



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



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## ARTICLE INFO

### Article history:

Received 23 May 2013

Received in revised form 24 February 2014

Accepted 2 May 2014

Available online 17 June 2014

### Keywords:

Fisheries

Governance

Human rights

Rights-based approaches

Policy reform

## 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

needs to be taken into account when devising development interventions (Béné et al., 2009, 2010). In most developing country fisheries, where there are wider societal inequities and a shortage of mechanisms for effective representation and accountability, making individual or communal fishing rights more exclusionary runs the risk of exacerbating existing inequalities and fostering further violations in rights (Ratner and Baran, 2008).

Policy research on how to incorporate human rights standards into fisheries governance has so far largely focused on access rights for small-scale fishers as a part of their right to livelihood (Charles, 2011; Davis and Wagner, 2006; Skonhoft and Gobena, 2009; Ziegler, 2004), or more narrowly on the rights of indigenous people to their traditional fishing grounds (Bess, 2001; Capistrano, 2010; Davis and Jentoft, 2001; Sherman, 2006). Yet a growing minority of advocates and analysts in the sector have argued that focusing on fishing rights alone is insufficient (Kearney, 2007; Allison et al., 2011b; Suarez, 2013). In this view, a fisheries reform agenda that addresses property rights specifically should be complemented by efforts to analyze and advance human rights in fishing communities more broadly (Ratner and Allison, 2012).

The broader human rights perspective also mirrors the concerns of many small-scale fishing communities (see, e.g., Johnson and Bavinck, 2010). Participatory assessments of vulnerability in African fishing communities, for example, indicate that access to fisheries resources or the state of the fish stock are not their main concerns. Rather, they raise health issues, lack of infrastructure, and access to education as the main challenges for their livelihoods (Barratt, 2012; Mills et al., 2011). Global consultations on small-scale fisheries organized independently by both the International Collective in Support of Fishworkers (ICSF) and by the FAO have similarly gathered testimonies and evidence that support a strong consensus for adopting a human rights approach to development in the small-scale fisheries sub-sector (FAO, 2012; ICSF, 2007, 2010). For groups faced with such multiple sources of vulnerability and risk, their willingness to engage in longer-term problem solving and resource management depends critically on addressing the more immediate concerns of health, food security, freedom from violence, and decent labour standards (Allison et al., 2011a). Addressing these specific rights deficiencies also contributes to the broader goal of prioritizing human wellbeing in deliberations over competing options for fisheries governance (Coulthard et al., 2011).

### 3. A review of the evidence for human rights abuses and violations in fisheries

We conducted a review to identify examples of these less-researched elements of the human rights agenda in the fisheries sector, with a focus on small-scale fishing communities in developing countries. This review covered case law, media reports, NGO and intergovernmental agency reports, and academic literature to identify human rights concerns in communities engaged in fisheries-related activities (including catching, trading and processing of fish). The review also included a search for responses to identified violations, or allegations of violations.

The review methodology, therefore, aimed to sift through the literature to identify where specific cases of human rights issues in fishing communities are documented. Searches for “fishing” and “fish” were performed through the websites of two major international human rights NGOs, Amnesty International and Human Rights Watch, as well as through the search engine of Human Rights Information and Documentation Systems, International (HURIDOCS). Searches for fish\* AND “human rights” were also performed on Wiley Interscience, Science Direct, Google Scholar, and Google. Relevant material was probed for further references to other texts. Following the initial results, additional

searches were performed for the main categories of cases that emerged. These subsequent searches covered fish\* AND eviction/arrest/security/“right to food”/“access to health”/or “child labour,” and included publications through mid-2011. In conducting a broad search for cases, the intent is to survey what communities of human rights activists, scholars, and policy stakeholders are saying and doing about human rights issues in the fisheries sector. As a broad overview, we also aim to provide a foundation for further research that could subsequently proceed with detailed analysis of media reports, interviews with key human rights advocacy organizations, primary case-study based research of particular human rights campaigns in fisheries, and comparative analysis of such cases.

Cases are mainly reported from Asia and Africa, where the highest numbers of people engage in (generally small-scale) fishing (FAO, 2010). The actual human rights case law on fisheries is quite limited and mainly concerns indigenous peoples in developed countries, where the right to fish for subsistence outside of the general fisheries management system is recognized through legal practice internationally and nationally. The case law on indigenous fishing rights is very well summarized by Smith and Dodson (2010), and there are also several studies on the advocacy work done by these communities (Capistrano, 2010; Davis and Jentoft, 2001; Sherman, 2006). This issue is therefore not addressed further in this review, which is concerned with a more universal application of human rights principles to fisheries governance and development, rather than fishing rights of indigenous peoples specifically—important as that issue is.

