; Presidents Office, 2019).

International instruments are the secondary source of law according to article 68 of the Maldivian Constitution (AGO, 2008, p. 26). Over the past few years, Maldivian courts have readily referred to provisions of ILO instruments in the interpretation of rights and processes under the Employment Act 2008 (Wisham, 2018). If the Maldives decides to ratify and implement the Convention No. 188, it will assist in improving the working conditions and

ensuring labour rights of fishers, which will help to reduce the fatality rates in the fishing industry. Therefore, the motivation of this research is to review and assess the capacity of authorities and legislature, for the ratification and implementation of Convention No. 188.

1.3 Aims and Objectives

The perspective of this study would enhance the speedy ratification and implementation of Convention No. 188 for the protection of labour rights of the fishers.

To achieve the aim, the study was carried out based on the following objectives;

- To analyze the legal capacity of Maldives for the implementation of provisions of Convention No. 188.
- To analyze the impact on roles and obligations of the national authorities upon ratification and implementation on Convention No. 188
- To analyze the challenges and opportunities to the Maldives by ratifying Convention No. 188.

1.4 Methodology

The study was carried out following a comparative legal analysis, which includes examining international instruments, the guidelines of ILO, documents published by FAO, academic journals and published studies on the subject. Data related to the Maldivian Fishing industry and the current legislation on labour rights were collected from the websites of the government authorities and through email communications with those authorities. After the collection of data, the legal capacity of Maldives in ratifying and implementing Work in Fishing Convention was analysed using “ILO’s guideline to undertake a comparative analysis of the Work in Fishing Convention, 2007 and national laws, regulations or other measures”. Effects of ratifying and implementing the Work in Fishing Convention were assessed through SWOT analysis.

1.5 Scope and Limitations of the Study

The provisions of Convention No. 188 focused in the study are those highlighted as the key provisions by the ILO’s guideline to carry out comparative analyses of the Convention No.188 against national legislation. Among those provisions, the author specifically focused on those which will have a significant impact on the fishers’ occupational safety and health. The

research to identify the challenges to Convention No. 188 in the Maldives is an extensive subject, which covers various institutions; MoFMRA, Labour Relations Authority (LRA), Transport Authority and the Coast Guard. Since these institutions have a limited number of data published through official documents and webpages, it was challenging to obtain the necessary and relevant information related to the labour rights of fishers. By considering the limited time for the research, the author intentionally covered mainly of the data available on the public domain.

1.6 Structure of the Study

The research will be presented in six chapters. Chapter 1 introduces the preliminary aspect of the research including the background of the study, the aims and objectives and the methodology used to conduct the research. Chapter 2 presents an overview of Maldivian Commercial Fisheries Industry, Labour related challenges in fishing industry, both globally and in Maldives, ILO's commitment to improving the labour conditions in the fishing industry, and the Work in Fishing Convention, 2007. Chapter 3 presents the fisheries Industry and the Labour rights of fishers in the Maldives including the relevant government authorities and the national legislature on labour rights. The provisions of Convention No. 188 will be compared against the current legislature in Maldives in Chapter 4 while Chapter 5 will present the findings of the assessment in chapter 4 and present challenges and opportunities to Maldives by ratifying and implementing Convention No. 188 in Maldives. Chapter 6 of the research concludes the research with the recommendations.

CHAPTER 2

Literature Review

This chapter presents an overview of the Maldivian Commercial Fisheries Industry, Labour related challenges in the fishing industry, both globally and in Maldives, ILO's commitment to improve the labour conditions in the fishing industry, and an overview of Convention No. 188. Also the barriers and challenges to implement and ratify Convention No. 188 are given.

2.1 The Maldivian Commercial Fishing Industry

The Maldivian fisheries sector represents 99% of the country's total export (OEC, 2018). Fishing licenses are issued only to vessels owned by Maldivian individuals or companies which are 100% owned by Maldivians. The most prominent methods of fishing in the Maldives are pole and line and the hand line fishing. Licenses are required to participate in any commercial fishing activity, but they are entirely open access except for the longline fisheries. The country does not issue fishing licenses to foreign vessels, but allows the employment of foreign crew in the longline fishery. The commercial fishing fleet consists of 685 vessels, while 349 of them are below 24 meters and 336 of the vessels are above 24 meters in length. (MOFAMR, 2009; MOFAMR, 2014).

MoFMRA focuses on increasing competitiveness and income of the fishers while ensuring the sustainability of marine resources. A majority of the fishery is an open access fishery and there is less control on the fisheries managers to control the fishing effort, thus giving the fishermen the chance to the trade-off between safety and other objectives without rest and fishing in bad weather conditions (FAO, 2001). The longline fishery had a quota-based licensing system but vessels owners had the opportunity to aggregate quota among other vessels (MOFAMR, 2014).

The pole and line fishing fleet consists of vessels, which are constructed using wood and fibre reinforced plastic. Pole and line tuna vessels are locally built and have accommodation blocks for the crew to rest while on the fishing trip. The Longline fishing fleet consisted of foreign-built vessels which have been bought by Maldivian companies and then localised. Since MoFMRA does not obligate any specific requirements for crewing the vessels, the fishing vessel owners enjoy the freedom of hiring unskilled labourers. These vessels, which had an average of nine crew members, operated at sea up to 3 weeks but had small compartments for the crews' accommodation. Most of the crew members on longline vessels are from south-east

Asian countries (MOFAMR, 2018, pp. 27,29). These countries are well-known as major suppliers of forced labour and human trafficking victims (Derks, 2010).

MoFMRA initiated the development of the Fisheries Act, 2019 in 2014, with technical assistance from FAO (JICA, 2018). When the draft of fisheries act was submitted to the parliament and opened for public to comment, the government received a lot of pressure from the fishers and fishing vessel owners. Following the pressure from the fishers and fishing vessel owners, the provisions on fishing operations were detached when it was finally passed from parliament (Edition MV, 2019).

It is due to credence among the Maldivian politicians and government officials that fishers and their families play a vital role in the results of elections. During every election, politicians and political parties focus on developing manifesto's which mention ways to generate more income for fishers through increased fishing efforts and competition in the industry. Also, fishers and fishing vessel owners have a strong influence over the policies and decisions of the government (SUN MV, 2019; MDP, 2018).

2.2 Labour Conditions in the Fishing Industry

Statistics available from the prominent fishing nations on fatalities and injuries in the fishing industry prove that commercial fishing is the most dangerous occupation in the world. It was estimated by ILO's OSH branch that 24,000 fatalities occur annually, which is higher than any other profession. Statistics on deaths and injuries in the fishing industry are maintained poorly in most of the developing countries. Therefore, the actual rates might be higher than those estimated by ILO (FAO, 2001). According to Matthew J.S.Windle, et al. (2008), since statistics are poorly maintained and without a standardised international system to identify, record and report incidents, it is impossible to know the challenges faced by fishermen.

J. E. Nordland (1989) believes that the risks fishers face are often seen as part of the fishing culture by many, which is an obstacle to improve the safety and working conditions in the fishing industry. Kaplan and Kite Powel (2000) after examining the attitude of fishers towards the New England Fisheries Management Council, also shared similar views about it. The authors referring to Harold and Oltedal (2000) concluded that fishers often accept risks associated with the occupation, and some of them do not take risks seriously.

Over the last decade, 30 fatalities were documented by Maldives Coast Guard for the commercial fishing industry where 7596 people are employed. The Coast Guard has assisted in 41 incidents of Diving Decompression Sickness. In 2018 alone there were 18 diving decompression sicknesses. The Coast Guard has been conducting awareness programs around the country for fishers about the best practices of diving (MNDF, 2019). The statistics from MoFMRA indicates that the highest number of fishing effort is carried out in the southern parts of the country where most numbers of diving decompression sickness incidents are reported (MOFAMR, 2018, pp. 7,8). Diving experts in the Maldives assumes that incidents of diving decompression sickness are increasing because fishers lack proper knowledge and training on diving. Also fishing vessels are not equipped with emergency oxygen supplies and first aid kits, fishers wait for assistance from the Coast Guard (Mihaaru, 2019).

In addition to safety and health risks, fishers around the world are often victims of either forced labour or human trafficking. ILO estimates that close to 20.9 million workers around are caught up in forced labour, forced and tricked by either their employer or recruitment agency, and trapped in harsh situations where it is difficult to escape (ILO, 2012, p. 13). Surtees (2013) stated that Forced labour and human trafficking is very extensive in the fishing industry. The severe abuses in the fishing industry mentioned by him include cruel and inhumane treatment on board fishing vessels. ILO (2013), also reported migrant workers in the fishing industry are often cheated and forced by their employers and forced to work under threats being subject to forced labour. These victims are paid relatively less but are forced to work for longer hours without rest and in harsh working conditions.

Similar trends appear in the Maldivian commercial fishing industry. In a compliance inspection by the European Commission's Maritime Affairs and Fisheries division in 2018, it was discovered that some of the foreign crews of Maldivian longliners are victims of human trafficking and forced labour. The European Commission issued a warning to MoFMRA of a possible ban of all Maldivian fishery products to Europe if issues in the longline fishery are not addressed. Thus, MoFMRA decided on July 2019 to suspend longline fishery. MoFMRA will resume licensing for longline fishery after making new regulations (Peoples Majilis, 2019; MOFAMR, 2018).

