

## **SECURING ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF SMALL-SCALE AND ARTISANAL FISHERWORKERS AND FISHING COMMUNITIES**

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*ABSTRACT* Given the international consensus on achieving human rights, the paper stresses that committed action to realizing the human rights of fishing communities, as indeed of all vital, yet marginalized groups and communities, is really not a matter of choice. It is an obligation. The paper provides concrete proposals for securing social, economic and cultural rights of small-scale fishing communities. These proposals, in the main, seek the implementation of provisions that already exist in existing international legislation, including customary law. The paper also draws attention to the challenges that will need to be overcome in adopting and implementing a human rights approach to fisheries and fishing communities. A comprehensive and coherent policy approach, internationally, nationally and locally, to securing rights of fishing communities, is essential. Investment in building the capacity of both right holders and duty bearers is one of the most important steps necessary for translating commitment into action.

### **Introduction**

Whenever you are in doubt, or when the self becomes too much with you, apply the following test. Recall the face of the poorest and the weakest man whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him. Will he gain anything by it? Will it restore him to a control over his own life and destiny? (Mahatma Gandhi in Tendulkar 1969).

The first part of this paper briefly highlights the important role of fisheries, particularly of small-scale fisheries, in generating employment, and in contributing to local and national economies, food security and environmental sustainability. Stressing the resilience and dynamism of the sector, it discusses some of the unique social and cultural dimensions of fisheries and fishing communities, as well as associated traditional knowledge systems and institutions. These are aspects that, while of intrinsic value in themselves, could have an important role in the equitable and sustainable development of the sector if they were better recognized.

Given the international consensus on achieving human rights, this paper stresses that committed action to realizing the human rights of fishing communities, as indeed of all vital, yet marginalized groups and communities, is really not a matter of choice. It is an obligation. The adoption of a human rights approach to development, that recognizes that development should contribute to the realiza-

tion of human rights, provides a strong basis for citizens to make claims on their States, and for holding States to account for their duties. The successful implementation of this approach requires strengthening the capacity of rights holders – fishing communities in this case – to be aware of, and to claim and exercise their rights effectively and of duty-bearers to fulfil their human rights obligations. Fisheries line agencies, even as they need to link with other relevant departments to seek improvement in the quality of life of fishing communities, have the obligation of evaluating their own actions using the human rights yardstick.

### **Small-Scale Fisheries and Fishing Communities**

Fisheries are an important source of employment and livelihood for millions of people worldwide. An estimated forty-one million people worked as fishers and fish farmers as a full-time, or part-time, occupation in 2004, up from about thirty-nine million in 2000. The majority of fishers and fish farmers are small-scale, artisanal fishers, earning a living from coastal and inland fishery resources. The vast majority of these were from Africa, Asia and Latin America, with close to eighty-eight percent from Asia (FAO 2007). These figures are, in all likelihood, underestimates. Further, they do not include those involved in other fisheries-related activities, such as marketing, processing, net-making, supplying ice, boat building, and so on. Women play an important role in several of these activities, particularly in processing and vending.

For many communities fishing may be one among several livelihood activities. Thus, communities may seasonally, and on a part-time basis, engage in farming, fishing, aquaculture, livestock rearing, community-based tourism and similar activities. At the same time, they may fish only for domestic consumption, or also for the market.

The fisheries sector is known to make important contributions to the national economies of several countries, especially some of the least developed countries (LDCs). Though little information on the contribution of fisheries to local and household economies is available, it can be expected that the contribution is significant, due to upstream and downstream activities, such as construction of vessels, purchase of engines and purchase or fabrication of fishing gear, purchase of fuel, ice, food, bait; purchase of packaging material, fish processing and marketing/retailing activities and so on. In many rural areas with few employment opportunities, fisheries are often the main drivers of local economies.

Fish is an important source of food security worldwide. It is as important to highlight that fifty percent of all food fish originates from small-scale fisheries, and almost all fish from small-scale fisheries is used for food (FAO 2005). Production from the sector is, in general, more directly available to diversified and remote population, at affordable prices. While small-scale fisheries cater primarily to domestic markets, in several counties their contribution to export markets and earnings are increasing.

It has often been pointed out that small-scale fisheries are relatively more sustainable, given, for example, the diversity of the gear employed, the minimal

bycatch generated, and the lower energy consumed per unit of fish output (ICSF 1984; Jacquet and Pauly 2008; Kurien 2008; Thomson 1980). Even though the sector is rapidly changing today, and is relatively more technology and capital-intensive, the small-scale fisheries sector does still provide the model on which to sustain fisheries and fishery dependent livelihoods into the future.

The resilience and dynamism of small-scale fisheries are important to note. Decades after predictions of the sector's demise due to its perceived social and technological backwardness, it is clear that small-scale fisheries are here to stay, and that they continue to be relevant from a social, environmental, cultural, and economic perspective. There cannot be a doubt that a strong case exists for supporting small-scale fisheries, both for the contribution they already make and for the higher contribution they could potentially make to sustainable and equitable development.