The review found that academic writing on fisheries that does not concern indigenous groups has rarely dealt explicitly with human rights violations or advocacy. When addressed, such issues are often reported in passing. Similarly, NGO reporting of human rights violations often only refers to the community in question as a “fishing community” without further detailing the nature of fishing or the nationality, ethnicity, social structure and poverty status of members of that community.

As there is no standardized database on human rights cases, nor any comparable prior published reviews in relation to fisheries, the information gathered is incomplete and often anecdotal in nature. This is a common problem with human rights research; because so many cases are documented only in ‘grey literature,’ much of it not readily accessible, the risk of a bias also increases (Bollen, 1992). To the greatest degree possible, efforts were made to access documents from legal proceedings, where such documents existed. Sources that lacked references to the location (district, village, etc.) and/or to the number of individuals/households affected, were screened out of the sample (3 documents), as were sources that clearly restated information from other documents rather than presenting original information (11 documents). In searching for cases where broader conflict affects fishing communities, those cases where fishers/fishing communities were a party in the conflict were not included (7 documents); in other cases, the documents did not discuss any (alleged) rights violations, but merely the threat of this occurring (6 documents). Sixteen remaining documented cases are summarized in Table 1 and represent a first selection—not a comprehensive catalogue but rather an indication—of human rights issues that are especially relevant for fisherfolk, and how these have been addressed. Additional sources not included in the table of specific cases were nevertheless judged to provide important information about the drivers or contextual factors that can help to analyze human rights issues affecting fishing communities. These are cited in the presentation that follows, and in the subsequent discussion.

In the brief sections below, we illustrate the human rights concerns summarized in Table 1 in a fisheries governance context and note some of the drivers behind them. Relying on

**Table 1**

Examples of documented human rights issues in developing country fisheries.

Issue and key international conventions	Examples reported	Location
<b>Forced evictions</b> (UDHR, art. 25) (ICESCR, art. 11)	Forced eviction of hundreds of residents from National Park area ( <a href="#">Amnesty International, 2006</a> ) 1000 fishing and urban poor families houses were demolished and families relocated (GMA Network, 2009). 560 families in fishing community evicted, 200 of which reject cash compensation. (FIAN 2008) Fishing community of 105 families evicted ( <a href="#">Amnesty International, 2008</a> ). Fishing community of 160 families evicted ( <a href="#">Human Rights Watch, 2006</a> ). Fishing community of over 70 families evicted for coastal development ( <a href="#">Derman and Ferguson, 1995</a> )	Dudzorme Island, Lake Volta, Ghana Tanza, Philippines  Navotas City, Philippines Sihanoukville, Cambodia Ancol Timur, North Jakarta, Indonesia Mdulumanja, Lake Malawi
<b>Child labour</b> (CRC, art. 32)	Children making up >30% of fish processing workers ( <a href="#">Chhorvirith et al., 2005</a> )  60% of non-enrolled school children from fishing communities ( <a href="#">Fentiman et al., 2001</a> )  Children working on “jermals” (fishing platforms) under hazardous conditions ( <a href="#">Markkanen, 2005</a> ) 20% of fish processing workers aged 15–17 and 20% under 15; 2/3 of fishing vessel workers aged 15–17 ( <a href="#">Pearson et al., 2006</a> )	Stung Hav, Tumnup Rolok and Koh Kiang, Thailand Amankwa Circuit, Afram Plains District, Ghana North Sumatra, Indonesia Samut Sakhon, Thailand
<b>Forced labour</b> (UDHR, art. 4)	Forced labour on board IUU fishing vessels ( <a href="#">EJF, 2010</a> )  20% of migrant workers on fishing boats and 9% in fish processing allege they are forced to work—significantly higher than in agriculture ( <a href="#">Pearson, 2006</a> )	West Africa and Thailand Samut Sakhon, Thailand
<b>Detention without trial, or under unacceptable conditions</b> (UDHR, art. 9) (ICCPR, art. 9, 10)	580 Indian fishermen in Pakistani prisons without trial or after serving sentence ( <a href="#">Pakistan Institute of Labour Education and Research, 2010</a> )  325 people from 83 (foreign) vessels held in detention during 2003. Vessels were frequently used for detention ( <a href="#">von Doussa, 2005</a> )	Karachi, Hyderabad, Badin and Naushero Feroze, Pakistan. Darwin, Australia
<b>Right to life, liberty and security of person</b> (UDHR, art. 3) (CEDAW)	75 Tamil Nadu fishermen killed in over 236 targeted attacks by army forces ( <a href="#">Gupta, 2007</a> ) Prevalence of sexual and domestic violence in fishing communities ( <a href="#">Busby, 1999</a> ; <a href="#">Kathewra-Banda et al., 2005</a> )	Sri Lanka  Marianad, Kerala, India; Nkhota-kota District, Malawi