It was reported by the United States Department of State that in the Maldives there are adults of both genders and children who are subject to forced labour. The report also mentioned that the total number of foreign workers in Maldives is close to 200,000 (Department of State

United States of America, 2014) reported. This is more than twice the number of foreign workers by Maldives Immigration, who reported in the same year that there were 84,694 foreign workers in Maldives (The Bali Process, 2014). The first-ever law of Maldives against human trafficking was passed in 2013. Anti-human trafficking Act, 2013 in its provisions criminalised the trafficking of persons and introduced strict penalties for forced labour. The provisions of the law also criminalised the act of recruitment agencies involved in any act of human trafficking (The Bali Process, 2014, p. 33).

Even though the fishing industry remains as the most dangerous occupation in the world, fishers and fishing vessels are excluded from most of the legal instruments covering labour rights (ITF, 2007). Similarly, in Maldives, the fishermen are excluded from the provisions of the Employment act, 2008 which is concerned with working hours, overtime, holidays, unfair dismissal and employment agreements (AGO, 2008, p. 15).

Considering the increase in the number of human trafficking, forced labour and fatalities and injuries in the fishing industry, during the 92nd session of International Labour Conference a discussion was initiated to develop a comprehensive instrument on work in the fishing sector. After three years of reviews, ILO completed an International instrument concerning the labour rights of fishers; Convention No. 188 was adopted with overwhelming support from the member states (ILO, 2017).

2.3 Work in Fishing Convention, 2007 (Convention No. 188)

Convention No. 188 was developed considering all of ILO's eight fundamental conventions on labour rights. Also previously developed instruments such as Occupational Safety and Health Conventions of 1981 and 1985 and the recommendations, Social Security (Minimum Standards) Convention, Social Security (Minimum Standards) Convention and provisions of Seafarers Identity Documents Convention were also taken into consideration.

The main objective of Convention No.188 is to guarantee fishers all over the world decent working conditions onboard vessels while taking into account minimum requirements to work on board, food and accommodation of fishers. Most importantly the OSH protection of fishers were addressed very specifically. Convention no.188, which broadly demonstrates the efforts of ILO towards ensuring decent work for fishers, applies for all the vessels that are involved in commercial fisheries (ILO, 2012, pp. 1-2).

Convention No.188 includes provisions on the minimum requirements of work on fishing vessels, standards of accommodation and most importantly ensuring Occupational Safety and Health of the fishermen. The most significant changes brought by the convention are the minimum requirements on the age of fishers and a compulsory medical examination. The National Authorities are obligated to set procedures through laws and regulations on how the medical examinations will be carried out and how the certificates will be issued (ILO, 2012, pp. 4-5).

According to Convention No.188, the duties and obligations of fishers must be clear. Therefore, it is a responsibility for the vessel owner to make a written agreement with every fisher which has to be signed by both parties. The fishers must be guaranteed the right to seek advice and review the terms of the contract (Article 16,17 & 18). Before departing the port, or immediately after the departure of each fishing vessel, it is required to inform the competent authorities in that State a crew list of all personnel on board (Article15).

As per the provisions of article 14, all the fishing vessels are required to be manned sufficiently for the smooth and safe operation of the vessel and its navigation. The fishermen who work on-board the vessels should be given regular intervals from their work to rest. Convention no.188 also urges the competent authorities of a country to set stricter requirements depending on the time vessels remain at sea. Article 21 of the convention states that repatriation of foreign fishers after the duration of their employment agreement or termination of the contract is to be done by the expense of the employer. If the employer fails to do so, the duty is on the flag state to arrange repatriation and to recover the costs from the employer. Regarding the salary of fishers, provisions of articles 23 and 24 mentions that each fisher must receive a monthly payment or other agreed terms of payment.

According to article 29 of Convention No. 188, each fishing vessel must carry sufficient medical equipment and must have at least one person on board who knows the use of medical equipment or to give first aid assistance. As mentioned in article 30, there should be communication equipment on the vessel, which can connect to the shore, if a need arises to get medical advice. Fishing vessels are also required to have risk evaluation and risk management systems on-board the vessels to avoid occupational accidents and other risks which are related to the work of fishers, as mentioned in article 31. This includes the training of fishers on how to use the fishing gear and other equipment onboard vessels. Incidents where fatalities or other injuries occur on board the fishing vessels, article 38 mandates member states to take necessary

measures to protect fishers against such events through vessel owner's liability or compulsory insurance schemes (ILO, 2007).

2.4 Benefits to the Contracting Parties

Convention No. 188 if applied in a country will give the fishing vessels owners assurance that the substandard fishing operations will be marginalized. The improvements in the OSH of fishers not only improves the fishing operations it will reduce costs related to the operations. The majority requirements of Convention No. 188 are not too high compared to the current practices in the fishing industry. Therefore, it will not be a burden for most of the vessel owners to comply with Convention No. 188. Also complying with the vessel will reduce the burden faced by fishing vessels, which operate in International waters and land fish to countries other than the flag state as documentation awarded under the Convention will facilitate the procedures they have to follow under the Port State Control Inspections (ILO, 2012, p. 7).

In a fisherman's perspective, Convention No. 188 will strengthen the social dialogue in the industry to improve things for the fishing community. As mentioned earlier the comprehensiveness of the provisions in addressing the OSH of fishermen in multiple ways will improve the lives of fishers and their families (ILO, 2012, p. 8). Convention No. 188 was developed by ensuring that it remains as an instrument which will be quickly ratified by many countries. In the case of developing countries, there may be difficulties of application due to insufficiently developed institutions or infrastructure, lack of human resources and the financial strains. To address these challenges, Convention No.188 allows provisions such as the requirement of crew lists, employment agreements, the need for medical certificates and risk evaluation and protection against injury or death to be applied progressively. Moreover, the Convention also allows the flexibility in the implementing of the provisions related to minimum hours of rest through substantial equivalences, which does not risk the safety and health of fishermen (Vivekanandan, 2007).

In 2013, ILO hosted a Global Dialogue Forum for the promotion of Convention No. 188 and agreed points of unanimity regarding the promotion of Convention No. 188. Regarding the challenges faced in the ratification and implementation of the convention, it was agreed that; *“Given the diversity of the fishing sector, flexibility devices of the Convention allow countries to adopt the Convention's provisions to the specificities of certain categories of fishing vessels or fishers within the framework of the Convention”*. National authorities will also have the

option to use any flexibility device mentioned in the convention. Flexibility clauses include in Convention No. 188 enables member states to implement several provisions of the convention in a progressive manner. Also, flexibility in implementation of the provisions will allow member States to comply with the requirements by considering the characteristics of the fishing sector at the time of ratification (ILO, 2018, p. 4).

International Collective in Support of Fish workers (ICSF) believes that the adoption of ILO Work in Fishing Convention will be a crucial step to improve the employment rights in the industry. The development of long-term labour standards in the interest of the fishing industry would reduce accidents at sea which are caused by fatigue. The improved labour standards will be helpful to the standardise recruitment of crew members which will reduce a chance for forced labour and human trafficking (ICSF, 2013, p. 4).

One of the biggest issues faced by fisheries regulators around the world is vessels which use flags of convenience and engage in Illegal Unreported Unregulated (IUU) fishing. These vessels are known for exploiting labour rights. Convention No.188 through port state inspections has the potential to kick these vessels out of the industry (Vivekanandan, 2007).

2.5 The barriers to Ratify and Implement

Recent trends of globalisation in the commercial fishing industry have presented a lot of challenges for the authorities to regulate labour standards. Considerably in developing countries aligning their national legislation to requirements of Convention No. 188 may be too onerous (SIWATIBAU & SLOAN, 2017).

The regulating of foreign-flagged vessels becomes challenging when it comes to dealing with vessels of distant water fishing nations. The author also mentions that the generation of political will in countries remains as a visible challenge that has been creating a hurdle implementing the provisions of the Convention effectively. The delays in ratification of Convention no.188 emphasises the widely held view that the social protection and employment rights of fishers are not a priority of the governments (Vivekanandan, 2007). The Samudra reports published by the International Collective in Support of Fish workers reports highlighted four reasons why countries have delayed the ratification of Convention No. 188. First, it was mentioned that the lack of provisions in the existing national legislation to ensure social protection and other rights of fishers guaranteed by convention No. 18. Thus it requires countries to develop new legislation to meet the requirements of Convention No. 188 and the high costs of such work

remains a reason why countries have delayed ratification. The second reason is that in many countries, elements of Convention No. 188 falls into a mandate of several agencies and they often lack coordination and coherence. The third reason mentioned in the report blames vessel owners who pressure governments to avoid ratification as they are doubtful that ratification would lead to increase in the cost of fishing operations (ICSF, 2013).

According to Servais (2013) meeting with ILO standards is a challenge even for highly industrialized countries. The author further elaborates that the cost of meeting ILO standards are different in countries depending on their administrative and industrial structures. For instance, training fishers and public officials who will inspect vessels might become a financial burden for developing countries. In the Maldivian context, there has been no impact analysis done so far on the capacity of the current legislature and obligations of authorities to improve the OSH of fishers to international standards. Therefore, the author focuses on analysing impact of ratification and implementation of ILO Convention No. 188 which is one of the most comprehensive international instruments that focus on improving the OSH of fishers. The findings will assist to identify the opportunities and challenges for the country in implementing Convention No. 188.