It is important not to reduce fisheries to an economic activity. The livelihoods of fishing communities are linked also to culture, identity and way of life. Customs, food habits, rhythm of life, rituals, spiritual beliefs, value systems, traditions and social organization are all closely linked to fisheries, and to the aquatic milieu on which they depend.

As important as the social aspects of fishing, over time fishers have evolved a keen understanding of their ecosystems. Fishing practices, techniques, craft and gear have evolved, or been adapted, based on this contextual understanding and knowledge. Systems of internal governance have also evolved over the generations, and continue to exist in several countries around the world. Such systems are well documented, for example, in parts of Indonesia, Lao PDR, Pacific island states, Brazil, Japan, Australia, United States, and India. These have played a critical role in regulating access to inland, coastal and fisheries' resources, in putting in place systems of 'sea tenure', in managing internal and inter-community conflict, and in promoting communitarian ethics and values such as reciprocity, redistribution and support to those in need, including widows and aged people.<sup>1</sup>

In this context it is worth pointing out that the perception of fisheries as largely open access is often incorrect. It reflects a lack of awareness and knowledge of the elaborate mosaic of community sea tenure systems and the linked social institutions that have been documented in so many countries (for example, Adams 1998; Cinner and Aswini 2007; Colding and Folke 2001; Cordell 1989; Kendrick 1993; Kurien 2003; Ruddle 1998). It is certainly true that technological changes, the push for expanding production and exports, and centralized management systems that pay little heed to traditional and customary rights to resources have weakened or even destroyed many such traditional systems and associated value systems. Nonetheless it is still incorrect to assume that fisheries, particularly inshore and coastal fisheries, are open access (Kurien 2003; Cordell 1989; Ruddle 1998).

## A Human Rights Approach to Fisheries and Fishing Communities

The recognition of human rights has its basis in the United Nations (UN) charter, the 1948 Universal Declaration of Human Rights (UDHR) and subsequent legally binding human rights conventions and treaties, in particular the 1966 International Covenant on Economic, Social and Cultural Rights (CESCR), and the 1966 International Covenant on Civil and Political Rights (CCPR), which elaborate on the rights included in the Universal Declaration.<sup>2</sup>

Taken together, these instruments reflect an international consensus on a legal framework of entitlements and obligations to achieve human rights. They set a standard of rights for all people everywhere, recognizing the inherent dignity and equal and inalienable rights of all members of the human family. Protecting and achieving human rights is recognized as an end in itself. Recognized rights include the right to work in just and favourable conditions, to social protection, to an adequate standard of living, to the highest attainable standards of physical and mental health, to education and to enjoyment of the benefits of cultural freedom and scientific progress.

The 1986 Declaration on the Right to Development recognizes that all human rights, and in particular economic, social and cultural rights, must be realized in the process of development, laying the foundation for the human rights approach to development that has since gained wide international acceptance. Highlighting the link between development and human rights, the Human Development Report 2000 pointed out that human rights are not a reward for development; rather they are critical to achieving it (UNDP 2000).

There is a strong case for adopting a human rights approach for improving life and livelihood in fisheries and fishing communities, as indeed of all marginalized groups and communities. A human rights approach, in general, has been defined as 'a framework for the pursuit of human development that is normatively based on, and operationally directed to, the development of capacities to realize human rights' (Tomas 2005: 7). It represents a convergence between the human rights and the development discourse, recognizing that human rights and human development share a common vision and a common purpose – to secure the freedom, well-being and dignity of all people everywhere (UNDP 2000). The task is really to flesh out the contours of a human rights approach in fisheries – what interventions are needed to secure the well-being, freedom and dignity of small-scale fishing communities. This will also mean negotiating carefully the inherent tensions between individual rights and collective or community rights, and recognizing that at times the equal worth and dignity of all can only be assured when the recognition and protection of individuals' rights is contextualised into the larger socio-cultural group of which they are members.

Amartya Sen, who has contributed to the development of the human rights approach, stresses the importance of removing obstacles such as illiteracy, ill health, lack of access to resources, or lack of civil and political freedoms that prevent people from doing what they want to do. He uses the notion of 'capability' to capture what people can do or be, their opportunities, or 'positive freedoms' to lead flourishing lives (Fukuda-Parr 2002).

In this sense, an important task is to expand the capabilities and the freedoms enjoyed by members of fishing communities so that they may have the opportunity to fulfil their potential. They must be given access to basic services and to the civil and political freedom to participate meaningfully in processes that determine their lives. The achievement of this outcome requires structured interventions and coordinated action, internationally, nationally and locally, from fisheries line agencies and from other agencies and organizations, as part of a comprehensive strategy.