Acronyms: CRC (Convention on the Rights of the Child), CEDAW (Convention on the Elimination of All forms of Discrimination against Women), ICESCR (International Covenant on Economic, Social and Cultural Rights), ICCPR (International Covenant on Civil and Political Rights), UDHR (Universal Declaration on Human Rights).

documentation outside of formal legal proceedings is a common feature of human rights research, particularly with regards to economic, social, and cultural rights ([Landman, 2004](#)). Because most of these cases have not been tried by any domestic court or international human rights body, we do not take a position on whether all the examples reported are *de facto* rights violations or merely *alleged* ones, referring instead generally to human rights issues.

### 3.1. Forced evictions

In many coastal and riparian areas, commercial development is displacing prior occupants whose livelihoods depend directly on the natural resource base, often affecting small-scale fishing communities disproportionately. This may involve conversion of common property mangrove forests used by fishers and foragers into private commercial shrimp farms, for example in Ecuador ([Veuthey and Gerber, 2011](#)) and Bangladesh ([Swapan and Gavin, 2011](#)). It may occur during the creation of state-managed or private conservation areas linked to tourism, such as in Tanzania ([Benjaminsen and Bryceson, 2012](#)), or the modification of river and floodplains used by fisherfolk and farmers for large-scale irrigated agriculture and hydropower development, as in the Mekong River basin ([Snedden, 2007](#)). Displacement may also result

from claims on the most picturesque areas for high-end private tourism and residential development, as on the beaches of Lake Malawi ([Derman and Ferguson, 1995](#)).

Many instances of displacement qualify as forced eviction even when no physical coercion is involved. Under international law, the appropriation of land without following proper procedures of consultation, notification and compensation for settlers can also be deemed forced eviction ([Human Rights Watch, 2006](#), p. 33f). Poor fishing communities also may not have the literacy skills needed to defend their legal tenure interests, as documented, for example, in Bangladesh and Ghana ([Maddox and Overå, 2009](#)), as well as South Africa ([Petersen, 2008](#), p., 207–228). Forced evictions not only violate the human right to adequate housing but frequently other rights as well. Evictions of fisherfolk in conjunction with tourism development and/or creation of Marine Protected Areas (MPAs) and national parks can be a significant threat to community livelihoods in both coastal and inland fisheries ([Almudi and Berkes, 2010](#); [Derman and Ferguson, 1995](#)). In one relatively well-documented example in Sihanoukville on the Cambodian coast-line, about 100 fishing families were evicted from the village of Mippapheap 4 in April, 2007 ([Amnesty International, 2008](#)). A number of villagers were arrested and brought to court after physically resisting the eviction, and were later given jail terms. The villagers were accused of illegally squatting in the area;



however, the dispute was never taken to the courts, despite recommendations by the Cambodian Senate Committee on Human Rights and wide publicity by independent human rights organizations (CESCR, 2009).

### 3.2. Detention without trial.

Small-scale fishers frequently come under threat when crossing maritime boundaries between states. In their pursuit of migratory fish stocks, many fisherfolk have always been mobile, yet the advent of national maritime boundaries and Exclusive Economic Zones has constrained this mobility (Stacey, 2007). Fishermen crossing maritime borders have frequently become victims of the tense relations between bordering states, especially when the delimitation in question is disputed. Arrests of fishers accused of illegal border crossings are frequent in many parts of the world, as well as occasional killings (ICSF, 2010).

Although arrest for suspected illegal crossings is not in itself a violation of human rights, detention of fishermen for extended periods of time without trial is. In India and Pakistan, for example, this detention period has for political reasons sometimes extended several years (Pakistan Institute of Labour Education and Research, 2010). In Australia, a practice of confining arrested Indonesian fishermen on board their boats was found by the Australian Human Rights Commission to breach the rights of prisoners to humane conditions of detention (von Doussa, 2005; Baird, 2007).

### 3.3. Child labour

Although the general consensus is that child labour is widespread within developing country fisheries and processing operations, the extent of the problem is difficult to estimate. The US Department of Labour (2009) includes fish/shellfish products from seven different countries in its list of goods produced by child labour. In International Labour Organization (ILO) statistics, child labour in fisheries is aggregated with that in agriculture, hunting and forestry; together these sectors account for 60 percent of the working children in the world (ILO, 2010). While acknowledging the lack of reliable data distinguishing children's participation in agricultural work from child labour conditions defined as "harmful and unacceptable" including particular risks to health and safety, a preliminary analysis by the FAO and the International Labour Organization indicates that "the total number of child labourers in fisheries and aquaculture in the world... is likely to be many millions" (FAO-ILO, 2011, p. 7).

