

FISHERIES, DEVELOPMENT AND HUMAN RIGHTS

Chandrika Sharma¹

Abstract

This paper discusses the imperative and rationale for adopting a human rights-based approach to development in fisheries. The principle of non-discrimination inherent in such an approach requires a special attention on those presently disadvantaged within the sector, whether in large- or small-scale fisheries. A specific focus on small-scale fishing communities, particularly on women, is warranted given available evidence of their vulnerability as well as their importance in any vision of sustainable development. The growing emphasis on issues of social development and human rights in the deliberation of the FAO Committee on Fisheries (COFI), a specialized global forum for deliberating major international fisheries issues, is traced. The last section dwells on the content of a rights-based approach to development in fisheries, articulated by the growing movement of small-scale fishworkers and support organizations. That many of the rights seen as important by small-scale fishworkers are already re-

cognized in existing international law, including customary law, is emphasized. The concluding section underscores the critical need to honour international commitments to human rights.

Introduction

The international recognition of human rights² has its basis in the 1948 Universal Declaration of Human Rights. This Universal Declaration has been further elaborated with subsequent legally-binding human rights conventions and treaties, including the 1966 International Covenant on Economic, Social and Cultural Rights (CESCR), and the 1966 International Covenant on Civil and Political Rights (CCPR).

These instruments reflect the international consensus amongst members of the United Nations 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 rights of

1. Executive Secretary, ICSF (International Collective in Support of Fishworkers). This paper has been prepared with extensive inputs from ICSF members and secretariat, in particular from Jackie Sunde, John Kurien, Cornelia Quist and Sebastian Mathew. It draws on the outcomes of the Civil Society Workshop held prior to the Global Conference on Small-scale Fisheries (4SSF) and on five recent workshops organized by ICSF in Asia (2007), Latin America (2005, 2008) and Eastern and Southern Africa (2006, 2008), to explore the issue of rights for small-scale fisheries (See www.icsf.net).

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.

all members of the human family. Human rights are viewed as universal, inalienable, inter-related, indivisible and interdependent. Protecting and achieving human rights is recognized as an end in itself. These instruments recognize a wide variety of rights. They include *inter alia*: the right to life, liberty and security of person; just and favourable working conditions; food, housing and social security; education; freedom of association, expression, assembly and movement; the highest attainable standard of health; and to participate in cultural life (UN 2006).

It has also been noted that at times the equal worth and dignity of all can be assured only through the recognition and protection of individuals' rights as members of a group. Collective rights refer to the rights of such peoples and groups, including ethnic and religious minorities and indigenous peoples, where the individual is defined by his or her ethnic, cultural or religious community (UN 2006).

The foundation for a human rights-based approach to development was laid by the 1986 Declaration on the Right to Development that recognizes that all human rights, and in particular economic, social and cultural rights, must be realized in the process of development. The right to development is seen as an inalienable human right and the United Nations Millennium Declaration explicitly places both human rights commitments and development goals at the centre of the international agenda. The adoption of a

human rights-based approach draws its intrinsic rationale from the tenet that achieving human rights of all citizens is an end in itself.

The recognition and promotion of human rights, and the legal frameworks that guarantee these rights, are important for their instrumental value in promoting agency – both individual and collective (Fukuda-Parr 2002). By adopting a human rights-based approach, citizens have a stronger basis to make claims on their States, and hold them accountable for their obligations and duties. A human rights-based approach stresses that everyone, and in particular marginalized groups, have legally mandated and recognized rights. 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” (UN 2004).

In 1997 at the launch of the United Nations Programme for Reform, the Secretary-General called on all entities of the United Nations system to mainstream human rights into their various activities and programmes within the framework of their respective mandates. The political impetus for this was realized in September 2005 at the World Summit (UN 2005)³.