It is noteworthy that by stipulating an internationally agreed upon set of norms, backed by international law, the adoption of a human rights approach provides a stronger basis for citizens to make claims on their States, and for holding States to account for their duties. A human rights approach stresses that everyone, including in particular, marginalized groups, has legally mandated and recognized rights, and the basis to claim them, not as charity, but as a right. As noted by the Office of the High Commissioner for Human Rights (OHCHR): 'This recognition of the existence of legal entitlements of the poor and legal obligations of others towards them is the first step towards empowerment'.<sup>3</sup>

It has been pointed out that the recognition and promotion of human rights, and the legal frameworks that guarantee these rights, is important not only for their intrinsic value but also for their instrumental value in promoting individual and collective agency (Fukuda-Parr 2002). This is important and, in fact, awareness and consciousness of rights is the basis of the demands of many fishworker movements today. These movements are demanding action and accountability from their States to protect their basic rights to life and livelihood and to participate in decision making processes. In some cases such efforts have met with success and the requisite action by States (Davis and Jentoft 2001; Jaffer and Sunde 2006; Kearney 2003; Kurien and Paul 2000; Sherman 2006).

An important area of focused intervention, essential to the realization of human rights, is strengthening the capacity of right-holders (fishing communities and their members in this case) to be aware of, and to claim and exercise their rights effectively. Equally efforts must be made to assist duty-bearers in fulfilling their human rights obligations. A human rights approach would require a special focus on strengthening the capacity of critical, but politically and socially marginalized groups within fishing communities to exercise their rights in order to enhance their participation, power and influence. These groups would include small-scale fishers on unmotorized craft, women engaging in productive and reproductive work within the sector, indigenous peoples and ethnic minorities.

### **Proposals for Securing Economic, Social and Cultural Rights**

As discussed, there is a strong case for supporting communities engaged in small-scale fisheries to secure their human rights. This will also help in countering developments that are undermining the rights of fishing communities to a decent life and livelihood, and in retaining their cultural diversity and identity.

The proposals elaborated here for securing the economic, social and cultural rights of fishing communities in the realm of fisheries draw on a series of workshops that ICSF organized in Asia, Eastern and Southern Africa and Latin America, in the run up to the 2008 FAO conference *Securing Small-scale Fisheries: Bringing Together Responsible Fisheries and Social Development*.

Most significantly perhaps these workshops highlighted the need to address fishery access and user rights, post-harvest rights and human rights in an integrated manner, to ensure that all interventions, including within fisheries, are directed towards the realization of human rights.

#### *Rights to Coastal Lands and Resources and to Participation in their Management*

Coastal and wetland habitats in several regions are under threat from pollution, indiscriminate conversion of flooded forests and mangroves, upstream deforestation, damming of rivers, and habitat destruction. From a time when fisheries was one of the primary user of coastal lands and resources, there is today growing competition for coastal and wetland spaces from, for example, the creation of special economic zones, construction of ports and harbours, industrial aquaculture, including mariculture operations, tourism, real estate development and speculation, mining, and oil and gas exploration, and even conservation-related activities.

As a consequence, coastal and inland fishing communities face deteriorating quality of life and the threat of eviction on an ongoing basis. These developments uproot communities from their traditional settlements and occupational spaces and disrupt their access to water bodies, including rivers, estuaries and the sea. Losing land adjacent to fishing grounds for small-scale fishing communities is closely linked to loss of culture, identity, livelihood and dignity.

Effective management of coastal and wetland resources, within a sustainable development framework, is essential to secure right of small-scale fishing communities. For this, it is important that coastal and wetland area management policies recognize and secure the inalienable rights, including customary rights, of coastal and inland fishing communities to inhabit lands, including lands traditionally used for fisheries-related activities, such as for berthing boats, mending nets and processing and drying fish. The Constitution of Venezuela (Article 305) offers an important example where the State has committed to protect the settlement and the fishing grounds of artisanal fishing communities along the coast (Government of Bolivarian Republic of Venezuela 1999).

It is equally important that the rights of fishing communities to participate in coastal and wetland management programmes as primary rights-holders, rather than as one among several stakeholders, is recognized. In this context, attention needs to be drawn to Articles 10.1.2 and 10.1.3 of the 1995 FAO Code of Conduct for Responsible Fisheries (CCRF) that ask States to ensure that representatives of the fisheries sector and fishing communities are consulted in decision-making processes related to coastal area management planning and development, and to take into account the rights of coastal fishing communities and their customary practices while determining the possible uses of, and access to, coastal resources (FAO 1995). It is also important to take note of relevant decisions under the Convention on Biological Diversity, such as Decision VIII/22 that asks Governments to

encourage participation by indigenous and local communities and relevant stakeholders in Integrated Marine and Coastal Area Management (IMCAM) processes (Secretariat of the Convention on Biological Diversity (SCBD) 2008).