Studies of child labour with a focus on fisheries have found evidence that child labour in fisheries may be higher than other agricultural sectors. A study in Thailand found 2/3 of fishing vessel crewmembers and 40 percent of processing workers below 17 years of age, whereas the proportion for agricultural workers was around 30 percent (Pearson, 2006). A study in El Salvador found children employed in fishing and fish-processing exposed to malnutrition, bacterial infection, physical abuse, and occupational hazards including shark attack and injury from use of explosives, as well as suspension of schooling and psychological impacts due to separation from the family (Godoy, 2002). Seventy-two percent of these children surveyed said they would prefer to work on tasks in crop agriculture or livestock rearing, perceived as less risky. Around Lake Volta, Ghana, non-enrolment in schools was found to be higher among fishing communities, and almost one-fifth of older children in fishing communities were not living with their kin (Fentiman et al., 2001). The study authors found the issue of child labour to be more pronounced in fisheries/fishing communities than farming communities. More recent sources document evidence of child trafficking in the Lake Volta fishery, with children forced to work at least 12 hours per day, many exposed to beating

and hazardous conditions, and instances of sexual violence against girls (Afenyadu, 2010). Clearly this is an area that requires further research, which must distinguish the worst forms of child labour from occasional work traditionally done by children in or near the family home, or as part-time apprenticeship in fishing-related trades, as is common in many fishing communities (Iversen, 2006; FAO-ILO, 2011).

### 3.4. Forced labour and unsafe conditions

Fishing is one of the most dangerous occupations in the world and is frequently unregulated (ILO, 2000). The dangerous nature of fishing as an occupation puts already vulnerable child and migrant workers in the sector at an increased risk of injury and death, most notably in the case of forced labour under deplorable conditions on illegal fishing vessels (Environmental Justice Foundation, 2010). One fifth of migrant labourers on board Thai fishing vessels, frequently children, reported being forced to work (Pearson, 2006). Even in the UK, where labour rights safeguards are relatively well developed, a case in 2004 demonstrated that foreign workers face particular risks. In that instance, 18 Chinese cockle pickers drowned after being caught out on mudflats at night by rising waters, not having been properly briefed on tidal changes in the area by their 'gangmasters' (Cohen, 2006, p.1f).

### 3.5. Violence and personal security

Fisherfolk may be subject to violence resulting from disputes over resource access (e.g., Pomeroy et al., 2007), and in some coastal areas where restrictions on industrial vessels are poorly enforced by the state, violent attacks involving small-scale fishers are commonplace. In Senegal, more than 90 percent of fishers interviewed by DuBois and Zografos (2012) reported being involved in incidents where large boats damaged or destroyed the fishing gear of small boats, and approximately half of those interviewed had been involved with or witnessed acts of on-board or gunwale-to-gunwale violence at sea (forcible boarding and attack with weapons like guns, knives or rocks, or crews throwing bottles, rocks and incendiary devices at each other). These disputes escalate into violent confrontations because small-scale fishers in particular perceive the state as biased towards industrial fishing interests, therefore failing to act as a fair arbiter (DuBois and Zografos, 2012).

Fishing communities are sometimes involved in conflicts fuelled by other factors, such as sectarian divides (Adhuri, 2009; Mander, 2009), and civil wars can make fishing grounds inaccessible, as examples from Sri Lanka (Korf and Fünfgeld, 2006) and Sierra Leone (Thorpe et al., 2009) illustrate. Any civil war in which civilians are targeted represents a failure in the state's responsibility to protect the lives and personal security of its citizens. However, in some violent conflicts fishers are specifically targeted because their livelihood brings them into disputed waters, or they are suspected of shepherding arms or militants. A study in Sri Lanka recorded over 236 incidents of attack on Tamil Nadu fishermen by the military during that country's civil war, resulting in 75 deaths (Gupta, 2007).

Gender-based discrimination and violence is of course not unique to fishing communities either; however, several studies point to particular vulnerabilities that fishing-related livelihoods bring to women and girls (Bennett, 2005; Weeratunge et al., 2010). In many areas, women are excluded through local cultural norms from fishing, or from fishing commercial species as a source of cash income (Geheb et al., 2008). Domestic and sexual violence can be a socially accepted means of enforcing subordination according to local cultural norms, as described by Busby (1999) for a fishing community in Southern India and FAO (undated) in northern

Uganda. The practice of “fish-for-sex,” likewise, has some degree of cultural acceptance in parts of Southern Africa (Béné and Merten, 2008), but nevertheless constitutes an example of female subordination within the fisheries sector, most egregiously in cases involving sexual violence against girls (Kathewra-Banda et al., 2005).