3. 126: “We resolve to integrate the promotion and protection of human rights into national policies and to support the further mainstreaming of human rights throughout the United Nations system, as well as closer cooperation between the Office of the United Nations High Commissioner for Human Rights and all relevant United Nations bodies”. 2005 World Summit Outcome: Sixtieth Session of UN General Assembly. Accessed online at: <http://daccessdds.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement>

Human rights, development and fisheries

In a fisheries context, adoption of a human rights-based approach would mean that all development efforts contribute to securing the freedom, well-being and dignity of all fisherpeople everywhere, in the small- or large-scale sector. Further, it would mean that fisheries management approaches, such as ecosystem-based management, rights-based fisheries management, and resilience-based management, should be coherent with a human rights approach. There is particular need to find a balance between the growing focus on biodiversity conservation and human rights, given that the narrow ecological perspective that often characterizes biodiversity conservation initiatives completely neglects the human dimension.

The application of a human rights-based approach, particularly the principle of non-discrimination, would require a special focus on small-scale fishing communities. For, despite the vital social, economic and cultural contribution of small-scale fisheries, their communities continue to be disadvantaged. This is due to a range of factors, including insecure rights to land and fishery resources, unfair and unsafe working conditions, and inadequate or absent health and educational services and social safety nets. Women fishworkers experience particular discrimination.

According to FAO estimates (FAO 2002) there are about 23 million income-poor people, plus their household dependents, that rely on

small-scale fisheries for their food security and livelihoods. The obligation of the State to prioritise disadvantaged groups requires them to take measures that explicitly benefit these groups – the persistence of poverty being acknowledged as a violation of human rights.

Small-scale fisheries currently contribute over half of the world's marine and inland fish catch, nearly all of which is used for direct human consumption (FAO 2005). They employ over 90 percent of the world's fishers and support another approximate 84 million people employed in jobs associated with fish processing, distribution and marketing. At least half of the people employed in small-scale fisheries are women (FAO 2009). Small-scale fisheries are known to be relatively more sustainable, given the diversity and seasonality of the gear employed, the minimal by-catch generated, and, as important, the lower levels of energy consumed per hour of fishing effort. Even though the sector has become relatively more technology and capital-intensive, it does still provide the model on which to sustain fisheries and fishery dependent livelihoods into the future.

It is a well recognized fact that when the small-scale sector is provided the right kind of support, it exhibits tremendous potential to significantly enhance its contribution to sustainable development and to the attainment of the UN Millennium Development Goals (MDGs) pertaining to eradication of extreme poverty and hunger and ensuring environmental sustainability. This recognition is well deserved.

Social development, human rights and fisheries at the FAO

Deliberations at the FAO's Committee on Fisheries (COFI) since 2003 have increasingly reflected international trends of a growing focus on issues of social development and human rights. Small-scale fisheries were included as a stand-alone item at COFI in 2003. In the context of the 1995 FAO Code of Conduct for Responsible Fisheries, COFI members welcomed the suggestion to elaborate technical guidelines highlighting the contribution of the small-scale fisheries sector to food security and poverty reduction (FAO 2003).

In 2007 COFI recognised that “progress in the implementation of international human rights instruments, including the conventions on the rights of seafarers and working conditions in fisheries were critical to both small-scale and large-scale fisheries” and stressed that “the recognition and adoption of human rights principles can help achieve poverty eradication and facilitate the adoption of responsible fisheries practices”. There was consensus on the need to continue working on small-scale fisheries and the proposal by Norway that FAO examine the convening of a broad-based international conference focusing specifically on small-scale fisheries, was widely welcomed (FAO 2007).

The Global Conference on Small-scale Fisheries (4SSF)⁴ held in October 2008, was a further step along this road. This Conference reaffirmed that human rights are critical to achieving sustainable development (FAO 2009).

Reviewing the outcomes of 4SSF, COFI agreed that action to support small-scale fisheries could include *inter alia*:

1. a special article on small-scale fisheries in the Code of Conduct for Responsible Fisheries;
2. an International Plan of Action (IPOA) on small-scale fisheries;
3. a sub-committee on small-scale fisheries; and
4. a dedicated global programme on small-scale fisheries (Mathew 2009).

Despite lack of consensus on the proposals, what remains clear is that this will be an issue that is likely to continue to be in focus in the coming period, with the FAO secretariat being mandated to explore all the above options.

