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## Terms of Reference

### Comparative analysis of Viet Nam's legislative framework in relation to the Work in Fishing Convention, 2007 (No. 188) and Recommendation (No. 199)

#### I. Background

The Ship to Shore Rights South East Asia (S2SR) programme is a multi-country, multi-annual initiative of the European Union (EU) and the United Nations (UN), implemented by the International Labour Organization (ILO) in collaboration with the International Organization for Migration (IOM) and the United Nations Development Programme (UNDP). Its overriding objective is to promote regular and safe labour migration and decent work for all migrant workers in the fishing and seafood processing sectors in South East Asia.

The programme will address the specific characteristics of work in the fishing and seafood processing sectors as well as the barriers and risks present in the migration system, which can lead to unsafe migration, decent work deficits, abuse and trafficking for forced labour. The programme has three specific objectives:

1. Strengthen the legal, policy, and regulatory frameworks related to labour migration and labour standards, focusing on the fishing and seafood processing sectors in South East Asia.
2. Protect labour rights and promote safe and secure working environments for all migrant workers from recruitment to post-admissions and end of the contract.
3. Empower migrant workers, their families, organizations, and communities to promote and exercise their rights.

The programme's strategy mainstreams the following cross-cutting themes: workers' voice and agency; rights-based approaches; gender equality; broad engagement of stakeholders; combatting trafficking in persons and other transnational crimes; marine resources conservation and sustainability.

Under objective one, the S2SR programme will support a comparative analysis of Viet Nam's legal framework for work in the fishing sector. The study findings will provide the basis for the ILO's ongoing technical support to the Government of Viet Nam to facilitate the ratification of the Work in Fishing Convention, 2007 (No. 188).

#### II. Situation analysis

Fishing is an important economic sector in Viet Nam, making a substantial contribution to employment, food security, poverty alleviation and economic growth. The country's seafood exports generated over US\$10 billion in 2022, establishing Viet Nam as the fourth largest seafood supplier in the world. In addition, official data from the Directorate of Fisheries suggests that as many as 552,300 Vietnamese workers were employed on-board 91,716 Viet Nam-flagged fishing vessels in 2021. Employment in the broader seafood industry is even more significant, estimated to provide jobs for approximately 5 million people in Viet Nam.

However, the rapid growth of the fishing sector in Viet Nam has created challenges for the regulation of the industry. Viet Nam has made policy commitments to improve its legislative framework to be more in line with the relevant international standards. On 14 September 2022, the Prime Minister issued a decision on the elimination of IUU fishing by the year 2025, which includes a directive for the Ministry of Agriculture and Rural Development to work in collaboration with the Ministry of Foreign Affairs and Ministry of Labour, Invalids and Social Affairs to undertake the necessary steps for Viet Nam to ratify the Work in Fishing Convention, 2007 (No. 188).



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In support of this initiative, the ILO received a direct request from the Viet Nam Institute of Fisheries Economics and Planning (VIFEP) for technical support to conduct a comparative analysis of Vietnam's legislation in relation to the Work in Fishing Convention 2007 (No. 188) and Recommendation (No. 199). The findings will support the Government of Viet Nam to identify the changes that are needed to bring its legal and regulatory framework into line with the articles of the Convention and move forward with the ratification process.

### III. Objectives

The assignment will achieve the following key objectives:

1. Complete a mapping of Vietnamese laws and regulations relating to work in the commercial fishing sector.
2. Provide a legal analysis of the gaps between the existing laws and regulations in Viet Nam and the Work in Fishing Convention, 2007 (No. 188) and Recommendation (No. 199).
3. Produce recommendations for any necessary amendments to ensure Viet Nam's laws and regulations are in line with the Work in Fishing Convention, 2007 (No. 188) and Recommendation (No. 199).

### IV. Scope of work

The analysis will examine the existing laws and regulations governing the work of commercial fishers and fishing vessels operating in Vietnamese jurisdiction. It will identify material gaps in legislation where the standards of the Convention are not met. It will also identify the competent authorities charged with implementing and enforcing legislation or regulations on labour standards for fishers; the responsibilities of fishing vessel owners; minimum age requirements; safety and health standards; fishers' work agreements; the recruitment of fishers; fishers' wages; social security provisions for fishers and coverage for work-related sickness, injury or death and other standards.

As the Work in Fishing Convention addresses a very wide range of issues, it will therefore be necessary to review laws, regulations and other measures falling within the area of responsibility of several ministries, departments and agencies, and perhaps also regional or local laws, regulations or other measures.

The definition of "fisher" applied in the analysis will adhere to Article 1(e) of the Convention, which provides that "fisher means every person employed or engaged in any capacity or carrying out an occupation on board any fishing vessel, including persons working on board who are paid on the basis of a share of the catch but excluding pilots, naval personnel, other persons in the permanent service of a government, shore-based persons carrying out work aboard a fishing vessel and fisheries observers". It is important to note that the scope of the Work in Fishing Convention does not cover fishers who are not working on vessels or who are working ashore (for example, post-harvest activities and marketing).