#### 4. Priorities for action

The examples catalogued above demonstrate some of the diversity of human-rights related grievances and challenges faced by fishing communities beyond fishing rights. Such issues clearly merit responses on human welfare grounds alone. For those interested in fisheries sector reform, however, there is an additional factor motivating action: the vulnerability of fishing communities to rights violations and their frequent marginalization from political and economic decision-making undermine the potential for positive reforms. Vulnerable people whose human rights are routinely violated don't make effective guardians of fishing rights or environmental stewards. State-community partnerships are unlikely to flourish when states are failing their citizens in their role as duty-bearers, or actively discriminating against particular groups (Allison et al., 2011a, 2012; Béné et al., 2010). Addressing human rights therefore makes reform of fishing rights easier and more likely to succeed, particularly when – as is increasingly the case – fisherfolk themselves are envisioned as equal partners in resource management.

Building on our review of human rights cases and the surge of contemporary interest in human rights based approaches in fisheries (reviewed in Allison et al., 2011a, 2011b; Charles, 2011; Suarez, 2013), we suggest the need for three linked priorities for action: (a) strengthening capacity to document, raise awareness of, and respond to specific incidents of rights abuse; (b) applying a human rights approach to address the roots of vulnerability and exclusion in fishing-dependent communities; and (c) supporting human rights advocacy as a driver in fisheries sector reform. In elaborating these priorities, we cite experiences in India, the Philippines, Cambodia, and South Africa. These are all countries with large fishing-dependent populations and diverse fishing industries involving both artisanal and industrial fisheries, and together they represent the regions where most of the world's fisherfolk live and work (South Asia, Southeast Asia, and sub-Saharan Africa). Moreover, they each have strong domestic social justice advocacy organizations that have campaigned on behalf of human rights in fishing communities, amidst differing levels of state and judicial capacity to uphold citizens' claims to justice. As such, these experiences offer insight into the potential—and the challenges—of mainstreaming human rights approaches in developing country fisheries more broadly.

##### 4.1. Strengthening capacity to document and respond to specific rights violations

Fishing communities sometimes invoke human rights mechanisms as a means to access justice in response to specific violations or grievances, or in response to an imminent threat. In Tamil Nadu, India, local fisherwomen facing the threat of eviction because of plans to develop the Chennai marina raised the issue at a public consultation with the National Commission for Women. As the plans would allegedly have brought wide-scale evictions of coastal workers, the Indian National Human Rights Commission sought clarification, whereupon local authorities informed them that the plans had been dropped (National Human Rights Commission, 2005). On the issue of illegally detained fishermen in India and Pakistan, NGOs demanded the release of several hundred jailed fishermen in letters to the Prime Ministers of both countries

(Pakistan Institute of Labour Education and Research, 2010). The heightened NGO activity took off after the Supreme Court of India ordered the release of 17 Pakistani fishermen following a petition citing human rights principles in the constitution and the UDHR (Bhim Singh v. Union of India & Ors. WR 310/2005). A similar petition was also submitted to the Supreme Court of Pakistan (Pakistan Fisher Folk Forum v. Federation of Pakistan & Ors. Const. P.48/2010), and more fishermen were subsequently released (Press Trust of India, 2010). This illustrates that actions framed in terms of human rights violations can be politically effective.

The results of such claims by fishing communities, however, depend critically on the characteristics of domestic political institutions and their responsiveness to such advocacy, as well as the strength of civil society and the judiciary. In the previously cited case from Cambodia, for example, forced evictions of fishers (as well as urban residents in development zones) were carried out even after the intervention of the Senate Committee on Human Rights (Amnesty International, 2008), and despite concerns raised by UN observers. Domestic courts are often poorly prepared to address issues related to vulnerability and economic and social rights, such as child labour, access to education, or exposure to violent conflict.

For this reason, one important avenue to addressing human rights in fishing communities is to strengthen the mechanisms for access to justice. This includes strengthening formal mechanisms such as the courts and other channels of state-sponsored dispute resolution, including traditional authorities for managing land and water (e.g. the Sasi Laut system in Indonesia described by Satria and Adhuri, 2010), and creation of platforms for multi-stakeholder dialogue (Pomeroy et al., 2007; Ratner et al., 2014) to aid fair allocation of resources among competing sectors, thereby avoiding rights violations through exclusion. Such dialogue is essential in areas where existing legal rights are poorly defined, or where strict application of the law may in fact aggravate inequities in resource access. It also means strengthening the capacities of civil society advocacy groups, such as the Bangladesh Environmental Lawyers Association, whose assistance to fishing communities has helped secure recognition of legal rights for women and landless households in community-based fisheries management (Thompson et al., 2010).

