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Regulating labour and safety standards in the agriculture, forestry and fisheries sectors

by
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for the
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FAO Legal Office

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Preface

One of the strategic objectives of the Food and Agriculture Organization of the United Nations (FAO) is to reduce rural poverty by contributing to the improvement of opportunities for the rural poor to access decent farm and off-farm employment. In this context, FAO has committed to supporting the implementation of international labour standards (ILS) in its sectoral areas of work, in collaboration with the International Labour Organization. FAO also engages with other international organizations, such as the International Maritime Organization in the context of the fight against illegal, unreported and unregulated fishing, and the United Nations Office on Drugs and Crime in relation to transnational organized crime in the fisheries sector. In addition to mainstreaming decent work in its corporate level programmes and activities, and leveraging its specialization in the agriculture, forestry and fisheries sectors, FAO has been carrying out policy, legislative and programmatic interventions to promote decent rural employment in a number of countries.

The Development Law Service of the FAO Legal Office (LEGN) collaborates with the Social Protection and Rural Institutions Division and other technical departments of FAO in its work on the legal aspects of decent rural employment. LEGN publications have highlighted legal approaches and barriers to the implementation of ILS in the agriculture, forestry and fisheries sectors. LEGN has also provided technical legal support to ensure the integration of labour standards into sectoral policy and legal frameworks, and has contributed to the development of capacity to implement ILS at the national level.

LEGN further supports projects on decent rural employment. For example, under the project: *Integrated Country Approach (ICA) for Decent Rural Youth Employment (2015-2017)*, it supervised legal assessments on the protection of ILS in the agriculture, forestry and fisheries sectors of Guatemala, Senegal and Uganda. The results of the legal assessments were used to contribute to relevant policy and legislative processes in the three countries and serve as sources of national level examples in the protection of ILS in this Legislative Study. The country level work and LEGN'S research so far have shown that the prevalence of informal work arrangements, limited legal protection of rural workers, and the absence or weakness of

inter-sectoral coordination mechanisms for the implementation of labour standards are major challenges that need to be overcome in the effort to ensure decent rural employment.

This Legislative Study seeks to contribute to addressing labour protection deficits in the agriculture, forestry and fisheries sectors by outlining the labour standards that apply to the sectors and by providing guidance on how such standards could be integrated into sectoral legislation. Whilst not exhaustive in its scope, the Study develops an innovative approach to the protection of the rights of people who derive their livelihoods in the sectors concerned. We hope that it will pave the way for further knowledge generation and ignite interest in further research in the legal and related aspects of decent rural employment.

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The study has made use of national legal assessments that were conducted on the regulation of labour and employment in the agriculture, forestry and fisheries sectors of Senegal and Uganda under the project: Integrated Country Approach (ICA) for Decent Rural Youth Employment (2015-2017). Emmanuel Kasimbazi prepared the assessment report for Uganda, whereas Amina Lattanzi helped with the completion of the report for Senegal.

Last but not least, Jessica Marasovic and Valerie Johnston provided support with editing and publication.

Acronyms and abbreviations

CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CFS	Committee on World Food Security
COFI	Committee on Fisheries
CRC	Convention on the Rights of the Child
EC	European Commission
EEZ	Exclusive Economic Zone
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FLEGT	Forest Law Enforcement, Governance and Trade
FLO	Fairtrade International
FSC	Forest Stewardship Council
GDP	Gross Domestic Product
ICCPM	International Code of Conduct on Pesticide Management
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFAD	International Fund for Agricultural Development
IFOAM	International Federation of Organic Agriculture Movements
ILO	International Labour Organization
ILS	International Labour Standards
IMO	International Maritime Organization
ISO	International Organization of Standardization

ISO	International Sugar Organization
IUU	Illegal, unreported and unregulated
LEGN	Development Law Service of the FAO
MCS	Monitoring, Control and Surveillance
MSC	Marine Stewardship Council
MSRA	Magnuson-Stevens Fishery Conservation and Management Reauthorization Act
OIE	World Organisation for Animal Health
OSH	Occupational Safety and Health
PEFC	Programme for the Endorsement of Forest Certification Schemes
PPE	Personal Protective Equipment
PSMA	Agreement on Port State Measure to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
SSF	Small-Scale Fisheries
STCW-F	International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (1995)
TBTI	Too Big to Ignore
TIP	Trafficking in Person
UNCLOS	United Nations Convention on the Law of the Sea (1982)
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme
UNIDROIT	International Institute for the Unification of Private Law
VPAs	Voluntary Partnership Agreements
WHO	World Health Organization
WTO	World Trade Organization

Introduction

The Food and Agriculture Organization of the United Nations (FAO) strives to improve opportunities for the rural poor to access decent farm and off-farm employment as part of its strategic objective to reduce rural poverty. An important component of this objective is the organization's commitment to support the implementation of internationally accepted labour standards, including through technical assistance to policy and law-making processes, in its sectoral areas of work. FAO implements this objective in collaboration with the International Labour Organization (ILO), which has a specialized mandate in issues of labour and employment.

The agriculture sector, including the sub-sectors of crop and animal production, forestry and fishing and aquaculture, is a source of livelihoods for over 85 percent of rural people (FAO, 2013a; ILO, 2011a).¹ The sector provides employment for about 38 percent of the world's population, representing over 1 in 3 of all workers (FAO, 2015), in formal and informal undertakings. Women make up approximately 25 percent of the global population employed in agriculture and 43 percent of the agricultural labour force in developing countries. Several labour protection issues arise in the sub-sectors. Agriculture is, for example, one of the most dangerous sectors in terms of workers' safety and health. An average of 170 000 agricultural workers are killed at work annually. The sector has the highest incidence of early entry into the workforce. Around 59 percent of all child labourers² – 98 million girls and boys in the age group 5 to 17 – work in agriculture and more than two-thirds of them are unpaid family members (Diallo, Etienne and Mehran, 2013; FAO, 2012a). More than half of these children engage in hazardous work that can compromise their health, development and education (ILO, 2017a). There are also widely reported cases of human trafficking, forced labour³ and undocumented work in the agriculture, forestry and fisheries sectors.

¹ While the phrase "agriculture or agricultural sector" in general may be used in this study to cover the forestry and fisheries sectors, the reference to "fisheries sector" includes aquaculture.

² Not all work done by children should be classified as child labour that is to be targeted for elimination. Child labour is work that is mentally, physically, socially or morally dangerous and harmful to children, and interferes with their schooling by depriving them the opportunity to attend school.

³ Forced labour refers to situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities.

Addressing the above-mentioned and other labour issues requires, among other things, long-term commitments to promote and protect decent work by adopting policy and legal frameworks that define labour and safety standards,⁴ and assign institutional responsibilities for their implementation. That is why the 2030 Sustainable Development Agenda sets the goal of promoting decent work for all through the protection of labour rights and ensuring safe and secure working environments, including for women and migrant workers, based on international standards and national legislation (United Nations, 2016). Nevertheless, agricultural and rural workers tend to be either tacitly or explicitly excluded from pertinent laws or such laws may fail to address the particular circumstances of agricultural workers (ILO, 2003). Strategies that seek to reduce rural poverty through the promotion of rural employment should address these labour protection gaps and decent work deficits.

FAO's niche in terms of the application of International Labour Standards (ILS) lies in its sectorial specialization, i.e. its comparative advantage to apply the standards in the agriculture, forestry and fisheries sectors. In terms of legislative support, FAO may collaborate with international institutions, such as the ILO, and with relevant national institutions in making sure that generic and thematic (e.g. on occupational safety and health) labour and employment-related laws take into account the special circumstances of those who work in the sector. More importantly, FAO may integrate labour and safety standards in the sectorial policy, legislative and programme support it provides to countries, upon request. These will contribute to the effective regulation of the labour rights of people deriving their livelihoods from agriculture, forestry and fisheries as well as the management of resources and production of commodities in the sectors.

The Legal Office of FAO provides legal advisory support to countries in a range of sectorial issues including plant protection and production, animal health and production, agribusiness-related arrangements such as contract farming, public-private partnerships and agricultural credit and insurance, certain agricultural inputs such as fertilizers and pesticides, and the governance and management of natural resources such as fisheries and forests. Within the agricultural legislation domain, those in which labour and safety standards may be integrated include organic agriculture and commodity-specific legislation, regulatory frameworks for contract farming, which may also cover some aspects of forestry, fishery and aquaculture production, and pesticides management laws. Labour and

⁴ "Labour and safety standards", as used in this study, encompass the international labour standards of the ILO including occupational safety and health standards that are presented in section 1.3, as well as specific safety standards that particularly apply to work in the agriculture, forestry and fisheries sectors, e.g., in pesticide use, in forest harvesting and onboard fishing vessels.

safety standards may further be integrated into legislation on animal health and livestock production. Laws establishing agricultural authorities or ministries may also include a labour-related mandate.

In forestry, operational efficiency or productivity, environmental protection and safety at work are closely interconnected. Labour protection is essential for all of these, notably for the first and third elements. Legal advisory support to forest management, forest harvesting and processing of forest products should take into account a range of labour and safety issues. The non-wood forest products sector also merits special attention in terms of general and specific labour standards, especially because those activities are not often recognized as formal sources of livelihoods and, like harvesters, forest dwellers work ‘out of sight’.

In fisheries, there are particular labour and safety issues, including occupational safety and health, entry into workforce and working conditions, which are governed by a range of specialized and general international instruments. While work in aquaculture is not equally regulated under international norms, it also presents a range of labour-related problems. The applicable labour and safety standards could inform general or labour-specific legislation in fisheries and aquaculture. Safety and labour concerns may form part of substantive provisions relating to the livelihoods and protection of fishers and fish workers and the institutional arrangements for the management of fisheries resources, monitoring, control and surveillance.

With a focus on production,⁵ this legislative study seeks to outline the labour and safety standards that apply to the agriculture, forestry and fisheries sectors with a view to providing guidance on how such standards can be integrated into sectorial legislation. This is not a typical legislative study that seeks to provide guidance on the contents of a certain type of legislation or on what a certain legislative process should entail, because the provision of legal advisory support to principal labour and employment law is not within the core mandate of the FAO Legal Office. The study aims rather to provide guidance on how labour and safety standards can be integrated into FAO’s sectorial legislative support work.

The study is divided into two main parts. Part one presents a synthesis of international labour standards that apply to the three sectors. Here, we analyse the pertinent international instruments and their scope of application, and identify specific labour and safety standards that should be taken into account

⁵ This is mainly because work in the processing of products from the sectors would require the application of labour standards that apply to work in industries, transportation, commerce, etc.

in developing national legislation that governs the sectors. Part two discusses the integration of such standards into various types of sectorial legislation at the national level. Its different sections identify the main labour issues in selected sectors and sub-sectors, analyse relevant international instruments that apply to the sectors, and demonstrate how the standards are, and could be, integrated into national legislation governing the sectors. They mainly identify entry points for the integration of labour standards into sectorial legislation based on the analysis of laws from several jurisdictions and provide examples of how this integration may be achieved.

Part I. International labour standards that apply to work in agriculture, forestry, fisheries

A number of general and sector-specific international instruments have been adopted with a view to regulating labour in the agriculture, forestry and fisheries sectors. This part reviews these instruments and examines their applicability to the different forms of employment in the sectors. It further summarizes the normative contents of specific standards relating to critical labour and safety issues in the sectors, and presents national legal measures that may be taken to give effect to them.

1.1. Relevant international instruments

Labour standards are promulgated into both general and specific international instruments that respectively reflect the commonalities and peculiarities of work in crop and animal production, forestry, fisheries and aquaculture and other sectors. The basic ILO conventions⁶ on the fundamental principles and rights at work, including the freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation apply to all sectors and areas of employment. All Member States shall respect and promote the principles and rights whether or not they have ratified the relevant Conventions (ILO, 2011f).

International human rights treaties, which are ratified by most States of the world, also include some labour standards that apply to all human beings with particular attention to vulnerable groups. International labour standards emanating from ILO instruments are different from human rights standards in that they result from tripartite dialogue and cooperation between governments, employers and workers. Nevertheless, they apply to all people working in all sectors. The pertinent standards

⁶ Based on the review of ILO standards adopted before 1985, the Governing Body designated 71 conventions, including the fundamental conventions and those adopted after 1985, as being “up-to-date” and recommended for active promotion, whereas it decided that some conventions needed to be revised, some had an interim status and some were outdated. For the status of the instruments herein referred to, see <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12030:0::NO::>.

that are incorporated in various human rights treaties include those on the rights to an opportunity to work, to just and favourable conditions of work, to form and join trade unions, to non-discriminatory access of women to employment opportunities, to protection against child labour and to access social security.⁷

Some of the fundamental ILO conventions are meant to specifically apply to rural and agricultural workers.⁸ In a similar vein, whilst many of the conventions concerning conditions of work have general applicability, work in agriculture is also governed by sector-specific ILS addressing issues such as occupational safety and health, working time and social security.⁹ ILS that apply to specific categories of workers, such as plantation workers and indigenous peoples, are additional examples of instruments specifically governing agricultural employment.¹⁰ In addition to the substantive instruments, the general labour administration and inspection conventions are complemented by a convention that lays down the institutional and procedural requirements for labour inspection in agriculture.¹¹ Other governance instruments such as those on employment policy and tripartite consultation are also of general application.¹²

Many of the ILO conventions pertaining to “agriculture” include work in farming, animal husbandry and forestry to varying degrees,¹³ whereas the fisheries and aquaculture sub-sectors are governed by more specialized

⁷ See the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966), Sections 6-7; International Covenant on Civil and Political Rights (ICCPR) (1966), Sections 8 and 22; the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) (1979), Sections 11 and 14; Convention on the Rights of the Child (CRC) (1989), Section 32. Note though that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) applies to persons who take up residence in another country for engagement in a remunerated activity.

⁸ Right of Association (Agriculture) Convention, 1921 (No. 11); Rural Workers’ Organizations Convention, 1975 (No. 141); Minimum Age (Agriculture) Convention, 1921 (No. 10); Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99).

⁹ Safety and Health in Agriculture Convention, 2001 (No. 184); Holidays with Pay (Agriculture) Convention, 1952 (No. 101); Workmen’s Compensation (Agriculture) Convention, 1921 (No. 12); Sickness Insurance (Agriculture) Convention, 1927 (No. 25); Old-Age Insurance (Agriculture) Convention, 1933 (No. 36); Invalidity Insurance (Agriculture) Convention, 1933 (No. 38); Survivors’ Insurance (Agriculture) Convention, 1933 (No. 40).

¹⁰ Plantations Convention, 1958 (No. 110) and Protocol of 1982 to the Plantations Convention, 1958; Indigenous and Tribal Peoples Convention, 1989 (No. 169).

¹¹ Labour Inspection (Agriculture) Convention, 1969 (No. 129).

¹² Employment Policy Convention, 1964 (No. 122); Tripartite Consultation (International Labour standards) Convention, 1976 (No. 144).

¹³ For example, see Labour Inspection (Agriculture) Convention, 1969 (No. 129); Safety and Health in Agriculture Convention, 2001 (No. 184).

international instruments.¹⁴ There are also more specific guidelines and codes of practice that exist with regard to work in specific sub-sectors such as forestry and fisheries.¹⁵ FAO collaborated with other international organizations in the development of such codes and guidelines, which for example, include dedicated provisions on occupational safety and health in the context of work in forestry and fisheries.¹⁶ An overview of the status of ratification of the ILO conventions relating to work in agriculture, forestry and fisheries shows that they generally have low levels of ratification, and an even lower level of accession by developing countries (ILO, 2017b). However, as indicated above, ILS are also part of the more widely ratified international human rights treaties.¹⁷

ILS could also be enshrined in regional instruments. The main substantive treaties of the African, European and Inter-American regional human rights systems protect a range of rights, including the rights to have work opportunities, to just conditions of work, to receive equal pay for equal work, to non-discrimination in employment and occupation, to organize and bargain collectively, to vocational guidance and training, to social security, as well

¹⁴ For example, see Work in Fishing Convention, 2007 (No. 188), which revises earlier conventions on minimum age, medical examination, articles of agreement and accommodation of crew; Fishermen's Competency Certificates Convention, 1966 (No. 125); International Maritime Organization (IMO), International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995; Cape Town Agreement of 2012 on the Implementation of the Provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977; FAO Committee on Fisheries (COFI). 2015. Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication, (SSF Guidelines). Rome, FAO; COFI. 2011. Technical Guidelines on Aquaculture Certification. Rome, FAO.

¹⁵ ILO, Code of practice on safety and health in forestry work (1998); Guidelines for labour inspection in forestry (2005); ILO Guidelines for port State control officers carrying out inspections under the Work in Fishing Convention 2007, No. 188 (2011).

¹⁶ FAO, the Model Code of Forest Harvesting Practices (1996); FAO, the Code of Practice for Forest Harvesting in Asia-Pacific (1999); FAO, the Regional Code of Practice for Reduced-Impact Forest Harvesting in Tropical Moist Forests of West and Central Africa (2003); FAO/ILO/IMO, Code of Safety for Fishermen and Fishing Vessels, Parts A and B (revised 2005), and the Voluntary Guidelines for the Design, Construction and Equipment of Small Fishing Vessels (2005).

¹⁷ International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966), Sections 6-7; International Covenant on Civil and Political Rights (ICCPR) (1966), Section 22; the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) (1979), Section 11; Convention on the Rights of the Child (CRC) (1989), Section 32.

as the prohibition of child labour and forced or compulsory labour.¹⁸ Labour standards may also be promulgated in other legal instruments adopted by regional organizations. The European Union (EU) has, for example, issued relevant directives that oblige Member States to transpose their provisions into national law within set deadlines. The European Framework Directive on Safety and Health at Work¹⁹ lays down general principles concerning the prevention and protection of workers in all sectors against occupational accidents and diseases. In December 2017, the European Union Council adopted the Directive (2017/159) implementing the Agreement concerning the implementation of the Work in Fishing Convention 2007 of the ILO, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF) and the Association of National Organizations of Fishing Enterprises in the European Union (Europêche).

ILS are also enshrined in a number of non-legally-binding international instruments that apply to the agriculture, forestry and fisheries sectors. Instruments adopted within FAO and the Committee on World Food Security (CFS) stipulate labour standards as requirements that should be met within efforts to realize the right to adequate food and as criteria for responsible investment in agriculture, food systems and related natural resources.²⁰ Such instruments further incorporate labour standards that are of particular importance to the thematic areas they cover. For example, the Voluntary Guidelines on small-scale fisheries urge states to promote decent employment and social security, eradicate forced labour and address issues of occupational health, unfair working conditions and discrimination among small-scale fisheries workers in their domestic law and practice.²¹ The International Code of Conduct on Pesticide Management similarly provides for the prevention of the use of

¹⁸ African Charter on Human and Peoples' Rights (1981), Section 14; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Section 13; European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), Sections 4 and 11; European Social Charter (Revised, 1961/1996), Sections 1-10; American Convention on Human Rights (Pact of San Jose, 1969), Sections 6 and 16; Additional Protocol to the American Convention on Human Rights in the areas of Economic, Social and Cultural Rights (Protocol of San Salvador, 1988), Sections 7-9.

¹⁹ Council of the European Communities. 1989. Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work.

²⁰ FAO. 2004. Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security, adopted by the 127th Session of the FAO Council, November 2004. Rome. Section 8A; CFS. 2012. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. Section 12.4. Rome; CFS. 2014. Principles for Responsible Investment in Agriculture and Food Systems. Principle 2 and Section 37. Rome.

²¹ COFI. 2017. Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication. Rome, FAO. Chapter 6.

pesticides by children in a work situation and for its classification as hazardous work in national law.²² These and other “soft-law” instruments can serve as important sources of inspiration for domestic labour policies, legislation and practices relating to labour in the agriculture, forestry and fisheries sectors.

In addition to providing essential guidance to national labour standards and practices, ILS may also contribute to bridging labour protection gaps at the domestic level. States that have ratified international human rights and labour treaties undertake to implement the provisions within their respective jurisdictions. ILS are better implemented when they are enshrined in domestic legal frameworks that portray the long-term commitment of States, define the rules governing employment relations and conditions of work in the specific country and sectorial contexts, and assign institutional and resource-related responsibilities. The standards in the specialized and general conventions and other instruments may be enshrined in a national Constitution, in national human rights instruments, in general labour laws and in sector-specific legislation. The international instruments may further serve as important reference texts for those working with voluntary initiatives, codes of conduct and social labelling schemes, for example, on child labour or occupational safety and health, which are applied relatively effectively in some circumstances.

1.2. The applicability of international labour standards to different forms of work in agriculture, forestry and fisheries

Most international labour conventions primarily apply to employers and employees in formal contractual relationships, for example, between large-scale agricultural operators and their formal employees. However, the agriculture, forestry and fisheries sectors host different ‘non-standard forms of employment’, including fixed-term, casual and seasonal workers, which face challenges in terms of legal coverage particularly in informal employment relationships (ILO, 2015a). Fixed-term contracts are written or oral work agreements for a predefined period of time. Casual workers are persons engaged on an occasional and intermittent basis, for a specific number of hours, days or weeks, in return for a wage dictated by the terms of a daily or periodic work agreement. Seasonal work is performed in a specific season or during a given period of the year due to the nature of the goods produced or the service provided. ‘Informal employment’ is the term often used to refer to such jobs in undertakings that are too small and/or not registered, or jobs which labour legislation does not specifically

²² FAO & World Health Organization (WHO). 2014. International Code of Conduct on Pesticide Management. Rome. FAO. Section 6.

cover or is not applied to (Husmanns, 2004). Such work arrangements are the prominent features of informal waged employment in low-income developing countries.

The agricultural sector in developing countries is further characterized by the prevalence of self-employed farmers, producers and small-hold operators that employ family labour. For example, almost three quarters of Africa's economically active rural population are smallholders (ILO, 2011b; FAO, 2014a), and many of them are engaged in self-employment or unpaid family work. Many of the rural poor are subsistence producers, family farmers or landless agricultural workers, including fisherfolk, pastoralists, and forest-dependent peoples (FAO, 2013b), who suffer from different forms of marginalization. In some countries, rural workers are considered to be neither employers nor workers to be governed by labour laws (ILO, 2015b).

An important question to ask in connection with the above situations is whether ILS apply to the various types of work arrangements in the agriculture, forestry and fisheries sectors. As indicated earlier, agricultural or rural workers tend to be either excluded from or not firmly covered by relevant international labour instruments. While some of the ILO conventions, including those applying to agriculture, exclude self-employed operators such as subsistence farmers, others include "flexibility clauses" that allow States to exclude certain categories of workers from the application of a convention.²³ On the contrary, a number of labour standard instruments, such as the ones relating to freedom of association and rural workers organizations,²⁴ recognize the heterogeneity of labour relations in agriculture and clearly apply to self-employed persons such as tenants, sharecroppers or small owner-occupiers. The four fundamental principles and rights at work are considered to be applicable to all forms of work in agriculture, including to informal labour.²⁵ Almost all ILO conventions governing the fundamental principles and rights apply to all types of workers.²⁶

²³ For example, see Safety and Health in Agriculture Convention, 2001 (No. 184); Labour Inspection (Agriculture) Convention, 1969 (No. 129); Plantations Convention, 1958 (No. 110) and Protocol of 1982 to the Plantations Convention, 1958.

²⁴ For example, see Right of Association (Agriculture) Convention, 1921 (No. 11); Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87); Rural Workers' Organisations Convention, 1975 (No. 141).

²⁵ ILO. 1998. Declaration on Fundamental Principles and Rights at Work and its Follow-up. Geneva.

²⁶ An exception is the Minimum Age Convention, 1973 (No. 138), which allows for the exclusion of family and small-scale holdings that produce for local consumption and do not regularly hire workers.

Some labour and human rights instruments and also sector-specific instruments with labour standard components, such as the Voluntary Guidelines on small-scale fisheries, provide for the rights of all workers without distinction and the concomitant obligations of States. Together with ILS that apply to all agricultural or rural workers and those which are interpreted as covering self-employed workers,²⁷ these instruments can serve as foundations for approaches to the promotion and implementation of decent rural employment for all. As indicated above, they can inform relevant policy processes and executive actions to the benefit of small-holder, casual, seasonal and other vulnerable agricultural or rural workers.

While the argument can be made for the overall applicability of ILS to family farming, smallholders, artisanal fisheries etc., the practical application of some of the standards faces serious challenges emanating from the prevailing realities in the sectors of concern. The strict implementation of standards such as the prevention of child labour, ensuring occupational safety and health, work agreement, payment of wages etc. could be challenging in the context of smallholder and family-based undertakings in developing countries. States would also find it difficult to require self-employed and subsistence farmers to comply with such labour standards at the peril of sanctions in the absence of alternative means of livelihoods or other positive incentives. Some States may not further have the institutional structures and/or the capacities that are required for the enforcement of labour standards in rural areas. The expansion of coverage in the application of labour and human rights standards should therefore go hand in hand with positive measures, such as the provision of social protection or other support on condition of compliance with certain labour standards, and strengthening capacity to deliver services in rural areas.

Moreover, certain types of work arrangements can result in the blurring of responsibilities for applying labour standards. Some big agricultural enterprises, in the logging business for example, engage sub-contractors to do the work with their crew. In contract farming, firms engaged in agricultural products business enter into agreements with producers (for example, of crops or livestock) to organize their procurement system in accordance with their specific needs. Agricultural workers may also be temporarily engaged by agencies which supply labour force to firms. The worker and the agency would enter employment contracts under which the agency pays wages and social benefits to the worker, whereas the

²⁷ For example, see Safety and Health in Agriculture Recommendation, 2001 (No. 192).

agency and the user firm conclude a commercial contract under which the user firm pays fees to the agency (Husmanns, 2004). The involvement of multiple parties often renders the rights of workers and the obligations of the sub-contractor, the producer or the user firm towards them (e.g. with respect to health and safety) confusing, especially where workers serve one of the entities for an extended period of time. A series of questions arise, including whether service or production contracts can be used to hide labour relationships, whether individual service providers or agricultural producers can be considered to be in employment relationships with the bigger firms, and whether the main contractor or workforce provider are expected to monitor the compliance of a sub-contractor or producer or user firm with basic labour standards in cases where the latter engages workers formally as well as informally.

Service and production contracts offer opportunities to extend the application of ILS to rural or agricultural workers, including those that are not covered by domestic labour laws, and to promote “formality” and better working conditions. The main contractor or workforce supplier could be expected to require the sub-contractor or producer or the user firm to comply with labour standards. However, practical implementation also depends on the monitoring and enforcement of the contracts. Similarly, while labour standards should normally apply in the relationship between the sub-contractor or producer or user firm and its employees, the protection gap relating to agricultural workers poses implementation challenges. This may still be overcome through the integrated implementation of international labour and human rights standards and implementation and monitoring mechanisms that recognize difficulties of operationalising ILS in the agriculture, forestry and fisheries sectors.

1.3. Key agricultural labour issues to be addressed in legislation governing work in the agriculture, forestry and fisheries sectors

As indicated earlier, the agriculture, forestry and fisheries sectors host a range of labour issues relating to the fundamental principles and rights at work, opportunities and conditions of work, and labour administration and inspection. Where trade unions of agricultural workers exist, their rights are often limited by legal constraints and practical challenges such as the dependency of the workers on their employers. Rural organizations are important to promote and defend the interests of agricultural workers, especially those in the informal sector. Forced labour occurs in a number of countries based on debts and other liberty-limiting practices, especially

in relation to migrant workers and victims of trafficking. As indicated above, millions of children continue to work in agriculture and related sectors in the formal as well as informal economies, including in the worst forms of child labour. Some vulnerable groups whose livelihoods depend on working in these sectors face discrimination in terms of employment and type of occupation (ILO, 2008).