2.6 Summary of the Chapter

This chapter has revealed that the commercial fishing industry is the most dangerous occupation in the world. The lack of a comprehensive international instrument on regulating the working conditions of fishers remains as the biggest challenge for the industry. It was found that Convention No. 188 has the potential to improve the working conditions of the fishers around the world. The insight of Maldivian Commercial fishery, mentioned in this chapter, has divulged that MoFMRA focuses more on increasing the competitiveness in the fishing industry to increase the economic benefit and also the sustainable management of marine resources. It was also learnt that in Maldives, fishers and fishing vessel owners have a huge influence over the policies and decision making of administrations. There is less control over the fishing effort as the majority of the fisheries is open access. Fishers in Maldives lack training which is a major cause for the increasing number of fatalities onboard fishing vessels over the years. In addition to OSH related incidents, the fishers in the longline fleets are victims of forced labour and human trafficking activities. If MoFMRA does not solve these issues, the country's fishery products may face a ban in the European Markets. The chapter also highlighted the common challenges faced for countries in ratifying and implementing Convention No. 188.

Chapter 3

The Authorities and Legislature

This Chapter presents the arising duties and obligations of the Authorities that are involved in ensuring the labour rights and the occupational safety and health of fishers upon ratification of Convention No. 188. In addition, an overview of the legislature is in place related to the Labour rights and Safety of Fishermen, the detailed assessment of the current legislature against Convention No. 188 is presented in Chapter 4.

3.1 Roles and Obligations on National Authorities

Article 40 of Convention No. 188 mentions that *“Each Member shall effectively exercise its jurisdiction and control over vessels that fly its flag by establishing a system for ensuring compliance with the requirements of this Convention including, as appropriate, inspections, reporting, monitoring, complaint procedures, appropriate penalties and corrective measures, in accordance with national laws or regulations.”* However, the Flag States are allowed to keep the provisions in their national legislature, which might have higher requirements than those of Convention no. 188. In addition, flag states will benefit from the flexibility clauses of the convention, which allows inspecting fishing vessels for matters which are not in the convention (ILO, 2007).

For the implementation of Convention No. 188, flag States are obligated to designate a competent authority or authorities, which will be responsible for inspecting the work and living conditions on board fishing vessels as mentioned in the Article 1(b). If there is more than one competent authority designated in the State importance, it should be given to establishing coordination among the authorities to carry out their responsibilities (Article 7). At the international level, flag states are urged to strengthen their cross-border cooperation and exchange of information to eliminate the illegal fishing practices and violations of the convention (ILO, 2015, pp. 41,42).

MoFMRA is the government authority responsible for regulating the fisheries sector. According to article 3 of the Fisheries Act, MoFMRA will represent the Maldivian government in the regional and international instruments and the international organizations will represent that related to Fishing, Activities related to fisheries, aquaculture, all being activities within the scope of the Fisheries Act (AGO, 2019, p. 5). In addition to this, there are other agencies such as the Maldives Transport Authority, Coast Guard and Labour Relations Authority, Maldives

Immigration and Ministry of Economic Development involved in ensuring the labour rights of fishers and their welfare. If the Maldives decides to ratify and implement Convention No. 188 the roles and obligations of these institutions will be affected.

3.1.1 Ministry of Fisheries Marine Resources and Agriculture (MoFMRA)

MoFMRA has the mandate of regulating both the fisheries and agriculture sector in the Maldives. The work of the organisation is divided into five divisions, fisheries division, Administrative division, Agriculture division, Uninhabited islands and lagoons division and Marine Research Centre. The Fisheries sector is administered primarily by the Fisheries division while the Fisheries advisory board, Fisheries technical committee and Fisheries promotion board advise the Minister on the development of the fisheries industry. The Marine Research Centre also plays a vital role in the work of the Organization through its scientific researches for managing and development of the fisheries sector. The mandate of the fisheries division is to work towards strengthening the industry to increase the competitiveness and also to ensure the sustainability of marine resources. The work of fisheries division is assigned to five sections. Namely, Fisheries Management Sections, Fisheries Compliance Section, Fisheries Logistics and Administration Section, Fisheries Training, Extension & Promotion Sections, Fisheries Infrastructure Development Section. The work assigned to these sections must have to be reported to the Director-General of the Fisheries Division. The fisheries Management section is responsible for developing management plans, fisheries policies, regulations, collection of fisheries data and issuing a license to fishing vessels and fish processors. Compliance department conducts regular inspections on the fishing vessels and processing facilities to check if they are compliant with the licensing regime and other fishing regulations (MOFMRA, 2019).

Fisheries compliance officers have inspected 230 vessels and seven fish processing facilities in 2018 (MOFMRA, 2018). The inspections were carried out following the guidelines by both the Indian Ocean Tuna Commission (IOTC) and FAO (MOFMRA, 2018). The Fisheries compliance officers of MoFMRA, Coast Guard and Customs officers are trained with technical assistance from IOTC and FAO to conduct inspections focused on eliminating the threats of IUU fishing (IOTC, 2015).

Fisheries training, extension and promotion section is responsible for conducting training programs related to fisheries (MOFMRA, 2019). There were seven training programs

administered by MoFMRA in 2018, but all of them focused on educating students. The number of training programs are limited because of the lack of both financial and human resources (MoFMRA, 2018).

As rising obligations from the ratification of Convention No. 188, MoFMRA should develop regulations or other measures to reduce occupational accidents and work-related risks on board the vessels. MoFMRA should make it an obligation for fishing vessels to report accidents that occur on board vessels and must investigate them accordingly. The Ministry must take the initiative in forming joint committees on OSH and accident prevention, as stipulated in article 32 of Convention No. 188.

The Fisheries Act, 2019 obligates MoFMRA to establish a college or an institute which should work towards the expansion of the fisheries sector by providing advanced training and education to fishers (AGO, 2019, p. 10). Such institute or college established by MoFMRA should “require that fishing vessel owners, skippers, fishers and other relevant persons should be provided with sufficient and suitable guidance, training material, or other appropriate information on how to evaluate and manage risks to safety and health on board fishing vessels” according to article 32 of Convention No. 188.

With regards to the manning of vessels, MoFMRA does not have any requirements or qualifications needed to work onboard a fishing vessel. While implementing Convention No. 188, MoFMRA must include the fishers work agreement as a required document with an application form submitted for the commercial fishing license. Also, MoFMRA should determine which authorities the vessels owners should inform about crew lists (crews onboard) before leaving the port.

3.1.2 Transport Authority

Maldives Transport Authority (MTA) is an independent authority under the umbrella of the Ministry of Transport and Civil Aviation in the Maldives, which is responsible for the transport sector in the Maldives. The Marine Department of the MTA is responsible for developing regulations related to the safety of vessels and crews on board. MTA is also responsible for maintaining the registry of vessels and the manning standards for the vessels and also regulations related to the safety of vessels which operate in the Maldives (TA, 2014).

The Seagoing Vessel Safety Regulation (2015/R-229) mandates every vessel which operates in the Maldives to have a valid Sea Worthiness Certificate. Requirements of the seaworthiness certificate ensure that crew members have a valid health certificate and an employment agreement (not mandatory for fishers). The seaworthiness certificate is valid for one year thus; each will be inspected at an interval of one year. The regulation further addresses all safety equipment, communication equipment onboard including first aid equipment. Once the Sea Worthiness Certificate is issued there are no further inspections carried out by MTA to check compliance with safety regulations. The Marine Police and Coast Guard conduct inspections randomly and report the non-compliant vessels to MTA and MoFMRA. In 2017, MTA made it mandatory for all the vessels that operate in Maldives to have hull insurance. However, with the complaints and concerns from vessel owners, especially the fishing vessel owners, MTA decided to implement the regulation only on vessels which are used for transportation (TA, 2015). While enforcing provisions of Convention No. 188, MTA must make it mandatory for the fishing vessels to submit employment agreements of all fishers. According to Shiyaza (Personal Communication, 14th August 2019) there are no inspectors in MTA. Thus to implement Convention No. 188, the MTA should hire more staff and train them according to the requirements of the convention to ensure compliance of safety regulations.

3.1.3 Labour Relations Authority

The Labour Relations Authority (LRA) is mandated to oversee compliance of the Employment Act, 2008 and its enacted regulations. The functions of LRA are carrying out inspections and implementing the administrative steps required for the implementation of Employment Act, 2008. Also investigating the disputes and claims between employers and employees. Furthermore, LRA has a mandate to create awareness regarding the provisions of the Employment Act, 2008, and providing technical information and advice for employers and employees (Saeed, 2015). Though LRA has the authority to inspect fishing vessels for compliance with the Employment Act, they have not inspected any vessels in the past three years (LRA, 2019). According to the US Department of State (2014). LRA faces difficulties in assessing safety standards during inspections due to the lack of national standards and lack of human resources. With the ratification and implementation of Convention No. 188, LRA must conduct appropriate inspections on fishing vessels. The organisation must employ a sufficient number of qualified inspectors, to conduct inspections, and must have the legal authority required. After the inspections, LRA must issue a document of inspection to vessels and must communicate it to relevant authorities. According to Articles 43 & 44 of Convention No. 188,

LRA must investigate any complaint received regarding working conditions or labour rights-related issues onboard fishing vessels (ILO, 2007).

3.1.4 Coast Guard

The Coast Guard of the MNDF plays a vital role in enforcing the maritime regulations in the country. The Coast Guard is mandated to protect the border of the country, and also to provide search and rescue services (AGO, 2008). According to article 57 of the Fisheries Act, 2019 MNDF the Coast Guard must carry out the roles assigned by MoFMRA for implementing the fisheries laws and regulations in the Maldives. Article 60 of the Fisheries Act, 2019 gave the Coast Guard officers the authority to board and inspect fishing vessels without a court warrant (AGO, 2019, p. 37). While implementing Convention No. 188, MoFMRA may delegate additional tasks, such as labour inspections to Coast Guard officers.