It is important to stress that the onus of implementing a human rights-based approach to development in relation to fishing communities cannot rest with fisheries line agencies alone. Commitment and action from a wide range of actors, internationally, nationally and locally, and particularly from governments and multilateral organizations, are crucial. However, fisheries line agencies 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. They have the obligation to ensure that all policies adopted within fisheries, whether related to fisheries management or the post-harvest sector, are consistent with a human rights-based approach to development, and benefit particularly the disadvantaged groups within the sector (Sharma 2008).

4. www.4ssf.org

What a human rights-based approach would mean in practice

Small-scale fishworkers and their supporters have organized several regional workshops since 2007, all of which have called for a human rights-based approach to development in relation to fisheries and fishing communities. These processes have also thrown up concrete proposals of what a rights-based approach should mean in practice, from the perspective of small-scale fishworkers. The Bangkok Statement⁵, adopted by participants of the Civil Society Workshop held prior to the 4SSF, represents a culmination of these processes. The workshop was jointly organized by the World Forum of Fisher Peoples (WFFP), the International Collective in Support of Fishworkers (ICSF) and the International Planning Committee on Food Sovereignty (IPC), organisations that have for long adopted a right-based framework for their work.

The rights highlighted in the statement include:

- Rights of fishing communities and indigenous people to their cultural identities, dignity and traditional rights, and to recognition of their traditional and indigenous knowledge systems;
- Rights of access of small-scale and indigenous fishing communities to territories, lands and waters on which they have traditionally depended for their life and livelihoods;
- Rights of preferential access to fisheries resources under national jurisdiction;
- Rights of fishing communities to use, restore,

protect and manage local aquatic and coastal ecosystems;

- Right of communities to participate in fisheries and coastal management decision-making, ensuring their free, prior and informed consent to all management decisions;
- Rights of women to participate fully in all aspects of small-scale fisheries, eliminating all forms of discrimination against them and securing their safety against sexual abuse;
- Rights of women of fishing communities to fish resources for processing, trading, and food, particularly through protecting the diversified and decentralized nature of small-scale and indigenous fisheries;
- Right of women to fish markets, particularly through provision of credit, appropriate technology and infrastructure at landing sites and markets;
- Rights of fishing communities to basic services such as safe drinking water, education, sanitation, health and HIV/AIDS prevention and treatment services;
- Rights of all categories of workers in the fisheries, including self-employed workers and workers in the informal sector, to social security and safe and decent working and living conditions;
- Rights of fishing communities to information in appropriate and accessible forms.

Many of these “rights” seen as important by small-scale fishworkers are already recognized in existing international law, including customary law. The issue is really about implementation and

5. The civil society statement finalized in Bangkok on 13 October 2008 is reproduced in SAMUDRA Report 51, December 2008, pp. 7–9.

we draw attention here to some of the relevant instruments and their provisions. These include the following:

- The 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) cites the right to adequate food as part of a fundamental right for everyone to an adequate standard of living (Article 11 [1]).
- The 1982 United Nations Convention on the Law of the Sea (UNCLOS) requires 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 EEZ (Article 61).
- The 1995 United Nations Fish Stocks Agreement (UNFSA) requires developing 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 5 [i]).
- The 1995 Code of Conduct for Responsible Fisheries (CCRF) has several provisions of relevance, such as those that call on States to: secure preferential access of small-scale and artisanal fisheries to traditional fishing grounds and resources in waters under national jurisdiction (Article 6.18); facilitate participatory and consultative processes (Article 6.13); ensure that rights of coastal fishing communities and their customary practices are taken into account in coastal area management (Articles 10.1.2 and 10.1.3); take into account traditional practices, needs and interests of indigenous people and local fishing communities while deciding on the use, conservation and management of fisheries resources (Article 7.6.6), and; document and take into account traditional knowledge in fisheries management (Article 6.4 and 12.12).
- The 1992 Convention on Biological Diversity (CBD) requires States to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biological diversity (Article 8 [j]), and to protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements (Article 10 [c]).
- ILO Convention 169 on Indigenous and Tribal Peoples (1989) seeks to protect indigenous and tribal peoples, based on respect for their cultures, their distinct ways of life, and their traditions and customs; the ILO Work in Fishing Convention 188 (2007) seeks to secure the rights of fishers to decent work; and several other ILO Conventions set standard for workers in the organized sector, as well as for home-based workers.
- The 1979 Convention on the Elimination of All Forms of Discrimination against Women (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.