Given that the agriculture sector is one of the most dangerous sectors in terms of work-related fatalities, accidents and occupational diseases, occupational safety and health standards are crucial. Indeed, agricultural work involves the use of and exposure to dangerous equipment, hazardous substances, agents of disease and other risks relating to the work environment. The involvement of migrant workers and the conditions of employment and accommodation of workers, especially in the fisheries and forestry sectors merit special attention. Wages, payment of wages and working hours add to the list of practical labour issues relating to employment in agriculture, forestry and fisheries, particularly in developing countries. Workers in these sectors are often paid very low and/or irregular wages, if paid at all, and they typically work longer hours than as stipulated in applicable standards.

Having looked at some of the labour issues arising in the agriculture, forestry and fisheries sectors, mainly in developing countries, the following sub-sections will outline the internationally accepted standards for protection of basic rights at work. The selection of labour standards is based on a survey of reports and discussions with relevant experts with a view to identifying the relatively critical labour issues in the agriculture, forestry and fisheries sectors. They present the pertinent labour and human rights issues and the provisions of pertinent instruments.

1.3.1. Effective recognition of freedom of association and the right to collective bargaining

Freedom of association is an important instrumental right for agricultural workers to rely upon for improving their terms and conditions of work, for example, through collective bargaining, and more broadly for ensuring their effective participation in socio-economic development. In addition to the prevailing poverty and informality in the agriculture sector, the involvement of family labour, migrant, seasonal and casual workers and the dependency of many of them on their employers pose practical challenges to the enjoyment of the right. This is complicated even more in countries where violence, harassment and dismissal of union officials

and members occur (ILO, 2008). States should not only guarantee freedom of association but should also encourage the establishment and free functioning of agricultural workers' organizations. This would facilitate dialogue and cooperation between governments, employers and workers in the formulation of labour standards and policies, i.e. the principle of tripartism.²⁸

- All agricultural workers, irrespective of their forms of engagement, should be able to form and join organizations of their own choosing without legal or administrative impediments or the need for prior authorization.²⁹ Accordingly, they should enjoy the same right of association as that of industrial and other workers.³⁰

1.3.2. The elimination of all forms of forced or compulsory labour

Despite the undertaking of States to suppress and abolish the use of any forms of forced labour in various contexts, such practices are prevalent in many rural or agricultural, forestry and fisheries sectors.

- States and employers shall undertake to suppress and not to make use of any form of forced or compulsory labour for any reason in all sectors or forms of employment or engagement.³¹ The implementation of such legal provisions requires putting in place monitoring mechanisms which include the deployment of special inspection groups and the imposition of fines on agricultural operators that contravene the law.³²

1.3.3. The effective abolition of child labour

Although there is an increasingly wide consensus against child labour, it is probably the most difficult agricultural labour issue to deal with, especially in developing countries. This is not only because of the sheer number of working children and related rural perceptions, but also because of its

²⁸ Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

²⁹ The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Rural Workers' Organisations Convention, 1975 (No. 141); ICCPR (1966), Section 22; the International Convention on the Elimination of all forms of Racial Discrimination (CERD) (1965), Section 5.

³⁰ The Right of Association (Agriculture) Convention, 1921 (No. 11); ICCPR (1966), Section 22; CERD (1965), Section 5.

³¹ The Forced Labour Convention, 1930 (No. 29); the Abolition of Forced Labour Convention, 1957 (No. 105).

³² For a pertinent law and practice in Brazil, see ILO. 2008. Promotion of Rural Employment for Poverty Reduction. International Labour Conference, 97th session, report IV. Geneva. p. 89.

adverse effects on children's development and efforts to promote decent youth employment. The problem is further exacerbated by gaps in legal prohibitions of hazardous child labour, legal exclusions and exemptions with regard to family labour, the non-existence or weakness of labour inspection in agriculture and the low access to or standards of education. It is worth noting that the child labour to be abolished is that which interferes with compulsory schooling and damages health and personal development.

- States shall strive towards the abolition of child labour in agriculture by progressively increasing the minimum legal age of admission to work to “a level consistent with the fullest physical and mental development of young persons” and by prohibiting and eliminating the worst forms of child labour.³³ While the exact minimum legal age for employment depends on the context of each country and the sector and type of work, the enforcement of age-related legal requirements for agricultural labour should include institutionalized monitoring mechanisms and measures of protection to children who are engaged in such work.

1.3.4. The elimination of discrimination in respect of employment and occupation

Agricultural workers often face discrimination in terms of labour protection, working conditions, payment of remunerations etc., (ILO, 2008). Women and girls, who constitute almost half of the agricultural workforce in the world, face particular discrimination in terms of opportunities and treatment in respect of employment and occupation. Examples of such discrimination include cases of employer-mandated pregnancy tests penalizing pregnant workers and the lack of supportive facilities (childcare, schools etc.) in remote work sites. Some group of agricultural workers also face particular vulnerability and marginalization that adversely affect the application of labour standards to them.

- States shall seek to ensure that all agricultural workers are entitled to equal opportunity and treatment in employment or occupation and to equal remuneration for equal work.³⁴ Special attention should be given to disadvantaged groups such as women workers,

³³ The Minimum Age Convention, 1973 (No. 138); the Worst Forms of Child Labour Convention, 1999 (No. 182); CRC, Section 32.

³⁴ The Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); ICESCR, Section 7.

indigenous workers, migrant workers, “lower-caste” workers and workers with disabilities in terms of access to vocational training, rehabilitation and guidance, to employment and to particular occupations, and with regard to terms and conditions of employment.³⁵

- States shall take all appropriate measures to eliminate discrimination against women in the field of employment and to prevent discrimination on the grounds of maternity by taking into account the particular problems faced by rural women and the significant roles they play in the economic survival of their families, including their work in the non-monetized sectors of the economy.³⁶ Such measures include ensuring equality in employment opportunities, promotion, job security, all benefits and conditions of service, treatment in respect of work of equal value, social security and paid leave, and in the provision of vocational training and protection of health and safety in working conditions.

1.3.5. Occupational safety and health

Although agriculture is one of the most dangerous sectors to work in, it is often not covered under national occupational safety and health regulations (ILO, 2008). Even the International Labour Convention that specifically governs safety and health in agriculture excludes work in the exploitation of forests and in subsistence farming (along with the processing of agricultural raw materials), and allows for the exclusion of other categories of agricultural workers.³⁷ However, the human right to just and favourable conditions of work, including safe and healthy working conditions, belongs to *everyone*.³⁸

- Regulatory frameworks on labour in agriculture, forestry and fisheries should incorporate standards on safety and health that prescribe preventive and protective measures regarding equipment or machinery safety and ergonomics, safety of life at sea, handling and transport of materials, sound management of

³⁵ Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159); Human Resources Development Convention, 1975 (No. 142); United Nations Convention on the Rights of Persons with Disabilities, 2006, Sections 26-27.

³⁶ CEDAW, Sections 11 and 14.

³⁷ The Safety and Health in Agriculture Convention, 2001 (No. 184). Work in industries using agricultural raw materials is covered by the broader Occupational Safety and Health Convention, 1981 (No. 155), which in turn incorporates a flexibility clause that allows the exclusion of some group of workers.

³⁸ ICESCR, Section 7.

chemicals, animal handling and protection against biological risks, the construction and maintenance of agricultural facilities, vessels etc.³⁹ Such provisions should be gender and age-sensitive and apply to all forms of agricultural employment.

1.3.6. Wages, payment of wages and working hours

Wages in agriculture generally tend to be low, not paid in time (and sometimes not in legal tender), not commensurate with number of hours worked and not periodically adjusted (ILO, 2008). Agricultural labourers work for very long hours and their low payments are further compromised by practices such as debt bondage (based on advances on wages) and excessive charges for services in work sites. Wage and working hour issues are compounded when looking at small-holder employers and in relation to family members, women, seasonal, casual and migrant workers. Appropriate mechanisms for the determination of minimum wage and maximum working hours either do not exist or do not apply to many agricultural workers, especially in developing countries. Relevant ILS do not apply to agricultural workers⁴⁰ or allow the exclusion of some categories of agricultural workers from their scope of application.⁴¹

- States should create and/or maintain an adequate machinery to fix minimum wage rates that are sufficient to meet the needs of agricultural workers and also to preserve the purchasing power of the wage.⁴² Minimum wage fixing machineries should ensure the participation of employers and workers and take into account the special circumstances of the agricultural sub-sectors and the various forms of engagement.⁴³ While legal tender should be the principal mode of payment, the circumstances and occupations in which wages may be paid partially in the form of allowances in kind should be clearly determined.⁴⁴ In accordance with pertinent ILS, the maximum working hours and holidays with pay for agricultural workers should be determined with a view to meeting the Forty-

³⁹ The Safety and Health in Agriculture Convention, 2001 (No. 184); Safety and Health in Agriculture Recommendation, 2001 (No. 192).

⁴⁰ For example, see hours of work and weekly rest conventions, and Night Work Convention, 1990 (No. 171).

⁴¹ The Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99); Holidays with Pay Convention (Revised), 1970 (No. 132).

⁴² ICESCR, Section 7.

⁴³ The Minimum Wage-Fixing Machinery Convention, 1928 (No. 26); The Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99); Minimum Wage Fixing Convention, 1970 (No. 131).

⁴⁴ The Protection of Wages Convention, 1949 (No. 95).

Hour Week threshold and the minimum of three weeks annual leave with pay, respectively.⁴⁵ Non-compliance with standards relating to wages and working hours should be met with adequate legal sanctions.

1.3.7. Social security

Seventy-three percent of the global population is either not covered or partially covered by social security systems, which include health care, sickness, maternity, old age and invalidity benefits, and workers' compensation (ILO, 2014). The majority of these people live in the rural areas of developing countries and mainly derive their livelihoods from agriculture and related sectors. Social protection systems are particularly important for people engaged in small-scale and subsistence agriculture, forestry and fisheries activities, for example, during lean and fishing ban seasons. While pertinent ILS formally apply to all workers, the requirement of Convention No. 102 that social security instruments cover at least 50 percent of the total number of all employees in the country creates a possibility of exclusion as the threshold can often be reached without including agricultural workers.⁴⁶ Social security and social protection regimes can be important catalysts for compliance with other labour standards, such as those relating to child labour.

- The laws and regulations of states on employment injury benefits and insurance systems against social risks such as sickness, invalidity and old age should extend to all agricultural workers with a view to ensuring universal coverage.⁴⁷ Women workers should be entitled to maternity leave and cash benefits as well as breaks for breastfeeding.⁴⁸ Pregnancy and maternity-based evaluations for decisions on employment and promotion should be clearly regulated. States should put in place social protection programmes that progressively cover all forms of engagement in agricultural work, including self-employed, casual, seasonal and

⁴⁵ The Forty-Hour Week Convention, 1935 (No. 47); Holidays with Pay Convention (Revised), 1970 (No. 132).

⁴⁶ The Social Security (Minimum Standards) Convention, 1952 (No. 102); Medical Care and Sickness Benefits Convention, 1969 (No. 130); Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128).

⁴⁷ The Workmen's Compensation (Agriculture) Convention, 1921 (No. 12); Social Insurance (Agriculture) Recommendation, 1921 (No. 17); Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121); ICESCR, Section 9.

⁴⁸ The Maternity Protection Convention, 2000 (No. 183), and its Recommendation No. 191; CEDAW (1979), Sections 11 and 14.

migrant agricultural workers. States and small-scale fisheries actors should cooperate to create the appropriate frameworks to allow for fair and adequate integration of migrants.

1.3.8. Protection of vulnerable group of workers

The agriculture, forestry and fisheries sectors engage many vulnerable and marginalized groups of workers, including women and children, persons with disabilities, casual or seasonal workers, migrant workers, indigenous peoples, tenants and sharecroppers. As highlighted earlier, especially in relation to children and women, these groups of workers are vulnerable to discrimination and abuse because of their sex, social status and/or their dependence on employers. Some of them face the related challenges of unequal access to productive resources and agricultural inputs.

- Migrant workers lawfully in the country of employment should be treated in equality (e.g. in social security coverage) with nationals, whereas all migrant workers should be afforded a minimum level of protection (e.g. with respect to the fundamental principles and rights at work) irrespective of their status.⁴⁹ States and other relevant actors should cooperate to create appropriate frameworks for the fair and adequate protection and integration of migrant workers, including cross-border migrant fishers.⁵⁰
- Indigenous and tribal peoples should enjoy equal opportunities and treatment with other workers in the agricultural and other sectors. Their sources of livelihood should be protected and promoted by safeguarding their rights to traditionally occupied land and other natural resources and strengthening rural industries and traditional occupations that contribute to cultural protection and economic development.⁵¹
- States should put in place policies that aim to progressively and continuously increase the well-being of tenants, share-croppers, hunter-gatherers, artisanal fishers and similar categories of workers, the stability and security of their work and livelihood, and the capacity for managing their holdings. The establishment of

⁴⁹ The Migration for Employment Convention (Revised), 1949 (No. 97); Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); Migrant Workers Equality of Treatment (Social Security) Convention, 1962 (No. 118); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

⁵⁰ COFI. 2015. SSF Guidelines. Rome. Section 6.10.

⁵¹ The Indigenous and Tribal Peoples Convention, 1989 (No. 169); United Nations Declaration on the Rights of Indigenous Peoples (2007), Section 17.

organizations that represent the interests of such workers should be encouraged in the same way as those of landowners or formal tenure holders.⁵²

1.3.9. Labour administration and inspection

Labour administration and inspection mechanisms are crucial Labour administration and inspection mechanisms are crucial governance structures for the development of labour standards as well as their implementation. Such mechanisms include the work of public administration bodies in the preparation, enforcement and review of labour policies, laws and regulations in consultation with workers, employers and their organizations. They also include mechanisms for monitoring the application of labour standards in both the formal and informal sectors.⁵³ In terms of enforcement, labour inspection in agriculture, forestry and fisheries is a challenging task because of the dispersed and temporary nature of the worksites, which are often located in remote and inaccessible places. (Wettmann, 2011).

The legal, institutional and operational frameworks for labour administration, inspection and social dialogue in many developing countries fail to cover rural workers, especially those in the informal economy (ILO, 2008). These gaps result partly from the lack of frameworks and resources for inter-sectorial institutional collaboration (e.g. between the ministries in charge of labour and agriculture, forestry and fisheries). The widely divergent status of ratification between the general labour inspection Convention and the one on agriculture accentuates the supposed and actual difficulties in extending labour inspection to agricultural or rural work.⁵⁴

- States should put in place agricultural labour administration and inspection structures with powers to prepare, administer, coordinate and review national labour law and policy, to secure the enforcement of labour standards relating to conditions of work and protection of workers, to provide technical assistance on ways of complying with relevant legal provisions and to present

⁵² See the Tenants and Share-croppers Recommendation, 1968 (No. 132).

⁵³ The Labour Administration Convention, 1978 (No. 150); Labour Inspection Convention, 1947 (No. 81).

⁵⁴ At the time of writing of this study, the Labour Inspection (Agriculture) Convention, 1969 (No. 129) was two-thirds less ratified than the Labour Inspection Convention, 1947 (No. 81).

evidence-based recommendations for the improvement of labour policies, laws and regulations. They should have legally defined powers covering all forms of work in agriculture with structures extending to rural areas.

- Recognizing that labour issues in the agriculture and related sectors fall within the mandate of different ministries and agencies (those dealing with labour, agriculture, forestry, health, fisheries, transport, maritime issues), relevant public authorities and bodies should put in place mechanisms for effective inter-sectorial and inter-institutional coordination for labour administration and “interdisciplinary inspection” mechanisms in the sectors.⁵⁵

1.4. International labour standards and domestic legal measures

International labour and human rights instruments usually require or recommend that States take legislative and other measures to give effect to their respective provisions. Even if international treaties are binding on States that ratify them, their implementation or application at the national level often depends on the extent to which they are integrated into domestic law. National enabling legislation is even more important for the implementation of non-binding international standards. States can give effect to international labour standards in various ways, which should include the creation of a tripartite consultative body, composed of representatives of the Government, employers’ and workers’ organizations from different sectors, as a platform for the development of national labour policies and laws.⁵⁶

States may integrate international labour standards into their laws as part of a pre or post-ratification process or regardless of the ratification or endorsement of international instruments. In this connection, instruments such as the European Commission regulations and directives, including those relating to labour standards, are different in that Member States are duty bound either to implement them as they are or to transpose their provisions into their national laws within a given period of time.⁵⁷

⁵⁵ Safety and Health in Agriculture Convention, 2001 (No. 184), Section 5.

⁵⁶ Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). For example, see Burkina Faso. 2015. Décret n°. 2015-971-PRESTRANS/PM/MFPTSS/MEF du 10 août 2015 portant création, composition, attributions, organisation et fonctionnement de la Commission Consultative relative aux Normes Internationales du Travail (CCNIT) (including the ministries in charge of labour and agriculture).

⁵⁷ European Union directives impose a duty on member states to take steps to fulfil the directives’ requirements, whereas the more detailed European Union regulations form a part of member states’ national legislation from the time of their publication.

In any case, national legislation translates international standards into enforceable rights and duties with institutional structures to apply sanctions for non-compliance.

National constitutions usually include provisions on labour rights that apply to all sectors of work and types of employment, including rural employment.⁵⁸ Constitutional legal provisions are then spelled out in more specific thematic or sectoral legislation. States often adopt generic labour and employment-related laws that apply to various sectors of work. Such legislation does not necessarily cover all aspects of work and is often supplemented by legal instruments dealing with specific labour issues, such as occupational safety and health and minimum wages,⁵⁹ that similarly apply to different sectors and types of work. Labour laws of general application may not necessarily capture the nuances and particular characteristics of work in the agriculture, forestry and fisheries sectors. Such limitations could be addressed through the incorporation of certain labour standards in sectorial laws. While integrating the whole gamut of ILS into principal sectorial laws, such as national forestry or fisheries laws, could render them unnecessarily complex, such legislation may include some critical labour and safety provisions. In cases where States want to address sector-specific human rights and/or labour issues, they may also adopt separate legislation to that effect. The generic and/or specific legislation that applies to work in the sectors should ideally incorporate the labour standards highlighted in the previous section.

Even where agricultural workers are covered by labour legislation or other sectorial laws, applicable labour standards are not often well implemented in practice.⁶⁰ This may result from non-compliance with applicable standards as well as the weakness of labour administration and inspection mechanisms. Overcoming the double challenges of applicability and enforcement of labour standards, especially in relation to informal employment, can clearly present its difficulties. At the normative level, it requires going beyond the confines of labour instruments that exclude some workers and work arrangements and applying human rights and labour standards that apply to all workers. At the operational level, there is a need to put in place institutional (administrative and inspection)

⁵⁸ For example, see Constitutions of Brazil (1988) and Ethiopia (1995).

⁵⁹ For example, see the Ugandan Occupational Safety and Health Act 2006, and the Malaysian National Wages Consultative Council Act 2011, Act 732 (establishing a council with a mandate to make recommendations to the Government to make minimum wages orders according to sectors, types of employment and regional areas).

⁶⁰ International Labour Conference. 2008. Resolution concerning promotion of rural employment for poverty reduction (adopted at the 97th Session, Geneva, June 2008), paras. 38-40.

structures, coordination mechanisms and sanction regimes that ensure the implementation of the standards. Effective implementation would in addition require supplementing the enforcement mechanisms with positive measures that enable or incentivise compliance with labour standards. Social transfers may, for example, be conditioned upon sending children to school or avoiding hazardous child labour.

Part II. Labour standards and their integration into sectoral national legislation

The Development Law branch of the FAO Legal Office (LEGN) provides technical legal advisory support in a number of sectoral areas including food security and nutrition, plant and animal production and protection, agribusiness-related arrangements, certain agricultural inputs such as seeds, fertilizers and pesticides, and the governance of natural resources such as land, water, biodiversity, forests and fisheries. To the extent that these sectors provide sources of livelihoods for millions of rural people, labour and employment-related issues are bound to arise in all these areas. However, based on the analysis of a number of national laws that fall within the areas of LEGN's advisory support and discussions with experts in the technical areas at FAO, legislative frameworks applying to agricultural commodities, contract farming, pesticides management, livestock production, forestry, fisheries and aquaculture have been identified as those in which labour and safety standards can be integrated relatively more clearly.

This part of the study aims to identify sector-specific labour issues, to present the labour and safety dimensions of international instruments that apply in the above-mentioned areas, and to explore the extent to which labour and safety standards are or can be incorporated into sectorial legislation. It begins with an introduction to possible ways in which labour and safety issues in the sectors could be regulated and then discusses labour protection per sector.

As mentioned above, the study focuses mainly on domestic legislation governing production from the selected sectors. However, production of commodities from the agriculture, forestry and fisheries sectors is also influenced by market state legal instruments that regulate the import and export of products from the sectors. The study therefore looks at market state legislation, such as legally sanctioned certification schemes and trade rules that are developed with a view to countering the illegal sourcing of products from other countries. Labour, human rights and safety standards may fall within the framework of certification or the definition of legality

within such legislation. The enforcement of the latter may also give rise to legal reform in the producing or exporting countries, and this may lead to better protection of labour standards in the sectors of production.

In relation to the selection of the legislative areas, it should be noted that national legislation in the areas of food security, safety nets, rural development and access to natural resources also have direct or indirect relationship with protection of labour standards, such as the prevention of child labour, without necessarily being open to the integration of those standards. For example, school feeding laws that have been adopted by many countries and broader food security legislation with provisions for school meals and support to poor households are positively associated with an increase in school attendance and a reduction in child labour. The same could be said about legislation that provides for services and benefits to low-income workers in conditions of poverty, or about a law that guarantees a certain number of days of employment for members of poor households.⁶¹ Recognition of access rights and livelihood considerations in the governance of natural resources could contribute to the improvement of labour and employment conditions of the people concerned. Such laws could actually complement other labour or sectoral legislation that seeks to prevent child labour and other sub-standard working conditions by providing incentives that may contribute to or result in compliance, for example, with laws prohibiting child labour in the context of prevalent practices to the contrary. Nevertheless, this study will focus on legislation into which labour standards can be directly integrated.

2.1. Legislative approaches to the protection of labour in the agriculture, forestry and fisheries sectors

In practice, there are various legislative approaches to the protection of labour and safety standards in the agriculture, forestry and fisheries sectors. The actual and potential involvement of FAO in providing technical support to the development of different forms of legislation differs from

⁶¹ For example, see Costa Rica. 2014. Decreto Nº 38.202/MTSS/MBSF - Reglamento parcial de la Ley Nº 5.662, Ley de Desarrollo Social y Asignaciones Familiares (providing for services and benefits to low-income workers in conditions of poverty or extreme poverty that have children with permanent disability); and India. 2005. National Rural Employment Guarantee Act No. 42 (provides for at least 100 days of wage employment per year to every household whose adult member volunteers to do unskilled manual work). There is also the finding that workfare programs may have the unintended consequence of reducing school enrolment – see Shah, M. & Steinberg, B.M. 2015. Workfare and Human Capital Investment: Evidence from India. No. 21543. Cambridge, Massachusetts, National Bureau of Economic Research.

one type to another. From the analysis of legislation in a number of jurisdictions, the following five categories of legislative approaches could be discerned.

In the first category is general labour and employment legislation, which in many countries applies across all sectors and may, in some cases, envisage sector-specific elaboration or determination of basic conditions of employment.⁶² Legislation of this nature also include those, which define occupational safety and health standards and hazardous child labour in different sectors, including in agriculture, forestry, fisheries and aquaculture.⁶³ Some general labour or occupational safety and health laws further explicitly provide for work arrangements that are prevalent in the aforementioned sectors, such as the protection and benefits of temporary and casual workers.⁶⁴ Principal labour and employment legislation of general application is often adopted with the technical support of the ILO, but FAO may play a complementary role by highlighting the peculiarities of work in the agriculture, forestry and fisheries sector at least at the implementation level.

The second category includes legislation that governs “work in agriculture”, including farming, animal husbandry, forestry and fisheries. Legislation that either adapts general labour standards to the agricultural sector or addresses some specific labour-related problems in the sectors falls within this category. Such legislation includes laws defining conditions for the application of a principal labour law to agriculture as well as those spelling out benefits of workers who are engaged for a certain minimum period of time.⁶⁵ It also includes regulations that set conditions of work

⁶² For example, see Thailand. 1998. Labour Protection Act B.E. 2541, Section 22 (envisaging Ministerial Regulations for labour protection in agriculture, fishing and other sectors); South Africa. 2002. Department of Labour, Government Notice No. 219, Sectoral Determination 12: Forestry Sector (issued under the Basic Conditions of Employment Act 1997).

⁶³ For example, see Gabon. 2011. Décret n° 01494/PR/MTEPS du 29 décembre 2011 déterminant les règles générales d’hygiène et de sécurité sur les lieux de travail; Côte d’Ivoire. 2012. Arrêté n° 009 MEMEASS/CAB du 19 janvier 2012 révisant l’arrêté n° 2250 du 14 mars 2005 portant détermination de la liste des travaux dangereux interdits aux enfants de moins de dix-huit ans (implementing ILO Worst Forms of Child Labour Convention No. 182 (1999) and Loi n° 2010-272 du 30 septembre 2010 portant interdiction de la traite et des pires formes de travail des enfants); and Uganda. 2012. Employment of Children Regulation of 2012.

⁶⁴ For example, see South Africa. 1993. Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993, chapter I, xix (a); and Ghana. 2003. Labour Act 651, Part I section 1, and Part X (considering temporary workers who are employed by the same employer for six or more consecutive months as permanent workers).

⁶⁵ For example, Ministry of Labour of the Kingdom of Thailand. 2014. Ministerial Regulation concerning Labour Protection in Agricultural Work B.E.2557 (2014) (covering works related to plantation, animal husbandry, forestry, salt-field, and fishing other than sea fishing).

in agricultural and related occupations, in the absence of a collective agreement;⁶⁶ legislation addressing specific issues such as forced labour and servitude in agriculture;⁶⁷ laws that define the rights and obligations of parties to agricultural work contracts and promote inter-institutional cooperation for decent work in the sector;⁶⁸ and legislation that establishes social security schemes for members of farming cooperatives and regulates the employment relationship between small-holder farmers and their wage-earning workers.⁶⁹

FAO may or may not be requested to provide technical assistance for the development of such regulatory frameworks. Where it is so involved, it should take the specific labour standards identified in Part I of this study and the issues relating to their applicability to work in agriculture, forestry and fisheries into account.

In the third category is legislation of general coverage in the areas of agriculture, forestry and/or fisheries, which may incorporate provisions on labour and safety standards and/or aim to contribute to the realization of decent work in the sectors. This category includes framework laws (*loi d'orientation*) for the agriculture sector, which, among others, may provide for the promotion of 'cooperativism' and workers' associations, the prohibition of forced labour, the creation of social security schemes and the requirement of compliance with safety and health standards;⁷⁰ legislation that introduces agrarian reform or develops solidarity economy with the overall objective of promoting decent work standards, social

⁶⁶ Senegal. 1961. Décret n° 61-347 du 6 septembre 1961 fixant, à défaut de Convention collective les conditions de travail dans les professions agricoles et assimilées.

⁶⁷ For example, Plurinational State of Bolivia. 2008. Decreto Supremo N° 29.802 - Establece en el ámbito agrario, lo que se entenderá por sistemas servidumbres, trabajo forzoso, peonazgo por deudas y/o esclavitud de familias, personas cautivas o formas análogas; and the associated Decreto Supremo N° 388 (2009) (defining the substantive, methodological and institutional aspects of the determination of forced labour and servitude).