The Coast Guard is the only government agency which maintains data on accidents in the fishing industry. Those recorded by the Coast Guard are only the incidents which are reported to them by fishermen who are seeking assistance. In addition to this, recognising the increase in the number of diving decompression sickness incidents, the coast guard has been voluntarily conducting training programs for fishers around the country (MNDF, 2019). While implementing convention No. 188, in the Maldives the coast guard will be required to align the training programs up to the standard developed by the training institute, which will be developed by MoFMRA. As currently MoFMRA and LRA do not have enough staffs to conduct inspections on the fishing vessels the Coast Guard officers will be authorised to conduct inspections.

Also, for the implementation of Convention No. 188, the Coast Guard should improve cross-border cooperation and the exchange of information to eliminate illegal fishing practices and violations of the convention. Moreover, the Coast Guard must ensure that inspectors have sufficient knowledge about the protection and standards of Convention No.188, and must be trained to perform their duty. Inspectors must also have access to sufficient safety equipment. Furthermore, inspection reports must be available to the public or shared with the relevant authorities to publish them to draw attention to the deficiencies which are detected (ILO, 2015, pp. 34,35,37).

3.1.5 Immigration

Maldives Immigration (MI) is responsible for “protecting the borders of Maldives, from undesirable or harmful effects from immigrants and aliens, that might deter or disrupt the harmony and solidarity of the sovereign Maldives” (MI, 2019). The foreign labourers working in the Maldives are required to get approval from MI before they are allowed to enter the country. MI has also developed regulations on the issue of work permits and the terms and allocates the issuance of quota for bringing foreign labourers into the country (MHRYS, 2011). The department requires the medical insurance, employment agreement and the health certificate of the foreigners who apply for the work visa in the Maldives. As recommended in the ILO Guidelines for the Flag States on the implementation of Convention No. 188 (ILO, 2015) MI must share information and facilitate coordination between relevant agencies to tackle the illegal activities.

3.1.6 Maldives Police Service

Maldives Police Service (MPS) is the national police force of Maldives, which is responsible for enforcing the laws of the country to maintain peace and order (MPS, 2011). According to article 57 of the Fisheries Act, 2019 MPS must carry out roles assigned by MoFMRA for the implementation of fisheries laws and regulations in Maldives. As an additional task, MPS officers will be required to conduct inspections as mentioned in the provisions of Convention No. 188 (AGO, 2019, p. 38).

3.1.7 Ministry of Economic Development

The Ministry of Economic Development (MED) formulates trade and economic policies. The broad span of its mandate also includes matters related to immigration and emigration, labour, and maritime transport services. The labour-related issues such as the decision to enter into international conventions about employment and labour, are within the mandate of MED. Employment agencies in the Maldives are operated according to the regulations set by MED (MED, 2019). As the responsible agency to make decisions on the entering into international conventions, MED should designate the competent authority or authorities to implement provisions of Convention No. 188. According to Article 7 of the Convention No. 188, MED must also “establish mechanisms for coordination among relevant authorities for fishing sector at national and local levels, as appropriate, and define their functions and responsibilities, taking into account their complementarities and national conditions and practice” (ILO, 2007).

3.2 Domestic Laws and Regulations

The fisheries sector is primarily regulated by the Fisheries Act, 14/2019, which focuses more on the sustainable management of fishery resources and increases the economic benefit gained from the fishing industry. In addition to the Fisheries Act, 2019 and regulations made under it, there are several other regulations and laws in place which regulate the employment rights of fishermen.

3.2.1 Fisheries Act, 14/2019

The Fisheries Act, 14/2019 entered into force on 16th of September 2019 mentions standards for the protection of the marine environment, marine resources, regulating fisheries-related activities within the EEZ of Maldives, control of fisheries activities conducted by Maldivians on high seas and for the development of both fisheries and aquaculture activities in the country.

The main objectives of the Fisheries Act, 14/2019 mainly focus on;

- *“The preservation and protection of the marine environment and fisheries resources for sustainability.*
- *The development of a framework, which is developed by the principles of equity and good governance.*
- *The development of aquaculture and developing a mechanism to regulate aquaculture and increasing the possibility of economic development.*
- *The development of regulations to eliminate IUU fishing.*
- *The development of the legal framework for the implementation of obligations arising from international instruments which Maldives is a party to.*
- *Recognizing the work of fishers and ensuring fishers get a reasonable income.*
- *Maintaining a register for fishers and ensuring their rights, ensuring the social protection and ensuring the right for pension.*
- *Motivating the young fishers to get involved in the fisheries sector.*
- *Ensuring equal opportunities for both genders in the fisheries sector.*
- *Ensuring the Maldivian fishers, the opportunity to conduct fisheries activities on the high seas and also selling the fish to overseas markets.*
- *Developing “home fish processing facilities” with the collaboration of local councils and private parties.*
- *Providing the opportunity for the development of offshore platforms.*
- *Providing the opportunity for the expansion of the business of fishing vessels construction” (AGO, 2019, pp. 1-3).*

The provisions of the Fisheries Act apply to all the vessels and crew members on board vessels which operate or enter the EEZ of the country. Also, the provisions do apply for the Maldivian flagged vessels and crew on board those vessels even though they operate beyond the EEZ of the country. According to Article 5 of the Fisheries Act, the establishment of sufficient monitoring systems for the effective implementation of roles and obligations arising from international conventions and other instruments are within the mandate of MoFMRA. Provisions of Article 10 and Article 11 mandates MoFMRA to develop relevant schemes to guarantee fishers their right to Social protection, pension, and providing modern training and education related to the fisheries sector. The Fisheries Act also promotes gender equality in the fisheries sector and mandates MoFMRA to develop a register of commercial fishers in Maldives within 100 days after the Fisheries Act enters into force. The ministry currently maintains a register of commercial fishers through the commercial fisheries licensing regime (Article 8 and 9) (AGO, 2019, pp. 5-9).

The most prominent changes seen from the Fisheries Act, 2019 is that it calls for cooperation and dialogue with the local councils and government agencies. Article 15 of the Fisheries Act mentions that MoFMRA may form a Memorandum of Understandings (MOU's) and Standard Operating Procedures (SOP's) for delegating the authority of MoFMRA to other agencies including local councils for enforcing the provisions of the Fisheries Act (AGO, 2019, p. 11).

The provisions of the Fisheries Act on the management of fisheries sector obligates the development of management plans, regulations on the management of fisheries and widely focuses an expansion of the fisheries sector. This includes provisions on selling fish to foreign fishing vessels, development of offshore platforms, development of small scale fish processing facilities, allowing fishers to sell fish directly to foreign countries. As the fisheries regulator of the Maldives, MoFMRA has the authority to suspend or cancel the fishing licenses if the parties are violating the Fisheries Act and the regulations made according to the act. The provisions on issuance of licenses mentioned in the Fisheries Act states that licenses must be issued according to regulations made by MoFMRA. The commercial fishing licenses and fish processing licenses are issued according to the "Regulation for Licensing Commercial Fishing, Fish Processing for Exports and Aquaculture" (MOFAMR, 2009; AGO, 2019).

The provisions of chapter 9 of the Fisheries Act emphasizes the need for establishing a Monitoring Control and Surveillance (MCS) system. MoFMRA is obligated to coordinate with

MNDF Coast Guard, MPS, Maldives Customs Service, Maldives Transport Authority and other relevant institutions for establishing an MCS system (AGO, 2019, p. 36).

According to article 57 of the Fisheries Act, it is an obligation for all the authorities which are assigned duties to implement and enforce fisheries laws and regulations by MoFMRA. The enforcement officers are explained in article 57 as those officers who have received training and experience related to the work assigned. The enforcement officers of Coast Guard and MPS are given the authority to board vessels and enter fish processing facilities without warrants for the inspection and carrying out the duties assigned by MoFMRA (Article 59 and 60). In addition to this article 58 of the Fisheries Act allows MoFMRA to hire of Rangers for the implementation and enforcement of fisheries laws and regulations. The duties and obligations of Rangers have to be defined in regulation or guideline developed by MoFMRA.

The roles assigned to fisheries enforcement officers from MPS includes inspecting vessels to check the licenses, fishing gear and seizing any equipment which can be used for illegal activities. The fisheries enforcement officers of Coast Guard are assigned to board the fishing vessels both in the Maldivian EEZ and in the high seas to check the seaworthiness certificate and the fishing equipment. Also the officers of the Coast Guard are given authority to arrest crew members of fishing vessels if they are engaged in a violation of the Fisheries Act and regulations made under it (AGO, 2016, pp. 35-40).

Fishing vessel owners and fishers are obligated under Article 70 of the Fisheries Act to cooperate and provide necessary information to rangers and enforcement officers. Article 72 of the Fisheries Act stipulates that fines imposed on foreign-flagged vessels found guilty of violating the Fisheries Act will face twenty times higher fine than the amount mentioned in the act. The violation of licensing requirements or fishing without license includes a fine of not more than Maldivian Rufiyaa four hundred thousand (Twenty-five thousand nine hundred forty US Dollars). The parties found guilty of violating the regulations formed under the Fisheries Act are subject to a fine not more than Maldivian Rufiyaa five thousand (Three hundred twenty-four US Dollars) (AGO, 2019, pp. 41-47).

