



Fishing for justice: Human rights, development, and fisheries sector reform



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ABSTRACT

A review of case law and other documentation of human rights issues in fishing communities highlights forced evictions, detention without trial, child labour, forced labour and unsafe working conditions, and violence and personal security, including gender-based violence, as key areas of concern. We argue that human rights violations undermine current attempts to reform the fisheries sector in developing countries by increasing the vulnerability and marginalization of certain groups. Citing cases from India, the Philippines, Cambodia, and South Africa, we show how human rights advocacy can be an effective element of support for development in fisheries. Finally, we outline how fisheries reform can better address human rights issues as an essential complement to the equitable allocation of fishing rights, contributing to improved resource management and human wellbeing.

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1. Introduction

Human rights have gained prominence in international development policy in recent years as a complement and sometimes alternative to approaches focused on local livelihoods and national economic growth. The “rights-based approach” to development argues that human rights are integral to development outcomes, as international human rights norms highlight the freedoms and capabilities of each individual, essential components of the human side of development that economic indicators fail to capture (Fukuda-Parr, 2003; Sen, 2001; UNDP, 2000). In its application to natural resource management, a human rights-based framework draws attention to the institutions and power structures that determine resource allocation and access, as essential contributions to livelihoods and wellbeing, sometimes framed as environmental entitlements (Leach et al., 1999). Establishing access rights to a natural resource for the poor, as part of a right to livelihood, represents a legal and moral claim that cannot be easily ignored, and opens up ways of defending these claims through advocacy that references domestic and international legal instruments (Conway et al., 2002; Moser and Norton,

2001). The approach also draws attention to the range of factors beyond resource access that can undermine the health and welfare of natural resource-dependent communities.

An analysis of human rights issues in fisheries is particularly pertinent as recent years have seen an explicit adoption of human rights principles in international norms in the sector. Most notably, the UN Food and Agriculture Organization (FAO), with a range of civil society partners, has since 2007 increasingly framed policy support and governance advice in the small-scale fisheries sector in terms of human rights (FAO, 2007, 2009, 2012). In June 2014, the FAO Committee on Fisheries is scheduled to propose to its 192 member states the ratification of a new global governance instrument, the FAO Guidelines on Small-scale Fisheries (FAO, 2013), which would institutionalize human rights approaches in the sector.

There are three major antecedents for the human-rights framing in this policy initiative. The first is the institutionalization of human rights approaches to development in the UN system, with particular emphasis on implementing the Right to Food (Mechlem, 2004). For example, the UN Human Rights Commission's Special Commissioner on the Right to Food made a case before the UN General Assembly for the protection of small-scale fishing interests as a means to implement the Right to Food (UN, 2012). A human rights clause is also included in the recent fishing access rights partnership agreement between Mauritania and the European Union (European Union, 2012), which serves as a

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template for new agreements between the EU and developing countries following recent reform of the EU Common Fisheries Policy.

A second factor motivating the human-rights turn in FAO's small-scale fisheries guidelines is the recognition that small-scale fishers tend to be marginalized in social, economic, and political terms, and often include indigenous groups, disadvantaged castes and other groups who face particular obstacles to participation in broader development decision-making (e.g., Osaghae, 1995; Doyen, 2002; Jana, 2007; Pattanaik, 2007). Human rights approaches provide one means of addressing the root causes of these inequities, which lie in unequal power relations and the failure of states and other powerful non-state actors to respect and uphold the rights of all citizens.

The third motivating factor is the rise of civil society-led movements to recognize and secure indigenous peoples' and small-scale producers and resource users' traditional and communal tenure systems in the face of state and private-sector led moves to strengthen private property rights or state ownership and private leasing arrangements (e.g., in the pastoralist, water, energy and fisheries sectors: Igoe, 2003; Hall et al., 2005; Jaffer & Sunde, 2006). These "transnational agrarian movements" have begun to influence the normative instruments of international organizations (Barras et al., 2008, pp. 172–173). The fisheries sector also has "relatively vibrant transnational networks", including the World Forum of Fish Harvesters and Fishworkers, World Forum of Fisher Peoples, and the International Collective in Support of Fishworkers (Barras et al., 2008, p. 171), all of whom have been involved with FAO in the development of small-scale fisheries policy. Working with these and other regional and national intermediary organizations, the FAO has incorporated extensive consultation with fisherfolk in development of its small-scale fisheries guidelines: "14 national and one regional civil society workshop, collectively involving 1000 participants, artisanal and small-scale fishing communities, fish workers and their support organizations around the world" (Sowman et al., 2012, p. 3). The development of related "Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests" has similarly involved consultations with 970 people in 133 countries, representing civil society organizations, the public and private sectors and academia (FAO, 2012, p. vi).