⁶⁸ For example, Argentina. 2011. Ley N°. 26.727 - Régimen de Trabajo Agrario (incorporating provisions on different types of contract, standards of living, wages, working hours, minimum age, social security etc.); and Argentina (La Pampa). 2014. Ley N° 2.762 - Aprobando el Convenio de Cooperación y Fortalecimiento Institucional para la Promoción del Trabajo de Calidad en el Sector Agrario (the agreement among others includes protecting agrarian workers' dignity and fundamental rights, and guaranteeing social justice).

⁶⁹ For example, see Cuba. 2001. Decreto Ley N° 217 - Seguridad social de los miembros de las cooperativas de producción agropecuaria; and Cuba. 2010. Resolución N° 33/10 - Contratación de los trabajadores asalariados que trabajan con carácter permanente junto a los agricultores pequeños.

⁷⁰ Côte d'Ivoire. 2015. Loi n° 2015-537 du 20 juillet 2015 d'orientation agricole de Côte d'Ivoire; Senegal. 2004. loi d'orientation agro-sylvo-pastorale, la loi n° 2004-16 du 4 juin 2004; and Senegal. 2008. Décret n° 2008-1262 instituant un régime de protection sociale agro-sylvo-pastorale.

security and the welfare of farmworkers;⁷¹ regulations on family farming, which, among others, promote the creation of rural organizations through cooperatives and other modalities;⁷² and laws on youth entrepreneurship in rural areas that promote the creation of associations and cooperatives for the improvement of working conditions of young producers.⁷³

Other sectoral legislation with the teleological approach to labour protection includes: laws governing rural development, including the protection of agricultural workers such as seasonal and temporary labourers;⁷⁴ laws protecting women working in rural areas including through the promotion of decent employment, cooperatives and access to basic social services;⁷⁵ and investment laws, including in agriculture and related sectors, that aim to create decent jobs for nationals and require investors to comply with internationally accepted standards of labour and human rights.⁷⁶ Legislation in this category is closely related to the work of FAO in areas such as family farming, rural development, agricultural investment and youth employment. Where FAO is involved in the provision of technical assistance for the development of such legislation, it should integrate the relevant labour and safety standards by paying attention to the peculiarities of work in the agriculture, forestry and fisheries sectors. Attention should be given to ensuring the effective implementation of the labour and safety standards by promoting inter-institutional coordination in such legislation.

A fourth category of pertinent legislation is that which establishes the mandates of agriculture ministries or other relevant public authorities. Such pieces of legislation may well have varying scope of sectoral coverage in different countries, but they may nonetheless incorporate labour and employment-related provisions as appropriate.

⁷¹ For example, see Costa Rica. 2015. Decreto N° 39.089/MP/MTSS - Declara de interés público y nacional el fomento, creación, desarrollo y formalización de los grupos, organizaciones y empresas de la Economía Social Solidaria; and Republic of the Philippines. 2009. Comprehensive Agrarian Reform Law of 1988, As Amended, Act No. 9700.

⁷² Republica Dominicana. 2016. Ministerio de Agricultura. Resolución N° 14/16/MA - El Ministerio de Agricultura adopta el concepto de Agricultura Familiar.

⁷³ For example, see Argentina (Entre Ríos). 2015. Ley N° 10394 - Régimen de Promoción para el Emprendedurismo Joven Entrerriano.

⁷⁴ For example, see Mexico (Nuevo León). 2008. Ley de desarrollo rural integral sustentable del Estado de Nuevo León; Mexico (Sinaloa). 2013. Ley de desarrollo rural sustentable del Estado de Sinaloa.

⁷⁵ Paraguay. 2015. Ley N° 5.446 - Políticas públicas para mujeres Rurales; the Philippines. 2009. An Act Providing for the Magna Carta of Women (Republic Act No. 9710) (providing for the right to decent work under Section 22).

⁷⁶ Guinea. 2015. Loi L/2015/008/AN du 25 mai 2015 portant code des investissements de la République de Guinée.

The mandate of the ministry or authority could include the promotion of rural organizations, decent work and support to vulnerable groups.⁷⁷ Such laws may also provide for inter-sectoral or inter-institutional coordination on matters such as rural development and rural livelihoods – providing grounds for inter-disciplinary approaches to the promotion and implementation of labour and safety standards in the agriculture, forestry and fisheries sectors. FAO is often called upon to provide legal advisory support to such legal frameworks; in these instances, the benefits of including labour related provisions in their laws should be highlighted.

The fifth category includes principal and secondary legislation⁷⁸ governing the technical areas identified above within the agriculture, forestry and fisheries sectors. This may include provisions regulating specific aspects of labour and employment. Such laws generally focus on, among others, the management and conservation of resources, the production and distribution of commodities, the safety and health aspects of the products from the sectors, licencing and authorization regimes, and sanctioned conduct and enforcement mechanisms. Labour protection does not usually form part of the primary objectives of the sectoral legislation. However, some labour standards with particular relevance to the sector in question or labour standards with particular sectoral dimensions are (or could) be incorporated in the legislation. Although this is uncommon, legislation governing one of the specific sectors (e.g. veterinary legislation) may also include general labour and social security-related provisions to the benefit of people deriving their livelihoods from that sector.⁷⁹ This would help to address sector-specific labour concerns in a manner that ensures the integrated protection of standards that apply to the resources or products from the sector, as well as the people who drive their livelihoods from these sectors.

The inclusion of some labour standards and concerns, such as those on rural workers' organizations and workers' safety, in sectoral legislation does not obviously supplant or duplicate their protection in principal or general labour laws. It would rather reinforce labour protection within specific sectors and provide the all-important inter-sectoral coordination. The various sections that follow aim at finding entry points for the actual

⁷⁷ For example, see Mozambique. 2017. Draft law defining the mandate of the Ministry of Agriculture and Food Security.

⁷⁸ The legislation may take different names – while the principal legislation could be an act, a law, a framework law (*ley organica* or *loi d'orientation*), a proclamation etc., the secondary/subsidiary legislation may be a regulations, decrees, arête, by-laws or executive or administrative orders.

⁷⁹ For example, draft Surinam Animal health legislation, 2016.

and potential integration of internationally accepted labour and safety standards in the substantive and institutional aspects of legislation governing agricultural commodities, contract farming, pesticides management, livestock production, forestry, fisheries and aquaculture.

2.2. Agricultural legislation

For the purpose of this section, the phrase “agricultural legislation” denotes laws that regulate a broad range of areas relating to the production, protection, distribution, processing and commercialization of agricultural commodities. These include not only legislation that defines the mandate of the state authorities in charge of agriculture, but also organic production and commodity-specific legislation, and agribusiness-related legislation, including financial mechanisms (e.g. crop warehouse receipts), special contracts for agriculture (e.g. contract farming), public-private partnerships, agriculture insurance, and agricultural credit or microcredit. They also extend to certain agricultural inputs that require special regulatory protection, such as seeds, fertilizers, pesticides and access to water for irrigation. Some of these pieces of legislation apply as much to livestock and aquaculture production as they do to crop production. While labour standards do not normally form part of the main provisions of such laws, some agricultural legislation accommodates social standards including labour and human rights.

With the underlying focus on the production level, this section presents the actual and potential entry points for labour standards in legislation governing organic production and other agricultural commodities, in contract farming and in pesticides management.⁸⁰ These legislative areas have been selected as they are considered to be those in which the integration of labour standards is most feasible.

2.2.1. Organic production and other systems for the certification of agricultural products

Organic agriculture may be defined as a production system that sustains the health of soils, ecosystems and people by relying on ecological

⁸⁰ The identification of these agricultural legislation is made based on the review of relevant international and national instruments to see the extent to which labour standards are or can be accommodated. Some agricultural legislation combine two or more of the thematic areas. For example, law on organic agriculture or contract farming may cover the production of crops, livestock, aquaculture, forestry products etc. There could also be other such legislation which may have particular relevance to labour issues.

processes, biodiversity and cycles adapted to local conditions while at the same time minimizing the use of inputs such as manufactured fertilizers and pesticides, food additives and genetically modified organisms (IFOAM, 2016). It may be used in the production of plants, crops, livestock, aquaculture and other related products. Organic production is expected to have environmental, social and economic benefits. Important among the social benefits are the improved employment opportunities that it could create to local communities and its contribution to the implementation of labour standards through the provision of liveable wages, safe and healthy working conditions and access to social services (Morgera et al, 2012). The increasing demand for organic products, particularly in developed countries, has been accompanied by the development of legal frameworks that regulate the production, labelling, inspection and certification of the products.

Certification schemes that apply to organic and other agricultural products certify that they are produced following certain methods and established standards. Such requirements may include the protection of labour standards. The kind of labour issues that arise in organic or other agricultural production are generally those that are present in the agriculture sector. They include occupational health and safety issues arising from exposure to climatic and physical conditions, long working hours particularly in cases of seasonal crops, child labour and forced labour, challenges to unionisation, discrimination etc. Informality adds to the challenges of labour protection in many countries.

2.2.2. International instruments

International reference standards for agricultural products certification may include social issues, such as the labour and human rights of people involved in their production. The international certification standards serve as references in the development of national level regulatory frameworks and certification schemes. Incentives relating to access to market and peer pressure may give the voluntary standards de facto mandatory status. The standards are applied by governments, private certification agencies, and associations of workers, producers and consumers that are involved in certifying the compliance of certain products with organic practices.

The standards approved by the International Federation of Organic Agriculture Movements (IFOAM) are considered to be the most important non-governmental standards for organic production. Other international organizations, such as International Organization of Standardization (ISO) and the Fairtrade International (FLO), among others, develop and provide standards for the certification of special production processes, such as fair

trade. While the guidelines adopted by these organizations include labour standards in one way or another, the Codex Alimentarius Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods, which are adopted within an intergovernmental framework, do not explicitly integrate labour standards.

The standards approved by the above-mentioned organizations are applied by international, national, public and private certifiers. The labyrinth of certification requirements and schemes are sometimes considered to constitute an obstacle to trade, especially for small producers in developing countries. There are efforts at harmonization and equivalence in standards for organic, fair trade and other agricultural products. Nevertheless, the inclusion of labour issues in the certification schemes provides opportunities for labour protection in the agriculture sector.

The IFOAM is an international non-governmental umbrella organization with the goal of achieving worldwide adoption of ecologically, socially and economically sound systems of organic agriculture based on common standards, verification and market identity. Notably, it has developed the IFOAM Standard for Organic Production and Processing, which is used by certification bodies, and includes requirements of social justice concerning labour and human rights, non-discrimination and equal opportunities. The specific requirements include prohibition of forced and involuntary labour, non-interference with the right to organize and to bargain collectively, non-discrimination, avoiding child labour, and providing written terms and conditions of employment, including working hours and payment of wages (IFOAM, 2014).

A non-governmental organization made up of public and private national standards institutes, ISO is the world's main formulator of technical standards for many industrial, technical and business sectors. ISO 65 establishes general criteria for organic certification bodies, including principles such as impartiality, competence and performance against reference standards, which are often referred to in national legislation on organic products (Morgera et al, 2012). ISO 26000 on the Standard of Social Responsibility includes certification requirements such as improving employee engagement and motivation, and improving health and safety of staff and beneficiaries (Dankers, 2003). The Social Accountability International (SAI) Standard SA8000 goes even further, as it promotes the implementation of ILO conventions covering social justice and working conditions. It includes standards on the prohibition of child and forced labour, occupational safety and health, freedom of association

and collective bargaining, working hours and wages, the right to non-discrimination and the need for a social management system (Dankers, 2003).

First established in 1997 as an association of producer networks, national labelling initiatives and marketing organizations, Fairtrade Labelling Organizations International split in 2004 into Fairtrade International, which sets standards and supports producers, and FLOCert, which inspects and certifies producer organizations and audits traders following ISO 65. FLO seeks to benefit small producers, especially in developing countries, by increasing their access to markets, and establishes requirements of health and safety and social justice to participate in fair-trade. Associations must comply with the regulations that protect workers in accordance with related ILO international instruments (Dankers, 2003).

Other voluntary certification schemes also apply to agricultural commodities that are not necessarily organic. For example, Rainforest Alliance Certified sets sustainability standards aimed at improving conditions for workers and relationships with local communities, whereas Fair Trade Coffee promotes support to producers and sustainable farming practices that avoid child labour and forced labour (Dankers, 2003). These standards may serve as sources of inspiration for the integration of labour standards into national level regulatory frameworks for agricultural commodities.

2.2.3. National legislation

The standards for organic production are often developed and applied by non-governmental organizations and private certifiers. However, a number of countries have adopted regulatory frameworks for organic products. Such national frameworks generally provide guidelines that regulate the production and commercialization of organic agricultural products and the institutional arrangements for their certification. The legislation normally regulates how standards are to be developed or recognized as national standards and how certification schemes are to be implemented. The standards of organic production in a number of national regulatory frameworks include ecological and social standards. The conditions of labour in the production processes should fall within the latter standards.

The protection of labour standards in organic agriculture legislation can be ensured through substantive requirements for organic production and through institutional arrangements that include labour and social

welfare-related bodies. The substantive provisions may generally define social responsibility, social justice or social welfare objectives which, as shown above, include labour standards. For example, the Costa Rican law on organic agriculture requires that the production process be ecologically and socially responsible,⁸¹ whereas a similar Mexican law promotes the development of organic agriculture based on the principle of social justice, including the social welfare of workers and the guarantees of their rights.⁸² According to the Brazilian organic products regulation, organic agriculture labour relations should be in accordance with the social rights determined by the Federal Constitution, and organic production systems should aim to improve the quality of life of the workers.⁸³ Such legislation may go further to include specific labour standards in the basic rules of organic production, either as positive requirements (e.g. ensure just and favourable conditions of work) and/or as prohibited measures (e.g. hazardous child labour or forced labour) (Morgera et al, 2012).

In terms of institutional arrangements, organic agriculture legislation often includes provisions regarding certification bodies and competent authorities with overall mandate over organic agriculture. In the above-mentioned Costa Rican and Mexican laws for example, an organic product must be certified by a body that is legally registered and accredited. The Mexican law establishes the National Council for Agricultural Production as the competent authority for promoting the development of organic production systems and supporting small organic producers to improve their income and productive efficiency. While some countries assign responsibility to a single institution, other countries establish a joint deliberative governing body comprised of a variety of stakeholders or a multi-stakeholder advisory committee for the revision of organic agriculture standards and the list of authorized inputs, or for the monitoring of the accreditation of certification bodies (Morgera et al, 2012). Where the latter approach is adopted, it would be important to include institutions with a mandate on labour and social welfare issues in the multi-stakeholder body. Provisions that generally require cooperation

⁸¹ Costa Rica. 1997. Reglamento sobre la agricultura orgánica.

⁸² Mexico. 2006. Ley de Productos Organicos.

⁸³ Brazil. Ministry of Agriculture, Livestock and Food Supply. 2011. Regulatory Instruction No. 46, of October 6, 2011. (Also available at <http://www.agricultura.gov.br/assuntos/sustentabilidade/organicos/legislacao/ingles/normative-instruction-n-o-460-2011-organic-systems-of-animal-and-plant-production.pdf/@download/file/Normative%20Instruction%20N%20%C2%BA%20460-2011%20-%20Organic%20Systems%20of%20Animal%20and%20Plant%20Production.pdf>).

among governmental actors on relevant issues could also serve as good bases for inter-institutional coordination, including on labour issues in organic agriculture.

Organic legislation further provides for on-site inspections of production and/or handling facilities by the certifying agent of the authorised certification body or the competent public authority. The inspection of the certification body would be aimed at verifying compliance with the standards, while the inspection of the public authority would be aimed at auditing the implementation of the law. Such inspection could be done against reference standards, which could include checking compliance with the positive requirements and prohibitions relating to labour in agricultural production. Inspections could be carried out in coordination with labour inspectors and this could be envisaged in the national legal framework.

Last but not least, organic agriculture legislation provides for sanctions for non-compliance with substantive and institutional requirements, including suspension and cancellation of organic certification or the accreditation status of non-compliant producers or certification bodies, respectively. These sanctions could be extended to non-compliance with labour-related provisions.

Table 1 Components of organic agriculture legislation and possible entry points for labour standards	
Objectives of the legislation, certification scheme or competent authority	<ul style="list-style-type: none"> • <i>inter alia</i>, ensure social sustainability, social responsibility, social justice, welfare of workers
Guidelines for the production and commercialization of organic products, e.g. criteria of organic production	<ul style="list-style-type: none"> • may include labour standards as either positive requirements (e.g. pay minimum wages, provide protective equipment) and/or prohibited measures (e.g. discrimination, hazardous child labour, forced labour)
Institutional arrangements <ul style="list-style-type: none"> • for the certification of the products • competent authority • multi-stakeholder deliberative governing body or advisory committee 	<ul style="list-style-type: none"> • reference standards may include labour standards • engage with labour authorities and/or workers' organizations • include labour and social welfare-related public institutions, and possibly workers'/producers' organizations
on-site inspections of production and/or handling facilities by the certifying agent or competent authority	<ul style="list-style-type: none"> • looking at labour conditions and/or coordinating with labour inspectors
sanctions for non-compliance, including suspension and cancellation of certification or accreditation status	<ul style="list-style-type: none"> • may include non-compliance with labour-related standards

2.2.4. Commodity-specific legislation

A number of countries adopt dedicated legislation to regulate certain agricultural products if these are of strategic importance for the national economy, such as coffee, cotton, sugar and tea. Commodity-specific legislative frameworks, which are not limited to organic production, usually regulate different aspects of production and marketing of a commodity, including quality of products, storage, contracts for sale, and institutional and inspection-related matters. They may also incorporate provisions on

the conditions of people deriving their livelihoods from the production of the commodities, such as protection of rural workers or vulnerable population groups.

In terms of relevant international instruments, institutions such as the International Sugar Organization (ISO) and the International Coffee Organization (ICO) have developed standards that include some social issues. The ISO-administered International Sugar Agreement provides, for example, that “members shall ensure that fair labour standards are maintained in their respective sugar industries and, as far as possible, shall endeavour to improve the standard of living of agricultural and industrial workers in the various branches of sugar production and of growers of sugar cane and sugar beet” (ISO, 1992). Similarly, the International Coffee Agreement 2007 recognizes the necessity of encouraging the economic, social and environmental sustainability of coffee production, inducing the increase of employment and income, and improving living standards in producing countries (ICO, 2007).

2.2.5. National legislation

As indicated above, commodity-specific legislation generally regulates the quality, production, storage and other technical matters relating to the value chain of certain agricultural products. While labour and employment-related provisions do not normally form a central part of such laws, there are entry points for the integration or application of labour standards in some of their substantive requirements and institutional arrangements. Thus, provisions on labour standards may simply be included amongst the obligations of producers relating to product quality or the welfare of their workers. The Kenyan horticulture produce legislation, for example, obliges producers to ensure the personal hygiene and health of all workers, to provide medical services in case of injury, to provide potable water at all times, to abide by the regulation of wages and conditions of employment, and to maintain records of process control issues, including labour and welfare.⁸⁴ Labour protection may also form part of the conditions of agricultural subsidies, certification schemes and inspection mechanisms in some laws governing agricultural commodities. For example, the Honduran law on coffee provides for the receipt of fertilizer bonuses which could be conditional upon good workforce-related practices.⁸⁵

⁸⁴ Kenya. 2008. the Agricultural Produce (Export) (Horticultural Produce) (General) Rules (issued by the Minister for Agriculture under the Agricultural Produce (Export) Act (Cap. 319)), Sections 7-9 and 17.

⁸⁵ For example, see Honduras. 1992. Ley de apoyo a la caficultura nacional, Decreto N° 81/92.

There could also be relevant national instruments addressing working conditions more directly. For instance, in Brazil, there is a National Commitment,⁸⁶ which is a voluntary agreement that seeks to improve the conditions of work in sugar cane production. Among others, it covers labour contract, hiring of migrant workers, health and safety at work, unionisation and collective bargaining and responsibility for community development. Employers are expected to apply the good practice standards directly as well as disseminate them to independent suppliers of sugar cane and in community support actions.

Commodity-specific legislation often provides for the composition and mandate of a competent public authority and/or a multi-stakeholder deliberative body with advisory or decision-making powers. Such institutional arrangements could include labour-related stakeholders or mandates. For example, the Coconut Fibre Board of Sri Lanka includes representatives of fibre millers associations as well as trade unions in the industry, whereas the Cashew Nut Board of Tanzania includes farmer and producer representatives.⁸⁷ Among the mandates of the former is to ensure that the workers engaged in the fibre industry are provided with satisfactory working conditions, suitable accommodation and paid the rates of wages as set in applicable laws. The legislation establishing the Cashew Nut Board and Cotton Board of Tanzania similarly mandates them to promote or facilitate the formation of associations of stakeholders.⁸⁸ This would contribute to the implementation of the freedom of association of the workers in the sectors. The functions of the Cotton Board further include appointing inspectors for the inspection of farms and related-facilities.⁸⁹ Such inspection could ideally be conducted in coordination with labour inspectors.

Some commodity-specific legislation defines the mandate of the competent institution more broadly in a manner that enables it to implement labour standards; for example, in terms of the improvement of the livelihoods of farmers. The mandate of Malawi's Cotton Council, for instance, includes carrying out "such activities as are necessary, advantageous, proper or for the benefit of cotton growers and the cotton industry" and to advise the

⁸⁶ Brazil. Secretaria de Governo. National Commitment to Improve Working Conditions in Sugarcane. [Cited 21 November 2016]. <http://www.secretariadegoverno.gov.br/compromissos-nacionais/canadeacucar>.

⁸⁷ Sri Lanka. 1971. Coconut Fibre Act No. 556 of 1971, (amended by the Coconut Fibre (Amendment) Act No. 45 of 1984, which repealed Section 18 on coconut fibre duty), Sections 2 and 3; and Tanzania. 2009. Cashewnut Industry Act, 2009 (No. 18 of 2009), Section 5.

⁸⁸ Tanzania. 2001. Cotton Industry Act (No. 2 of 2001), Section 5.

⁸⁹ Tanzania. 2009. Cashewnut Industry Act (No. 18 of 2009), Section 5.

Government on "matters of policy, strategies and other matters regarding the cotton industry".⁹⁰ As part of this broadly formulated mandate, the Council may promote the implementation of labour standards and the enforcement of the labour laws of the country in the cotton production sector.

Table 2 Elements of commodity-specific legislation and entry points for labour standards	
Technical standards on quality, production, storage	<ul style="list-style-type: none"> e.g. production processes meet standards of hygiene and health of workers
Conditions of agricultural support such as subsidies	<ul style="list-style-type: none"> respect for basic labour standards, such as avoidance of forced labour, child labour, discrimination etc.
Obligations of producers	<ul style="list-style-type: none"> abide by regulations on wages, conditions of employment etc.
Contract farming provisions	<ul style="list-style-type: none"> labour standards as part of rights and duties of parties (see section 2.2.3)
Institutional structure <ul style="list-style-type: none"> composition of multi-stakeholder body mandate or functions 	<ul style="list-style-type: none"> includes labour authorities and/or workers', employers' organizations ensure just conditions of work, payment of minimum wages, non-discrimination etc.
Inspection mechanisms	<ul style="list-style-type: none"> coordination with labour inspectors

2.2.6. Contract farming

Contract farming is an agreement entered into by persons or entities engaged in agricultural products business with agricultural producers to organize their procurement system in accordance with their specific needs and requirements of quantity, quality, timing etc. The arrangement may apply not only to crops and livestock, but also to forestry and fishery products (see Frank & Umoh, 2015). Transactions represented by production contracts range from simple relationships between a contractor and an individual producer (or group of producers or their association) to more

⁹⁰ Malawi. 2012. Cotton Act 2012, Section 11.

complex relationships with direct or indirect involvement of third parties, such as government agencies and international actors. Contract farming differs from the other areas of sectorial legislation not only because there may not necessarily be a specific legal instrument governing it in many countries, but also in terms of the very relationship between contractors and producers and the labour relationships that the production involves.

The exact nature of the contractual and legal relationship between a contractor and a producer may not be fully clear, especially when the producer is a natural person under the tight control of the contractor in terms of production processes and the inputs used for the production of certain commodities. Some production contracts may expressly state that the producer is neither an employee nor an agent, but the determination of the nature of the relationship depends also on factors such as level of subordination, economic dependency, integration with the business organization and absence of financial risk.⁹¹

There are some contractual arrangements that appear to be either borderline cases between contract farming and employment or are designed so as to avoid the financial and legal implications of employment. The contracted tasks may, for example, be performed with the substantial inputs (livestock, feeds, seeds etc.) of the contractor either on the producer's production site or on the contractor's premises, and hence the primary input of the producer becomes labour and skills. In some legal systems, agreements that essentially entail payment for the provision of services based on performance standards and that may not entail transfer of ownership of the inputs or the final products, are considered to be production contracts.⁹² It would be important to make sure that such arrangements are not used with a view to evade obligations under labour and social security laws. A different genre of agreements that raise questions of legality and applicability of labour-related obligations are "service contracts", which agricultural businesses sometimes enter into with an agent who supplies labour force to their undertakings.⁹³ Such agreements do not constitute contract farming.

⁹¹ UNIDROIT, FAO and IFAD. 2015. UNIDROIT/FAO/IFAD Legal Guide on Contract Farming, (hereinafter referred to as "Legal Guide on Contract Farming"). Rome. p. 16.

⁹² Legal Guide on Contract Farming, p. 22.

⁹³ For example, see FAO. 2016. Multi-sectoral Study on Agribusiness Venture Arrangement (AVA) Policy and Implementation under the Comprehensive Agrarian Reform Program. Rome. (Also available at <http://www.fao.org/3/a-i6239e.pdf>).

In short, a typical production contract is an agreement between independent parties that does not create an employment relationship between the contractor and the producer. Both parties are subject to laws that apply to the transactions and conducts under the contract. For example, a producer that hires workers is liable to applicable labour and social security laws.⁹⁴ The legal protection gap relating to agricultural workers, such as family and casual labour, poses implementation challenges particularly with regard to small-holders. Nevertheless, the production contracts offer opportunities to extend the application of ILS to agricultural labourers, including those which may be left out of domestic labour laws, and to promote “formality” and better working conditions.⁹⁵

Production contracts may explicitly stipulate the application of certain standards, such as those on occupational safety and health, prohibitions of child labour and forced labour, working hours and social contributions, which are common in the agricultural sector. They could incorporate provisions on the responsibility of the contractor to alert the producer on issues of compliance with labour standards and ways of addressing such deficits.⁹⁶ Laws governing contract farming could provide the basis for the normative and institutional arrangements for labour protection. Practical implementation further depends on the mechanisms put in place for the monitoring and enforcement of the contracts.

2.2.7. International instruments

Although there is no international instrument specifically governing the various aspects of production contracts, there are a number of instruments of general relevance that may serve as sources of inspiration in the formulation of instruments regulating production contracts or the contracts themselves, especially in international transactions. The 1980 UN Convention on Contracts for the International Sale of Goods provides a set of rules that apply to cross-border sales transactions. While many of its basic rules apply to production contracts, the Convention does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services.⁹⁷ The UNIDROIT Principles of International Commercial Contracts of

⁹⁴ Legal Guide on Contract Farming, p. 76.

⁹⁵ Legal Guide on Contract Farming, p. 108.

⁹⁶ Legal Guide on Contract Farming, p. 110.