#### *Preferential Access Rights to Fisheries Resources and Fishing Grounds*

In the face of problems such as competition from industrial fisheries, harmful fishing practices such as dynamiting and destructive bottom trawling, as well as pollution and habitat destruction, small-scale fishworkers have consistently highlighted the need for secure access rights to resources (Mathew 1990, Mathew 2007; ICSF 2007). They have emphasized collective, community-based access and management regimes that foster equity and sustainability, that are suited to the socio-cultural ethos of small-scale fishing communities, and that recognize natural resources of bays, seas, rivers and inland water bodies as a common heritage (ICSF 2007; Kurien 2003).

Here it is important to draw attention to the fundamental distinction and dissonance between the demands of small-scale fishers for preferential access rights, and some of the current rights-based approaches to fisheries management that often promote private property rights in fisheries, to deal with the problem of 'open access' (FAO 2009; ICSF 2007; Jaffer and Sunde 2006; Jentoft 2007; O'Riordan 2008; Sowman 2006). Recent court judgments and views, such as by the Human Rights Committee (HRC) of the United Nations responding to an appeal from an Icelandic fisherman have, in fact, raised concerns that right-based approaches to fisheries management violate human rights, particularly the rights of fishers to a livelihood (Mathew 2008). In South Africa, in response to a case filed by artisanal fishers against the Minister for Environment and Tourism for inequitable and discriminatory allocation of fishing rights, particularly those based on the individual quota system, the Equality Court issued an order forcing the Minister to begin a new policy process for small-scale fishers that would accommodate the socio-economic rights of these fishers (Jaffer and Sunde 2006).

Notably, several international instruments recognize the need to protect access rights of artisanal and small-scale fishing communities. Article 61 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) asks States to take into account relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, while taking measures to conserve and manage the living resources of the Exclusive Economic Zone (EEZ). Article 5 (i) of the 1995 United Nations Fish Stocks Agreement (UNFSA) requires States to take into account the interests of artisanal and subsistence fishers, while giving effect to their duty to co-operate in accordance with the Convention. Article 6.18 of the 1995 FAO CCRF, stresses the need to protect the rights of fishers and fishworkers, particularly those engaged in subsistence, small-scale and artisanal fisheries, to a secure and just livelihood as well as preferential access, where appropriate, to traditional fishing grounds and resources in the waters under their national jurisdiction.

There are several positive cases where States have taken steps to protect access rights of small-scale fisheries, most importantly perhaps through the introduction of exclusive artisanal fishing zones. Many countries around the world,

such as India, Peru, Chile, Thailand, Malaysia, Marshall Islands, Guinea Bissau, Mauritania, Venezuela, Indonesia and the Philippines have introduced exclusive artisanal fishing zones, often under pressure from their small-scale sectors (ICSF 2004; Mathew 1990, 2007; O’Riordan 2004; Vera *et al.* 2007). While these are certainly positive initiatives to securing rights, enforcement of these zones remains a persistent problem.

Through bilateral arrangements in particular, small-scale fishers also seek recognition of their fishing rights to traditional fishing grounds that, post-UNCLOS, have fallen under the jurisdiction of adjacent States. It is important that small-scale fishers are not arrested for fishing in their traditional fishing grounds in such cases. Should arrests and detention occur, fishers should be immediately released and repatriated along with their fishing vessel and gear. This would be consistent with Article 73 of UNCLOS that requires that arrested vessels and their crews are promptly released upon the posting of reasonable bond or other security, and that coastal State penalties for violations of fisheries laws and regulations in the EEZ do not include imprisonment or any other form of corporal punishment. The CCPR similarly decries arbitrary arrest or detention and guarantees liberty of movement (ICSF 2001).

Lessons also need to be learned from the several bilateral arrangements that have been put in place between States to recognize the traditional fishing rights of small-scale fishers, such as between Cayman Island and Honduras, Trinidad and Tobago and Barbados, Eritrea and Yemen, and Costa Rica and Nicaragua<sup>4</sup> (ICSF 2001; Permanent Court of Arbitration (PCA) 1999, 2006; Treaty Agreement between the Government of United Kingdom of Great Britain and Government of the Republic of Honduras 2001).<sup>5</sup>

### *Rights to Fisheries Management Regimes that Protect Resources and Sustain Livelihoods*

Well managed fisheries can contribute to securing economic and social rights of fishing communities, provided they are inclusive regimes that foster equity and community wellbeing, and provided they recognize certain attributes of small-scale fisheries as desirable for better fisheries management. Fisheries management measures adopted need to take note of existing systems of rights to resources and to promote the use of environmentally friendly small-scale and artisanal fishing gear and practices. This is particularly desirable because the latter tend to involve smaller quantities of gear in greater diversity, are often used in tandem with seasonal patterns in fishing, and have potentially less negative impact on fish habitats and fishery resources even as they employ more people per unit of fish output. Fishing vessels that are larger in size should be considered only after progressively exhausting the possibility of employing smaller fishing units.