In other instances, particularly where domestic advocacy institutions are poorly developed, international attention through civil society advocacy, the media, and/or multilateral organizations, may be influential. Civil society advocacy and media campaigns have been particularly effective in addressing violations of children's rights. The International Organization for Migration (IOM), for example, was instrumental in highlighting the injustices of child labour in the Lake Volta fisheries in Ghana and since, 2002 has maintained a campaign of support for child workers and their families. The issue was also widely reported in international media, including the *New York Times* (LaFraniere, 2006). Over 700 trafficked children have reportedly been rescued and reintegrated into their communities, most of them returning to school (IOM, n.d.).

##### 4.2. Using a human rights approach to address marginalization and vulnerability in fishing communities

Often specific cases of rights grievances are rooted in more systemic aspects of vulnerability faced by fishing communities and their marginalization from political and economic decision-making, especially notable in the case of forced evictions. Also clearly evident from the cases reviewed is vulnerability of particularly social groups, notably women and children, as well as poor labourers attracted to work on commercial vessels despite known risks. A large body of evidence, ranging from systematic review of case studies (Jentoft and Eide, 2011) to the testimonies of

fisherfolk gathered through regional consultations (ICSF, 2007; FAO, 2012) point to widespread marginalization of small-scale fishing communities in political processes and economic planning decisions. In these contexts, achieving development impact requires a broader approach to poverty reduction and governance than just securing resource rights.

Development initiatives in fisheries need to address these aspects of marginalization and vulnerability directly, in conjunction with the more common focus on improvements in incomes and assets. A new set of voluntary guidelines for small-scale fisheries governance, developed by the FAO following an extensive stakeholder consultation process, reinforces this perspective, with an emphasis on preferential access of fishing opportunities to small-scale fisherfolk and inclusion of fishing communities in development processes that affect them, such as marine spatial planning, water resource management and coastal land use planning (FAO, 2012). Community-based co-management of small-scale fisheries has also, in recent years, increasingly emphasized the links between local resource management and these broader governance challenges (Ratner et al., 2012).

These concerns have recently found voice through the advocacy of civil society organizations in fisheries and the support of governments, development agencies and international organizations aiming to pursue a human-rights based approach to development (Allison et al., 2011b; Sharma, 2011; Isaacs, 2011). The FAO, notably, adopted the Right to Food in, 2005, leading to wider adoption of rights-based approaches in its technical assistance and normative programming (Charles, 2011; FAO, 2007, 2009). Under the initiative of the International Collective in Support of Fishworkers (ICSF), representatives of small-scale fishing communities in Asia gathered to assert that “responsible fisheries can be assured only if human rights of fishing communities, including the right to decent work and labour standards, and human development, are secure” (ICSF, 2007). Alongside principles of responsibility and accountability of fishers for sustainable resource management, the group’s Siem Reap Statement goes on to detail a range of rights that demand attention, including “the right of fishing communities to social security and social services, including education and health care, with special emphasis on the prevention and treatment of diseases like HIV/AIDS... women’s rights to fishery resources... and to decision-making processes affecting their livelihoods...”

Advocating gender equity, as formulated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is one way of raising awareness of the discrimination and violence faced by girls and women in the fisheries trade and in fishing-dependent communities. The obligations of the 186 states party to the Convention can and should matter to policies and interventions in the fisheries sector, taking into account the vulnerable position of women but also their crucial role in sustaining the economic and social benefits produced by the sector (Weeratunge et al., 2010). While changing cultural norms of discrimination is a long process, there are active ways fisheries sector programs can support women’s equity in decision-making. The transition to fisheries co-management in Uganda, for example, drew on national gender equity policies to ensure women’s representation on newly mandated beach management committees linking traditional fishing authorities with decentralized government (Nunan, 2006).

#### 4.3. Supporting human rights advocacy as a driver in fisheries sector reform

Several of the most promising examples of developing-country fisheries sector reform have roots in human rights advocacy. In the Philippines, for example, advocacy for human rights has played a

major role in reforms to fisheries governance. Indeed, the community-based fisheries co-management movement began primarily as a means to address social justice concerns, and helped provide justification for the more general shift towards decentralized natural resources management (Rivera-Guieb, 2006; Ratner et al., 2012). NGO staff working in coastal fishing communities report that addressing human rights issues has at times provided an inroad to gaining local trust and subsequently addressing resource management challenges. Communities have also used advocacy methods learned in the course of fighting corruption and unlawful arrests to later claim greater local authority in resource management (Ferrer et al., 2001).