⁹⁷ United Nations. 1980. United Nations Convention on Contracts for the International Sale of Goods 1980, Sections 1-3.

2010⁹⁸ provides for widely-accepted rules on contractual relations while paying particular attention to the weaker party and without defeating the economic purpose of the contract. According to these Principles, the terms of international commercial contracts should not infringe with other mandatory rules, including those relating to labour standards such as the prohibition of child labour.⁹⁹ The 2012 FAO Guiding Principles for Responsible Contract Farming Operations include requirements of fairness in production practices and in buyer-farmer relations, but do not clearly provide for working conditions and other labour-related standards.¹⁰⁰

The purpose of the above-mentioned international instruments is not to govern contract farming or labour in production agreements. However, their provisions could serve as good sources of inspiration for the formulation of terms of contractual relations that may include or affect labour standards. The Legal Guide on Contract Farming that is developed with the concerted effort of UNIDROIT, FAO and IFAD in 2015 is by far the most comprehensive international reference document on the subject. It lays out the most important issues to be addressed in contract farming, including labour protection. Last but not least, the international labour and human rights instruments outlined in Part I of this study also apply to labour relations in contract farming.

2.2.8. National legislation

At the national level, various pieces of legislation may apply to different aspects of contract farming. General contract law as well as labour legislation may not fully accommodate the special characteristics of contract farming and the different levels and forms of relationship created by such agreements. Considering the increasing reliance of businesses in many countries on production contracts, a number of countries have decided to either adopt a specific legal instrument governing contract farming or to include specific contract farming provisions in broader agriculture or commodity specific legislation. In practice, some countries

⁹⁸ UNIDROIT. 2010. UNIDROIT Principles of International Commercial Contracts of 2010. Rome. (Also available at www.unidroit.org/english/principles/contracts/principles2010/integralversionprinciples2010-e.pdf).

⁹⁹ UNIDROIT. 2010. UNIDROIT Principles of International Commercial Contracts of 2010. Rome. (Also available at www.unidroit.org/english/principles/contracts/principles2010/integralversionprinciples2010-e.pdf). Sections 1.4, and 3.3.1.

¹⁰⁰ FAO. 2012. Guiding principles for responsible contract farming operations. Rome, FAO. (Also available at <http://www.fao.org/docrep/016/i2858e/i2858e.pdf>).

include provisions on contract farming into laws governing a variety of broader matters (from agricultural commodities production to land consolidation), while others adopt specific legislation on contract farming.

The review of contract farming-related legislation from various countries, including Cambodia, India, Morocco, Tanzania and Zimbabwe, shows that such laws focus more on the formality requirements for the contracts, parties' rights and obligations, technical specifications, pricing modalities, performance, remedies for breach, applicable law and dispute resolution.¹⁰¹ While some legislation recognizes the possible influence of the contractors over production processes, for example, in providing inputs and technical advice, they do not expressly include the requirement of compliance with labour standards.¹⁰² Nevertheless, some legislative frameworks provide for the implementation of certain labour standards, such as freedom of association (through the creation of farmers' organizations) and vocational guidance and training standards (through the provision of training to producers on production processes).¹⁰³

The provisions on the rights and obligations of the parties (e.g. the provision of technical services), terms and conditions imposed on the parties, and the composition and power of the institution/s with a mandate to implement them (e.g. including producers' associations and a mandate to monitor the implementation of farming contracts), which are common to most contract farming laws,¹⁰⁴ could also be appropriate entry points for the integration of labour standards or interpretations to that effect. The duties of the contractor may include ensuring that producers comply with labour standards and developing their capacity

¹⁰¹ For example, see Tanzania. 2011. The Cotton Industry Regulations (enacted under the Cotton Industry Act, CAP 201), Sections 31-36; Tanzania. 2011. Sisal Industries Regulation, sections 29-34. There are also pertinent legislation that basically provides that the parties to farming contracts agree on the terms with the facilitative role of the competent Government authority (on agriculture). For example, see Rwanda. 2010. Ministerial Order No. 14/11.30 Determining the Models of Land Consolidation and its Productivity, Official Gazette No. 52 of 27/12/2010, Section 6.

¹⁰² For example, see India. 2003. State Agricultural Produce Marketing Model Act (Addendum on Contract Farming Agreement and Its Model Specifications); India (State of Punjab). 2013. Contract Farming Act (Punjab Act No. 30 of 2013); Zimbabwe. 2013. The Agricultural Marketing Authority (Grains, Oilseed and Oilseed products) Regulations, Section 7.

¹⁰³ For example, see India. 2003. the Indian State Agricultural Produce Marketing Model Act; orocco. 2012. Law n°. 04-12 relative á "agrégation agricole" (encouraging the formation of associations to serve as basis for contract-based agriculture).

¹⁰⁴ For example, see Zimbabwe. 2013. the Agricultural Marketing Authority (Grains, Oilseed and Oilseed products) Regulations, section 7; Tanzania. 2009. The Cereals and Other Produce Act, Part VI, Amendment to the Food Security Act (Sections 28ff), Section 17; Tanzania. 2009. Cashewnut Industry Act, 2009 (No. 18 of 2009), Sections 5 and 14.

to comply with such standards. Producers could also be directly required to comply with labour standards. Where an inter-sectoral coordination mechanism is envisaged in legislation governing contract farming,¹⁰⁵ the inclusion of a public authority in charge of labour issues and producers' associations would be a useful element for labour protection. The powers of implementing institutions should also include monitoring powers to verify whether labour standards are being upheld in contract farming arrangements. Agricultural (contract) inspection mechanisms could be required to coordinate with labour inspection authorities.

The example of India demonstrates the above-mentioned limitations and possibilities of labour protection in legislation that applies to contract farming. The Indian State Agricultural Produce Marketing Model Act of 2003, which among other things aims to avoid exploitation of farmers by industries, includes a separate chapter on contract farming. It prescribes forms and terms for agreements, requires the official registration of the agreements, prevents the transfer of title or rights [over land] through a contract farming agreement, and provides for dispute settlement procedures. The law further presents the economic functions, advantages and risks of contract farming agreements and mechanisms of reducing potential default in an Addendum on Contract Farming Agreement and Its Model Specifications. Although the Addendum provides for the possible influence of the contractors over production processes by providing inputs and technical advice, checking compliance with labour standards does not feature in the contents of the model agreement. Similarly, the Punjab Contract Farming Act of 2013 (Punjab Act No. 30 of 2013) does not provide for labour issues in contract farming. However, the Model Act states the possible effect of contract farming on the creation of farmers' organizations and the provision of training on production processes, and hence the relationship to the standards of freedom of association and vocational guidance and training.

Needless to say, production agreements may be concluded in a context where there is no specific contract farming legislation or under broader legal frameworks such as applicable provisions of a civil code. Such agreements also provide entry points for labour protection or may even specifically include provisions on labour standards. For example, most production contracts in Malawi spell out the crop husbandry practices that must be followed by the farmer(s) and state that the contractor will not

¹⁰⁵ For example, see Cambodia. 2014. Sub-decree on Contract Farming (inter-ministerial committee put in place to coordinate work on contract farming, it does not include the ministry in charge of labour).

be under a duty to purchase any crop(s) produced in contravention of the conditions in the contract. If the conditions include meeting certain labour standards, the possibility of non-purchase would incentivise compliance with the standards. In the tobacco industry, however, the contracts consistently include clauses barring farmers from using child labour in their crop husbandry and enjoining them to use Good Agricultural Practices (Mwiza, 2014). This is believed to be mainly because of the prevalence of child labour in tobacco farming and the existence of sector-specific efforts to tackle it. It provides an example where labour standards could be enforced through production contracts.

Overall, there are some entry points for the integration of labour standards in legislation or other instruments governing contract farming, or more directly in the production contracts themselves. Be this as it may, generic labour laws that apply to agriculture and related sectors also apply to labour relations in contract farming. Depending on the type of contractual relations, the labour standards identified in Part I of this study may apply either in the relationship between the contractor and producers, or between the producers and their employees.

Table 3 Components of contract farming legislation/production contracts and entry points for labour standards	
formality requirements	<ul style="list-style-type: none"> cooperatives as parties (rural worker’s organizations)
rights and obligations of the parties	<ul style="list-style-type: none"> (requiring) compliance with labour standards providing vocational guidance and training
technical Specifications	
performance terms and conditions	
the composition and power of the institution/s with a mandate, if included	<ul style="list-style-type: none"> inter-sectoral arrangement to include labour (inspection) institution inspection in coordination with labour inspectors
remedies for breach	
applicable law	
dispute resolution	

2.2.9. Pesticide management laws

Pesticides are chemical or biological substances that are intended for repelling, destroying or controlling any pests, or regulating plant growth. Despite their importance to deal with outbreaks of endemic and transboundary pests and diseases that affect agricultural production, there are high incidences of contamination and poisoning of pesticide users, agricultural workers and bystanders, especially in developing countries. The availability, use and appropriateness of personal protective equipment, the particular risks to the very large number of children engaged in agricultural work, and other safety and health concerns are among those labour issues that consistently arise in the context of the management of pesticides. The problems of availability and use of protective and application equipment, as well as the involvement of children, are comparatively more accentuated in the informal sector and with respect to casual, seasonal, family and self-employed workers.

2.2.10. International standards that apply to pesticides management

There are both voluntary and binding international instruments that apply to pesticides management. The relatively most comprehensive and up-to-date instrument is the International Code of Conduct on Pesticide Management (ICCPM),¹⁰⁶ which is intended to provide guidance on all facets of pesticide distribution and use. The ICCPM is to be applied and used together with instruments that are important for the identification of pesticides or chemicals that pose danger to human health and the environment, including the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the Stockholm Convention on Persistent Organic Pollutants, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Codex Alimentarius standards for maximum residue limits, and the Globally Harmonized System of Classification and Labelling of Chemicals (Vapnek et al, 2007).

¹⁰⁶ FAO and WHO. 2014. (originally adopted in 1985 and subsequently revised in 1989, in 2002 as FAO International Code of Conduct on the Distribution and Use of Pesticides) (hereinafter referred to as ICCPM). Rome.

Some of the above instruments are concerned primarily with reciprocal exchanges between states and with the setting of technical standards, rather than with the regulation of pesticides use and handling. While these instruments generally incorporate provisions that seek to regulate the relevant conduct of public as well as private entities, the ICCPM refers to food producers and trade unions. The above international instruments may be used to supplement and/or inform the development of pertinent national legislation.

According to the ICCPM, governments should put in place regulatory (legislative and enforcement) frameworks on the marketing and use of pesticides that take full account of personal protective equipment (PPE), which provides protection from pesticide exposure during handling and application.¹⁰⁷ This closely relates to the requirement of the Occupational Safety and Health in Agriculture Convention whereby national laws and competent authorities prescribe that agricultural machinery and equipment, including personal protective equipment, comply with national or other recognized safety and health standards.¹⁰⁸ It is further in line with the ILO Occupational Safety and Health Convention, which in principle applies to “all workers in all branches of economic activity” and requires employers to “provide, where necessary, adequate protective clothing and protective equipment to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects on health”.¹⁰⁹ In addition, the ILO Convention Concerning Safety in the Use of Chemicals at Work requires employers to assess the risks arising from the use of chemicals at work, and to protect the safety and health of workers, including through the provision and proper maintenance of PPE and clothing at no cost to the worker, and the implementation of measures to ensure their use.¹¹⁰

The ICCPM further provides that national legislation should prevent the use of pesticides by and sale of pesticides to children¹¹¹ and recommends the inclusion of pesticide use by working children in National Hazardous Work Lists for children under ILO Convention No. 182 on the Worst Forms of Child Labour. The prevention of use should further apply to pregnant women and other persons with relatively high vulnerability to health risks. These are in addition to the more general requirement to label

¹⁰⁷ ICCPM, Sections 6.1, 11.1.

¹⁰⁸ Occupational Safety and Health in Agriculture Convention (No. 188, 2001), Sections 5, 9.

¹⁰⁹ Occupational Safety and Health Convention (No. 155, 1981), Sections 1-2, 16.

¹¹⁰ Convention Concerning Safety in the Use of Chemicals at Work (No. 170, 1990), Section 13.

¹¹¹ ICCPM, Section 6.1.

hazardous chemicals in a way that is easily understandable for the worker and to provide information on the hazards they present and the safety precautions to be observed.¹¹²

The Rotterdam Convention is very useful for the identification and availability of adequate information on pesticides that cause risks and/or hazards to human health, including in occupational use.¹¹³ The Globally Harmonized System of Classification and Labelling of Chemicals provides invaluable guidance on the physical, health and environmental hazards of pesticide products.¹¹⁴ These instruments help determine the application of the above-mentioned labour standards with respect to particular pesticides.

2.2.11. National legislation

Adopting dedicated national legislation that covers all pesticides and all stages of pesticides life cycle is a highly recommended legislative practice.¹¹⁵ Such legislation may incorporate provisions on occupational safety and health, child labour and other relevant standards to differing degrees. This is of course in addition to labour protection provided by generic labour and employment-related laws that apply to agricultural workers in general.

In a number of countries, legislation on pesticides management includes elements of occupational safety and health standards in provisions on the application of pesticides and protective equipment. Relevant legislation often includes provisions whereby employers that require or permit the use or handling of pesticides by employees ensure that they use protective [and application] equipment and clothing that is suitable for the safe handling of the pesticides.¹¹⁶ Legislation may add requirements for the provision of facilities for washing and cleaning, health and technical

¹¹² Convention Concerning Safety in the Use of Chemicals at Work, 1990 (No. 170), Section 7.

¹¹³ UNEP and FAO, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, revised in 2013, Sections 13-15 and Annex III (including information on chemical handling and accident management and on alternatives that are safer for human health).

¹¹⁴ United Nations. 2011. Globally Harmonized System of Classification and Labelling of Chemicals, Fourth revised edition, New York and Geneva.

¹¹⁵ In some countries, for example, the 1997 Tanzanian Plant Protection Act and the 2007 Agricultural Chemicals (Control) Act of Uganda, pesticides are regulated within broader legislation.

¹¹⁶ For example, see Ethiopia. 2010. Proclamation to Provide for the Registration and Control of Pesticides, No. 674/2010, Section 22.

supervision, and first-aid facilities to cater for emergencies.¹¹⁷ Legislation should further regulate the availability, quality and appropriateness of application and protective equipment by taking into account the health risks of the pesticides and the physical and health conditions of workers.¹¹⁸ While adequate protective equipment may not be available in many rural areas or places of work, (Kasimbazi & Lander, 2016), even where these are available, they may not fit the physical characteristics of women and young workers. PPE should be gender and age sensitive.

It would also be important to provide workers who handle pesticides with training and instructions on the required standard of competence for the handling and application of pesticides, as well as periodic medical check-ups to identify and address pesticides-related health problems.¹¹⁹ The provisions on the requirements for the registration of a pesticide shall also require the assessment and evaluation of its human health hazards.¹²⁰ Legal provisions on licencing schemes regulate who can use specific pesticides and the training needed for their application. Such schemes could include labour and safety-related obligations, particularly for licences to use hazardous pesticides. Legislation may further restrict the employment of persons who by reason of their state of health, age, or other circumstances are subject to particular risks of poisoning.¹²¹

In relation to child labour, pesticide legislation shall incorporate clear provisions on the prohibition of the selling to and use of pesticides by children, and the classification of such use at work as hazardous child labour. Some national legislation clearly articulates the prohibition of sale of pesticides to children (any person under the age of 18 years).¹²² While it would be important to define the hazards of pesticides to children within the specific thematic legislation, the provisions of generic labour laws relating to minimum age and child labour also apply to pesticides handling, which often falls in the category of hazardous labour. The list of hazardous child labour should ideally include the use and application of pesticides.

¹¹⁷ Trinidad and Tobago. 1979. Pesticides and Toxic Chemicals Act, No. 42, Section 12; Malta. 1972. Importation, Sale and Use of Pesticides Regulations, Subsidiary Legislation 192.01 (as amended by Legal Notice 99 of 1992), Section 16; and Uganda. 1989. Control of Agricultural Chemicals (Registration and Control) Regulations, Section 6.

¹¹⁸ ICCPM, Sections 3.6 and 11.1.

¹¹⁹ Malta. 1972. Importation, Sale and Use of Pesticides Regulation, Section 16.

¹²⁰ For example, see the Ethiopian Proclamation to Provide for the Registration and Control of Pesticides, No. 674/2010, Section 5.

¹²¹ Trinidad and Tobago. 1979. Pesticides and Toxic Chemicals Act No. 42, Section 12.

¹²² For example, Swaziland draft Pesticides Management Bill 2007.

The rules of advertising and disposal in pesticides legislation could also play an important role in controlling the health hazards related to pesticide use and exposure. Such provisions could be explicitly related to occupational safety and health risks, the requirements of use and hazards to children.

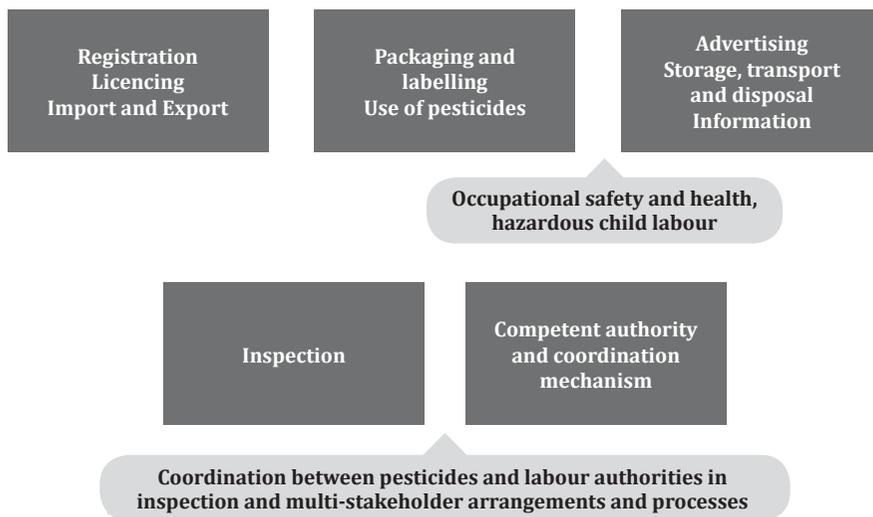
Other important entry points for the implementation of labour standards in relation to pesticides are the composition of pesticides registration and/or advisory boards and the definition of the power of pesticides inspectors. In relation to the administrative aspect of pesticides management, laws usually establish a registration board composed of various government institutions and/or an advisory board constituted of both public and non-governmental institutions. The membership of a multi-stakeholder advisory board could include the public authority with a mandate on labour or occupational health and safety issues and workers' associations, in addition to those with agriculture-related portfolio, so that the occupational health risks and hazards to workers could be addressed effectively. In some legislation, the composition of such a board is explicitly defined, while in other examples examined, an indicative list of members is given. For example, the Pesticides and Toxic Chemicals Control Board of Trinidad and Tobago, whose functions include advising on the making and monitoring of implementing regulations, is by law to be composed of state authorities such as the Industrial Inspection Supervisor, and other persons the Minister may appoint, including representatives of organisations of workers and employers, and occupational health specialists.¹²³

The mandate of pesticides inspectors should include monitoring the use and propriety of application and protective equipment, other occupational health and safety standards and the involvement of children. In this regard, it would be advisable to require pesticides inspectors to coordinate with other agricultural labour inspectors, which may be in place in accordance with the Labour Inspection (Agriculture) Convention No. 129 or with a national legislation. Legislation may also simply authorize the pesticides inspector to work with relevant experts,¹²⁴ which could serve as a basis to coordinate with a labour inspector, occupational health and safety expert or a law enforcement authority. Labour inspectors should also collaborate with pesticides inspectors in the context of agriculture and related sectors.

¹²³ Trinidad and Tobago. 1979. Pesticides and Toxic Chemicals Act No. 42, Sections 3-4.

¹²⁴ For example, Act No. 42 of Trinidad and Tobago on Pesticides and Toxic Chemicals (section 8) authorizes the pesticides inspector to be accompanied by a police officer, a medical practitioner or another person with expert knowledge.

Figure 1
Components of national pesticides legislation and
entry points for labour standards



2.3. Other agricultural legislation

As mentioned in the introduction to Part II, national legislation in the areas of food and agriculture may incorporate provisions that directly or indirectly relate to labour protection without necessarily integrating specific labour standards. In addition, certain agricultural sub-sectors may host crucial issues of labour protection (e.g. animal production), yet the international and national regulatory frameworks governing those sub-sectors do not often include labour standards. Such standards can however be introduced into the regulatory frameworks for agricultural operators in these areas. For example, legislation governing farm registration could require that those engaged in animal production comply with specific labour and safety standards, or the registration of food businesses in food safety legislation may include labour and employment-related requirements. However, legal instruments that apply to the livestock sector generally lay more focus on animal health than the working conditions of people that are involved in animal production. Similarly, the ultimate objective of legislation on the registration of agricultural operators is often that of identifying the entities for tax and other control purposes and may not be concerned with labour

protection. This section illustrates the possibility of regulating labour and safety standards in agricultural legislation other than the ones reviewed in the previous sections by discussing labour protection in animal production.

2.3.1. Animal production

An estimated 1 billion people depend on livestock for food and income, and traditional livestock systems contribute to the livelihoods of about 70 percent of the world's rural poor (FAO, 2014b). A large number of the child labourers in the agriculture sector work in livestock rearing and other related activities, mainly in animal care and herding, starting from early age (4-7). Like in other sub-sectors of agriculture, working in livestock involves serious dangers. Animal production presents hazards for workers such as crushing, blunt or goring injuries as a result of moving, caring for, or conducting treatments on animals (ILO, 2011c). Over 60 percent of pathogen agents that have emerged in humans during the last 30-40 years originate from animals (Roche & Guégan, 2011; FAO, 2013c). While the labour standards identified in Part I of the present study and the labour protection deficits in the informal sector generally apply to the livestock sector, standards relating to occupational safety and health, child labour and labour inspection merit particular attention.

While there are a number of international instruments that apply to the livestock sector, as indicated above, they focus mainly on animal health and animal products and less on the human element in the sector.¹²⁵ Although animal production is where labour issues are clearly present, there are no international rules on animal production aside from animal welfare standards and animal identification and traceability, which do not normally accommodate labour standards. On the other hand, the more specific ILO conventions such as those on safety and health (No. 184) and labour inspection (No. 129) in agriculture also explicitly cover work in livestock production and care.¹²⁶ The relevant provisions of these instruments can be used to inform the accommodation of labour-related concerns within veterinary legislation at the national level.

¹²⁵ The Terrestrial Animal Health Code of the inter-governmental World Organisation for Animal Health (OIE) primarily governs animal health; the World Trade Organization's (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures and the relevant recommendations of the Codex Alimentarius Commission are about product safety and quality standards; and the relevant provisions of the WTO's General Agreement on Tariffs and Trade rules relate to trade in animal products.

¹²⁶ The ILO Convention No. 184 on Safety and Health in Agriculture (2001) allows the exclusion of some undertakings and employers from its application.

At the national level, laws that apply to the livestock sector, commonly referred to as veterinary legislation, include laws governing animal production, animal health and welfare, veterinary drugs, the veterinary profession, foodstuffs of animal origin and animal feed, and animal identification and traceability. In some countries, one legal instrument covers two or more of these issues, whereas others regulate them separately. Such legislation does not usually provide for the protection of the rights of those who work in the livestock sector, except in some cases where general provisions on the livelihoods of livestock farmers are included.¹²⁷ Rules governing farm registration for animal production provide better entry points for labour and safety standards as such rules could require compliance with labour standards by farm operators. Animal production and farm registration legislation may, for example, include provisions that require employers to provide workers with protective clothing, i.e. specific clothing and footwear that are suitable for the prevention of zoonosis and other hazards in dealing with animals. They may further include minimum age requirements for the various types of work.

With regard to veterinary and para-veterinary professionals, legislation should define minimum initial and continuous educational requirements for the professionals.¹²⁸ This could be accompanied by a requirement for government to organize or facilitate the provision of vocational guidance, vocational training and lifelong learning in the veterinary profession especially in rural areas,¹²⁹ as a means to implement labour standards relating to vocational guidance and training.

Veterinary legislation usually provides for inspectors who are authorized to check animals, animal products or animal-related items in establishments, abattoirs, vehicles, port facilities or other places, but whose mandate does not normally include the monitoring of working conditions and other labour issues. The inspection mechanism in animal production and farm registration legislation should pay attention to the conditions of people working in the sector, for example, by giving inspectors the authority to check if livestock farmers or workers are adequately protected against physical and health risks. Labour inspection in the livestock sector obviously requires inter-sectoral, inter-

¹²⁷ A draft Animal Health, Production and Welfare Law of Surinam (2016, Section 39), for example, prescribes support to the creation of strong and functional livestock farmers' association and the improvement of livelihoods by paying special attention to labour conditions, gender issues and social protection.

¹²⁸ OIE Guidelines on Veterinary Legislation, Section 3.4. (Also available at http://www.oie.int/fileadmin/Home/eng/Support_to_OIE_Members/docs/pdf/A_Guidelines_VetLeg.pdf).

¹²⁹ See the ILO Human Resources Development Convention, 1975 (No. 142), and the Human Resources Development Recommendation, 2004 (No. 195), which apply to all sectors of the economy and branches of economic activity.

institutional coordination between the state authorities in charge of labour and those with a mandate on livestock production. The inspection of “veterinary establishments” by livestock controllers¹³⁰ could, for example, be carried out together with labour inspectors to check conditions of work.

While this section mainly demonstrates the challenges and opportunities in integrating labour standards in agricultural legislation, such as that governing animal production, it also illustrates that labour may be protected within agricultural laws beyond the ones reviewed in the previous sections.

2.4. Forestry legislation

Forests cover one third of the earth and contribute significantly to the global economy. While the forestry sector generates about USD 600 billion, which constitutes 1 percent of global GDP, its contribution to national economies varies significantly, reaching up to 15 percent of GDP in countries such as Liberia (FAO, 2014). Millions of people derive their employment and income from the sector, including in the production of roundwood for the forest-based manufacturing industries as well as the extraction and gathering of wild growing non-wood forest products, such as gum arabic, rubber/latex and resin, cork, bamboo and rattan. The ILO defines forestry labour as all the activities necessary to “establish, regenerate, and protect forests and harvest their products” (ILO, 2011e). The level and nature of employment and activities in forestry depend on the type and designation of the forests, i.e. whether they are naturally regenerated forests, planted forests such as rubberwood, cork oak and Christmas tree plantations, production forests that are designated primarily for production of wood, fibre, bio-energy and/or non-wood forest products, or multiple use forests that include any combination of production of goods, protection of soil and water, conservation of biodiversity and provision of social services (FAO, 2012b). Forestry workers include public employees (e.g., forest law enforcement officers, such as forest inspectors and guards) as well as those employed by forestry operators in the extraction and processing of forest resources.¹³¹

Undertakings in forestry include public enterprises and contractors of differing sizes, which employ two or more labourers, and self-employed persons working in their own forest holdings. Work in the sector may take the form of regular employment, as in the case of field foremen, maintenance supervisors

¹³⁰ For example, see Mali. 2011. Loi n° 2011-028/ du 14 juin 2011 instituant le contrôle des denrées alimentaires d’origine animale et des aliments pour animaux, article 8.