3.2.2 Commercial Fishing Regulations

MOFAMR issues fishing licenses according to “Regulation for Licensing Commercial Fishing, Fish Processing for Exports and Aquaculture” (MOFAMR, 2009). The Commercial Fishing License will be issued only for the types of fisheries decided by MOFAMR, and the licensees

must not engage in any commercial fishing activity (Article 4). If an authorized party wants to transfer the license to another party, it can be done after getting approval from MOFAMR.

The licensed fishing vessels are required to provide crew lists of the vessels while applying for the license. In addition to this, MOFAMR has the right to reject license applications if the vessels do not have seaworthiness certificates and health certificates (Article 14). According to Article 24 of the regulation, the ministry may deploy a fisheries observer on board the longline fishing vessels. The duty of the observer includes collecting information on fishing operations (gear used, catch data, bycatch data), a record of sales of fish to the processing facilities, and how data is recorded on the catch logbooks. The regulation mandates longliners to ensure their fishing operations are in accordance with the provisions of the Fisheries Act, commercial fisheries license regulation and the regulation on issuing longline fishing licenses. Therefore, the violations of a provision of the two regulations of the Fisheries Act are dealt with by the penalties mentioned in the “Commercial fisheries license regulation” (MOFAMR, 2009, pp. 4,6,7).

3.2.3 Employment Act, 2008

The Employment Act of 2008 is the first Statute on employment or labour rights in Maldivian history, which was formed after several years of discussions among government agencies and the ILO consultation in the drafting process. Provisions of Chapter 2 prohibit the forced labour and discrimination of all kinds in the hiring and termination of employees and also while giving wages and training. Chapter 4 prescribes in its provisions about the employment agreements, working hours and right to leave and procedures for the termination of employment. The Act further mentions the formation for a Labour Relations Authority and an Employment Tribunal. While chapter 4 of the Act carries with it the most significant group of rights and benefits enjoyed by employees, creating several duties upon the employer in matters such as dismissal, disciplinary action etc. Section 34 of the Act excludes workers’ on-board vessels from the scope of Chapter 4. Thus workers on board vessels do not enjoy the rights, benefits and protections afforded according to Chapter 4, which essentially means that issues such as working hours, overtime, holidays and dismissals without cause are not within the legislative purview of protection afforded to workers in the seagoing vessels (AGO, 2008).

3.2.4 Safety of vessels operating in Maldivian Waters Regulation

The “Safety of vessels operating in Maldivian waters” regulation formed by Maldives Transport Authority applies to all the vessels that operate in the Maldives except the vessels used by military personnel and those foreign vessels which have been given diplomatic clearance (Articles 6 &7). The safety regulation addresses the detailed procedures for surveying vessels for seaworthiness certificate. The regulation also mentions that seaworthiness certificates must be issued for 1 year (TA, 2015). The inspection carried out before issuing the seaworthiness certificate includes checking if the crew on board the vessels have a valid health certificate and employment agreement. The regulation excludes fishing vessels to have mandatory employment agreements (Jaleel & Grewal, 2017).

3.2.5 Anti-Human Trafficking Act 2013

The most significant milestone the Maldivian government has achieved in combatting human trafficking is the Anti-Human Trafficking Act 12/2013. The Act was developed aiming to achieve the international best practices which include three main components, which focus on the prevention and criminalisation of forced labour and providing rehabilitation for victims. The anti-human Trafficking Act is the first attempt in the legislative history of the country to make trafficking in persons a criminal offence. The provisions of the act further criminalise fraudulent recruitment also as an act of human trafficking. The objectives of the Anti-Human Trafficking Act includes;

- Prevention of trafficking of persons through and across the country.
- Criminalising the acts of trafficking person and prescribing penalties.
- Enhancing the prosecution of alleged perpetrators of human trafficking.
- Promoting the rights of victims of human trafficking (AGO, 2013).

According to the Anti-Human Trafficking Act, the president of Maldives has established the committee which oversees the work by authorities in combating human trafficking. The committee includes the participation of government agencies, independent institutions and the civil society. The fourteen members of the committee includes representatives from the Human Rights Commission of the Maldives, Prosecutor General’s Office, Attorney General’s Office, Department of Immigration, Ministry of Foreign affairs, Maldives Customs service, Maldives Police Service, Labour Relations Authority, Ministry of Home Affairs, Ministry of Islamic Affairs and a Non-Governmental Organization. The committee has no representative from MoFMRA (The Bali Process, 2014).

3.2.6 Employment Agency Regulation, 2016

The aim of Employment Agency Regulation is to regulate employment agencies which assist Maldivians to get employment opportunities abroad and to help foreigners to get employment in the Maldives. The regulation also ensures that the recruitment process is carried out without affecting the rights of any employer and also the process is carried out according to provisions of International Conventions on labour rights (Article 3). Parties which wish to operate as an employment agency are required to obtain a permit from the Ministry of Economic Development (Article 5). The regulation is implemented by the MED, LRA, MI, MPS, Employment Tribunal and Courts of Maldives. The permits are not issued to parties who have a record of violations of the Employment Act of 2008 and the Anti-human trafficking Act, 2013 (Article 7). The permits issued to employment agencies are subject to be renewed every two years, which requires a security deposit of 50,000 USD. According to the provisions of the regulations, those agencies who are not compliant can be blacklisted and denied service from any government authority. Regarding foreign employers, the law strictly prohibits the charge of any fee directly or indirectly from any person who is being recruited (AGO, 2016).

3.4 Summary of the Chapter

The findings of this chapter reveal that ensuring labour rights and the occupational safety and health of fishers in the Maldives, falls under the mandate of various authorities. MoFMRA, which is responsible for regulating fisheries sector, must develop regulations to reduce occupational accidents onboard vessels and procedures to investigate the accidents which occur onboard fishing vessels. The development of manning standards and reporting mechanisms of accidents that occur on-board fishing vessels will be an additional task assigned to MoFMRA upon ratification of Convention No. 188. The current training department or training institution of MoFMRA must focus on giving training to fishers rather than focusing on educating school students. MTA currently has no inspectors employed to check the compliance of safety regulations. Therefore, they must hire staff and train them accordingly. The Coast Guard should improve cross-border cooperation and the exchange information, to eliminate illegal fishing practices and violations of the convention. MED is the authority which makes decision to enter into international conventions about employment and labour established mechanisms for coordinating among relevant authorities at the national level. LRA will be required to develop

national safety standards. For compliance inspections required by Convention No. 188, the authorities must provide the staffs appropriate training, safety equipment and authority to carry out inspections. The national legislature discussed in the chapter presented the Fisheries Act, 2019 which is the primary legal instrument that regulates the fisheries industry in Maldives. It was discovered that apart from obligating the MPAO to develop disability insurance schemes, there are no provisions which require MoFMRA to develop regulations on improving the working conditions and OSH of fishers. The safety related matters of seagoing vessels are regulated by the safety of vessels operating in Maldivian water regulations. The issues related to labour rights are addressed in Employment Act, 2008 where they are comprehensively addressing the core labour rights. However, workers on seagoing vessels are excluded from important provisions. The Anti Human Trafficking Act, 2013 and the Employment Agency regulations stipulates the employment of expat workers in the country.

Chapter 4

Assessment of Ratifying and Implementation of Convention No.188

This chapter presents a comparison of Convention No. 188 against the current legislature of the Maldives. The findings of this chapter is further elaborated in Chapter 5.

4.1 General Duties

According to Article 94 of United Nations Convention on Law of the Sea (UNCLOS), it is the duty of each State to take necessary measures to ensure the safety of vessels which carry their flags by keeping up to the requirements mentioned in international conventions regarding labour conditions, training and the manning of ships. After the adoption of Convention No. 188, ILO gave importance to develop guidelines to assist both flag states and port states in performing their duties (ILO, 2015; 2010). Convention No. 188 was developed by considering the ILO's eight fundamental conventions on labour rights. Maldives is already a party to those conventions, and according to the legal system of the country international instruments are referred by courts while interpreting labour rights. Also provisions of those conventions are enacted into national laws and regulations. (Wisham, 2018).

4.2 Definitions

Part 1 of Convention No. 188 mentions the definitions and scope. Commercial fishing is described as all fishing operations including fishing operations on rivers or canals. In the Maldivian legislature, regulations for Licensing Commercial Fishing, Fish Processing for Exports and Aquaculture define commercial fishing as fishing to export or to sell to an exporter. Article 1 of Convention no. 188 defines the fishing vessel owners, fishers, skippers and fishers work agreements. The Fisheries Act 14/2019 does not define the fishers work agreement but article 88 defines fishing vessel owners, operators of fishing vessels, fishers. The role of a skipper is defined in the convention as the fisher who has command of a fishing vessel while in the Maldives, Regulation for Licensing Commercial Fishing, Fish Processing for Exports and Aquaculture defines skipper as the person who is in charge of the decisions on a vessel's operations. The Fisheries Act 14/2019, in its article 88, further defines the masters of the vessels. (ILO, 2007; MOFAMR, 2009; AGO, 2019).

4.3 Minimum Age

Part 3 of Convention No. 188 defines minimum requirements for work on board fishing vessels. Article 19 of Convention No. 188 sets a minimum age to work onboard a fishing vessel as 16 years and also gives flexibility to the National Authority to reduce the minimum age to 15 years old (ILO, 2007). In the Maldivian Employment Act, 2008, the minimum age of employment is 16 years. The provisions of the Act prohibit the employment of minors in working conditions which might have a detrimental effect on their health, safety, education, and conduct. Also, the Act requires the approval of guardians for the employment of minors and also prohibits making minors work after 11 pm. The minors in employment are required to be registered at LRA and if employed on a vessel minors should be subject to medical certificates issued by a medical practitioner licensed by the government (AGO, 2008).