Debates over reforms in fisheries governance in developing countries today hinge in important ways on various conceptions of "rights"—from a more focused perspective on fishing rights to a broader conception of human rights in the lives and livelihoods of fisherfolk (Allison et al., 2012). Most recently, the Global Partnership for Oceans—a coalition convened by the World Bank, advocating for and investing in governance reform in fisheries—commissioned a 'Blue Ribbon Panel' report that confirms the need for clarity and security in fishing rights to reverse the costly inefficiencies and destructive effects of overfishing, while also affirming the importance of food security and distributional equity (World Bank, 2013). Critics of the Global Partnership for Oceans' proposals have often used human rights arguments (including the right to food, right to livelihood, and rights of indigenous peoples) to voice their objections (WFFP and WFF, 2013). Beyond these debates among policy stakeholders, there is also legitimate criticism from academics that human rights approaches are being promoted with limited empirical and conceptual understanding of the relevance and desirability of this turn to 'rights-talk' (Davis and Ruddle, 2012; Ruddle and Davis, 2013). This is compounded by a fear that, in the international organizations at least, the human rights-agenda may be just lofty and idealistic rhetoric, unmatched by political commitment and action (Allison, 2011).

Evaluating the case for a human rights perspective in these debates over the future of developing country fisheries demands

empirical evidence addressing what, if anything, a human rights perspective can provide to improve understanding of the social conditions faced by fisherfolk, and the potential impacts of proposed tenure reform processes. It also requires an assessment of what past human rights campaigns and legal cases have achieved to improve the equity outcomes of fisheries policy reform. With these goals in mind, this paper reviews case law and other documentation of human rights issues in fishing-dependent communities, indicating how these issues undermine attempts to reform fisheries governance. It then identifies strategies to integrate human rights advocacy in fisheries sector reform, not only responding to incidents of abuse but also proactively addressing vulnerability and marginalization in fishing-dependent communities. The emphasis is on developing-country fisheries because that is the primary focus of the above policy reforms initiatives and debates, and because the vast majority of households engaged in fishing livelihoods are in developing countries—including those most likely to be at risk from failures to protect human rights (Kurien, 2002; FAO, 2010).

Expanding on more established research on the fair allocation of fishing access rights as a social, economic and cultural right of indigenous people, our review highlights human rights issues that have been less well documented: forced evictions, unlawful detention, violation of rights to decent work, as well as violence and threats to personal security. We argue that failure to address these issues, along with other dimensions of fishing communities' vulnerability and marginalization from decision making, undermines attempts to reform developing-country fisheries and improve their economic performance and environmental sustainability. We outline how policy reform efforts in the fisheries sector can better address human rights issues as an essential complement to the equitable allocation of fishing rights needed to sustain the sector's contributions to poverty reduction and food security.

2. Rights-based fishing and human rights: untangling the lines of policy debate

When fisheries officials and academics recommend the implementation of rights-based approaches to fisheries, they are generally referring quite specifically to *fishing rights* (Charles, 2001; Allison et al., 2012). The overwhelming consensus among fishery scientists is that poorly regulated access regimes are a chief cause of overexploitation of the world's fisheries (Beddington et al., 2007; Hannesson, 2004; Hilborn, 2007). Referencing this deficiency, many fisheries economists have advocated for strengthening of exclusionary rights over the resource, in order to end the economically wasteful and ecologically unsustainable 'race to fish.' This focus on the need for a transition to 'rights-based fisheries' (conceived in terms of access or property rights) has also influenced investments in the sector by agencies such as the UK Department for International Development and the World Bank, with the rationale that secure use rights remove fishers' perverse incentives to over-invest, instead establishing incentives for more sustainable, long-term management (World Bank, 2004; Cunningham et al., 2009).

Although these principles are sound, arguments about fishing rights and incentives have tended to underplay the complex relationships that exist between poverty, resource access and the wider economic and political context, especially when applied to small-scale fisheries in developing countries (Béné, 2003; Jentoft, 2006; Allison et al., 2012). Small-scale fisheries can be an important source of cash income for the poor, a buffer against seasonal hunger in areas where rain-fed agriculture is the dominant livelihood, as well as temporary employment for the landless poor or those displaced by natural disasters, economic shocks or conflict. The value of these 'welfare' functions of fisheries

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