¹³¹ Production of timber often includes processing of the logs, and hence the focus of the study on the production level extends to preliminary level processing in the case of forestry.

and security guards, and temporary, seasonal and self-employed work, which may include forest land preparation, nursery, tree felling, log skidding, tapping of pine sap, rubber etc. and social forestry operators. (ILO, 2010b). Across the world, over 13 million people, or 0.4 percent of the total labour force (ILO, 2017c), are employed in the formal forest sector, whereas an additional 41 million persons work in non-formal enterprises, such as wood fuel collection and charcoal manufacture in developing countries (FAO, 2014). A significant number of workers in the non-formal sector are also engaged in small-scale forest product processing units (for example, of illegal timber) in some countries. Data on forestry labour is often skewed because of the prevalence of informal arrangements that are not captured in official statistics or are merged with broader agricultural work. The large number of temporary, seasonal and self-employed workers and forest dwellers deriving their livelihoods from the sector are often not accounted for. Despite the considerable size of the workforce engaged in the sector, issues regarding labour rights either tend to be over-shadowed by conservation and commercial interests, or are overlooked entirely. The prevalence of informality in this sector compounds the problem of labour protection.

Forestry labour exposes workers to dangers relating to the activities as well as from the environment in which they are carried out. Many forestry workers do not have formal contracts, appropriate training, adequate personal protection or supervision. Work sites are often remote, temporary and scattered, making it difficult to provide facilities such as health and safety protections. The geographic, climatic and biological conditions of many work sites expose forestry labourers to unsuitable working and living conditions. These, in turn, complicate the enforcement of labour standards. Migrant workers and women in the forestry industry are particularly vulnerable and face unequal treatment and exploitation (ILO, 2011e). There are cases of child labour, particularly during peak harvest season and at certain times of the year, when many children are forced by the economic situation of their families to work during the night in rubber plantations in some countries (ILO, 2010b). Migrant workers are often not afforded legal protection and are forced to accept unsafe working conditions and low pay. In addition, the significant number of women forestry workers is often under-reported, but they face particular challenges in terms of assignments and in maternity-related issues. In Indonesia, for example, women account for 69 percent of unpaid community or social forestry work (FAO, 2016a).

The above-mentioned and other labour issues in the forestry sector merit matching regulatory responses. The following sections of the study reviews international instruments and national legislation that is relevant to the regulation of labour in forestry, with a view to demonstrate how labour standards are or could be integrated into forestry legislation.

2.4.1. Relevant international instruments

A number of international instruments apply to work in the forestry sector. The international human rights treaties and the ILO Conventions relating to the fundamental principles and rights at work reviewed in Part I enshrine provisions that apply to everyone engaged in forestry work.¹³² The agriculture-specific ILO conventions generally apply to the formal forestry sector. The Safety and Health in Agriculture Convention No. 184 (2001) applies to “forestry undertakings”. However, it excludes subsistence activities and the industrial exploitation of forests, and allows the exclusion of “certain agricultural undertakings or limited categories of workers” from its application. Member States may accordingly use the latter provisions to exclude its application to work in forestry. The Labour Inspection (Agriculture) Convention No. 129 (1969) also covers forestry work, including the primary processing of products and other activities in undertakings with employees or apprentices, whatever the type, form or duration of their contract. A Member State to the Inspection Convention may also apply the system of inspection to other categories of persons including tenants, sharecroppers, members of co-operatives and family members of an operator. At least the latter Convention shows that the instruments can be applied to informal forestry workers.

The above ILO Conventions are spelled out in more detail in the Code of Practice on Safety and Health in Forestry Work of 1998¹³³ and the Guidelines for labour inspection in forestry of 2005.¹³⁴ The Code covers all types of forestry workers, including contractors, the self-employed, forest farmers and other persons or entities whose activities influence the safety, health and welfare of those engaged in forestry work. It outlines a safety management system for enterprises, including training and skill certification as key conditions for safety in forestry. It further offers detailed

¹³² Note, however, that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families applies to those who take formal residence for remunerated activities in a foreign state.

¹³³ ILO. 1998. Safety and health in forestry work: An ILO code of practice. Geneva.

¹³⁴ ILO. 2005. Guidelines for labour inspection in forestry, Meeting of Experts to Develop Guidelines for Labour Inspection in Forestry. Geneva.

technical guidance on logging and on some high-risk operations like tree climbing, harvesting of windfall and forest fire-fighting. On the other hand, the Guidelines focus on labour inspection in the forestry sector (from planting to logging) based on standards that include the right to organize and bargain collectively, prohibition of forced labour, child labour, equality of opportunity and treatment, fair remuneration, specific provisions for safety and health in forest work, and workforce qualification and training. They are addressed to state labour inspectors and sustainable forest certifiers, individuals and management teams responsible for running forest enterprises, as well as to training and educational organizations. They further provide detailed information on how to organize, implement, report and follow-up on inspection.

Moreover, FAO has issued voluntary instruments that are intended to guide public and private entities in the improvement of labour standards in forestry. The FAO Model Code of Forest Harvesting Practices (1996) aims to promote sustainable forest management by providing guidance on forest harvesting practices with the objective, among others, of improving the economic and social contributions of forestry as a component of sustainable development. The FAO Model Code dedicates a chapter to the “forest harvesting workforce”, which includes managers, administrative and support staff, planners and engineers, field supervisors and foremen, forestry and engineering technicians, machine operators and their assistants, mechanics who repair and maintain machinery and manual workers.¹³⁵ While the FAO Model Code emphasizes the importance of the health and safety of workers in view of the potentially high risks inherent in forest harvesting, it requires all operations to comply with the national labour standards. The Model Code also recommends practices such as skills training, safety inspections, standardized accident reporting, adequate standards of comfort, sanitation, food and welfare, adequate compensation in the event of an accident, fair wages negotiated by workers’ representatives and stable employment that engages the local community.¹³⁶

¹³⁵ FAO. 1996. Model code of forest harvesting practice. Rome, FAO, Chapter 9. (Also available at <http://www.fao.org/docrep/v6530e/v6530e00.HTM>).

¹³⁶ FAO. 1996. Model code of forest harvesting practice. Rome, FAO, Chapter 9.

Collaboration between FAO and the United Nations Economic Commission for Europe (UNECE) resulted in the publication of the *Guide to Good Practice in Contract Labour in Forestry* (2011).¹³⁷ This Guide departs from the identification of the forest workforce as an aspect of the social pillar of sustainable forest management that receives little attention. Whilst the Guide focusses mainly on contract labour in Europe and North America, its provisions can be applied in other contexts when it comes to the outsourcing of labour from directly employed workforce to contractors. These comprise entrepreneurs, employees (often organized in workers' unions) and subcontractors (self-employed individuals working for a main contractor). The Guide identifies labour-related good practices including the regulation of occupational health and safety at work and the conclusion of long-term labour contracts with socially adequate working conditions and payments. It also recommends that public authorities lay down and enforce laws and regulations that consistently demand health protection and safety in forestry work in accordance with pertinent ILO instruments.

The forgoing legally-binding and non-legally-binding international instruments provide guidance on how labour standards apply to the forestry sector, including standards on occupational safety and health, vocational guidance and training, just and favourable conditions of work and terms of employment, adequate standard of living for workers and labour inspections. The prohibition of gender-based discrimination also features in most of the instruments. The codes and guidance instruments can be accessible sources of inspiration for national laws and regulations, as well as for organizational by-laws.

As indicated in section 1.1, labour standards that apply to work in forestry are also enshrined in the European Union Directives that oblige Member States to transpose them into national law within set deadlines. The European Framework Directive on Safety and Health at Work,¹³⁸ which applies to all sectors, contains principles concerning the protection of safety and health, the assessment and elimination of risks and accident factors, consultation with and training of workers and their representatives.¹³⁹ To further facilitate the implementation of the Directive, the European Commission published the practice guide entitled "Protecting Health and Safety of Workers in Agriculture, Livestock farming,

¹³⁷ FAO and UNECE. 2011. *Guide to good practice in contract labour in forestry: report of the UNECE/FAO Team of Specialists on the Best Practices in Forest Contracting*. Rome, FAO. (Also available at <http://www.fao.org/docrep/014/i2231e/i2231e.pdf>).

¹³⁸ Council of the European Communities. 1989. Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work.

¹³⁹ Council of the European Communities. 1989. Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work (while the transposition of the directive into national law had to be done by the end of 1992, some states introduced considerable legal reform whereas no major adjustments were necessary in others).

Horticulture and Forestry” in 2012. The guide identifies specific health and safety concerns and provides risk reduction strategies for different activities. For example, the chapter on forestry includes a section on proper chainsaw usage and discusses the most common causes of chainsaw accidents, what precautions handlers must take, what safety features the chainsaw must be fitted with and what accessories users should wear (European Commission, 2012). It is designed to help all stakeholders, in particular farmers, supervisors, employers, workers and their representatives, and others, to implement directives and to properly manage the prevention of risks due to work in agriculture (European Commission, 2012).

Labour standards are also incorporated into international forest certification schemes that are developed by international non-governmental organizations. The schemes are based on guidelines that aim at ensuring sustainable forest management through the consideration of economic, social and environmental concerns. They include the Forest Stewardship Council (FSC) and the Programme for the Endorsement of Forest Certification Schemes (PEFC), both of which are presented as best practices in the FAO/UNECE Guide that is presented above.

The requirements of the FSC Principles and Criteria for Forest Stewardship (2015) include upholding the fundamental principles and rights at work in accordance with the core ILO Conventions, promoting gender equality, protecting workers from occupational safety and health hazards, paying fair or living wages, and providing job-specific training and supervision (FSC, 2015). The PEFC is the largest global forest certification system. Its requirements include respect for the core ILO Conventions on fundamental principles and rights at work, whether ratified or not, the safety of working conditions, and the provision of pertinent guidance and training to all those assigned to a task in forest operations (PEFC, 2003). Both schemes refer to the ILO code of practice on Safety and Health in Forestry Work.

International certification standards contribute to the implementation of labour standards at the national level through the direct certification of national level operators, or by influencing the development of national certification schemes that include labour concerns. In Chile, for example, the FSC certified SSC Wood Technologies S.A. (SWT) contains good practices in both production and labour related areas, such as engaging contractors who paid forestry workers at least the minimum wage in addition to social security (FSC, 2009). The PEFC strongly encourages States to implement their own independent standards, certification and accreditation systems, and has its own system for approving national standards through a series of steps and pilot testing. For

example, it endorsed Australia's National Standard for Sustainable Forest Management, which addresses common issues such as non-discrimination against forest workers, skills development, and occupational health and safety (Australia Standard, 2013). Other countries such as Indonesia and Malaysia also have national level third party certification schemes that are influenced by international guidelines and which include labour standards.¹⁴⁰

The national as well as the international certification bodies would conduct audits to check the compliance of forestry undertakings with internationally accepted labour standards. The audits are based on sampling and may make use of the findings of labour inspection, but unlike the latter, certification bodies do not advise on conformity with standards. Although the standards are formulated to apply to various cultural, political and legal systems, international forest management certification initiatives are relatively less present in developing countries where enterprises are not geared to international markets.

2.4.2. National legislation that apply to labour in forestry

In the first place, in many countries forestry workers are covered by constitutional provisions on labour standards that apply to work in various sectors, including the agriculture and fisheries sectors. Some constitutions, such as those of Brazil (1988) and Ethiopia (1995),¹⁴¹ provide for the rights of both urban and rural workers, which would appear to include forestry workers, independently of whether they are formal or informal workers.

The form, contents and coverage of forestry legislation differ from one country to another depending mainly on the national definition of forests, on the legal tradition, the overall governance framework and the importance of the sector in the national economy. Following the broad definition of forestry as including naturally regenerated forests, planted forests, production forests and multiple use forests, the regulatory framework for the forestry sector of a given country may be found in more than one piece of legislation. However, many countries have an overarching legislation on forestry, covering one or more of the different types of forests. Labour standards are particularly relevant to legislation governing planted and production forests, but labour in the regeneration

140 For example, the Malaysian Timber Certification Council (MTCC) and the Indonesian Ecolabelling Institute (LEI) standards.

141 The Constitution of the Federative Republic of Brazil, Chapter II, Section 7; the Constitution of the Federal Democratic Republic of Ethiopia, Section 42. The provisions of the Brazilian Constitution are more detailed, but they both include provision on conditions of work, the need to avoid discrimination and occupational safety and health.

and protection of forests, in accordance with ILO's definition, may broaden the scope of legislation to be reviewed. However, this study focuses mainly on the application of labour standards to workers employed by forestry operators rather than forest law enforcement officers or public employees in forestry.

Principal forestry legislation may differ in coverage, but it generally includes provisions on forest ownership and use; sustainable forest resources management; forestry planning and forest management bodies; contracts, permits, licenses and certificates; forest and wildlife conservation; forest resource exploitation, processing and trade in forest products; community and land owners' rights; forest fires and forest information; and offences and penalties. It does not normally provide for the labour rights of people who work in the sector or derive their livelihoods therefrom. However, forestry legislation may provide for (community) rights in the management and use of forest resources and other general livelihood-related provisions with direct or indirect relevance to labour standards. Other forestry legislation also integrates labour standards, such as those relating to occupational safety and health, more directly.

In terms of livelihood-related provisions, forestry legislation may provide for the right to access natural resources including land, fisheries and wildlife and to own, collect, use and dispose of forest produce, and the right of local communities to participate in the co-management of resources.¹⁴² The recognition of the tenure and livelihood rights of people working in the sector contributes to promoting an adequate standard of living. A piece of legislation may also simply contribute to the formalization of labour in forestry. For example, the Lithuanian Act on Provision of Services in Agriculture and Forestry (2013) allows persons working in the sectors to issue a voucher for the provision of services by temporary workers with no special skills, qualifications, permits, licenses or training (European Labour Law Network, 2016). The recognition of such service contracts contributes to the promotion of the legalisation of widespread undeclared work and towards compliance with regulations on wages.

While the above types of legislative provisions relate to the livelihoods of forest workers, they do not directly integrate labour standards that

¹⁴² For example, see India. 2006. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act; Mozambique. 1999. Forest and Wildlife Act; Liberia. 2009. An Act to Establish the Community Rights Law of 2009 with Respect to Forest Lands, Part III of Title 23 of the Liberian Code of Law Revised; Vanuatu. 2012. Forestry Rights Registration and Timber Harvest Guarantee (Amendment) Act 2012 (No. 8).

aim to protect the rights of these workers. Forestry legislation does not, and is not actually expected to incorporate detailed provisions on labour standards, but it may include some specific labour and social security-related provisions. Amongst the examples of forestry laws that cover labour issues, some provide broadly formulated protection to forestry workers, while certain others integrate specific provisions on issues such as occupational safety. The Forestry Act of Japan, for example, provides for the duty of the State to “take necessary measures such as increasing job opportunities, stabilizing employment, improving working conditions, improving social security, and enhancing vocational training programs, in order to improve welfare, develop and secure the forest labour force”.¹⁴³ It further provides that the Council that implements the Act will study and deliberate important matters with “ministries concerned”, which may include the ministry in charge of labour in related matters.

In terms of specific labour standards, occupational safety and health, and vocational guidance and training are relatively more pronounced in the forestry legislation of a number of countries, particularly those which have adopted Codes of Practice that set national standards in relation to the labour issues.¹⁴⁴ Some of the Codes have legal status, while others elaborate the requirements of relevant national legislation. For example, the Vanuatu Forestry Act which governs forestry sector planning, commercial forestry, as well as environmental protection and timber exports, includes the Vanuatu Code of Logging Practice with its provisions on practices and standards for logging and forest management, including training, licencing, health and safety of forest operators.¹⁴⁵ The Forest Harvesting Code of Practice of Fiji, which provides guidance on best practice forest harvesting and minimization of adverse impacts, is legally binding on all parties and individuals involved in marking, felling, extracting, loading and hauling wood and wood products from all forests in the country.¹⁴⁶ The Fiji Code requires that all harvesting operators comply with a list of occupational health and safety requirements, and that all persons in the field be provided with personal protective equipment (PPE), which must be worn at all times whilst undertaking harvesting activities. All workers are also required to comply with certain machine standards as detailed in the Code.

¹⁴³ Japan. 1964. Forest and Forestry Basic Act, No. 161, Sections 21 and 30.

¹⁴⁴ See the FAO Model Code of Forest Harvesting Practices discussed in section 2.4.1 of this study.

¹⁴⁵ Vanuatu. 2001. Forestry Act (CAP 276), Act 26, Section 43. (Also available at <http://faolex.fao.org/docs/texts/van65770.doc>).

¹⁴⁶ Fiji. 2013. Forest Harvesting Code of Practice. (Also available at https://thereddesk.org/sites/default/files/hiji_harvesting_code_of_practice_2010.pdf).

In countries where the codes of practice are not legally binding, their purpose is to implement the provisions of the pertinent legislation on safety and health. New Zealand's Code of Practice for Safety and Health in Forest Operations,¹⁴⁷ for example, provides practical guidance to employers, contractors, employees and all others engaged in work associated with forestry on how they can meet their obligations under the Health and Safety in Employment Act, 1992.¹⁴⁸ Employers are expected to provide all appropriate PPE and ensure their correct use, inspection and maintenance to protect employees from harm due to any hazard, and to ensure that emergency procedures are developed and fully understood at the work area. Every person undertaking forestry work in New Zealand should be either competent or closely supervised, and no person under the age of 15 should operate a chainsaw or machinery in a forestry operation. Another example is Ireland's Code of Best Practice¹⁴⁹ which in a similar manner refers to the requirements of management of safety and health and the related responsibilities of all individuals and companies involved in work activities under the pertinent legislation of the country.¹⁵⁰ It identifies health and safety in forestry as a social sustainability standard that should be the concern of all those involved, including forest owners, managers, supervisors, operators, recreational users and trespassers. Although they are not legally binding *per se*, these Codes implement standards of general labour laws with particular emphasis on issues of occupational safety and health, training and guidance, child labour etc.

Compliance with labour standards may also form part of the conditions for the issuance and/or implementation of (exploratory, harvesting, afforestation or forest management) permits or concessions issued under forestry legislation. The Forests Act of Guyana, for example, explicitly requires every holder of a State forest authorization to provide, in accordance with the Occupational Safety and Health Act 1997, for the occupational safety and health of workers involved in carrying out activities under the authorization.¹⁵¹ Non-compliance

¹⁴⁷ New Zealand. 2012. Code of Practice for Safety and Health in Forest Operations. (Also available at <http://safetree.nz/wp-content/uploads/2015/02/forest-operations1.pdf>).

¹⁴⁸ New Zealand. 1992. Health and Safety in Employment Act. (Also available at <http://www.legislation.govt.nz/act/public/1992/0096/latest/DLM278829.html>).

¹⁴⁹ Ireland. 2000. Code of Best Practice. (Also available at <https://www.agriculture.gov.ie/media/migration/forestry/publications/codeofbestforestpractice/Code%20of%20Best%20Forest%20Prac%20Part%201.pdf>).

¹⁵⁰ Ireland. 1989. Safety, Health and Welfare at Work Act 1989, and the Safety, Health and Welfare at Work (General Application) Regulations 1993.

¹⁵¹ Guyana. 2009. Forests Act, No. 6 of 2009, Part 3, Section 17. (Also available at <http://faolex.fao.org/docs/pdf/guy141900.pdf>).

with this requirement may entail the suspension of the authorization. This applies in addition to the code of practice for forest operations that is envisaged by the Act.¹⁵²

The regulation of labour and safety standards can also be achieved through implementing legislation. For example, the Forestry Act of The Bahamas authorizes the Minister responsible for forestry to issue regulations concerning the safety requirements for and use of all power tools and other equipment in the forestry sector, as well as on the lighting and use of fires.¹⁵³ Similarly, the Forestry Act of Liberia authorizes the competent state authority to issue regulations concerning the health, safety and welfare of individuals on forest lands, including the safety of commercial operations and the reporting of accidents.¹⁵⁴ Such secondary legislation could thus potentially integrate more detailed labour standards.

As indicated in section 2.1 of this study, the principal labour and employment legislation of many countries, which includes generic labour laws and legislation covering some specific labour issues such as occupational safety and health, normally applies to employers and employees in all sectors, including forestry. Such legislation applies not only to public employees such as forestry officers, inspectors and “rangers”, but also to workers in timber extraction and processing. Some forestry legislation actually restates the applicability of general labour legislation to work in forestry.¹⁵⁵ General labour laws may further accommodate sector-specific labour issues by incorporating some tailored provisions. Again, as mentioned in section 2.1, provisions relating to casual and temporary workers in general labour laws, for example, address issues that are common to work in the forestry sector.¹⁵⁶ A general law on minimum wages may also allow competent authorities at national or sub-national level to determine the minimum wages for forestry related work.¹⁵⁷

¹⁵² Guyana. 2009. Forests Act, No. 6 of 2009, Part 3, Section 35. (Also available at <http://faolex.fao.org/docs/pdf/guy141900.pdf>).

¹⁵³ Bahamas. 2010. Forestry Act, No. 32, Part IX, Section 34. (Also available at <http://faolex.fao.org/docs/pdf/bha129008.pdf>).

¹⁵⁴ Liberia. 2006. An Act Adopting the National Forestry Reform Law of 2006, Section 19.1.

¹⁵⁵ For example, see Liberia. 2006. An Act Adopting the National Forestry Reform Law of 2006, Sections 18.3, 18.4, 18.17 (including to foreign employers and employees).

¹⁵⁶ See also, Hungary. 2010. Simplified Employment Act (2010/LXXV) (to facilitate seasonal and casual employment notifications, reports and payments, including social security benefits).

¹⁵⁷ India. 1948. Minimum Wages Act, 1948; see Government of India, Ministry of Labour and Employment. 2015. Report on the Working of the Minimum Wages Act 1948, for the Year 2013. (Also available at http://labourbureaunew.gov.in/UserContent/MW_2013_final_revised_web.pdf).

Principal labour legislation may also provide for the sector-specific determination of labour standards. For example, the Basic Conditions of Employment Act 1997 of South Africa authorizes the Minister of Labour “to make a sectoral determination establishing basic conditions of employment for employees in a sector and area”.¹⁵⁸ Accordingly, the Minister issued Sectoral Determination 12 for the forestry sector, which applies to the employment of forestry workers in all forestry activities, including timber growers, contractors, transportation, and domestic workers and security guards employed in a place where forestry activities take place.¹⁵⁹ It provides for a variety of issues including particulars of employment, wages, payment modalities, working hours and overtime pay. The Determination does not apply to employment in mixed farming, community forestry, conservation activities and areas covered by other instruments such as transportation and processing.¹⁶⁰

Considering the nature of labour issues in forestry and the structure of principal forestry legislation, the legal protection of labour in the forestry sector is usually a function of more than one piece of legislation. In the United States, for example, a mixture of labour and sectoral legislation such as the Fair Labour Standards Act, the Migrant and Seasonal Agricultural Worker Protection Act, the Service Contract Act and State Labour Laws, provide protection for workers engaged in manual forestry activities such as tree planting, brush clearing, pre-commercial tree thinning, and forest fire fighting (US Department of Labour, 2017). The Migrant and Seasonal Agricultural Worker Protection Act applies in particular to individuals who are employed in agricultural employment of a seasonal or other temporary nature, whereas the Fair Labour Standards Act defines agricultural activities to include forestry or lumbering operations. Accordingly, forestry workers have rights to the highest of federal or state minimum wages, over-time pay and/or fringe benefits, adequate standards of living, including housing, water and sanitation, and the employer is required to disclose to them in writing the terms of employment, including rates of pay and other benefits, period of employment, place of employment, worker’s compensation, deductions, transportation arrangements, and housing conditions.

¹⁵⁸ South Africa. 1997. No. 75 of 1997. (Also available at <http://www.labour.gov.za/DOL/downloads/legislation/acts/basic-conditions-of-employment/Act%20-%20Basic%20Conditions%20of%20Employment.pdf>).

¹⁵⁹ South Africa. 2002. Department of Labour, Government Notice No. 219, Sectoral Determination 12: Forestry Sector, Section 1. (Also available at <http://www.forestry.co.za/uploads/File/legislation/labour/Forestry%20Determination%20Part%201.pdf>).

¹⁶⁰ South Africa. 2002. Department of Labour, Government Notice No. 219, Sectoral Determination 12: Forestry Sector, Section 1(2).

As mentioned in section 2.1 of this study, labour in forestry may also be regulated through labour instruments that apply to the broader agricultural sector. Such legislation takes into account the special characteristics of work in forestry, for example, the fact that forestry workers often live, at least temporarily, on the work site, and hence would need adequate accommodation. In this regard, the Thai Ministerial Regulation that governs agricultural work, which includes work in forestry, requires an employer to provide a clean, hygienic and safe accommodation and to provide adequate hygienic drinking water to an employee.¹⁶¹

In terms of institutions, forestry legislation usually assigns responsibilities for its implementation to a dedicated government institution, which could be a ministry or a specialized agency with different names in different countries. The executive body is often complemented by general or thematic consultative bodies with either decision-making or advisory powers. Some forestry laws establish a multi-stakeholder advisory body with a mandate to advise the competent authority on general policy matters,¹⁶² whereas other countries create such consultative bodies in relation to specific issues in forestry such as the classification (and declassification) of forests, the management of national parks and harvesting permits.¹⁶³ The Forestry Management Advisory Committee of Liberia, for example, has a general policy advisory mandate and should have gender and age-sensitive representation of professional forester associations, forest labour organizations and logger associations.¹⁶⁴ The inclusion of labour authorities and stakeholders in the consultative body depends on its nature or functions. Those relating to different forms of forest harvesting would include employers' and workers' representatives,¹⁶⁵ and could ideally include public authorities in charge of labour. The inclusion of labour authorities and stakeholders in consultative bodies established by forestry legislation serves as a good basis for the implementation of applicable labour standards in the sector.

¹⁶¹ Thailand. 2014. Ministerial Regulation concerning Labour Protection in Agricultural Work B.E.2557 (2014), Section 8.

¹⁶² Liberia. 2006. An Act Adopting the National Forestry Reform Law of 2006.

¹⁶³ For example, see Gabon. 2001. Décret Fixant Les Modalités de Classement ou de Déclassement des Forêts et des Aires Protégées (en application des Articles 9 et 212 de la Loi 016/01); Gabon. 2007. Loi no. 003-2007 du 27/08/2007, relative aux parcs nationaux (Titre III – chapitres 1, 2, 3), and Décret no. 000019/PR/MEFPPN fixant les status de l'Agence Nationale des Parcs Nationaux, 2008; Gabon. 2011. Arrêté no. 136-MEF du 10/10/2011, fixant les modalités d'attribution et de gestion du Perms de Gre Gre.

¹⁶⁴ Liberia. 2006. An Act Adopting the National Forestry Reform Law of 2006, Section 4.2.

¹⁶⁵ For example, see Gabon. 2011. Arrêté n°. 136-MEF du 10/10/2011, fixant les modalités d'attribution et de gestion du Perms de Gre Gre, Article 5.

Labour inspection in forestry is important to make sure that forest managers and other forestry operators are accountable for the treatment of their employees. General labour and employment laws provide for inspection mechanisms that often apply to all sectors including forestry work sites, but the practical implementation of such inspection mandates is wanting, especially in rural areas of developing countries. On the other hand, forestry inspection typically focuses on environmental factors, land use, the prevention of illegal logging and other activities in forests. Joint or multidisciplinary inspection that lays focus both on the sustainable management of forests and the rights of the people who derive their livelihoods from the sector is proposed as a method that balances all relevant values and interests.