4.4 Medical Examination

Article 10 of Convention No. 188 mandates all fishers to have medical certificates which assure that they are fit to perform their duties. Paragraph 2 of the article allows a competent authority to exempt the requirement of such certificates by considering the duration of the voyage, size of the vessel and the availability of medical assistance to the vessel. However, this exemption does not apply to vessels that remain at sea for more than three days or are above 24 meters in length. According to paragraph 3 of article 10 of the Convention No. 188, for vessels which remain at sea for more than three days and are above 24 meters in length the requirement is compulsory (ILO, 2007). “Safety of vessels operating in Maldivian waters”. Regulation by the Transport Authority makes it mandatory for vessels to present the medical certificate of its crew as a part of the inspection for issuing seaworthiness certificates. The medical certificates have to be issued by a health practitioner who has a license issued by the government (TA, 2015).

4.5 Manning and Hours of Rest

According to the provisions of Article 13 of Convention No. 188 member states are obligated to ensure that fishing vessels are crewed safely and sufficiently for the safe navigation and operation of the vessel. Convention No. 188 also obligates member states to ensure that fishers enjoy sufficient periods of rest to guarantee their safety and health. Furthermore, article 14 mentions that for vessels of 24 meters in length and over, or those vessels which remain at sea for more than three days, competent authorities set a minimum level of training and

qualifications to work onboard vessels. Also it specifies that fishermen on-board vessels which are 24 meters and remaining at sea for more than three days must get a minimum of ten hours' rest per day and a total of seventy-seven hours of rest per week (ILO, 2007). Article 32 of Maldives Employment Act, 2008 mentions the maximum number of working hours per week, but according to Article 34 fishers are exempt from provisions that specify the maximum working hours (AGO, 2008).

Commercial fisheries license regulations by MoFMRA do not mention qualification or training requirements of the fishers on board vessels (MOFAMR, 2009). However, according to MTA's "Safety of Seagoing vessels in Maldives" regulation, a minimum number of crew members are allowed on a vessel are mentioned. The regulation obligates vessels to be operated by a captain who holds a license to operate vessels and requires the presence of a marine mechanic. These requirements are high for vessels which are above 24 meters in length (TA, 2015).

4.6 Crew List

Article 15 of Convention No. 188 requires the fishing vessels to provide a crew list to competent authorities in the country and the vessels must have the crew list on the vessel (ILO, 2007). According to the "Regulation for Licensing Commercial Fishing, Fish Processing for Exports and Aquaculture" the fishing vessel owner has to submit the crew list with the application for a commercial fishing license (MOFAMR, 2014; MOFAMR, 2009). As of now, there are no regulations which require fishers to report the crew list to MoFMRA or any other agency before departing for a fishing trip.

4.7 Fisher's work agreement

The provisions of Article 16 through article 20 of Convention No. 188 obligates member states to make it compulsory for fishing vessel owners to form an employment agreement with the fishers. The employment agreement should be formed by allowing fishers to review and seek advice on the terms and conditions of the contract. A copy of the agreement must be given to the fisher and a copy has to be accessible onboard the vessel and must be presented during inspections (ILO, 2007). "Safety of Seagoing vessels in the Maldives" requires all vessels to present valid employment agreements to vessel surveyors during inspections prior to issuing seaworthiness certificates, but fishes are exempted from this clause (TA, 2015).

4.8 Repatriation

The provisions of article 21 of Convention No. 188 obligates fishing vessel owners to repatriate fishermen as soon as possible upon the end of their contracts. Also, fishing vessel owners must repatriate foreign workers if the employment contract is terminated by either the fisherman or vessel owner for a justified reason (ILO, 2007). In Maldivian legislature, according to Chapter 4 of the regulation on “Recruitment of Foreign Laborers” repatriation costs must be paid by the employer (Gazette MV, 2011).

4.9 Payment of Fishers

Article 23 of Convention No. 188 obligates fishing vessel owners to pay the salary of fishers to monthly or other payment intervals agreed by the fishers and the vessel owner. Also, provisions of article 24 mention that fishers must be allowed to send their salary or part of it to their home without any costs (ILO, 2007). As per article 50 of the Maldives Employment Act, 2008 all employees other than temporary employee’s salary should be paid at least once a month (AGO, 2008). In the Maldives, there is a “Masveriyaa” (Fishermen in Maldivian Language) Card, and Digital Wallet introduced especially for fishermen to assist them in making transactions and payments more conveniently through a unique card linked to a digital wallet (MBR, 2019).

4.10 Accommodation and food

Articles 25 through 27 specify the need to improve a standard of accommodation and food served on board the vessel. In Article 28, particular reference is given to Annex III concerning the design and construction of fishing vessels, ventilation, sleeping rooms, laundry facilities and sleeping rooms available onboard (ILO, 2007). In Maldivian legislature, MTA’s “Regulations for Maldivian maritime vessels built in the Maldives” mentions the standard of vessels. Chapter 7 of the regulation specifies that crew accommodation blocks on vessels should have sufficient space and should be built by considering the health of crew members. Specifically standards of the ventilation, area of sleeping beds, laundry facilities, toilets, food quarters and availability of water are mentioned in the provisions of Chapter 7 (TA, 2017).

4.11 Medical Care

According to Convention No. 188, each fishing vessel must be equipped with sufficient medical equipment onboard. It also mentions that at least one of the crew members should be given the training to provide first aid or to use medical equipment. The convention also

prescribes the need for having communication equipment which should help the vessel to connect to medical services ashore to receive advice. These provisions are already in the Maldivian legislature through the regulation on “Safety of vessels operating in Maldivian waters”. The regulation specifies the minimum number of medicine which should be available on board the vessels and requires at least one crew member to have received first aid training and the use of a medical car. In addition, it obligates the presence of communication equipment on board to connect to medical services ashore in order to get advice when the need arises (TA, 2015; ILO, 2007).

4.12 Occupational Safety and Health Protection

Article 31 of the Convention No. 188 stipulates that member states should adopt laws and regulations or other measures to *"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"*. The article further prescribes the obligations on fishing vessel owners, and the responsibility of the competent authorities to investigate OSH related accidents. Article 73 of the Maldivian Employment Act, 2008 mentions that employers should implement measures for the safety and protection of employees at workplace without taking any charge from them. Those measures include providing protective equipment, training and education as well as regular health checks for employees (AGO, 2008; ILO, 2007).

4.13 Social Security

The provisions of Article 34 through Article 37 of Convention No. 188 mentions that fishers and their families have access to social security benefits (ILO, 2007). In the Maldives, social protection is a constitutional right for all of its citizens. The “Regulation on Maldives Retirement Pension Scheme” developed according to article 12 of the Maldives Pension Act, mentions that every employer must enrol their employees in the retirement pension scheme. Employers are obligated to contribute on behalf of their employees between 16 to 65 years of age (MPA, 2013). Also the “Regulation on including Foreign Labourers in Maldives into the Retirement Pension Scheme” obligates the employers to include all the foreign labourers in the pension scheme (MPAO, 2018).

4.14 Protection in the case of work-related accidents

Convention No. 188 in the provisions of its Articles 38 and 39 stipulates that fishers must be subject to medical care, compensation, medical insurance and other means of protection against work-related accidents. In the Maldives, the Employment Act, 2008 in the provisions of Article 70 obligate the employers to provide the appropriate medical care for employees for the injuries and accidents while on the job. Furthermore, article 75 gives employees the right to refrain from any work which dangers their health and safety. The Employment Act does not obligate employers to provide medical insurance to the employees (ILO, 2007; AGO, 2019). Article 10 of the Fisheries Act, obligates Maldives Pension Administration Office (MPAO) to develop a disability insurance scheme for fishers by coordinating it with MoFMRA. The aim of this scheme is to ensure the protection of fishers rights and providing social protection (AGO, 2019, p. 10).

4.15 Summary of the Chapter

The comparison of Convention No. 188 against the current legislature of the Maldives in this chapter reveals that existing legislature meets the key requirements. However, there are amendments requiring the national legislature to fully enact the provisions of Convention No. 188. The Fisheries Act and commercial fishing license regulation include provisions which define the key terms mentioned in Convention No. 188. The requirements of the convention on minimum age, medical examination, medical care, social security, accommodation and food, payment of fishers, Occupational Safety and Health Protection and repatriation are already mentioned in the national legislature. However, to meet the requirements of Convention No. 188, amendments are required to the national legislature to obligate fishing vessel owners to present fisher's work agreement and crew lists to the relevant authorities. Also, compliance with manning standards and ensuring the right of seagoing workers to get sufficient hours of rest as mentioned in Convention No. 188 should be enacted in the national legislature.

Chapter 5

Impacts on National Authorities, Legislature, challenges and opportunities for Ratification and Implementation

This chapter discusses the findings of the assessment done to find out the impacts on legislature and authorities upon ratification and implementation of Convention No. 188. A SWOT analysis was carried out based on the literature review, the current capacity of authorities, national legislature and findings of this research to present challenges and opportunities for ratification and implementation of Convention No. 188.