Fisheries legislation in some countries seeks to protect the interests of small-scale fisheries. One of the goals of new Indonesian fisheries legislation on fisheries management is to improve the living conditions of small-scale fishers and fish farmers. The legislation makes provisions for small-scale fishers to fish anywhere in the entire fisheries management zone (FMZ) that includes the Indonesian territorial waters and the EEZ, upon complying with conservation regula-



tions (Mathew 2007). Similarly, the tuna handline act of Philippines (2006) permits traditional handline fishing vessels to fish in the EEZ and beyond (Vera and Hipolito 2006).

Regulation and prohibition of destructive fishing gear and practices like non-selective bottom trawling and dynamite fishing can also help secure the economic and social rights of small-scale fishing communities. There are several such fisheries management measures taken by countries including, for example, bans on bottom trawling in tropical waters. In 2008 the government of Venezuela modified its national fishing law to include a ban on trawling in its waters to protect the seabed and the ecosystem (ICSF 2008). Indonesia banned trawling in some of its waters in 1980 to protect the fishing grounds of traditional fishermen (Mathew 1990). The artisanal fishing zones designated in different provinces in India are to protect the fishing grounds of small-scale fishers from trawlers. The Kenyan government banned trawling in its waters in 2006, to protect fish stocks (Ndegwa 2006). In Malaysia a zonation system has been introduced that specifies the kind of vessels that can fish in each zone. Its effective implementation has helped reduce conflict between small-scale fishers and trawlers (ICSF 2007). However, as mentioned earlier, implementation and enforcement of such measures continues to be weak.

Activities and management measures that diminish the economic and social rights of fishers should not be considered. For example, conservation initiatives such as marine protected areas must be redesigned when they unjustly deny small-scale fishers access to their fishing grounds and settlements. Similarly, it should be ensured that aquaculture operations, including mariculture, do not disrupt small-scale fishing operations or cause other negative impacts on capture fisheries-based livelihoods, on the quality of life of coastal communities, or on indigenous species through the introduction of alien and genetically modified species or through other impacts. Privatization of inland water bodies and coastal waters should be avoided at all costs, while ensuring that the primary rights to take up aquaculture or mariculture in coastal waters lies with fishing communities.

Such measures for securing rights would be consistent with the 1995 CCRF. Article 7.6.6, for example, asks States to take into account the 'traditional practices, needs and interests of indigenous people and local fishing communities which are highly dependent on fishery resources for their livelihood', when deciding on the use, conservation and management of fisheries resources. Article 9.1.4 calls on 'States to ensure that the livelihoods of local communities, and their access to fishing grounds, are not negatively affected by aquaculture developments'.

#### *Traditional Knowledge and Social and Cultural Rights*

As discussed earlier, small-scale fisheries is much more than an economic activity. It is associated with unique cultures, knowledge systems, social institutions and beliefs. Many of these cultures, institutions and knowledge systems are today being weakened, and it is necessary to take measures that secure the cultural rights of fishing communities. It is also worth stressing, however, that while there is a strong case for supporting values and social norms held by communities, there is also need for checks and balances to protect the rights of groups that

may be marginalized or discriminated against by existing values and norms. It is known, for example, that some traditional fishing communities hold values that keep women out of public spaces or decision-making processes.

Effective implementation of the provisions of several international legal instruments can contribute significantly in securing the social and cultural rights of small-scale fishing communities. Article 8 (j) of the 1991 Convention on Biological Diversity, for example, stresses the need to 'respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application'. Article 10 (c) calls on States to 'protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements' (SCBD 1992).

International Labour Organization (ILO) Convention 169 on Indigenous and Tribal Peoples (1989), revising Convention 107 on Indigenous and Tribal Populations (1957), aims to protect indigenous and tribal peoples, based on respect for their cultures, their distinct ways of life, and their traditions and customs. It recognizes that indigenous and tribal peoples have the right to continue to exist, maintain their own identities, and determine their own paths and pace of development. The recently adopted UN Declaration on the Rights of Indigenous Peoples (2007) sets out the individual and collective rights of indigenous peoples, as well as their rights to culture, identity, language, employment, health, education and other issues. It emphasizes the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions and to pursue their development in keeping with their own needs and aspirations. It recognizes their right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired, and their right to maintain, control, protect and develop their cultures and cultural heritage, traditional knowledge, traditional cultural expressions, sciences, and technologies.

Article 6.4 of FAO's CCRF highlights the need to base conservation and management decisions on the 'best scientific evidence available, also taking into account traditional knowledge of the resources and their habitat'. The need to 'investigate and document traditional fisheries knowledge and technologies, in particular those applied to small-scale fisheries, in order to assess their application to sustainable fisheries conservation, management and development', is highlighted in Article 12.12.

In a fisheries context, important initiatives have been taken by countries such as Fiji, Indonesia, Panama, Peru, Philippines, and Palau, which have made legal provisions to recognize traditional management systems and to draw on traditional knowledge in current day fisheries management (Swiderska 2004). The Philippines Indigenous Peoples Act (1997) is an example of an attempt to secure the cultural and social rights of indigenous peoples (Government of Philippines 1997).