Table 4 Possible components of forestry legislation and entry points for labour standards	
objectives; guiding principles	<ul style="list-style-type: none"> include protection of sources of livelihoods, promotion of safety and decent work in forestry, etc.
classification, ownership and use of forest resources <ul style="list-style-type: none"> forest tenure and land tenure community and land owners rights 	<ul style="list-style-type: none"> livelihoods-related provisions, including right to access natural resources and to participate in the co-management of the resources
sustainable forest resources management	<ul style="list-style-type: none"> express provision on social sustainability
forestry planning	
forest governance institutions <ul style="list-style-type: none"> executive body (ministry or specialized agency) consultative (multi-stakeholder) body (advisory or decision-making) forestry officers, inspectors 	<ul style="list-style-type: none"> consultative body includes public authority in charge of labour and associations of forestry workers and employers coordination with labour inspectors

Table 4 Possible components of forestry legislation and entry points for labour standards	
Production forests Contracts or agreements of concession, forest management, afforestation, timber sale Permits, licenses, bidding procedure and certificates (use, exploitation, exploration)	<ul style="list-style-type: none"> • may include conditions of compliance with labour standards
Protection forests environmental protection, protected areas, forest conservation, control of deforestation and forest degradation	<ul style="list-style-type: none"> • protection of the labour rights of public forestry employees
Forest operations and forest produce (forest harvesting codes of practice, processing, transportation)	<ul style="list-style-type: none"> • occupational safety and health and other labour standards (prohibition of child labour, forced labour etc.)
Wildlife conservation and exploitation	
Agro-forestry Private forests	
Trade in forest resources (timber and non-timber forest products, including game)	
Forest fires (prevention, protection, reporting)	
Forest information	
Offences and penalties	
Dispute resolution	

2.4.3. Market states legislation

A number of market state legislation have been adopted in the last 15 “Market states legislation” refers to legal instruments adopted by States to regulate access to or transitions on their market based on requirements relating to the harvesting, sourcing and/or importation of forest products. A number of market state legislation have been adopted in the last 15 years with a view to counter illegal logging and trade in illegal timber. This section examines such laws from the United States, the European

Union, Australia and Japan, which together provide a huge market for wood products, in order to gauge the extent to which labour laws could be considered in the determination of the legality of logging or timber.

In 2008, the United States of America (USA) amended the Lacey Act, which was originally passed in 1900 to protect wildlife from trafficking, to include plant products. The law bans trade in the USA of illegally sourced wood products from within the country or any other country, requires the submission of import declarations on certain wood products, and imposes penalties for those who either knowingly have traded in illegal products or failed to exercise “due care”. The Act applies to all parties along the value chain and illegal activity at any point means that the product may not be legally traded in the United States (EU FLEGT Facility, 2017). Legality under the Lacey Act is determined based on compliance with specific laws concerning forestry, taxes and export (i.e. theft of plants, taking plants from officially protected or designated areas, taking plants without authorization, failing to pay appropriate royalties, taxes, or fees, and violating laws concerning export or trans-shipment). However, it does not include compliance with national labour laws. Implemented mainly by the Animal and Plant Health Inspection Service, the Act does not require certification or verification of legal origin, and leaves it to each individual USA trader to determine how best to conduct due care and avoid illegal timber in the market. In addition to the fact that labour law does not form part of the determination of legality, the implementation arrangements are not conducive to the consideration of labour issues.

In 2003, the European Union (EU) published the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan, which sets out a range of measures available to the EU and its Members to tackle illegal logging in the world’s forests. As one of the measures to ensure that only timber products that have been legally produced in accordance with the national legislation of the producing country may enter the EU, the Council of the European Union adopted a regulation on the establishment of a FLEGT licencing scheme in 2005.¹⁶⁶ To this end, the EU concludes Voluntary Partnership Agreements (VPAs) with timber-producing countries, whose licencing authorities shall issue FLEGT licences demonstrating the legality

¹⁶⁶ Council of the European Union. 2005. Council Regulation (EC) No. 2173/2005 of 20 December 2005 on the establishment of a FLEGT licencing scheme for imports of timber into the European Community.

of the timber products covered.¹⁶⁷ The VPA is, therefore, a legally binding trade agreement that could help timber-exporting countries stop illegal logging by improving regulation and governance of the forest sector. VPA can contribute to the enforcement of existing national laws, including those governing labour in forestry. It can also trigger legislative reforms to cover areas that are not duly regulated, and may at least potentially strengthen the legal framework for the protection of labour in forestry.

What constitutes legal timber is defined by each VPA and determined by the authorities based on the laws and regulations of the partner country. Recognizing the potential complexity of assessing compliance with the possibly large number of laws relating to forestry and timber production in many countries, the definition of legality should rely on laws that relate to the environmental, economic as well as social aspects of forest management and timber processing. These are likely to include not only laws relating to harvesting rights and forest operations, fees and taxes, trade and export processes, but also compliance with relevant labour and community welfare legislation, and respect for tenure or use rights to land and resources that may be affected by timber harvest rights (European Commission, 2007). Accordingly, the standard criteria for of the Timber Legality Assurance System that form part of the VPAs with partner countries include compliance with labour laws and regulations.

The extent to which the legality grid includes specific labour standards differs from one VPA to another. The legality standards of the VPA with Indonesia, for example, include compliance with labour laws and regulations relating to occupational health and safety requirements, freedom of association and collective agreements, and non-employment of underage workers.¹⁶⁸ The VPA with Ghana requires compliance with occupational health and safety in the context of timber processing and includes an undertaking to carry out legal reform to introduce such

¹⁶⁷ Commission of the European Communities. 2008. Commission Regulation No. 1024/2008 of 17 October 2008 laying down detailed measures for the implementation of Council Regulation (EC) No 2173/2005.

¹⁶⁸ VPA between the European Union and the Republic of Indonesia on forest law enforcement, governance and trade in timber products into the EU, Official Journal of the European Union L 150/252 (referring to Regulation of the Minister for Manpower and Transmigration 01/1978; Regulation of the Minister for Forestry P12/2009; Act 21/2000 and Regulation of the Minister for Manpower and Transmigration 16/2001; and Act 13/2003, Regulation of the Minister for Manpower and Transmigration 16/2011).

requirements for forest operations.¹⁶⁹ Overall, VPAs can do better in terms of covering more labour and safety standards and addressing the issue of applicability of the standards to informal, casual and temporary workers. The verification of compliance with the standards should definitely involve labour and occupational safety and health inspectors, who may certify if the timber is produced in accordance with the labour laws of the country in question.

In 2010, the EU Parliament adopted the EU Timber Regulation (EUTR)¹⁷⁰ as an additional measure under the FLEGT Action Plan. The Regulation prohibits the first placing of illegally harvested timber and products derived from such timber in the EU market and obliges operators in the EU market to have systems in place to ensure that the timber has been procured in a legal manner.¹⁷¹ The legality of timber is defined based on compliance with or contravention of the applicable legislation in the country of harvest, covering rights to harvest timber, payments for harvest rights and timber, timber harvesting (including pertinent environmental and forest legislation), third parties' legal rights concerning use and tenure, and trade and customs. This means that, like the Lacey Act, compliance with labour and employment-related laws is not a test of legality under the EUTR.

While the EUTR requires operators to exercise due diligence so as to minimize the risk of placing illegally harvested timber or timber products on the EU market, FLEGT licensed timber is considered risk free and does not require further due diligence measures from the importer. Risk mitigation measures include third party verification or certification standards that comply with the laws of the country of origin, which may include FSC – PEFC that are discussed under section 2.4.1. The consideration of FLEGT licenses and other certifications in risk mitigation could include also the compliance with labour and safety standards in the implementation of the EUTR. The Regulation is to be implemented by the EU Members, which have designated Competent Authorities with responsibilities to carry out checks on operators, monitoring organizations, and maintaining and communicating records of their actions to the European Commission that is responsible for monitoring its effective and uniform implementation.

¹⁶⁹ VPA between the European Community and the Republic of Ghana on forest law enforcement, governance and trade in timber products into the Community, Official Journal of the European Union L 70/30, 2010, Annex II (referring to Act 651 Labour Act Section 118-124; Health and employment (Section 18-20) and Office and Factories Act).

¹⁷⁰ Regulation No 995/2010, applicable from March 2013.

¹⁷¹ Regulation No 995/2010, applicable from March 2013.

In 2012, Australia issued the Illegal Logging Prohibition Act which makes it an offence for Australian businesses to place onto the Australian market timber or timber products that have been harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested. The Act does not clearly identify the laws based on which legality is to be determined. Although illegal logging is often defined as felling trees and extracting logs from a forest or plantation without the requisite approvals under the relevant laws of the country of origin, non-compliance with labour standards that apply to the forestry sector could also meet the requirement of illegality. While the Act considers as a high-level offense to knowingly, intentionally or recklessly import or process illegally logged timber, the Illegal Logging Prohibition Regulation 2012 that came into effect two years later outlines the due diligence process for importers and processors with regard to certain timber products. Evidence that may be considered as part of the exercise of due diligence includes FLEGT licenses, third party certification systems such as those of FSC and PEFC, and national timber legality verification systems. Inspectors are appointed to monitor compliance with the Act.

In addition, in 2016, Japan enacted a “Law Concerning the Promotion of Distribution and Use of Legally-Harvested Timber, etc.”. The law aims to prevent the illegal logging of forests in Japan or in foreign countries, as well as the distribution and use of illegally harvested timber by business operators with a view to the conservation of the natural environment and ensuring fair transactions in the timber market. It differs from the market state legislation reviewed above in that it is designed to promote the trade of legal timber through a voluntary registration system, rather than attempting to eliminate illegal timber on the market. While it defines legally harvested timber as “wood derived from trees logged in compliance with laws and regulations of Japan or of the country of origin”, its provisions imply that elements of sustainable forest management as well as social issues should be taken into consideration in determining legality. The detailed definition of legality could be developed in a way that covers compliance with labour and employment-related laws and regulations. This could further be reflected in the application of the provisions on the specific responsibilities of the State and business operators, including the procedures of registration, due diligence, reporting and inspection, to ensure the distribution and use of legally harvested timber by companies that can call themselves “registered operators in timber related business”.

While some of the market states legislation reviewed above allows the inclusion of labour standards into the criteria for the determination of timber legality, other laws do not. There is much to be desired in terms of

making the protection of the rights of people deriving their livelihoods from forestry part of the regulation of legality of production from forestry, both in law and practice. Much work on capacity development and awareness-raising on labour in forestry should be devoted to ensuring that labour considerations are included in regulatory frameworks on the legality of logging and trade in legal timber.

2.5. Fisheries and aquaculture legislation

The fisheries and aquaculture sectors are not only important sources of food and nutrition, they are also vital sources of income and livelihoods for hundreds of millions of people around the world. An estimated 56.6 million people were engaged in the primary sector of capture fisheries (37.9 million) and aquaculture (18.7 million) in 2014, whereas a further 140 million were employed along the value chains (FAO, 2016d). There is limited disaggregated data on the number of workers engaged in the different types and forms of fisheries undertakings – whether in inland or marine fisheries, in small to large-scale operations, and in pre- to post-harvest activities. However, data shows that about 880 million people draw their livelihoods from the sector. The biggest proportion of the global population engaged in the fisheries and aquaculture sector was in Asia (84 percent), followed by Africa (10 percent), and Latin America and the Caribbean (4 percent) (FAO, 2016d). It is estimated that about 90 percent of the world's fishers and fish workers are engaged in small-scale fisheries (SSF) (FAO, 2015b). In 2012, over half (60 million) of those employed in fisheries value chains in developing countries worked in small-scale inland fisheries (The World Bank, 2012). The sub-sector often absorbs rural surplus labour from local communities and migrants mainly because small-scale operations can be started without much investment, and they can be carried out on temporary and casual bases. Between 70 and 80 percent of aquaculture ventures are also considered small-scale, often family-based activities (HLPE, 2014).

Women account for almost 20 percent of all people directly engaged in the primary sector, whereas they make up about half of the workforce when the secondary sector is included.¹⁷² They face different forms of difficulties, including discrimination in access to resources and services and sexual and physical abuse. A high number of children are engaged as unpaid family

¹⁷² The figure goes up in Africa where women constitute about 27 percent of people that are engaged in fisheries and aquaculture. See FAO. 2016. Scoping study on decent work and employment in fisheries and aquaculture: issues and actions for discussion and programming. Rome, (hereinafter "Scoping Study"), p. 23.

workers, as employed or self-employed workers on board fishing vessels, in unloading catches, preparing nets and baits, in feeding and harvesting fish in aquaculture ponds, and in sorting, processing and selling fish (FAO & ILO, 2013). Most fishers and fish workers, especially in small-scale operations, are informally employed (FAO, 2016c). Of the total population engaged in capture fisheries, 36 percent were engaged in full-time employment, whereas the rest were part-time, occasional or seasonal workers (FAO, 2016d). Workers in fisheries are often exposed to significant hazards such as rough weather conditions, crushing waves and powerful and dangerous machinery, and their work sites are often far from where they may get professional help in cases of accident or illness. Working on fishing vessels out at sea results in fishers having to stay on board fishing vessels for a longer period of time and work longer hours in order to ensure profitability. There is generally a low level of organization among fishers and fish workers. The problem is more pronounced among vulnerable migrant workers who cannot exercise freedom of association and access to social security services. There are different forms of payment arrangements relating to work in fisheries, including those determined based on a share of the revenues or the catch itself, which raises questions as to whether the fishers can be classified as employees.

In recent times, problems of employment and labour conditions in the fisheries sector have come to the fore due to revelations of child labour, human trafficking, forced labour, undocumented work and violation of health and safety standards on board fishing vessels in different parts of the world, especially in South East Asia (US Department of State, 2016; FishWise, 2016). The discovery includes sub-standard working conditions for migrant workers on fishing and processing vessels/units that are connected to, or fall within the jurisdictions of, developed countries such as Ireland, the UK and the USA.¹⁷³ A number of case studies have shown examples of fraudulent recruitment, 18-20 hour workdays, physical, mental and sexual abuse, child labour, abandonment, refusal of fair and promised pay, health and safety violations, and the removal or withholding of identity documents (FishWise, 2016). Despite the work and income opportunities that fishing provides to migrant workers, their work conditions are precarious as they may not have a written contract, timely payments and access to social security services (FAO, 2016d). What contributes to this situation is the absence of effective labour laws and enforcement mechanisms in the sector. Many fishers and fish workers do not benefit from legal protection, either because their employment is often informal and non-registered, casual, temporary or seasonal, or because they are self-employed or

¹⁷³ For example, see *The Guardian*, Revealed: trafficked migrant workers abused in Irish fishing industry, 2 November 2015; *The Independent*, Migrant fishermen detained on US boats for months with pitiful wages and poor working condition, investigation finds, 8 September 2016.

small-scale operators. The location of fishing sites, problems in accessing and finding victims and witnesses and the weakness of administrative and physical infrastructure in some contexts present serious challenges to the monitoring and enforcement of laws and regulations (ILO, 2011d).

Whilst recognizing the differences between the fisheries and aquaculture sub-sectors in terms of the prevailing labour issues and applicable standards, this section puts relatively more focus on capture fisheries. The vessel-related safety and other standards do not apply to the aquaculture sector even where the aquaculture cages are located at sea. Accordingly, work in aquaculture can be seen as closely related to crop and animal farming, especially in terms of applicable international labour standards. The applicable labour standards also differ as one moves up the value chains to include processing and marketing. As is the case for the other sectors covered by the study, this section primarily deals with the production level. However, many of the labour standards that apply to fishing at sea also apply to vessels that collect, freeze, transport and process fish. Safety standards that apply to seafarers in merchant and passenger vessels may also apply to those engaged in transporting and processing fish.

2.5.1. Relevant international instruments

As mentioned in Part I of this study, the ILO conventions on the fundamental principles and rights at work, i.e. the four core labour standards on the recognition of freedom of association, the elimination of forced labour, the abolition of child labour and non-discrimination, apply to all sectors and forms of employment, and also to all States, including those that have not ratified the pertinent conventions. The international human rights regime has an even broader scope of application because it provides for rights, such as the right to equality and non-discrimination, the right to work, trade union rights, participatory rights and protection against child labour, to all human beings, with particular attention to vulnerable groups. While the provisions of these instruments apply to fishers and fish workers, work in fisheries is further governed by other general and fisheries-specific treaties as well as by non-legally-binding international instruments with labour standard components. These include instruments that can be broadly categorized as follows: (1) treaties of general application with some relevance to labour regulation, especially vessel safety; (2) treaties specifically governing work in fisheries; and (3) non-legally-binding fisheries-related instruments with provisions on labour standards. This section reviews the three categories of instruments by highlighting their provision on labour and safety standards.

2.5.2. General treaties

This category includes treaties that regulate the governance of fisheries resources, shipping and navigation, safety of life at sea and the related rights and responsibilities of States. To begin with, international treaties governing the conservation and management of fisheries resources generally pay little attention to labour and other social issues.¹⁷⁴ However, the 1982 *United Nations Convention on the Law of the Sea* (UNCLOS) requires every State to ensure safety at sea with regard, *inter alia*, to the construction, equipment and seaworthiness of ships flying their flags, and the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments (UNCLOS, Section 94). Accordingly, the flag State bears primary responsibility to regulate safety, training and labour conditions on board vessels at sea, including those engaged in fishing. The Convention divides the world's oceans into maritime zones and defines coastal States' jurisdictions. Where a coastal State does not have the capacity to harvest its entire allowable catch of living resources of the Exclusive Economic Zone (EEZ), it may give other States access to the surplus under an agreement or other arrangements (UNCLOS, Section 62.4).¹⁷⁵

The jurisdiction of the coastal States further includes ensuring compliance with the laws and regulations adopted in conformity with the Convention (UNCLOS, Section 73). Compliance with labour laws of the coastal State may be made a condition of license for foreign vessels to fish within its jurisdiction. Consequently, a coastal State may regulate control, inspect or take other legal measures on fishing vessels in relation to fishing and related activities within waters under its jurisdiction, including the territorial sea and EEZ. This could include the implementation of the labour laws of the State to flagged and foreign licensed fishing vessels operating within these areas.

Secondly, the *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (PSMA)¹⁷⁶ lays down requirements for entry (and denial of entry) into port of vessels,

¹⁷⁴ For example, see Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (adopted by the FAO Conference on 24 November 1993 and entered into force on 24 April 2003).

¹⁷⁵ Such arrangements are subject to the UN Agreement for the Implementation of the Provisions of the UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (adopted on 4 August 1995, and entered into force on 11 December 2001), which sets out principles for the conservation and management of those fish stocks.

¹⁷⁶ Adopted at the Thirty-sixth Session of the FAO Conference on 22 November 2009 and entered into force on 5 June 2016.

and inspection and follow-up actions. It has been argued that measures to fight illegal, unreported and unregulated (IUU) fishing¹⁷⁷ are dominated by biological perspectives and fail to take full account of social aspects of fisheries (TBTI, 2017). Despite the increasing recognition of the relationship between IUU fishing and sub-standard working conditions (FAO & IMO, 2016), the application of labour and safety standards in the context of IUU fishing is complicated by the intricacy of relationships that may exist between vessel owners, States and workers, as well as the realities of vessel operations in areas beyond national jurisdiction (FAO, 2016d). The provisions of the PSMA apply “without prejudice to the rights, jurisdiction and duties of Parties under international law” and it is to be interpreted and applied “in accordance with applicable international rules and standards”.¹⁷⁸ These are potential entry points for the application of international labour standards in identifying and combatting IUU fishing. Fishing activities that do not comply with laws governing labour relations and conditions in fisheries could then be considered “illegal fishing”.¹⁷⁹ The integration of port state measures within the broader system of port controls, along with the requirements of pre-entry notification and in-port inspections could be used as entry points for labour inspection on board fishing vessels (PSMA, Sections 5, 8 & 12). However, critics argue against the indiscriminate application of IUU fishing prevention measures to offshore industrial fisheries and fleets in international waters as well as to small-scale, inshore and coastal fisheries (TBTI, 2017). The PSMA excludes vessels of a neighbouring State that are engaged in artisanal fishing for subsistence from its application, provided however that there are other ways of ensuring that they do not engage in IUU fishing (PSMA, Section 3).

International treaties on vessel safety that apply to fishing incorporate provisions that are closely related to labour standards, chiefly, occupational safety and health standards. The 1974 *International Convention for the Safety of Life at Sea*, which is the most important treaty on vessel safety, excludes fishing vessels from its scope of application, but Chapter V on the safety of navigation applies to “all ships on all voyages”. The 1977

¹⁷⁷ For the definition of IUU fishing, see FAO. 2001. International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. Rome, para 3.

¹⁷⁸ *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (PSMA) (adopted at the 36th Session of the FAO Conference on 22 November 2009 and entered into force on 5 June 2016) Section 4.

¹⁷⁹ This may further cover “fishing related activities” which include any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea.

Torremolinos International Convention for the Safety of Fishing Vessels, which was intended to fill this gap, provides for safety requirements for the construction and equipment of new, decked, seagoing fishing vessels of 24 metres in length and over, including those vessels processing their catch. However, it has not entered into force. The *Torremolinos Protocol* to this Convention was adopted in 1993 with a view to update the Convention and encourage its ratification. To further ensure wider acceptance and ease entry into force, the *Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977* was adopted on 11 October 2012. The Cape Town Agreement lowers the number of ratifications needed for entry into force and the aggregate number of vessels authorised by the states to operate on the high seas, and introduces more exemptions and flexibility into the time frame for implementation.

The Cape Town Agreement, the 1993 Protocol, the regulations in the annex to the 1993 Protocol and the regulations in the annex to the 1977 Convention shall, subject to the modifications set out in the Agreement, be read and interpreted as one single instrument. They set out detailed technical requirements regarding watertight integrity and equipment; stability and associated seaworthiness; machinery and electrical installations; fire protection and fire-fighting; protection of the crew; life-saving appliances; emergency procedures and safety training; radio communications; and navigational equipment. Compliance with the requirements shall be monitored through surveys and inspections carried out by the flag State, leading to the issuance of a vessel safety certificate, and port State control of foreign vessels. Despite the fact that they are not in force, these treaties serve as sources of international law on fishing vessel safety and are used in the development of relevant national legal instruments.¹⁸⁰

Another treaty on safety of life at sea is the IMO International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F),¹⁸¹ which applies to personnel serving on board seagoing fishing vessels. It lays down basic requirements for the certification of fishing vessel personnel, the requirements of basic safety training and watchkeeping, and the responsibilities of flag States and port

¹⁸⁰ For example, see Kenya. 2009. Merchant Shipping Act (CAP 389) (consolidated in 2012), Section 260 (providing that the Minister may make regulations prescribing safety requirements and certification in respect of fishing vessels having due regard to the *Torremolinos Convention for the Safety of Fishing Vessels, 1977*).

¹⁸¹ Adopted on 7 July 1995 and entered into force on 29 September 2012.

States in the issuance and control of certificates. Institutional arrangements are to be put in place for the purpose of administering the certification, training and other requirements of the Convention. The Convention applies together with the more labour-specific ILO instruments such as the 1966 Fishermen's Competency Certificates Convention (C125).¹⁸² The latter applies to all ships or boats of over 25 gross registered tons that are engaged in maritime fishing, with the exception of those engaged in activities such as whaling, recreational fishing and fishery research. The ILO Convention requires States to establish standards of certification for fishing vessel personnel and procedures for inspection and sanctioning, and provides minimum requirements such as minimum age, professional experience and knowledge requirements for certification. With a similar scope of application, the ILO Vocational Training (Fishermen) Recommendation of 1966 (R126) provides guidance for countries on how to plan, coordinate and administer education and training programmes for fishers.

While most small-scale fishing vessels fall below the sizes regulated by the above safety-related treaties, the standards they enshrine provide guidance for safety on such vessels too. As shown further below, the FAO, the ILO and the IMO have jointly produced a number of voluntary instruments addressing the safety of fishing vessels and crew, which also apply to small-scale fishing vessels.

2.5.3. ILO conventions

As indicated in Part I of this study, the ILO has adopted a number of fisheries-specific labour standards, including on minimum age, medical examination, articles of agreement and accommodation of crew.¹⁸³ Some conventions that are primarily meant to apply to seafarers and merchant ships also cover sea-fishing vessels,¹⁸⁴ but the consolidated Maritime Labour Convention of 2006 excluded fishing vessels and fishers from its

¹⁸² The Convention has been in force since 15 July 1969, but it has been identified by the ILO as an "instrument to be revised" because some of its provisions could be outdated or covered in newer instruments.

¹⁸³ The Minimum Age (Fishermen) Convention, 1959 (No 112); the Medical Examination (Fishermen) Convention, 1959 (No 113); Fishermen's Article of Agreement Convention, 1959 (No 114); the Fishermen's Competency Certificates Convention, 1966 (No 125); the Accommodation of Crews (Fishermen) Convention, 1966 (No 126); the Hours of Work (Fishing) Recommendation, 1920 (No 7); and the Vocational Training (Fishermen) Recommendation, 1966 (No 196).

¹⁸⁴ For example, the Sickness Insurance (Sea) Convention, 1936 (No 56); the Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No 55).

scope of application. The 2007 Work in Fishing Convention (No. 188)¹⁸⁵ is by far the most comprehensive instrument revised and updated earlier conventions and to cover a greater portion of the world's fishers and fish workers. The ILO Convention No.188 aims 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, health protection, medical care and social security. The Convention applies to all fishers and all commercial fishing vessels, primarily on vessels of 24 metres in length and over but Member States may provide similar protection to fishers working on smaller vessels (section 2). It also includes flexibility clauses that allow Member States to either exclude inland waters and some categories of fishers or fishing vessels from its application, or to progressively implement some of its provisions with respect to some group of fishers or vessels (sections 3 and 4). No flexibility is permitted for vessels measuring 24 meters in length and over, for vessels that remain at sea for more than seven days, and for vessels that normally operate beyond the EEZ of the flag State. Convention No. 188 primarily targets flag States and stresses the need for the development of national legal frameworks by requiring States to adopt laws, regulations or other measures concerning issues essential to ensuring decent working conditions for fishers. The labour standards enshrined in the Convention may be incorporated either in generic labour laws that take into account the special characteristics of (or include a section on) work in fishing or fisheries-specific labour legislation.

According to Convention No. 188, the minimum age for a person to work as a fisher is 16 years, but it could be 15 for persons who are no longer subject to compulsory schooling. However, fishers must be 18 years or more to do work that is likely to jeopardize the health, safety or morals of young persons, or to do night work, unless exceptions are made under certain conditions. No fishers shall work on board a fishing vessel without a valid medical certificate issued by a duly qualified practitioner attesting to fitness to perform their duties, although exemptions may be granted for work on fishing vessels of less than 24 meters in length and those which do not remain at sea for more than 3 days. Fishing vessels shall be sufficiently and safely manned and carry a crew list. Fishers shall have a written work agreement that is comprehensible to them, and they shall be entitled to regular payment, periods of rest and repatriation upon termination of contract. The Convention further requires that accommodation on board fishing vessels be of sufficient size and quality and appropriately equipped.

¹⁸⁵ Adopted on 14 June 2007 and enters into force on 17 November 2017.

It adds that food carried and served on board and potable water shall be of sufficient nutritional value, quality and quantity and free of cost for the fisher. In relation to ensuring occupational safety and health, all fishing vessels are required to carry appropriate medical equipment and medical supplies and to ensure the provision of timely medical care on board or ashore. Fishers and their dependants shall also be entitled to social security benefits relating to sickness, injury or death under conditions no less favourable than those applicable to other workers.