5.1 Impacts National Authorities

If the Maldives decides to implement Convention No. 188, it will bring changes to the current roles and obligations of the government authorities concerned with regulating the fisheries sector and the labour rights of the fishermen. The authorities will have to carry out additional duties as part of complying with the requirements of the Convention.

Findings of Chapter 3 revealed that the main focus of MoFMRA is on securing the resources and mitigating the impacts on the marine environment, increasing the fisher's income and giving less importance to the human element. Though MoFMRA has a Training, Extension & Promotion Sections, Fisheries Infrastructure Development Section it does not provide any training for the fishermen. Convention No. 188 will make it an obligation for MoFMRA to develop standards of training and also conduct training programs to train the fishermen. Current requirements of fishing licenses must obligate fishing vessel owners to submit the employment agreement of fishers. As an additional task, MoFMRA should obligate fishing vessel owners to report accidents which occur on-board fishing vessels and also must investigate the accidents. Crew lists, which are currently required only for application of the license, should be communicated by the fishing vessels before leaving the port. The fishing vessels compliance inspections conducted by MoFMRA should include broader requirements of Convention No. 188, which will assist to make the fishing industry less vulnerable to forced labour and human trafficking (ICSF, 2013). In addition to this MoFMRA, it should develop a minimum requirement to work on board fishing vessels. The development of long-term labour standards reduces accidents at sea which are caused by fatigue. Also, the standardized recruitment of crew members will reduce the chance for forced labour and human trafficking (ICSF, 2013, p. 4).

Findings in Chapter 3 further suggest that MTA, within its current mandate, complies with the majority requirements of Convention No. 188. MTA should bring minor changes, such as making it obligatory for fishing vessels, to submit fisher's employment agreements and also conducting inspections to ensure if vessels comply with the safety regulations.

LRA is required to develop a national safety standard policy and must train more staff to conduct inspections on the fishing vessels as the authority is currently understaffed. For compliance inspectors, LRA must provide sufficient safety equipment and delegate the authority to carry out their duties. LRA is also required to set up mechanisms to investigate the complaints they are expected to receive about the vessels which violate the requirements of Convention No. 188. The reports of investigations must be published. The Coast guard, as a border control agency, must coordinate with the cross border agencies of other countries to gather intelligence information to assist relevant authorities to conduct inspections. If the Coast Guard is delegated to conduct inspections, they must provide safety equipment and trained as mentioned in Convention No. 188.

Maldives Immigration, as the responsible authority to protect the borders of Maldives, currently meets with the requirements of Convention No. 188, which are related to foreign fishers. The work visa for foreign labourers is obtained only through applications submitted by employment agencies. The Immigration Department must coordinate with other government agencies to ease their inspections by providing relevant information on the Work Visa. MED has the mandate to enter into international conventions related to employment and labour; the organisation must decide the competent authority or authorities to implement Convention No. 188 in the Maldives. Establishing the coordination among concerned national authorities, and requesting technical assistance from international organisations, will also be additional work for MED. One of the main tasks assigned to national authorities will be the conduct of the flag state and port state inspections, according to Convention No. 188.

5.2 Impacts on the Legislature

Key provisions of Convention No. 188	National Legislature of Maldives
Definitions	Fisheries Act, 14/2019, Commercial Fishing License Regulation
Medical Care	Fisheries Act, 14/2019, Commercial Fishing License Regulation
Minimum Age	Employment Act, 2008
Medical Examination	Regulation on Safety of vessels operating in Maldivian waters
Manning and Hours of Rest	Requires Amendments to the Employment Act, 2008 and the Commercial Fishing License Regulation
Crew List	Requires Amendments to the Commercial Fishing License Regulation
Fishers Work Agreement	Requires amendments to Regulation on Safety of vessels operating in Maldivian waters
Repatriation	Regulation on Recruitment of Foreign Labourers
Payment of Fishers	Employment Act, 2008
Accommodation and food	Regulations for Maldivian maritime vessels built in the Maldives
Medical Care	Regulation on Safety of vessels operating in Maldivian waters
Occupational Safety and Health Protection	Employment Act, 2008
Social Security	Regulation on Maldives Retirement Pension Scheme, Fisheries Act, 14/2019
Protection in the case of work-related accidents	Employment Act, 2008, Fisheries Act 14/2019

Requires amendments 

Already in line with the requirements of Convention No. 188 

Table 1 Assessment of Maldivian Legislature against key provisions of Convention No. 188

As presented in Table 1, the Maldivian legislature is in line with the key provisions of Convention No. 188. The assessment revealed that to incorporate Convention No. 188 into the domestic law of Maldives, it requires some amendments to the national legislature. For instance, MoFMRA should develop manning standards and training requirements of the fishing

vessels according to the requirements of Convention No. 188. The current requirement for crew lists by MoFMRA is only used to verify information submitted with the applications for commercial fishing licenses. Therefore amendments are required to commercial fishing license regulations to obligate fishing vessels to report crew lists to designated authorities while leaving for fishing trips.

Provisions of Convention No. 188 have set a minimum age of work onboard fishing vessels at the age of 16 years while allowing national authorities to reduce it to 15 years. The Maldivian Employment Act, 2008 in its provisions, have met with these requirements of the convention. Also, the provisions of Convention No. 188 on OSH protection and medical care are covered by the Employment Act of Maldives. However, one of the most significant provisions of Convention No. 188 on the working hours and hours of rest covering fishers, is not enacted in the Employment Act of Maldives. Although the Maldivian Employment Act has provisions on the working hours and hours of rest, fishers are exempted from those provisions (AGO, 2008; ILO, 2007). Thus, new provisions should be enacted to the legislation, or the current provisions should be amended.

The requirements of Convention No. 188 for medical examination and standards for food and accommodation of the crew members are already covered in this regulation. The health certificates of fishers are checked as a requirement of the survey before the issuance of seaworthiness certificate. The regulation currently requires employment agreements for all the seagoing vessels but the fishing vessels are exempted (TA, 2015; ILO, 2007). To comply with the provisions of Convention No. 188 the regulations must be amended to make it obligatory for fishing vessels to present employment agreements.

5.3 The Challenges and Opportunities of the Ratification and Implementation of Convention No. 188 in the Maldives: A SWOT Analysis

The following SWOT Analysis is based on a literature review, the current capacity of Maldivian authorities and findings of impact assessments of the ratification and implementation focused on both the legislature and the national authorities. The SWOT analysis highlights the major strengths, weaknesses, opportunities and threats of the ratification and implementation of Convention No. 188.

Strength	Weakness
The existing provisions in the national legislature of Maldives which are already in line with Convention No. 188	The lack of a national safety standards and lack of trained public officials
The authority assigned to fisheries enforcement officers.	The current Fisheries Act is insufficient to eliminate the labour challenges in the industry
Political will in the government.	
The representation at RFMO's and Support from International Organizations.	Lack of coordination and coherence between national authorities
Flexibility in implementation, and the wider scope of application.	Lack of financial resources and human resources which limits the capacity of the government agencies.
The Fisheries Act mandates MoFMRA to strengthen cooperation with agencies.	
Opportunities	Threats
Will strengthen the social dialogue in the industry.	Influence and pressure from the fishers and fishing vessel owners.
Port state inspections has the potential to kick the IUU vessels out of the industry.	Financial constraints for long term investment in providing training for fishers.
Will improve fishing operations, reduce costs and also will lessen burden faced by fishing vessels which operate in high sea.	Change in administration might slack the political will to implement the convention.
Will improve the lives of fishers and also their families	Aligning national legislation to the requirements of Convention No. 188 will be too onerous
Elimination of risk of accidents and acts of forced labour.	
Avoiding the penalties which the country may face due to labour exploitation in the fishing industry.	Not adopting labour standards in fisheries industry might lead to a possibility of fishery products being banned in EU Market

Table 2 SWOT Analysis on the implementation and ratification of Convention No. 188 in Maldives

If Maldives decides to ratify and implement the Convention, it will encounter challenges in the administration. Also it will give opportunities for the country to improve the fishing sector. From the findings of chapter 4 as discussed in 5.1 of this chapter, there are several provisions in the national legislature of the Maldives that are already in line with Convention No. 188. Also, the provisions of ILO's eight fundamental conventions on labour rights which were taken into consideration for developing Convention No. 188 are already enacted in the national legislature (ILO, 2019).

The key requirements of Convention No. 188 on minimum age, medical examination, medical care, social security, accommodation and food, payment of fishers, Occupational Safety and Health Protection and repatriation are already mentioned in the national legislature. However, enacting the provisions of Convention No.188 on manning standards and working hours might be too onerous for the government. This is because the fishers and fishing vessel owners are significantly influential over government officials. Since 2014 MoFMRA has initiated a process of forming a new fisheries act, but the proposed fisheries bill took five years to get approval from parliament. Even when the Fisheries Act, 2019 entered into force in September 2019 several provisions of the initial proposed fisheries bill were detached for the leniency of the fishers before it entered into force. (Edition MV, 2019).

The warnings from the European Commission to MoFMRA after discovering the acts of human trafficking and forced labour in the longline fishery has generated a political will within the government. Following the warnings by the European Commission, which regulates the import of fishery products to European countries, MoFMRA has decided to suspend the longline fishery. It was also announced by MoFMRA that they will make new regulations for the fishery (OEC, 2018; Peoples Majilis, 2019). This is an opportunity to develop the regulations and bring necessary changes to comply with the requirements of Convention No. 188. However, Maldives is well-known for its political instability and changing of government. There is also a risk that if the process of adjusting the legislature might fail due to the political influence of the fishers and fishing vessel owners.