- The 2007 UN Declaration on the Rights of Indigenous Peoples 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.
- The Millennium Development Goals (MDGs) set time-bound targets, with clear indicators of progress, to meet eight agreed goals, including: reducing poverty, eliminating gender disparity in primary and secondary education, reducing the maternal mortality ratio and halving the proportion of people without sustainable access to safe drinking water and basic sanitation.

Conclusion

There is a strong international framework and universal commitment to the adoption of a human rights-based approach to development. By focusing on 'rights' such an approach has the potential to empower, and to hold duty bearers accountable. The effective implementation of a human rights-based approach to development is critically dependent on two dimensions: the extent to which the capacities of rights holders

to claim and exercise their rights, as well as the capacities of duty-bearers to fulfil their human rights obligations, can be developed. The importance of such capacity building, as well as the substantial and concrete investment required to be made by international and national organizations in this process, cannot be overemphasized.

The challenge, sixty years after the adoption of the 1948 Universal Declaration of Human Rights, is really implementation. There is enough evidence, for example, of unacceptably high levels of inequity and poverty, persistent hunger, gender violence and discrimination in fishing communities. There is enough evidence to indicate that the interests of small-scale fishing communities are being sacrificed for causes that range from economic growth and development to environment protection and conservation, in violation of all accepted principles of human rights.

Given the economic and financial crisis facing the world today the need for taking decisions consistent with a human rights-based approach to development, especially in relation to small-scale fisheries, is more critical than ever. The provision for 'progressive realisation' of social, economic and cultural rights must not be used to postpone necessary action for realization of these rights. The achievement of human rights – civil, political, social, economic and cultural rights – is not a means to an end. It is a legitimate end in itself.

References

- Food and Agriculture Organization of the United Nations (FAO). 2002. The State of World Fisheries and Aquaculture (SOFIA), 2002. Rome, FAO.
- Food and Agriculture Organization of the United Nations (FAO). 2003. Report of the twenty-fifth session of the Committee on Fisheries. Rome, 24–28 February 2003. *FAO Fisheries Report R702*. Rome.
- Food and Agriculture Organization of the United Nations (FAO). 2005. Increasing the contribution of small-scale fisheries to poverty alleviation and food security. *FAO Technical Guidelines for Responsible Fisheries* no. 10. Rome, FAO.
- Food and Agriculture Organization of the United Nations (FAO). 2007. Report of the twenty-seventh session of the Committee on Fisheries. Rome, 5–9 March 2007. *FAO Fisheries Report R830*.
- Food and Agriculture Organization of the United Nations (FAO). 2009. Securing sustainable small-scale fisheries: bringing together responsible fisheries and social development. COFI/2009/7. Rome, FAO.
- Fukuda-Parr, S. 2002. Operationalising Amartya Sen's ideas on capabilities, development, freedom and human rights – the shifting policy focus of the human development approach. Available online at: http://hdr.undp.org/docs/training/oxford/readings/fukuda-parr_HDA.pdf (accessed on September 1 2008).
- Mathew, S. 2009. Securing Small-scale Fisheries. *SAMUDRA Report* 52, March 2009, ICSF.
- Sharma, C. 2008. Securing Economic, Social and Cultural Rights of Fishworkers and Fishing Communities. Paper presented at the Global Conference on Small-scale Fisheries, 13–17 October 2008, Bangkok, Thailand.
- United Nations (UN). 2006. Frequently asked questions on a human rights-based approach to development cooperation. Geneva, Office of the United Nations High Commissioner for Human Rights, United Nations. Available online at: http://www.hurilink.org/tools/FAQon_HRBA_to_Development--OHCHR.pdf (accessed on 25 March 2009).
- United Nations (UN). 2005. 2005 World Summit Outcome: United Nations General Assembly Resolution adopted at the Sixtieth Session of the General Assembly. Available online at: <http://daccessdds.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement>.
- United Nations (UN). 2004. Human Rights and Poverty Reduction: A Conceptual Framework. HR/PUB/04/1. Office of the United Nations High Commissioner for Human Rights, United Nations. Available online at: <http://www.unhcr.ch/html/menu6/2/povertyE.pdf>.