Human rights advocacy similarly played an influential role in spurring Cambodia’s major reforms in inland fisheries. In the country most dependent on inland fisheries for food and livelihood in the world (Baran, 2005), a tenure system inherited from colonial times created tension as the commercial exploitation of inland fisheries accelerated in the 1990s, along with growing demand from subsistence and small-scale users. Conflicts sometimes turned violent, with guards employed by private fishing concessions accused of shooting at transgressors (Ratner, 2006). As human rights NGOs started to address the issue, producing reports and organizing workshops, fishing communities also organized letter-writing campaigns and public protests (Mansfield and MacLeod, 2002). NGOs drew on principles of economic and social rights by emphasizing the importance of fish as a source of food and income for the rural population, but at the same time stressed cross-sectoral human rights concerns such as the impunity of officials, an inefficient court system and lack of information available to the public (Fisheries Action Coalition Team, n.d.). In this context, the Prime Minister made a surprise announcement in December 2000 that more inland fishing areas would be opened up for the benefit of communities. This was the starting point for reform, and by the following year 56 percent of private fishing concessions had been released for public access (Ratner, 2006). Most recently, a second wave of reform was also linked to civil society advocacy around equity and social justice for fishing communities (Ratner, 2011).

Human rights advocacy has also strongly influenced fisheries reform in South Africa. After the transition from Apartheid, the need for urgent conservation measures for a number of commercial species had spurred adoption of a narrow definition of subsistence fishing. The emphasis on enterprise development as well as complicated application procedures meant that many small-scale fishers felt alienated and disappointed by the process of fishing rights allocation in the wake of the promises of the Black Economic Empowerment policy (Isaacs, 2006; Sowman, 2006). A number of small-scale fishers, with assistance from fisheries NGO Masifundise and the human-rights oriented Legal Resources Centre, brought the matter before the South African “Equality Court.” The case referenced the Bill of Rights in the South African constitution (Minister of Environmental Affairs and Tourism v. George and Others [ZASCA 57], 2006). The outcome was an interim solution, a court order dictating that a further 1000 *bona fide* fishers be given permits to sell their catch for subsistence purposes, with allocation administered by Masifundise (Petersen, 2008, p. 235f). The court order also mandated that a new legislative and policy framework be developed to accommodate traditional fishers more effectively. In practice, fishing rights allocation did not result in the envisaged economic empowerment of socially and economically marginalized groups: many were allocated unviable rights, or quickly sold their rights to commercial companies to address their immediate needs. At community level, allocating small quotas to individuals resulted in many community elites capturing the rights (Isaacs, 2011). The South African experience illustrates that achieving social justice requires more than the introduction of a

specific fisheries regulatory mechanism; it requires protection of the post-Apartheid Constitution and active human-rights based advocacy and support to enable vulnerable people living in poverty to influence and benefit from fishing rights reforms (Isaacs, 2011). A new small-scale fisheries policy adopted in 2012 states the government's intention to introduce a 'paradigm shift' in the sector, incorporating human rights principles: "It is clear," states the policy, "that a new approach is needed to address the ecological sustainability of the resource and to provide for the *progressive realization of human rights* within affected communities" (Department of Agriculture, Forestry and Fisheries, 2012, p. 20, emphasis added).

The new South African small-scale fisheries policy recognizes that fishing communities in the past have been both displaced and dispossessed (Department of Agriculture, Forestry and Fisheries, 2012, pp. 10–11). The policy references South Africa's constitutional commitment to "substantive equality" as well as the State's obligation to uphold the African Charter on Human and People's Rights. And it outlines measures to address "women's historical legacy of prejudice and inequality" including economic empowerment of women within the sector, as well as gender equity in resource access, employment, and representation in institutions and decision-making regarding marine resource management (Department of Agriculture, Forestry and Fisheries, 2012, pp. 28–30). South Africa's policy experiment points the way to future fisheries reforms that explicitly address issues of equity and freedom from discrimination, poverty alleviation and sustainable livelihoods in tandem with a reallocation of aquatic resource rights. The result of years of struggle by small-scale fishers and local NGOs, the South African reform experience also shows the crucial role for civil society in bringing about institutional and regulatory change through a human-rights based approach (Nelson and Dorsey, 2003).

## 5. Conclusion

The legal framework of the Universal Declaration of Human Rights provides an important point of reference in efforts to promote social development and improve governance in developing-country fisheries. While the fisheries sector in most developing countries lacks a systematic and sustained monitoring effort to track human rights concerns, the review of case documentation and research in this paper demonstrates the range of issues at hand, which include forced evictions, detention without trial, child labour, forced labour and unsafe working conditions, as well as violence and personal security, including gender-based violence. These issues are by no means unique to fisheries, though the review has found evidence of vulnerabilities that affect fishing communities disproportionately. Human rights concerns affecting fishing communities are in any case underappreciated and merit more comprehensive monitoring and response.