*Rights of Fair Access to Markets, Credit and Trade*

The issue of credit continues to be of vital importance in fisheries. Fishers, traders, vendors and processors in the small-scale sector still depend on moneylenders to meet their recurrent need for credit, frequently on exploitative terms. Similarly, in many parts of the world fishers receive low prices for their fish, with the bulk of the profits going to traders and to those outside the community.

Measures that provide an enabling environment for fishers and fishworkers to access credit and markets on fair terms and to ensure that the benefits of value addition along the fish supply chain are enjoyed by small-scale fishers, vendors and processors from local fishing communities are essential to secure the economic rights of small-scale fishworkers. Such measures should include tailoring credit programmes to the specific requirements of small-scale fisheries and investing in capacity building to enable fishers and fishworkers to benefit from the value chain.

Relatively few small-scale fishers and fishworkers have benefited from the growing international trade in fish and fish products. At the same time, export-led fisheries development combined with the absence of effective fisheries conservation and management measures is in some countries leading to the overexploitation of fisheries resources, with adverse impacts on the livelihoods of small-scale and artisanal fishing communities. In some instances, liberalized imports are depressing the prices of local fish in domestic markets.

To secure the economic and social rights of fishworkers, there is need to ensure sustainable management of resources subject to export pressure, while ensuring that the rules of trade are structured so as to bring concrete benefits to fishing communities through, for example, higher returns to primary producers and greater employment opportunities, including in fish processing. It must also be ensured that policies and practices related to the promotion of the international fish trade do not adversely affect the livelihood and nutritional rights of small-scale and artisanal fishing communities. Caution should be exercised in negotiating bilateral, multilateral and other trade agreements to avoid adverse impacts on fishing communities.

These measures would be consistent with Article 11.2.7 of the CCRF that stresses that States 'should not condition access to markets to access to resources', and with Article 11.2.15 that stresses the need to ensure that 'policies and practices related to the promotion of international fish trade and export production do not result in environmental degradation, or adversely impact the nutritional rights and needs of people dependent on fish for their health and well-being'.

Much greater emphasis also needs to be placed on removing obstacles to local, national and regional trade and markets, important for food security and for securing economic rights, particularly of women of fishing communities. A study undertaken by the Sustainable Fisheries Livelihood Project (SFLP) on the regional and largely informal trade in dried fish within the Lake Chad Basin countries found, for example, that informal fish trade generates employment, income, contributes to food supply (both regional and national levels) and underpins the livelihoods of thousands of people in these countries (SFLP 2004).

### *Rights to Safe and Decent Working Conditions*

Fishing remains a dangerous occupation with high accident rates. Conditions of work in fisheries-related activities, such as in processing fish, baiting hooks, and selling fish, are also known to be poor. Fishing communities and fishworkers also have high exposure to natural disasters such as cyclones, typhoons and tsunamis, and to sea level rise. The fisheries sector, however, lags behind many others in putting in place legal provisions ensuring better working and living conditions and access to adequate social security.

Implementation of the provisions of several international instruments that recognize rights to better and safe conditions of work, social security etcetera, are essential in this context. Various ILO Conventions set standard for workers in the organized sector, as well as for home-based workers. It is important that the provisions of the 2007 ILO Work in Fishing Convention are implemented in order to secure the rights of fishers to decent work. The provisions of the Convention must be extended to inland and shore-based fishers and fishing operations.

Article 9 of the International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to social security, including social insurance. In a fisheries context it needs to be kept in mind that significant numbers of people are self-employed and systems of social security must, therefore, not be limited to those in the organized sector.

Lessons need to be drawn from some positive examples of provision of social security to fishworkers. Fishermen and fishworkers, for example, are included in the 'special insured' category in the official social security system of Brazil, called the Regime for General Social Security (RGPS). Importantly, shore-based fishers, such as shellfish collectors (often women), are considered similar to artisanal fisherman (Lourenço *et al.* 2006). While the Brazilian system is not sector specific in that it covers all Brazilian nationals, there are also examples of sector-specific schemes, as those by the state of Kerala, India. The schemes under the Kerala Fishermen's Welfare Fund Board (known as Matsyaboard), for example, covers most of the social security benefits prescribed by the ILO Convention 102. The challenge, however, is that they remain underfunded and therefore poorly implemented (Kurien and Paul 2000).

### *Rights of Women in Fisheries and Fishing Communities*

Women are known to play vital roles within fisheries, roles that vary across region and location and that are culturally and socially determined. Their work includes fishing, vending, processing, and taking up other pre- and post-harvest work. Women also play important roles in maintaining the social, cultural and economic fabric of communities, and continue to bear primary responsibility for reproductive tasks. And, where men stay away fishing for long periods, women run households single-handedly.