It is also important to note that for many issues covered by the Work in Fishing Convention (e.g. medical care, occupational safety and health, accommodation, etc.), the Convention has requirements for all vessels and then higher requirements for vessels over 24 metres in length or vessels remaining at sea for longer periods. It is therefore important when reviewing national laws, regulations or other measures to determine if these are related to vessel size or time spent at sea.

The ILO stresses that countries should have in place, or put in place, the means to implement and enforce the requirements of Convention No. 188 effectively. An analysis of administrative capacity for implementation of the provisions of the Convention should therefore be included in the comparative assessment.



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## V. Assignment

The ILO S2SR programme will recruit a team composed of an international and national consultant to support the Directorate of Fisheries to conduct a comparative legal analysis. The consultants will work together under the guidance and direction of the ILO National Programme Coordinator and Technical Officer for the S2SR programme, with additional technical oversight provided by the Chief Technical Advisor and relevant ILO specialists. The work will be undertaken in close coordination with VIFEP and other authorities. The division of labour between the international and national consultants should be included in the financial proposal.

The assignment will be conducted through a desk review of relevant laws and research reports to assess the extent to which national laws and regulations in Viet Nam are aligned with the articles of the Work in Fishing Convention (No. 188) and the recommendations made in the Work in Fishing Recommendation (No. 199). After completion of the desk review, the consultants will conduct a series of key informant interviews to identify gaps in administrative capacity for implementation to be addressed. The findings from these methodologies will be triangulated to produce the comparative analysis in the report. The consultants are expected to present the report findings for review by the ILO and validation by tripartite stakeholders prior to finalizing the results.

## VI. Outputs

The main outputs of the research and analysis will include the following:

1. Brief inception report on the proposed approach, including a finalized methodology, work plan, list of laws to be reviewed, key informants for interview, data collection tools and report outline (5 days).
2. 1<sup>st</sup> draft of the comparative analysis report written in clear and concise English, including a matrix outlining the gaps identified and recommended solutions (30 days).
3. 2<sup>nd</sup> draft of the comparative analysis report, incorporating the ILO and VIFEP inputs (5 days).
4. Presentation of the research methodology, key findings and recommendations at a validation workshop with tripartite stakeholders (1 day).
5. Final version of the report that fully responds to the comments made by the ILO and key stakeholders (no more than 50 pages and including a brief executive summary) (5 days).

## VII. Work plan

The assignment outputs will be completed within 46 working days between August and December 2023. An indicative work plan is provided below and a more detailed schedule will be developed as part of the inception report. The report should be finalized no later than 31 December 2023.

Activities	Aug	Sep	Oct	Nov	Dec
Submission of inception report					
Data collection					
Submission of the 1 <sup>st</sup> draft report					
Submission of the 2 <sup>nd</sup> draft report					
Validation workshop					
Submission of final report					



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## **VIII. Required qualifications**

### **International consultant**

- A master's degree or equivalent in law, public policy or a closely related field of social science is required.
- At least 5 years of relevant professional experience working at the international level is required.
- Prior experience conducting comparative legal analysis is required.
- Excellent written and verbal English language skills are required.
- Work experience within the context of Viet Nam or other countries in South East Asia is considered an asset.
- Specific expertise related to work in the fishing sector is considered an asset.

### **National consultant**

- A master's degree or equivalent in law, public policy or a closely related field of social science is required.
- At least 5 years of relevant professional experience in Viet Nam is required.
- Prior experience conducting comparative legal analysis is required.
- Excellent written and verbal English and Vietnamese language skills are required.
- Specific expertise related to work in the fishing sector in Viet Nam is considered an asset.

## **IX. Terms of payment**

External collaborator agreements shall be made between the ILO and the consultants who shall be responsible for completion of all activities within the terms of reference. Should there be any problems with the delivery of the contracted outputs, the provider is expected to take the necessary corrective actions without affecting the final deadline for submission of the research report and at no additional cost to the ILO.

Payments will be made as follows:

- First payment (30% of the total budget) upon submitting an inception report to the satisfaction of the ILO (August 2023);
- Second payment of (50% of the total budget) upon submission of the draft report to the satisfaction of the ILO (October 2023); and
- Final payment (20% of the total budget) upon submission of the final report to the satisfaction of the ILO (December 2023).

## **X. Submission of proposal**

Interested parties should submit a cover letter expressing their interest in the assignment, an up-to-date CV, two samples of prior research outputs and a financial offer (including number of work days and daily consulting fee). The financial offer should clearly allocate the number of work days required for the international and national consultants. Proposals submitted by a team inclusive of both a national and international consultant are encouraged but not required.

All proposals should be submitted through email to [shiptoshorerights@ilo.org](mailto:shiptoshorerights@ilo.org) by 21 July 2023.