While considering the long-term implementation of the convention, as a developing country Maldives might face financial constrains in providing training for both fishermen and fisheries inspectors. This will lead to the ineffectiveness of the implementation (White, 2016). The lack of trained public officials will be challenged for all the authorities, which will be engaged in the implementation of Convention No. 188. There are trained fisheries compliance officers in

MoFMRA, and Coast Guard and Maldives Customs Service, but they do not have the knowledge to conduct inspections under the convention. (IOTC, 2015). With the limited financial resources within the government, it will be a burden for training both the public officials and fishers.

An enormous concern faced by the fisheries regulators around the world is the IUU fishing vessels, which use the flags of convenience and engage in exploiting resources. These IUU fishing vessels are known for exploiting labour rights. As mentioned by Vivekananda (2007, p. 25) Convention No.188 has the potential to kick IUU vessels out of the industry. Therefore, the country may seek technical assistance from RFMO's and international organizations such as IOTC, BOBP, FAO, ILO to train the public officials. The Fisheries Act, 14/2019 focuses more on the sustainability of resources and increasing the economic benefit from the industry giving less importance to labour conditions and OSH issues in the fishing industry (JICA, 2018; AGO, 2019, pp. 1-3). In addition to this, the labour related matters and fisheries administration is managed by various institutions which lack coordination and coherence. These factors could be a huge challenge while implementing the Convention No. 188 effectively.

The most prominent changes seen from the fisheries Act, 14/2019 is that it obligates MoFMRA to strengthen cooperation and dialogue with the local councils and government agencies. Article 15 of the Fisheries Act mentions that MoFMRA may form a Memorandum of Understandings (MOU's) and Standard Operating Procedures (SOP's) for delegating the authority of MoFMRA to other agencies, including the local councils for enforcing the provisions of the Fisheries Act. If MoFMRA carries out the obligations according to the Fisheries Act, 14/2019 it will help to solve the challenges of lack of coordination and coherence (AGO, 2019, p. 11).

The certificate of compliance awarded under Convention No. 188 will facilitate the procedures for local fishing vessels which land fish in foreign ports. It will be an added advantage for the fishing industry of the country, as it is an objective of the Fisheries Act, 14/2019, to allow local fishers to conduct fishing operations on the high seas and also allow fishing vessels to sell their catch directly to other countries. (AGO, 2019, pp. 3-4). If Maldives ratifies and implements Convention No. 188 the local fishing vessels will hold a certificate of competency issued under Convention No. 188 will lessen the burden faced by fishing vessels which operate on the high seas (ILO, 2012).

The flexibility clauses in Convention No. 188 enables the member states to implement several provisions of the convention in a progressively manner. Also the flexibility in the implementation of the convention will allow member States to comply with the requirements by considering the characteristics of the fishing sector at the time of ratification.

Moreover, Convention No. 188 will strengthen the social dialogue in the industry to improve things for the fishing community. As mentioned earlier, the comprehensiveness of the provisions of the Convention address the OSH of fishermen in multiple ways will improve the lives of fishers and also their families (ILO, 2012, p. 8). This will be an opportunity for MoFMRA and other national agencies to promote the requirements of Convention No. 188.

Developing countries like Maldives, might face difficulties in the application of the provisions of the convention due to the poor infrastructure and lack of human resources. As observed from the LRA, it is clear that the obstacles faced by the authorities were developed by considering these obstacles allowing developing countries to comply with the requirements such as crew list, employment agreements, the need for medical certificates and risk evaluations and protection against injury or death progressively (Vivekanandan, 2007).

The fisheries Act, 14/2019 gives the authority to MoFMRA to delegate authority to the Coast Guard and MPS to enforce the provisions of Fisheries laws and regulations. Also the authority given to enforcement officers, such as the boarding of vessels and fish processing facilities without warrants and hot pursuits will assist to implement and enforce the provisions of the Convention No. 188 (AGO, 2019, pp. 35-39).

According to statistics from MNDF (2019) a total number of 30 fatalities were recorded onboard fishing vessels within the last ten years. Surprisingly there were no training programs held by MoFMRA, or regulations developed which reveals a gap in the administration. While implementing Convention No. 188, the member states will be required to provide training to fishers. It was also highlighted by the US Department of States (2014) that a lack of National Safety standards remains as an obstacle to ensure the safety of workers in the country. The development of long-term labour standards will assist to reduce the accidents occur onboard fishing vessels which are caused by fatigue. The improved labour standards will be helpful to recruit crew members, which will reduce the chance of forced labour and human trafficking (ICSF, 2013, p. 4).

5.4 Summary of the Chapter

The findings of this chapter reveal that the current legislature meets the key requirements of Convention No.188, but require some amendments. The impacts on authorities were identified as the hiring of more staff, providing training, improving the coordination between government agencies, developing training programs, and forming new policies and standards on manning fishing vessels. Challenges and Opportunities identified through the SWOT analysis prove that Maldivian legislature has the capacity to meet the key requirements of Convention No. 188 and it will be the largest advantage for the country while considering ratifying the convention. The political will in the government and the flexibility clauses of Convention No. 188 will be helpful for the country to overcome the financial constraints, which the country might face. National authorities must focus on improving the coordination and cooperation as it was identified that at present there is a lack of coordination. Lack of financial capacity will also remain as huge challenge while the government focus to train the fishers and public officials. By seeking assistance from international organizations, it will help to overcome those challenges. The political influence of fishers and fishing vessel owners will also be a challenge while implementing the provisions of Convention No. 188. It was identified that Convention No. 188 has the potential to eliminate the risk of IUU vessels which will be an immense benefit for the Maldives. Also the social dialogue will help both the government and fishers to enforce the laws and improve standards.

Chapter 6

Conclusion and Recommendations

6.1 Conclusion

The concerns are rising over acts of human trafficking and forced labour in the fishing industry globally. The literature review emphasized the increase in fatality rates and the presence of forced labour and human trafficking in the Maldivian commercial fishing industry. Consequent to this situation of the commercial fishing industry, the Maldives has received warnings from the European Commission over the presence of forced labour and human trafficking in the fishery business. Following the warnings, the government was forced to suspend the longline fishery.

The motivation of this research was to enhance speedy ratification and implementation of Convention No.188 which is the most comprehensive international instrument concerning working conditions and the labour rights of fishers. The comparative analysis on Maldivian legislature against provisions of Convention No. 188 revealed that the national legislature does not meet the majority of the key provisions of Convention No. 188. However, there are amendments required to the national legislature to enact the key provisions of Convention No.188 on fisher's work agreement, crew lists, manning standards and working hours.

The analysis focused on studying the rising obligations for national authorities in the Maldives suggested that national authorities will have additional roles and obligations upon ratification and implementation of Convention No. 188. The main areas where the authorities should focus were identified as efforts on developing manning standards and reporting mechanisms of accidents that occur on-board fishing vessels. In addition to this, development of national safety standards and the obligation for providing training and education will be an additional role for the authorities.

The opportunities and challenges for Maldives in the ratification and implementation of Convention No. 188 were also discovered in this study. The findings suggested that the lack of coordination and coherence between various institutions presents challenges for progress. It was also discovered that as a developing country, Maldives may face challenges due to the lack of financial resources in training fishers and inspectors. However, the country's strong representation at RFMO's and international organization will assist to gain aid from the international community.

Though Maldives may face challenges in the implementation of Convention No. 188 due to financial constraints or lack of human resources, flexibility clauses in Convention No. 188, allows implementing several provisions progressively. The ratification and implementation will also strengthen the social dialogue in the industry, which will be helpful to promote safety standards and raise awareness among the fishing community.

Most of the incidents that occurred on-board fishing vessels are caused either due to fatigue or lack of training. Therefore, the training requirements and manning standards of Convention No. 188 will help to reduce the accidents and fatalities on-board fishing. It was discovered that following the warnings from the European Commission, a political will has been generated in the government to a certain extent. However, the influence of fishers and fishing vessel owners remains a challenge for the government to improve OSH conditions and the labour rights of fishers.

Considering the limited resources of the Maldivian archipelago and relevance of the fisheries sector to the economy, any negative impact on the fishers OSH and working conditions will have huge consequences on the country's economy.

While the authorities focus on increasing the fishing effort, if the OSH issues and labour conditions in the commercial fishing industry are not addressed it might lead to the downfall of the commercial fishing industry. The solution for addressing increase in fatality rates and other labour-related issues in the fishing industry is not banning fisheries or restricting fisheries activities. The authorities must focus on developing a legal framework ensuring the labour rights, occupational safety and health and working conditions of the fishers. Also being certified as a fishery which complies with the international labour standards will be an added advantage while promoting the fishery products around the world.

6.2 Recommendations

Therefore, it is highly recommended for the Maldivian Authorities to;

- Initiate the process of amending domestic legislature and bring necessary changes to the roles and obligations of the authorities to meet the requirements of Convention No. 188.
- Develop manning standards for working on board fishing vessels.
- Improve the coordination between relevant national authorities.
- Establish mechanisms to gather data on accidents that occur on board fishing vessels.
- Conduct awareness programs for fishermen and fishing vessel owners.

6.2.1 Future Research

The Occupational Safety and Health related issues and labour rights are closely tied to the fisheries regulatory regimes. The future research should focus on analysing the indirect and unintended risks generated from fisheries management policies towards the OSH of fishermen as they have huge impacts on limiting the choice available for fishers to take risks.

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