Women of fishing communities are, however, exposed to various kinds of problems on a regular basis. Those engaged in vending and processing fish struggle on a daily basis to get access to credit, to compete with economically powerful traders and exporters, to transport fish, to find space to vend their fish, to find clean water and toilets at landing centres and markets, and to take care of

their children. Women fishing in inland and inshore waters, often on foot, are exposed to high levels of pollution and natural disasters. In many areas they lack access to basic services such as health, sanitation, water and education. Women are also excluded from decision-making processes and subject to discrimination and abuse, including sexual abuse, within the family and outside.

It is vital to pay specific attention to securing the economic, social and cultural rights of women in fishing communities, including their rights to fishery resources, to coastal lands inhabited and used by them, to credit and transport, to appropriate infrastructure, facilities and services for fish processing and marketing, to basic amenities and services, and to decision-making processes affecting their lives and livelihoods. Specific measures to address, strengthen and protect women's rights to enable them to participate fully in, and benefit from, the fishery should be developed. All such measures should be within a framework of sustaining resources in the longer term and enhancing the wellbeing of fishing communities. There is need for specific focus on eliminating of all forms of discrimination against women and securing their safety against sexual abuse.

Implementation of the provisions of the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is essential to secure women's rights. CEDAW seeks protection for women against discrimination at home or in the workplace, and calls for protecting the rights of rural women to participate in decision-making processes, to enjoy adequate living conditions, to benefit from social security and to access loans and credit. Such measures are also called for by the Beijing Declaration (1995), through which States committed to ensuring a gender perspective in all their policies and programmes.

In this context, efforts underway in the Philippines to adopt the 'Magna Carta of Women' are commendable. This Bill, passed by the Philippines House of Representatives in August 2008, seeks to put into practice the country's commitment, under CEDAW, to eliminate discrimination against women. The bill recognizes, protects, fulfils and promotes human rights and fundamental freedoms of women, particularly the poor and marginalized (Government of Philippines 2008). The legislation was signed into law by the President of the Philippines on 14 August 2009 as Republic Act 9710. Another interesting example is from Chile, where in 2003 the Fisheries Sub-Secretariat adopted a gender focus in its policies to benefit women, including those employed in fish processing, hook baiting and net repairs (O'Riordan 2007).

#### *Right to Basic Services and Decent Quality of Life*

In some parts of the developing world artisanal fishing families are among the most socially, economically and politically disadvantaged segments of the population. According to FAO estimates, for example, the number of poor small-scale fishers and related employees in marine and inland capture fisheries earning less than 1 us dollar a day is 5.8 million, representing twenty per cent of the world's twenty-nine million fishers (FAO 2002). If the up to 17.3 million income-poor people in related upstream and downstream activities overall estimates suggest about twenty-three million income-poor people, plus their household dependents rely on small-scale fisheries for their livelihoods. Communities, particularly in remote

areas and urban slums, lack access to basic services needed for ensuring a decent quality of life and enhancing livelihood options. High incidence of diseases like HIV/AIDS in certain regions, as in Africa, has also been documented.

Specific inclusion of fishing communities in broader poverty alleviation strategies such as the Millennium Development Goals is clearly called for. A recent review of the Poverty Reduction Strategies Papers (PRSPs) of twelve countries in Africa highlighted that effective integration of the fisheries sector into poverty reduction strategies is evident in Senegal, Ghana, Guinea, Cameroon, Malawi and Mauritania (Thorpe 2005). Another analysis of fifty PRSPs showed that the PRSP of Cameroon establishes links between poverty and fisheries. Throughout the document, the Cambodian PRSP addresses fisheries-related issues such as illegal fishing, inappropriate government intervention, and gender bias in the post-harvest sector (Thorpe *et al.* 2006).

#### *Right to Participate in Decision-Making and Management*

The active participation of men and women of fishing communities in all decisions affecting their life and livelihood is necessary for securing their social, economic and cultural rights. Processes related to decentralization, devolution, co-management and community-based management are increasingly common. To enhance the role of fishing communities in co-managing fisheries resources, it is important to increase the accountability of national and provincial governments to fishing communities, devolve power to fishing communities, make efforts to enhance the capacity of communities in fisheries management, and enhance their negotiating power. It is important particularly to provide financial and capacity-building support to fishworker organizations, community-based, non-governmental organizations and research institutions to implement programmes to promote fishing communities awareness of rights and to strengthen their capacity to lobby and advocate for their rights.

The rights of communities to participate in decision-making is recognized by Principle 10 of the Rio Declaration that asks States to facilitate better access to information and participation of all concerned individuals in decision-making process, especially on matters relating to environmental issues. Article 6.13 of the 1995 CCRF asks States to ensure that decision making processes are transparent, and to facilitate consultation and the effective participation of industry, fishworkers, environmental and other interested organizations in decision making with respect to the development of laws and policies related to fisheries management, development, international lending and aid. It also asks States to ensure that fishers and fish farmers are involved in the policy formulation and implementation process (Article 6.16).