The routes to asserting and claiming human rights are numerous (Moser and Norton, 2001). We have outlined three priorities for action that together can help reduce the incidence of rights violations in fishing communities and improve the recourse available when there are legitimate grievances. Pursuing these priorities necessarily means a shift in orientation—or an expansion of the realm of attention—for many initiatives aimed at fisheries sector reform. The current emphasis by major development agencies such as the World Bank, and global initiatives such as the Global Partnership for Oceans, is on the critical challenges of improving resource conservation and ensuring the fisheries sector generates net positive economic contributions. There is now growing attention to the third pillar of sustainable development, addressing social or distributive justice elements. Human rights approaches can make an essential contribution in addressing this

historically neglected area of fisheries governance reform (Allison et al., 2012; Ratner and Allison, 2012).

Human rights advocacy can help create the conditions for small-scale fishing communities to have a voice in decisions regarding the allocation of resource rights as well as to argue for social justice more broadly, with South Africa, India, the Philippines, and Cambodia as prominent examples. In India, fisherfolk used human rights law formally, through the judicial system, to challenge unfair arrest and detention without trial, thereby helping to reduce risks associated with fishing in boundary areas. In South Africa, both the judiciary and state policy were employed in supporting the extension into the fishery sector of social policies designed to redress the human rights violations of apartheid. In that case, they enabled non-white fisherfolk to gain access to livelihood opportunities where they had previously been excluded or relegated to subordinate positions in white-owned commercial fisheries. In the Philippines, human rights advocacy supported improved partnership with government for resource management, and promoted fairer access to resources, while in Cambodia, partnerships between human rights advocacy groups and small-scale fishers achieved both a fairer distribution of access and improved accountability of state agents in enforcing fishing rights.

A key insight from examining such cases through a human rights perspective is that, in order to secure fisheries that are socially and economically sustainable, practitioners and advocates need to engage the state beyond the fisheries department with its resource management and fisheries policy functions. The behaviour of security forces, the judiciary, government planning departments and powerful private sector interests all influence fisherfolks' livelihood security and rights. A human rights perspective both brings these issues within the purview of fisheries governance and provides mechanisms for preventing injustice or seeking redress from it.

Fishery reforms that are inclusive and empower communities are of course difficult to implement from above (Béné et al., 2009; Pomeroy et al., 2001). Whatever the necessary conservation measures, or the need to create proper incentives using various forms of fishing rights, in many cases fisheries reform requires addressing human rights issues and building the capacity for community advocacy. Only then can we reasonably expect local fishing communities to build commitment for sustainable resource management over the long term.

A wide range of actors can contribute to the three action priorities we have outlined. Human rights NGOs, both international and domestic, can intervene on behalf of individuals or communities through documentation and advocacy, providing legal aid in domestic court proceedings, as well as by engaging various international human rights bodies. They can also work to build coalitions among advocacy groups concerned principally with conservation, gender equity, economic empowerment, or community development. Regional economic and political groupings (such as the Association of Southeast Asian Nations, African Union, and the European Union), UN agencies, and other international institutions can exert different forms of pressure on states to act in accordance with international treaties on human rights (Allison, 2011). They can also incorporate human rights principles in global codes of conduct and regional agreements, as the European Union has done recently in its new fishing agreements with developing countries. Fishery sector organizations, from state agencies to producer and community organizations, can also play a critical role as proponents of reform, as monitors of progress, and as advocates of successes to share with others. To remain grounded in local priorities, however, all such efforts need to recognize and reinforce the efforts of those whose rights are at risk. The many incidences of protest and challenge to



authority, and the growing but still small number of formal legal challenges, suggest that fisherfolk are increasingly aware of and fighting for their rights, and that human rights considerations will become increasingly important in sustaining fisheries for their contributions to human development and wellbeing.

## Acknowledgements

This article is dedicated to the memory of Chandrika Sharma.

The authors would like to thank Chandrika Sharma and staff at the International Collective in Support of Fishworkers for valuable input in identifying sources, as well as two anonymous reviewers for critical feedback on the manuscript. An earlier version of this article was presented at the World Small-scale Fisheries Congress in Bangkok (October 2010), and the plenary presentations and panel debates at that conference greatly served to frame the arguments of the paper. The main research for this article was undertaken during a six-month secondment of Björn Åsgård to WorldFish in Penang, Malaysia during 2011. This secondment from the Swedish Board of Fisheries was financed with the support of Sida, the Swedish International Development Cooperation Agency. The CGIAR Research Program on Aquatic Agricultural Systems supported additional work. The opinions expressed in the article do not necessarily represent the views of Sida or the Swedish Board of Fisheries. Sole responsibility for the content of this article, including any errors and omissions, rests with the authors.

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