In terms of implementation, the Convention No. 188 requires Member States to designate competent authorities and establish coordination mechanisms for labour administration and inspection. The competent authorities shall have power to grant exceptions, establish special conditions, issue certificates etc., whereas the qualified inspectors shall be authorized to carry out inspection and take action in case of infringements. The Convention requires larger fishing vessels or vessels on longer voyages to carry a valid document stating that inspection has taken place by a competent authority or on its behalf, while it allows flexibility with regard to inspection or certificate-related requirements for other vessels. Port States may conduct inspections on foreign vessels in their ports in the same way as theirs. If a port State receives a complaint or obtains evidence of infringements of requirements in the Convention, it may notify the flag State through a report detailing the infringements and if the infringements clearly present a hazard to the safety and health of the crew, it may take measures necessary to rectify the conditions.

The Work in Fishing Convention has received wide recognition as an international regulatory framework on labour in fisheries. On 19 December 2016, for example, the EU Council adopted Directive 2017/159 implementing the Agreement concerning the implementation of the ILO Work in Fishing Convention 2007, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF) and the Association of National Organizations of Fishing Enterprises in the European Union (Europêche). Based on the consideration of sea fishing as a cross-border sector under the flags of different Member States, the Directive aims to achieve the improvement of living and working conditions and the protection of health and safety of workers at Union level. While the social partners expect the national measures implementing this Directive to enter into force not earlier than on the date of entry into force of the Convention, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 15

November 2019. The Agreement applies to fishers working in any capacity under a contract of employment or in an employment relationship on board fishing vessels engaged in sea fishing, flying the flag of a Member State or registered under the plenary jurisdiction of a Member State, and to all other fishers who are present on the same vessel in order to ensure the protection of the overall safety and health. The Directive could extend the application of the Convention beyond the States that have directly ratified the Convention.

The ILO further adopted other instruments that provide voluntary guidance on how to implement the provisions of the Work in Fishing Convention at the policy, legislative, programme and operational levels. The Work in Fishing Recommendation of 2007 (R199) elaborates on how to meet the technical requirements of the Convention, whereas the 2010 *Guidelines for port State control officers carrying out inspections under the Work in Fishing Convention* are meant to assist in the effective and harmonized implementation of port States' responsibilities. Among other things, R199 suggests that in granting authorization to operate in their EEZs, over which they can exercise enforcement jurisdiction in relation to fisheries regulations, coastal States could require that all foreign fishing vessels comply with labour standards equivalent to the protections provided under the Work in Fishing Convention.¹⁸⁶

In addition to the above instruments applying directly to fishing vessels, there are others governing work on non-fishing vessels, which may apply to fishing or the transportation and processing of the catch. For example, the *Repatriation of Seafarers Convention 1987* (C166),¹⁸⁷ which establishes seafarer's right to repatriation and the related responsibility of the shipowner and the flag State, applies to every seagoing ship ordinarily engaged in maritime navigation, but leaves it up to the State to decide whether the provisions of the Convention shall be applicable to commercial maritime fishing. On the other hand, the *Maritime Labour Convention 2006*¹⁸⁸ excludes 'ships engaged in fishing or in similar pursuits' from its scope of application but its detailed provisions on seafarer's labour rights may be applied to work on board vessels that solely transport and/or process fish. Other treaties dealing with broader issues such as human trafficking and organized crime may also be relevant to work in fishing.

¹⁸⁶ ILO Work in Fishing Recommendation of 2007 (R199), Section 55.

¹⁸⁷ The Convention entered into force on 3 July 1999 and has been ratified by 14 States, but eight of the States have denounced.

¹⁸⁸ Adopted on 23 February 2006 and entered into force on 20 August 2013.

The UN Convention against Transnational Organized Crimes, for example, includes provisions applying to transnational trafficking and smuggling aboard fishing vessels.¹⁸⁹

Many of the treaties introduced above assume formal employment relationships, which, as mentioned earlier, are comparatively less common especially in small-scale fisheries (SSF). They typically apply to vessels that are bigger than the ones that are in prevalent use in SSF. It should be noted however that SSF could also be commercial. The ILO Work in Fishing Convention, for example, principally applies to all fishers and all fishing vessels engaged in commercial fishing operations, which may include small-scale fishers/vessels depending on the definition accorded to the sub-sector in the national jurisdiction concerned and the extent to which a Member State makes use of the flexibilities allowed by the Convention.

2.5.4. Legally non-binding instruments with labour standard components

In addition to the ILO recommendation and guidelines mentioned above, which could be considered as authoritative interpretations of the treaties they relate to, there are a number of “soft-law” instruments with labour standard components that are negotiated and adopted by States or intergovernmental entities. These include instruments that generally focus on the conservation and management of fisheries, but also include provisions on the livelihoods and labour conditions of people working in the sector.

The 1995 FAO Code of Conduct for Responsible Fisheries¹⁹⁰ primarily sets out principles and international standards for responsible practices with a view to ensuring the effective conservation, management and development of living aquatic resources. However, it also calls on States to ensure that “fishing facilities and equipment as well as all fishing activities allow for safe, healthy and fair working and living conditions and meet internationally agreed standards adopted by relevant international organizations” (section 6.17). With regards to fishing operations, the Code also addresses health and safety issues, education and training programmes, safety requirements for fishing vessels and crew members right to repatriation. The Code of Conduct applies to small-scale fisheries as well.

¹⁸⁹ Adopted on 15 November 2000, and entered into force on 29 September 2003.

¹⁹⁰ Adopted by the Twenty-eighth session of the FAO Conference on 31 October 1995.

The Code of Conduct is complemented by the 2014 FAO Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (the SSF Guidelines).¹⁹¹ The Guidelines aim, among others, to improve the socio-economic situation of fishers and fish workers and to promote ‘the contribution of small-scale fisheries to an economically, socially and environmentally sustainable future for the planet and the people’. Chapter 6 of the Guidelines encourages States to promote decent work in small-scale fisheries, including both the formal and informal sectors. It further provides for the need to eradicate forced labour, to address issues of occupational health, safety-at-sea and unfair working conditions in accordance with international human rights and labour standards, to promote professional and organizational development opportunities, in particular for more vulnerable groups, to extend social security protection to small-scale fishers and fish workers along the value chains, and to create the appropriate frameworks to allow for fair and adequate integration of migrants.

As indicated above, the FAO, the ILO and the IMO have jointly produced a number of voluntary instruments that address navigational, operational and occupational aspects of safety of fishing vessels and crew.¹⁹² The main instruments are:

- *Code of Safety for Fishermen and Fishing Vessels*, 2005;
- *Voluntary Guidelines for the Design, Construction and Equipment of Small Fishing Vessels*, 2005;
- *Safety Recommendations for Decked Fishing Vessels of Less than 12 meters in Length and Undecked Fishing Vessels*, 2012;
- *Implementation Guidelines on Part B of the Code, the Voluntary Guidelines and the Safety Recommendations*, 2014.

The *Code of Safety for Fishermen and Fishing Vessels* is divided into two parts. Part A provides guidance on the development of fishers’ education and training manuals and on the safety and health of crew members on board fishing vessels, whereas part B provides information on the design, construction and equipment of fishing vessels of 24 meters in length and over with a view to promote the safety of fishing vessels and safety and health of the crew. Part A of the Code provides general recommendations applying to all vessels regardless of size on duties and responsibilities of the flag State, the fishing vessel owners, skippers

¹⁹¹ Endorsed by the Thirty-first session of COFI in June 2014.

¹⁹² Developed by joint working groups of the three organizations and subsequently adopted by the Maritime Safety Committee of IMO, the Governing Body of ILO and the FAO Committee on Fisheries.

and crew members. It recommends to States to *inter alia* set a minimum age for entry into the fishing industry, to require mandatory pre-sea training courses or qualifications and certificates of competency, to make sure that crew members undergo medical examinations and hold fitness certificates, to ensure that appropriate medical supplies are carried on board, and to provide for regular inspections of fishing vessels.

Part B of the Code is wider in scope than the Cape Town Agreement and provides only for the minimum requirements to ensure the safety of fishing vessels.

The Voluntary Guidelines for the Design, Construction and Equipment of Small Fishing Vessels and *the Safety Recommendations for Decked Fishing Vessels of Less than 12 meters in Length and Undecked Fishing Vessels* provide guidance equivalent to part B of the Code for vessels of less than 24 meters in length but above 12 meters and vessels of less than 12 meters in length and undecked vessels, respectively. All three instruments apply to new decked fishing vessels, but where reasonable and practicable, they also apply to existing decked fishing vessels.

The provisions of the above instruments relate to technical determinants of seaworthiness as well as protection of the crew, emergency procedures and safety training, crew accommodation etc.

The Implementation Guidelines on Part B of the Code, the *Voluntary Guidelines and the Safety Recommendations* apply to all three instruments on the design, construction and equipment for fishing vessels and are intended to assist competent authorities to give effect to the provisions of the instruments. The Guidelines cover legal, administrative, strategic and operational requirements of safety, capacity-building, training of crew members, and enforcement of regulations. They further emphasize multi-stakeholder and inter-ministerial cooperation and coordination in the industry. A competent authority shall be empowered to establish standards and control compliance with safety requirements in the construction of vessels, to issue various kinds of certificates, and to appoint qualified and experienced inspectors or surveyors to perform inspections.

There is also the joint FAO/ILO/IMO Document for Guidance on Training and Certification of Fishing Vessel Personnel,¹⁹³ which provides for training and certification of fishing vessel personnel on small and large fishing vessels and

¹⁹³ Developed by a joint working group of the three organizations and approved by their governing bodies in 1985 and revised in 2000.

fishing on an industrial scale catching fish, whale, seals, walrus and other living resources of the sea. It is developed with a view to provide practical guidance for those developing, establishing or reviewing national schemes for the training and certification of fishing vessel personnel. On the other hand, eco-labelling and fishery certification schemes such as the Marine Stewardship Council (MSC) do not directly incorporate labour considerations in their understandings and assessments of “sustainable fishing”.¹⁹⁴

In addition to the substantive provisions on vessel safety and decent working conditions, the legally binding and non-binding instruments reviewed above envisage the designation of a competent authority with duties, responsibilities and the powers necessary to ensure compliance with their requirements. These include powers to: (1) grant exemptions and establish special conditions (e.g. authorize persons aged 15 to perform light work on board fishing vessels or establish special conditions for large seagoing vessels under the Work in Fishing Convention, sections 9, 14, 30 and 32); (2) appoint qualified inspectors and surveyors to conduct inspection and surveys and issue or endorse certificates, with “no more favourable treatment” in relation to the port State control (e.g. for compliance of a fishing vessel or crew with the applicable regulations and inspection or survey requirements under the Work in Fishing Convention, sections 40-43, Cape Town Agreement, section 4 of protocol, chapter I regulation II, VI, STCW-F Convention, section 8 reg. I/3, I/4, I/7); and (3) require repair to a vessel or to take such measures necessary to rectify any deficiencies and impose penalties including withdrawal, suspension and cancellation of certificates, in cases of non-compliance (e.g. the Work in Fishing Convention, section 43, the Cape Town Agreement section 4 of the Protocol and chapter I, reg. 6, the STCW-F Convention, section 8 and reg. I/4).

Finally, turning to labour protection in the aquaculture sector, work in aquaculture is not covered by the general maritime governance and vessel safety treaties. However, the labour-related provisions of some of the soft-law instruments such as the Code of Conduct for Responsible Fisheries and the SSF Guidelines apply to work in aquaculture. Moreover, the ILO Work in Fishing Convention and associated instruments may also be applied to aquaculture and some ILO standards that apply to work in the agriculture sector are understood as covering fish farming as well. Among the international instruments that specifically apply to aquaculture, the FAO Technical Guidelines on Aquaculture Certification,¹⁹⁵ which provide advice on developing, organizing

¹⁹⁴ Marine Stewardship Council. 2014. *MSC Fisheries Standard*, version 2.0. (Also available at <http://www.msc.org/documents/scheme-documents/fisheries-certification-scheme-documents/fisheries-standard-version-2.0>)

¹⁹⁵ Approved by the 29th session of COFI held in Rome from 31 January to 4 February 2011.

and implementing credible aquaculture certification schemes, include socio-economic aspects. The Technical Guidelines accordingly provide that workers should be treated responsibly and in accordance with national labour rules and regulations and, where appropriate, relevant ILO conventions governing issues such as child labour, working conditions, wages and benefits (FAO, 2011).

The above-reviewed international instruments cover a series of labour standards in the fisheries and aquaculture sectors. Some of these standards, for example those relating to vessel safety, are peculiar to fisheries, while others frame general labour standards in ways that take the special characteristics of labour in fisheries and aquaculture into account. The legally-binding instruments often require Member States to adopt legislative measures to give effect to their provisions, whereas the soft-law instruments, many of which are negotiated and agreed to by States, also provide strong substantive bases for the elaboration of labour policy, legislation and programmes. The instruments could inform generic labour and employment-related laws that either apply to all sectors or include specific provisions on work in fisheries and/or aquaculture. They may also be referred to in the development of thematic legislation such as those on occupational safety and health and social security, either in general or in the specific context of fisheries. Some provisions of these instruments could also be implemented through fisheries management and/or maritime safety legislation. The international standards may further be used in developing fisheries and/or aquaculture-specific labour legislation, in countries that seek to regulate work in the sector separately.

2.5.5. National legislation

AAs indicated earlier, work in fisheries and aquaculture may be governed by general labour and social security legislation and sectoral legislation of varying scope of coverage. Although generic or thematic labour legislation often applies to all or most sectors of work, it can omit to fully cover or accommodate the special characteristics of work in the fisheries and aquaculture sectors. This may necessitate the sector-specific determination or the extension of general labour and social security standards to these sectors. The social security system established by a general law may, for example, be extended to workers engaged in aquaculture and maritime fishing activities on board vessels, including to fisheries observers.¹⁹⁶

¹⁹⁶ Spain. 2015. Ley Nº 47/2015 - Ley reguladora de la protección social de las personas trabajadoras del sector marítimo-pesquero (providing for social benefits and health standards, among others, and referring to ILO standards).

While there are more elaborate Merchant Shipping laws that include detailed labour, vessel safety and employment-related provisions in many jurisdictions, they do not cover fishing vessels. However, such legislation in some countries provide for the application of their relevant provisions to fishing vessel workers.¹⁹⁷

The manner in which a country elaborates and frames legislation governing the fisheries and aquaculture sectors depends, among others, on the importance of the sectors within the national context, the issues that need to be regulated in the sectors, the legal tradition the country follows and its overall governance framework (Cochrane & Garcia, 2009). A complete regulatory framework for fisheries and aquaculture, including labour in the sectors, may not necessarily be found in one piece of legislation, but there is often an overarching law covering either or both of the two sub-sectors.¹⁹⁸ Principal fisheries legislation generally aims to ensure the conservation, management and development of fisheries, and to that effect it provides for institutional arrangements, the licencing and authorization regime for fishing and related activities, monitoring, control and surveillance (MCS) tools, enforcement mechanisms, and options for addressing offences. Such legislation cannot be expected to integrate the whole range of applicable labour standards, but it often includes some provisions relating to vessel safety and work in the sector. Legislation governing fisheries differs from aquaculture legislation (and also from agriculture and forestry laws) not only in relation to its specific work at sea and vessel safety provisions, but also in terms of its potential extraterritorial application for the regulation of high seas fishing by nationals and vessels flying the flag of a State.

In recent years, the labour protection gaps in the fisheries sector and the revelations of sub-standard working conditions in different parts of the world have led to the adoption of sector-specific labour legislation in some countries. Fish importing countries may also integrate labour-considerations into their laws governing the importation of fisheries products from source States. This section discusses the aforementioned three ways in which labour standards could be regulated in the fisheries

¹⁹⁷ For example, see Seychelles. 1995. Merchant Shipping (Manning and Certification) Regulations, Sections 130 and 242 Merchant Shipping Act of 1995, Section 3; Kenya. 2009. Merchant Shipping Act (Cap. 389, consolidated in 2012), Section 260 (authorizing the minister to prescribe safety requirements in respect of fishing vessels with due regard to due regard to the Torremolinos Convention for the Safety of Fishing Vessels, 1977).

¹⁹⁸ For example, compare Kenya. 2016. The Fisheries Management and Development Act No. 35 of 2016, and Canada (Québec). 2016. Act Respecting Commercial Aquaculture (R.S.Q.c. A-20.2).

and aquaculture sectors, namely, through principal fisheries and/or aquaculture laws, through sector-specific labour legislation and market States' legislation.

2.5.6. Fisheries and aquaculture legislation

The analysis of fisheries and/or aquaculture legislation from different countries shows that laws governing these sectors may address labour and employment issues in three different ways. Firstly, they may incorporate general livelihoods-related provisions pertaining to work in the sectors; secondly, they may include some relatively direct provisions on vessel safety and working conditions; and finally they may provide for institutional frameworks that accommodate labour authorities.

The improvement of the well-being and standard of living of fishers and fish workers, or more generally ensuring social sustainability, form part of the provisions defining the overall aims of fisheries and aquaculture legislation.¹⁹⁹ Public health, educational and welfare measures, special protection to the interests of artisanal fisheries and fishing communities, and support to producers' organizations, women, persons with disabilities and child-headed households may be identified as some of the actions to be taken to achieve livelihood-related goals.²⁰⁰ Such measures may also range from making sure that fisheries and aquaculture activities do not adversely affect the livelihoods of local or coastal communities to providing alternative sources of livelihoods to those re-organized out of capture fisheries.²⁰¹ Some of these measures relate to labour standards such as those on non-discrimination, rural workers organizations and social security. In some countries, the exploitation of fisheries resources and/or working on fishing vessels within their territorial waters and EEZ is reserved exclusively for their nationals.²⁰² Together with provisions

¹⁹⁹ For example, see Japan. 2001. Fisheries Basic Act (No. 89), amended in July 2005, Section 30; Thailand. 2015. Royal Ordinance on Fisheries, B.E. 2558, Sections 22, 73 (under aquaculture promotion); Mali. 2017. Ordonnance n°. 2017-008/P-RM DU 21 Fevrier 2017 Portant Creation de l'Office de Developpement de la Peche et de l'Aquaculture dans le Delata Interieur du Niger.

²⁰⁰ For example, see Thailand. 2015. Royal Ordinance on Fisheries, B.E. 2558, Section 4; South Africa. 2015. Regulations Relating to Small-scale Fishing (under the Marine Living Resources Act No. 18 of 1998); Indonesia. 2004. Fishery Law No 31/2004, Section 60; Viet Nam. 2003. Fisheries Law.

²⁰¹ For example, see Indonesia. 2004. Fishery Law No 31/2004, Section 63; and Viet Nam. 2003. Fisheries Law, Section 13.

²⁰² The Philippines. 1998. The Philippine Fisheries Code (Republic Act No. 8550), Section 5; Indonesia. 2004. Fisheries Law No. 31/2004, Section 29.

determining fisheries management tools, such as total allowable catch, fishing rights and communal rights, such exclusive entitlements closely relate to labour and employment in the sectors.

Fisheries and aquaculture legislation may go further to include specific objectives or provisions on preventing all forms of forced labour, ensuring legalised working conditions (e.g. requiring labour contracts), and extending the benefits of labour and social security protection to fishers and fish workers.²⁰³ Particulars may be defined with respect to some labour standards such as working hours and overtime. Legislation may further devise ways of applying national labour standards to foreign vessels operating within the EEZ of a State, including by making respect for human rights and labour rights part of the terms and conditions of access agreements to fish in the EEZ. New Zealand's unique legislation²⁰⁴ that requires foreign-owned fishing vessels operating in its EEZ to re-flag to New Zealand starting from 2016 is an example of extensive coastal State action to regulate the application of labour standards on board fishing vessels. Re-flagging gives the authorities full jurisdiction over employment, health and safety conditions on vessels fishing in New Zealand's EEZ, and the fishing vessels would have to fully comply with the Health and Safety at Work Act 2015, ensuring fair standards for all fishing crews working in New Zealand waters.

Principal fisheries legislation often provides for requirements of vessels and fishers safety, including provisions such as medical supplies and life-saving devices. Occupational safety, hygienic and accident aid requirements, as well as proper working conditions for seamen and fishers, may form part of the requirements for fishing licence and operations.²⁰⁵ Such legislation defines the responsibilities and duties of ship owners, captains and crew with respect to safety of vessels and crew members. The requirements may also include licencing and registration of crew and sanctions against employing non-licensed fishers or fish workers.²⁰⁶ Such

²⁰³ Thailand. 2015. Royal Ordinance on Fisheries, B.E. 2558, Sections 4, 11; The Philippines. 1998. The Philippine Fisheries Code (Republic Act No. 8550), Sections 25, 104.

²⁰⁴ New Zealand. 2014. Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act 2014, Section 103A(4). The requirement is in line with the Work in Fishing Recommendation R199, Section 55.

²⁰⁵ Thailand. 2015. Royal Ordinance on Fisheries, B.E. 2558, Section 37; The Philippines. 1998. The Philippine Fisheries Code (Republic Act No. 8550), Section 37.

²⁰⁶ Thailand. 2015. Royal Ordinance on Fisheries, B.E. 2558, Section 11; The Philippines. 1998. The Philippine Fisheries Code (Republic Act No. 8550), Section 104.

provisions may further require accident insurance for crew members.²⁰⁷ The Kenyan Fisheries Management and Development Act, for example, requires commercial fishing and aquaculture operators to comply with legally defined standards of navigation and the safety of vessels at sea as well as standards relating to working conditions on board fishing vessels.²⁰⁸ Like the legislation of many other countries, the Act further requires the operator and licence holder in respect of any vessel on which an observer is placed to provide full board, accommodation and access to any facilities and amenities and a safe work area. The inclusion of compliance with safety and labour standards as part of the preconditions for authorization, and the related requirements of furnishing information facilitate the subsequent implementation of MCS and enforcement measures.

Other labour standards that may be regulated by fisheries and aquaculture legislation include the freedom of association and vocational guidance and training. This can be done through provisions on the promotion of and support to fishers or fisherfolk cooperatives and associations, including through education and training,²⁰⁹ which can in turn be related to fishing rights allocations and participatory management schemes. States may also separately undertake to provide and/or facilitate (professional) trainings to fishers and fishing technicians.²¹⁰

In terms of the institutional structures for implementation, labour protection in fisheries and aquaculture is clearly a matter that cuts across the mandates of various public authorities. General issues of labour and employment relations are normally addressed by the ministry in charge of labour, whereas technical issues pertaining to the fisheries and aquaculture operations could be handled by the ministry in charge of fisheries and/or aquaculture. Vessel safety may bring in the transport ministry while port control measures imply the role of the port administration authorities. Health and training certifications may fall under the authority of yet other ministries. The determination of the “competent authority” for the implementation of labour standards in the fisheries and aquaculture

²⁰⁷ Viet Nam. 2005. Decree No. 6612005IND-CP of 19 May 2005 on ensuring safety for people and ships engaged in fisheries activities (adopted pursuant to the Vietnamese Fisheries Law (2003)), Section 5.

²⁰⁸ Kenya. 2016. The Fisheries Management and Development Act No. 35 of 2016, Section 102.

²⁰⁹ Japan. 1948. The Fisheries Cooperative Association Law (providing the legal foundation of fishery cooperative associations); The Philippines. 1998. the Philippine Fisheries Code, Section 45; Indonesia. 2004. The Indonesian Fishery Law No 31/2004, Section 60; South Africa. 2015. Department of Agriculture, Forestry and Fisheries. Regulations Relating to Small-scale Fishing, 2015 (under the Marine Living Resources Act No. 18 of 1998).

²¹⁰ Timor-Leste. 2004. Decree-Law No. 6/2004 on the legal regime for the management and regulation of fisheries and aquaculture, Section 104.

sector, as per the requirements of the international instruments reviewed in the previous section, should take this cross-sectoral nature of the issues into account. In addition to a specific competent authority, which may take the form of a specialized agency that combines the various specialized competencies, fisheries and aquaculture legislation should put in place an inter-sectoral or inter-ministerial mechanism to coordinate the different aspects of governance and development in the sector.

In many countries, the principal fisheries legislation creates or designates a fisheries management entity, which may comprise a collective decision-making or advisory body (e.g. board of directors, council or committee) with administrative, technical and operational arm or 'secretariat' of the entity controlled by an executive head (Cochrane & Garcia, 2009). Some legislation provides specific details as to the (sectoral) composition of the collective body, while other legislation leaves membership open. Pertinent legislation from the Philippines and Thailand, for example, establishes inter-ministerial fisheries bodies with decision-making powers that clearly include the ministries in charge of labour.²¹¹ The latter further includes professional associations such as the National Farmers' Council and establishes the protection of rights and the promotion of occupation and livelihood of Thai fishers as an underlying goal of aquatic resources management.²¹² As an example of open-ended membership, the Namibian Inland Fisheries Resources Act (2003) allows the Minister to appoint a person with relevant expertise on issues requiring consultation with the multi-stakeholder Inland Fisheries Council.²¹³ This allows the inclusion of labour experts or authorities into the Council where labour issues in inland fisheries are at stake. Some countries have further established inter-ministerial arrangements with the task of coordinating the fight against IUU Fishing.²¹⁴ Including the ministry in charge of labour into such arrangements could help bring working conditions squarely within the agenda of IUU fishing.

Last but not least, fisheries and aquaculture legislation usually establish inspection regimes. Fisheries legislation often provides for the inspection of safety and security of life and vessels at sea, which as indicated above, relates closely to fishers' working and living conditions. This would of

²¹¹ Thailand. 2015. Royal Ordinance on Fisheries, B.E. 2558, section 13; The Philippines. 1998. The Philippine Fisheries Code (Republic Act No. 8550), Section 129.

²¹² Thailand. 2015. Royal Ordinance on Fisheries, B.E. 2558, Sections 26-27 (the Provincial Fisheries Committee would include representatives of local fishing community organisations).

²¹³ Namibia. 2003. Namibian Inland Fisheries Resources Act, Sections 3 and 4.

²¹⁴ For example, Indonesia. 2015. The Decree of the President of the Republic of Indonesia No. 115 of 2015 on Task Force to Eradicate Illegal Fishing (does not include the ministry in charge of labour).

course supplement labour inspection that is provided for in a principal labour or occupational safety and health law that may apply to various sectors, including fisheries. In Brazil, for example, the Ministry of Labour and the Ministry of Defence have an agreement to exchange information on safety and navigation irregularities detected during inspections (ILO, 2015c). The differing size and facilities of vessels and the differences between subsistence and commercial fishing may require nuances in inspection frameworks and certain circumstances may be best served by adopting a flexible model such as mobile inspection arrangements.

Labour and safety issues may be integrated into the determination of port state measures, the requirements for conducting inspection and the documents to be presented by the owner or master of a fishing vessel upon demand. Thailand's 2015 Royal Ordinance on Fisheries, for example, requires the submission to Port Controlling Centres of documents on the details of outgoing seamen on board, work permit for foreigners, evidence of appropriate systems for ensuring occupational safety, hygiene and wellbeing of seamen, the absence of which could lead to the detention of the vessel.²¹⁵ States are increasingly instituting multi-disciplinary inspection mechanisms that enable the integrated inspection of fisheries, vessel safety and labour conditions. This may be done based on legal and extra-legal instruments. In the Netherlands, for example, the Fisheries Authority took the initiative to set up a joint project with the Tax and Customs Administration, the Fiscal Information and Investigation Service, the Social Security Authority and the Labour Inspection Authority with the objective of improving long-term compliance with various pieces of legislation (fisheries regulation, tax law, labour law etc.) throughout the fisheries sector (ILO, 2015c). The effectiveness of integrated inspection of labour and fisheries may be facilitated by measures against IUU, such as a moratorium on transshipment at sea, a measure which has been introduced by a number of countries.