It is worth drawing attention to some of the initiatives taken by countries to give a fillip to decentralization and devolution processes. In Cambodia, the government initiated major change in the fisheries sector by releasing more than fifty-six per cent (5,536,302 hectares) of fishing lot concession areas for local people to organize Community Fisheries in 2000. This was with the objective of promoting broad local participation in fisheries management and the efficient, sustainable, and equitable use of living aquatic resources. Communities are involved in

preparing bylaws and regulations, management plans and agreements in community fishing areas (Chansothea *et al.* 2007). The Philippines Local Government Code (1991) devolves certain responsibility for fishery resources and powers for their management to local governments, and the Fisheries Code (1998) mandates the local governments to manage municipal waters. The Fisheries and Aquatic Resource Management Councils (FARMCS) set up under the Fisheries Code are important institutions that involve local fishers and resource users in the planning and implementation of policies and programmes for the management of fisheries resources (Allan Vera *et al.* 2007). In Indonesia, space for co-management has expanded with Autonomy Law No 22/1999 (revised by 32/2004), and the Fisheries Law No 31/2004. The area up to four miles is under the district administration, from four to twelve miles under the provincial government, and waters beyond under the national government (Mathew 2007).

## Conclusion

This paper explores the contours of a human rights approach to small-scale fisheries and fishing communities. Recognizing the significant challenges that will need to be overcome in adopting and implementing such an approach, it stresses that an important first step is clarifying what the adoption of such an approach entails. In other words what does a commitment to adopting a human rights approach to fisheries and fishing communities mean in practice?

Several proposals, by no means comprehensive, for securing economic, social and cultural rights of fishing communities, indivisible from civil and political rights, have been proposed. This exercise needs to be taken forward with the active participation of small-scale fishing communities – men and women fishers, vendors, workers, traders, processors and others. Lessons also need to be drawn from the numerous national-level initiatives that have been taken to secure rights of fishing communities. An important issue that will need to be carefully explored is the call by small-scale fishworkers for recognition of their collective rights, as for example to resources, suited to their socio-cultural ethos.

It is widely acknowledged that much more needs to be done to move towards the goal of achieving universal human rights for all. Commitment and action are crucial from a wide range of actors, internationally, nationally and locally, and particularly from governments and multilateral organizations.

In a fisheries context the onus is certainly not on fisheries line agencies alone. However, fisheries line agencies, as best placed to understand the issues facing fisheries and fishing communities, do have a crucial role in working with other relevant agencies and organizations to seek improvement in the quality of life of fishing communities and to secure their rights. Fisheries line agencies have the obligation of evaluating their own actions using the human rights yardstick. Fisheries line agencies have the responsibility to ensure that all policies adopted within fisheries, whether related to fisheries management or to the post-harvest sector, are consistent with a human rights approach and benefit particularly politically and socially marginalized groups within the sector. Interventions under-

taken certainly must not undermine human rights, with particular attention to those of small-scale fishing communities. In this context, and at a time when right-based approaches promoting private property rights in fisheries are being widely advocated, a human rights lens is particularly important.

It is worth stressing that a human rights approach needs to be the foundation for, and complementary to, other approaches being proposed in the realm of fisheries, such as ecosystem-based management, rights-based fisheries management, and resilience-based management, for indeed achieving human rights is obligatory and non-negotiable.

It is also worth reiterating that effective implementation of a human rights approach is critically dependent on building the capacity of fishing community rights holders to claim and exercise their rights. Equally, the capacities of duty-bearers – fisheries and other government agencies among others – must be improved so that they can fulfil their human rights obligations. The importance of such capacity building, and of substantial and concrete investment by international and national organizations in this process, cannot be overemphasized.

As the world celebrates the sixty-second anniversary of the historic Universal Declaration of Human Rights (UDHR), it is high time that concrete commitments to securing the rights of small-scale fishing communities are made, and effective steps are taken to translate these into action.

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## Notes

- 1 Sea tenure has been defined by Cordell (1989) as ‘any system of informal, relatively closed, communal, shared, joint, collective or even private property rights in fishing’. Cordell notes that: ‘Seascapes are blanketed with history and imbued with names, myths and legends, and elaborate territories that sometimes become exclusive provinces partitioned with traditional rights and owners much like property on land.’
- 2 Human rights are seen as those rights which are essential to live as human beings—basic standards without which people cannot survive and develop in dignity. They are inherent to the human person, inalienable and universal.
- 3 [www.unhcr.ch/development/povertyfinal.html](http://www.unhcr.ch/development/povertyfinal.html)
- 4 International Court of Justice: Dispute regarding navigational and related rights (Costa Rica v. Nicaragua) Available: <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&k=37&case=133&code=coni&p3=6>. Access date: October 11, 2010.
- 5 See also ICSF website on arrests and detention of fishers: [http://arrest\\_fishers.icsf.net](http://arrest_fishers.icsf.net).

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