²¹⁵ Thailand. 2015. Thailand's Royal Ordinance on Fisheries, B.E. 2558, Sections 82-83.

²¹⁶ Adapted from Cochrane, K.L., Garcia, S.M. (eds.). 2009. A fishery manager's guidebook, 2nd edition, Chapter V: Legal Aspects, by Kuemlangan, B.. Rome, FAO & Wiley-Blackwell. pp. 105.

Table 5 Matters typically addressed by principal fisheries legislation and entry points for labour standards²¹⁶		
<p>While the exact form and content of fisheries laws vary depending on the legal tradition, history, philosophy and practice in a given state, the following provides a typical outline of matters addressed by a general fisheries legislation:</p>		
<p>(a) Objectives States general development policies and management objectives of policies and the law.</p>	◀	<p>improve well-being and standard of living of fishers and fish workers.</p>
<p>(b) Definitions Defines terms and phrases used to assist in interpretation and application of the law.</p>		
<p>(c) Scope Defines the extent of application of law [including extraterritorial application], e.g. to nationals or persons within the territory, fisheries waters or types of fisheries.</p>		
<p>(d) Administrative and management institutional framework Establishes or designates the public management authority, executive head and staff, boards, committees, etc. and their powers and functions.</p>	◀	<p>include ministry of labour and social security at least in advisory body.</p>
<p>(e) Management approaches, principles and planning Stipulates specific management aspirations or management approaches, guidelines, management plans, including formulation, content and endorsement. A different or specific fishery that is to be managed and the approach to be used may also be described.</p>		

Table 5 Matters typically addressed by principal fisheries legislation and entry points for labour standards²¹⁶		
<p>(f) Statement of general fishing access and entitlements Sets out the prerequisites for fishing and the persons or groups of persons who can participate in fisheries, e.g. nationals, locally based foreign operators/vessels or foreign vessels.</p>	◀	Promotion of fisherfolk cooperatives and associations, vessel safety and other decent work standards as preconditions of access, license or permit.
<p>(g) Management tools and related processes Establishes and describes the management tools to be utilised for regulating input and output, such as concessions, licences and other authorisations, fishing rights, quotas including individual transferable quotas and spatial and temporal limits.</p>		
<p>(h) Monitoring, Control and Surveillance (MCS) (Bio-economic and enforcement information requirements) Establishes and defines the MCS schemes and tools including scientific observer programmes and inspection schemes, procedures, powers and rights, for example, rights of observers or inspectors to access all parts of the vessel and stop, board and inspect vessels.</p>	◀	Observer, inspection, port state and enforcement schemes include labour conditions or coordination with labour and occupational safety and health authorities.
<p>(i) Prohibitions, violations and sanctions and enforcement processes Creates or describes prohibitions and violations, the administrative or criminal enforcement process to deal with violations including evidentiary provisions. This part of the law also establishes and describes sanctions for violations.</p>		
<p>(j) Alternative approaches to management Establishes the ability for the State or management authority to delegate, devolve or enter partnership or cooperative arrangements for management or to engage in other management approaches as appropriate.</p>		
<p>(k) Regulations Sets out requirements including standards, restrictions, procedures etc. that are too elaborate to be stated in principal legislation but are required for the implementation of the principal law.</p>	▶	Detailed safety and labour standards in implementing legislation

2.5.7. Legislation governing labour in fisheries

Considering that fishers and fish workers are a group of people with particular needs and interests, States may decide to regulate their working conditions and welfare through sector-specific labour and social security legislation. Such legislation differs from general fisheries and aquaculture legislation in that it focusses specifically on the people driving their livelihood from the sector. National laws in this category include legislation that is intended to provide support to fishers and fish workers and legislation that specifically regulates labour in fisheries. The former type of law typically integrate labour standards such as those relating to freedom of association, vocational guidance and training and social security.

A number of countries have issued fisheries-specific welfare legislation governing issues ranging from general improvement of workers' conditions in the sector to social protection for fishers that are in poverty or at risk of falling into poverty. Many of these laws are geared towards the protection of small-scale fishers. As such, it may aim to support or empower fishers and fish workers by providing fishing, fish farming, processing and marketing infrastructure and facilities and incentives such as subsidies and removal of licencing fees and levies on businesses.²¹⁷ It may also include the promotion of and institutional support to the creation of fishers associations, cooperatives or welfare societies with functions that extend from availing fishing implements and related facilities and subsidies to implementing social security schemes that include payments for accident relief, incapacity, disability, old age etc.²¹⁸ While other positive support may include vocational guidance, education and training, fishers and fish workers may further be protected by the requirement of a written work or production sharing agreement.²¹⁹ Legislation may further provide for the duties of government and fisheries businesses to provide protection to fishers and fish workers from risks in the form of insurance against occupational accident and loss of life and to guarantee the safety of fishers while fishing.²²⁰

²¹⁷ For example, see Indonesia. 2016. Law of the R.I. No. 7/2016 on the Protection and Empowerment of Fishermen, Fish Raisers and Salt Farmers, Sections 18-25, 36.

²¹⁸ India (Kerala). 1981. Fishermen Welfare Societies Act, 1980 (Act 7); India (Meghalaya). 1987. Fisheries (Welfare of Fishermen) Rules.

²¹⁹ Indonesia. 2016. Law of the R.I. No. 7/2016 on the Protection and Empowerment of Fishermen, Fish Raisers and Salt Farmers, Sections 28-29.

²²⁰ Indonesia. 2016. Law of the R.I. No. 7/2016 on the Protection and Empowerment of Fishermen, Fish Raisers and Salt Farmers, Sections 30-34, 40.

Legislation in some countries introduce a contributory or non-contributory social protection scheme for people that depend on fishing. Grants may be provided either as fishing ban subsidies or generally to prevent fishers and their families from falling into poverty or extreme poverty.²²¹ They may also take the form of a welfare fund, with contributory dimensions, that is meant to support fishers and their families.²²² The administration of such subsidy schemes or welfare funds may be vested in a technical secretariat (as in Paraguay) or a board composed of representatives of government ministries, organizations of fishers, fishing communities and fishing industry (as in Mauritius). The latter form of institutional arrangement could bring together the public authorities in charge of the fisheries, labour and social security sectors.

In light of the relatively recent revelations of human trafficking, child labour, forced labour and other sub-standard labour practices in some businesses engaged in fish harvesting and processing, (ILO, 2013), some countries have adopted more detailed legislation to specifically govern labour and human rights in the fisheries sector. In Thailand and the Philippines, the legislation takes the form of a regulation issued by the ministry in charge of labour under mandate provided in the principal labour laws, whereas in Indonesia, the Ministry in charge of fisheries issued a regulation on human rights in fisheries without referring to a clear mandate under the main labour law of the country.

While the adoption of the two above-mentioned legislative examples were both triggered by similar policy objectives, different approaches were followed. The Thai Regulation refers to a list of labour standards in the principal Labour Protection Act of 1998, which it stipulates apply to work in fisheries, and supplements them with a list of employer obligations regarding the employment, working and living conditions of fishers.²²³ Its scope of application is not defined clearly, but its provisions indicate that it is meant to regulate any work on sea fishing or related vessels under employment arrangement, with some of its provisions setting a minimum number of employees for their application.

²²¹ For example, see Paraguay. 2014. Decreto N° 2319 – Créase el Programa de Asistencia a Pescadores del Territorio Nacional, dirigido a familias en situación de pobreza o extrema pobreza durante la vigencia de la veda pesquera; and Paraguay. 2016. Decreto N° 6193 – Por el cual se amplía el Decreto N° 2319/2014, que crea el Programa de Asistencia a Pescadores del Territorio Nacional, dirigido a familias en situación de pobreza o extrema pobreza durante la vigencia de la veda pesquera.

²²² For example, see Mauritius. 2000. The Fishermen Welfare Fund Act 2000 (Act No. 28 of 2000); and the Contributory Scheme for Bank Fishermen Regulation 2006 (GN 104/2006) that is issued under Sections 11 and 18 of this Act.

²²³ Thailand. 2014. Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2557.

On the other hand, the Philippines Regulation provides by far the most detailed labour standards on the requirements of employment on commercial fishing vessels, the rights of fishers, the duties of employers and the mechanisms of labour administration and inspection. It applies to fishing vessel owners, fishers and captains or masters on board Philippine-registered fishing vessels engaged in commercial fishing operations in Philippine and international waters. Vessels are classified into small-scale, medium-scale and large-scale, with minimum of 3.1, 20.1 and 150.1 gross tonnage, respectively, for the purposes of applying the occupational safety and health standards and compensation schemes.²²⁴ While this may cover some commercial small-scale fishers, the regulation prescribes the conduct of a study to determine the appropriate compensation scheme (including minimum wage) for small-scale fishing operations.²²⁵

The Indonesian Ministerial Regulation follows a different approach that combines the UN “protect, respect and remedy” framework for business and human rights with a certification system that includes a detailed list of human rights and labour standards.²²⁶ It requires all fisheries businesses to apply a Fisheries Human Rights System composed of human rights policy, human rights due diligence and remedies, to appoint a coordinator to implement this system, and to undergo human rights certification by presenting the necessary documents to a team under the Minister, which shall grant, suspend or revoke certificates.²²⁷ This Regulation applies to Indonesian or foreign nationals, Indonesian or foreign-flagged vessels or fishing companies conducting business activities (pre-harvest, production, processing and marketing) in the fisheries management area of the Republic of Indonesia, and Indonesian-flagged vessels operating outside this area. In terms of size, the regulation governs vessels that are licenced by the Ministry of Fisheries, which are those above 30 gross tonnage. Much of the small-scale fisheries falls out of the scope of the law. The Ministerial Regulation on human rights certification was supplemented

²²⁴ The Philippines. 2016. Rules and Regulations Governing the Working and Living Conditions of Fishers on Board Fishing Vessels Engaged on Commercial Fishing Operation. Department of Labour and Employment, Order No. 156-16. (Also available at https://www.dole.gov.ph/files/Dept%20Order%20No._%20156-16.pdf, Sections 2 and 4).

²²⁵ The Philippines. 2016. Rules and Regulations Governing the Working and Living Conditions of Fishers on Board Fishing Vessels Engaged on Commercial Fishing Operation, Rule V.

²²⁶ Indonesia. 2015. Sistem Dan Sertifikasi Hak Asasi Manusia Pada Usaha Perikanan (“Regulation of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia on the Certification System and Human Rights in the Fishing Business”), NOMOR 35/PERMEN-KP/2015. (Also available at http://infohukum.kkp.go.id/index.php/hukum/download/783/?type_id=1).

²²⁷ Indonesia. 2017. Regulation of the Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia No. 2/PERMEN-KP/2017 on Requirements and Mechanism of Human Rights Certification for Fisheries.

in 2016 by another Ministerial Regulation that elaborates, among others, the types, jurisdictional elements, terms and conditions, rights and obligations and implementation of Fishers' Work Agreement.²²⁸

Among the main labour standards provisions in the fisheries-specific labour legislation are:

- a. Fishers and fish workers must be at least 18 years of age for activities that are likely to jeopardize the health, safety or morals of young persons;
- b. Prohibition of forced labour, including abuse of vulnerability, fraud, restriction of movement, physical and sexual violence, intimidation and threats, withholding of wages and debt bondage;
- c. The rights of fishers and fish workers to form or join labour organizations, associations or cooperatives of their own choice;
- d. Requirements of valid medical certificate and completion of basic safety and health training for employment;
- e. Employment must be made under a work agreement detailing working conditions, rights and duties, payments and benefits in a language comprehensible to the fisher or fish worker;
- f. Requirement to put in place occupational safety and health and accident prevention mechanisms, including personal protective equipment and first aid services;
- g. Regular and appropriate payment of (above minimum) wages, normally once a month;
- h. Entitlements for adequate rest period, overtime pay, paid holiday and sick leave and other social security benefits;
- i. Provision of adequate accommodation, food, water, medical care and health protection; the duties of vessel owner or master or captain to keep record of crew list and of contracts on board;

²²⁸ Indonesia. 2016. Regulation of the Ministry of Maritime Affairs and Fisheries Republic of Indonesia No. 42/PERMEN-KP/2016 on Fishers' Work Agreement for Fishing Vessel Seafarer (envisaged under Law No. 31 of 2004 on Fisheries as amended through Law No. 45 of 2009 (Section 42(2)(e)) and Minister Regulation No. 35/PERMEN-KP/2015 on System and Human Rights Certification in Fisheries Business (Section 5(2)(c)).

- j. Inter-sectoral and inter-institutional mechanisms for the implementation of the standards, including certification upon assessment to determine compliance with general labour standards and occupational safety and health standards, and inter-disciplinary inspection that engages fisheries and labour authorities; and
- k. Sanctions for non-compliance with labour standards.

Regardless of the differences in legislative approaches and scope of application, fisheries-specific labour legislation provides by far the most direct form of regulating work in fishing. While the laws reviewed above do not fully cover work in small-scale fisheries, the standards they enshrine on decent work, safety and social security can be used for the protection of fishers and fish workers in the sub-sector. The under-regulation of small-scale fisheries in a number of countries and the difficulty of applying the exact same standards of labour and safety to vessels of differing sizes are issues that arise also in the context of fisheries-specific labour legislation.

2.5.8. Market states legislation on fisheries

States that host big markets for fisheries products may adopt regulatory frameworks of differing coverage on supply chains or on more general policies against human trafficking and IUU fishing. The standards may relate to product qualities as well as the ways in which they are produced, including labour and human rights conditions. Compliance with the relevant legal standards of the source country could be made a condition of access to market. To the extent that such legislation applies to modes of production in source countries, it at least in principle cover the practices of a range of actors including in small-scale fisheries, although the focus is often on larger undertakings.

Legislation regulating supply chains may make compliance with labour standards part of important disclosures and reporting, or a basis of legal enforcement actions. The U.S. Trade Facilitation and Trade Enforcement Act of 2015,²²⁹ for example, prohibits the importation of products made, produced or manufactured by forced or indentured labour in any foreign country, and requires the U.S. Customs and Border Protection to annually report the measures it has taken to prevent such goods from entering U.S. supply chains. This was preceded by the 2010 California Transparency

²²⁹ H.R. 644 (meant to close loopholes in Section 307 of the Tariff Act of 1930).

in Supply Chain Act (SB 657), which requires consumer products retail and manufacturing companies with sales of USD 100 million or more in California to disclose their efforts, if any, to eliminate slavery and human trafficking from their supply chains. The human rights and labour standards may also be made part of public procurement laws. In September 2012, for example, the United States introduced a presidential executive order on “Strengthening Protections Against Trafficking in Persons in Federal Contracts”, which prohibits human trafficking activities not just by federal prime contractors, but also by their employees, subcontractors, and subcontractor employees (ILO, 2015c). If any such entities have trafficking-related issues, including in the context of fisheries, then they cannot be engaged in federal contracts.

Relevant legislation may also simply aim to prevent serious cases of non-compliance with labour standards and to protect victims of such practices, and at the same time make those rules part of a requirement of transparency in value chains. For example, the UK Modern Slavery Act 2015 makes it an offence to hold another person in slavery or servitude, or require another person to perform forced or compulsory labour, under circumstances that she/he knows or ought to know, and to arrange or facilitate the travel of another person with a view to that person being exploited. It requires any business or part of a business, including foreign companies and subsidiaries that engages in business (e.g. in the production or selling of fish and fisheries products) in the UK, and has a global turnover of GBP 36 million or more, to produce and publish an annual slavery and trafficking statement. The statement should set out the steps the business has taken to ensure there is no slavery in any part of its business, including in its supply chains. This would help ensure that foreign fisheries businesses and operators connected to the UK supply chains do not engage in human trafficking, compulsory labour and other substandard practices. Failure to comply with the disclosure requirement could result in a High Court injunction requiring compliance, and potentially an unlimited fine. The Act further empowers law enforcement officers at sea to stop, board, search, divert and detain a vessel or make arrests.

The implementation of the above legislation may impact on the record of compliance with labour standards along the fish value chains, including in source countries. Similar results could be achieved through mechanisms that are put in place to fight against human trafficking and IUU fishing. The US Department of State publishes the yearly Trafficking in Person (TIP) Report, which is related to the Trafficking Victims Protection Act of 2000, under which it places each country onto one of three tiers based on the extent

of their governments' efforts to comply with the "minimum standards for the elimination of trafficking", including international standards relating to the use of forced labour or child labour. The TIP report addresses the seafood sector in considerable detail, and the placement of a country in lower tier, especially, in a downgrade may trigger pertinent legislative and/or institutional reform. The downgrading of Thailand to tier 3 in 2014, with the observation that a significant portion of labour trafficking victims are exploited in commercial fishing and fishing-related industries, among others, led to the establishment of port control and inspection mechanisms through coordination with various public authorities including the department of labour (ILO, 2016).

As indicated earlier, the definition of legality in the context of the fight against IUU fishing could include compliance with labour laws. According to the IUU Regulation of the European Union (EU),²³⁰ only marine fisheries products validated as legal by the competent flag State or exporting State can be imported to or exported from the EU. Operators from the EU who fish illegally anywhere in the world, under any flag, face substantial penalties proportionate to the economic value of their catch, which deprive them of any profit. From the perspective of applicable law, illegal fishing is defined in the Regulation as fishing activities conducted either by national or foreign fishing vessels in maritime waters under the jurisdiction of a State in contravention of its laws and regulations, or by fishing vessels in violation of national laws or international obligations. Legality may therefore be determined based on compliance with labour and employment-related laws that apply within the jurisdiction of the State where fishing and related activities are conducted. A system is put in place whereby an IUU fishing vessel list is issued regularly. The EU Commission engages in formal dialogue with countries that are "pre-identified" or have been issued with a EU "Yellow Card", i.e. a warning that strong action is needed to fight IUU fishing. While the Commission lifts the pre-identification status or issues a "green card" to countries that show significant progress, it proceeds to banning the import of fisheries products from countries that have not shown the necessary commitment (identification and listing or "red card"). This "identification and carding" procedure, which has contributed to regulatory and other reforms in some countries such as Ghana and Papua New Guinea, could bring labour protection to the fore.

²³⁰ Council of the European Union. 2008. Council Regulation No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (entered into force on 1 January 2010). Commission Regulation (EC) No. 1010/2009 of 22 October 2009 lays down detailed rules for the implementation of Council Regulation No. 1005/2008.

In addition to the legislation relating to supply chains in fisheries products, the United States has numerous legal tools to address IUU fishing, (United States Department of Commerce, 2017), which may be used for the purpose of labour protection. These include the Lacey Act, which was discussed in Section 2.4.3, and the High Seas Driftnet Fishing Moratorium Protection Act 1995, which was amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) of 2006, the Shark Conservation Act of 2011, the 2015 IUU Fisheries Enforcement Act and the Ensuring Access to Pacific Fisheries Act of 2016.

The Lacey Act prohibits interstate and foreign trafficking in fish or wildlife taken in violation of domestic or foreign law, and the import, export, transport, sale, possession, or purchase of any fish or wildlife taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law. However, as stated earlier, the Act does not explicitly include labour and employment-related laws among the legislation to be considered in determining the legality of the pertinent activities and products. The Moratorium Protection Act directs the Secretary of Commerce to seek the adoption of lists that identify fishing vessels and vessel owners engaged in IUU fishing, and to adopt and expand the use of market-related measures to combat IUU fishing. The regulatory definition of IUU fishing published in 2013 under the Act focusses on conservation, vessel monitoring procedure and fishing practices, and does not expressly require compliance with national and/or international labour standards. The MSRA also prohibits imports of fish “taken, possessed, transported, or sold in violation of any foreign law or regulation or any treaty or in contravention of any binding conservation measures adopted by an international agreement or organization to which the United States is a party.” Subject to the data confidentiality provisions of the Act and other federal law, the competent authority could provide information regarding entries of seafood products to aid in the investigation or prosecution of labour crimes by one of the U.S. government agencies that has the mandate and authority to do so.²³¹

The Moratorium Protection Act, as amended by the IUU Fisheries Enforcement Act and by the Ensuring Access to Pacific Fisheries Act to the Moratorium Protection Act, requires the National Oceanic and Atmospheric Administration, under the Department of Commerce, to produce a biennial Report to Congress that lists nations the United States has identified for IUU fishing and/or by catch of protected species and shark catches on the high

²³¹ USA. 2016. Magnuson-Stevens Fishery Conservation and Management Act; Seafood import monitoring program, A Rule by the National Oceanic and Atmospheric Administration, Federal Register, Vol. 81 No. 237, 12 September 2016, Comment 11.

seas, for nations that do not have regulatory measures comparable to the United States. Once a nation is so identified in a report to Congress, based on information gathered from various sources regarding the activities of its vessels and cross-checked with the nation concerned, the United States works collaboratively with the nation to address the activities for which it was identified. Then, certification decisions are issued based on the actions taken by the nation. If the nation receives a negative certification, sanctions could be imposed, including prohibitions on importation of certain fish and fish products into the United States, denial of port privileges, and other measures, under specified circumstances. The identification, collaboration and sanction regimes should take into account the compliance of vessel operators with the labour laws of the State within the jurisdiction of which they conduct fishing and related activities.

Last but not least, the indiscriminate application of IUU standards to different fishing operators and areas is criticized for putting small-scale fisheries and generally unregulated or under-regulated fisheries into relative disadvantage. This is because they would face the consequences or sanctions of IUU fishing in the absence of legal and regulatory regimes that effectively apply to them. The motive and practice of market States in “imposing” regulatory regimes and standards applying to the fisheries of other States are also sometimes questioned, including with views that such frameworks could maintain or result in comparative advantages to the fisheries businesses of the market States. Nevertheless, the balanced and context-sensitive implementation of market State legislation, including IUU frameworks, and the inclusion of labour considerations in there could contribute to better legal protection to labour in fisheries and aquaculture. The regulatory reforms some of the schemes have triggered in source countries is one testament to their actual and potential positive role.

Concluding remarks

The agriculture, forestry and fisheries sectors host critical labour issues, not only in terms of the hazards faced by workers in these sectors, the sheer number of children involved and the prevalence of practices of human trafficking and forced labour in some sub-sectors, but also in relation to the unionisation of workers to promote and protect their rights. The present legislative study seeks to address an outstanding regulatory gap that emanates from the limitations of general labour and employment-related laws in terms of taking into account the peculiarities of work in agriculture, forestry and fisheries in their scope or implementation on the one hand, and the weakness of sectoral legislation in terms of integrating labour standards and protection mechanisms on the other. Underscoring that there are various ways in which labour issues in the aforementioned sectors could be addressed and also acknowledging that sectoral legislation may not integrate the whole gamut of internationally accepted labour standards, the study identifies some legislative areas in which specific labour standards could be integrated relatively more directly. In doing so, it identifies the prevalence of informality in the sectors as the main challenge to labour regulation. It also lays relatively more focus at the production level in cognizance of the differences in labour standards that apply to the various levels along the value chain.

Under the category of agricultural legislation, the study demonstrates how some specific labour standards could be integrated into laws governing agricultural product quality and strategic commodities, contract farming, pesticide management and, to some extent, animal production. It identifies actual and potential entry points for labour standards in such legislation, including in provisions on production methods and criteria of certification of quality products, as a condition for production support to certain commodities, as part of the responsibilities undertaken by the parties to production contracts, in connection with the use and labelling of pesticides, in the prevention of zoonosis and other risks in animal production, in the registration of agricultural operators, and in the inspection and governance mechanisms that the legislation often puts in place.

In the forestry sector, labour standards could be integrated into general or specific legislation as conditions of concession agreements, as part of forest harvesting codes of practice, in the rules that apply to public forestry

employees, and as part of multi-stakeholder forest governance structures. Labour standards may also be integrated into market State legislation that is intended to counter illegal logging and trade in illegal timber, including in the provisions on due diligence to be applied by forestry operators and traders, product export and import authorization, and the criteria based on which the legality of timber and related products is to be determined. It is strongly recommended that compliance with labour standards feature more clearly in the requirements of market State legislation in fisheries.

Legislation in the fisheries sector may include labour standards as part of vessel safety requirements, as preconditions of access, license or permit to fish, in provisions relating to observer, inspection, port State and enforcement schemes, and in the context of multi-stakeholder administrative and management structures. There are also specific laws on labour in fisheries which include those that lay down material and social security-related support to fishers and fish workers and those that provide detailed regulatory frameworks for work in fishing. There is also market State legislation that mainly puts in place mechanisms to prevent the violation of fundamental principles and rights at work in the context of fish value chains and the fight against IUU fishing. It is recommended that such schemes should include non-compliance with labour standards/legislation as part of the conditions that result in the denial of access to market for fisheries products.

The above legislative options for labour protection are in addition to general livelihood-related provisions that often form part of the objectives of agricultural, forestry and fisheries legislation or the mandate of institutions established by such legislation. Some of the legislation in this category includes general provisions on the welfare and protection of people who derive their livelihoods from the sectors. Such provisions could be interpreted together with general or thematic labour and employment-related legal instruments for the improved protection of labour rights in the above-mentioned sectors.

In terms of the identification and integration of specific labour standards into sectoral legislation, the legislative study provides a menu of options rather than prescriptions. The very integration of a specific labour standard, the formulation of the provisions to that effect and actual protection of labour in sectoral legislation depends on the legal system in question, the overall contents of a sectoral law, the implementation mechanisms it puts in place and the assignment and exercise of pertinent mandates by relevant State institutions. National legislation may therefore follow

different approaches to the identification, integration and implementation of labour standards in the agriculture, forestry and fisheries sectors.

This legislative study focusses on avenues for the legal protection of labour in the agriculture, forestry and fisheries sectors. While legislative and other measures to prevent human rights and labour abuse in the production of commodities from the sectors play significant positive roles, challenges will continue to be posed by the multiplicity of actors, the complexity of supply chains relating to the products, the prevalence of informality and lack of transparency in current labour-related practices in the sectors, the lack or weakness of enforcement mechanisms and difficulties with inter-sectoral coordination. The integrated regulation of the resources and products from the sectors, as well as the people who derive their livelihoods from them, will serve as one important pillar of sustainable governance in agriculture, forestry and fisheries.

The agriculture, forestry and fisheries sectors stand separated from labour protection at the national level not only in terms of legal frameworks and the competencies of State authorities, but also in terms of the expertise of legal professionals working in the relevant areas. The effective protection of labour in the above-mentioned sectors would require the political commitment to bridge existing regulatory and governance gaps as well as the cross-fertilization of technical expertise in the sectoral laws on the one hand and in labour and employment-related laws on the other. The present study can serve as a useful companion to those who work in the legislative areas of agriculture, forestry and fisheries and engage in the important task of integrating labour and safety standards into sectoral legislation.

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The general labour and employment laws of many countries do not necessarily take into account the special circumstances of those who work in the agriculture, forestry and fisheries sectors, whereas legislation governing these sectors tend not to integrate appropriate labour standards. This becomes more of a concern where there is a general weakness in inter-sectoral and inter-institutional coordination mechanisms.

The Legislative Study seeks to respond to these challenges by providing guidance on the integration of internationally accepted labour standards into national legislation in the agriculture, forestry and fisheries sectors. It identifies the standards that apply to these sectors and shows how they have been or could be integrated into regulatory frameworks governing organic production and other agricultural commodities, contract farming, pesticides management, forestry, fisheries and other related sectors.

The overall aim of the Study is to improve relevant regulatory frameworks with regard to the protection of the rights of people who derive their livelihoods in these sectors.



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