

## Comment

# Shameful incarceration

It is a matter of great concern that, over the last four years, fishermen of various nationalities are being arrested and detained for illegal fishing or for just accidentally straying into the territorial waters of neighbouring countries. There are numerous instances, for example, of Indonesian, Thai, Burmese, Indian, Pakistani, Sri Lankan, Egyptian, Yemeni, Filipino, Peruvian, Costa Rican and Trinidadian fishermen being arrested and bundled into prison. In some cases, due to tardy procedures, fishermen end up spending years on end in the jails of neighbouring countries. A conservative estimate of total arrests and detention of fishermen during these last four years, based on media reports, puts the figure at close to 2,000.

Most of these arrests and detention in the world occur in the Indian Ocean region and involve developing countries (with the exception of Indonesian fishermen in Australian jails). It is a shame that those who are thus arrested and detained are some of the poorest in the world, fishing not for profit but for life and livelihood.

In this context, the recent unilateral decision by the Government of India to release all Pakistani fishermen detained in Indian prisons is a welcome move. According to CNN, Atal Behari Vajpayee, the Prime Minister of India, has gone a step ahead, and "ordered that, from now on, all fishermen caught accidentally transgressing into the Indian waters should be turned back rather than arrested".

Even between adjacent maritime zones with boundary agreements, there is poor demarcation of boundaries, making it difficult for fishers from one country to safely ascertain if they are transgressing the territorial sovereignty of the neighbouring country.

Recognizing such practical difficulties, arrangements to prevent arrest and detention of innocent fishermen at a bilateral level exist, to our knowledge, only between Costa Rica and Nicaragua. They have a 'sea of tolerance' straddling their respective maritime boundaries. Local authorities alert fishermen and allow them to return safely home if they sail past these boundaries.

There is sufficient food for thought in the 1998 International Court of Justice Award of the Eritrea-Yemen Arbitration Tribunal over the Zuqar-Hanish and Zubayr groups of islands in the Red Sea. While upholding the territorial sovereignty claim of Yemen over these island groups, the Tribunal found "sovereignty entails the perpetuation of the *traditional fishing regime* in the region, including *free access and enjoyment for the fishermen* of both Eritrea and Yemen." Using the same logic, there should be legal recognition everywhere in the world, of traditional fishing regimes in adjacent waters, even if it means accommodating fishers of one country in the territorial waters of the other, subject to these regimes not resorting to non-selective and destructive fishing methods and techniques.

Even in cases of illegal fishing that leads to arrest and detention of fishermen (for example, interception of Sri Lankan multi-day tuna fishing boats and arrest of crew in several Indian Ocean countries), there can be agreements between countries to allow the small-scale fishing units using selective gear and techniques of one country limited access to the surplus fish stocks of another.

Recognizing traditional regimes and developing bilateral or regional mechanisms to share fish stocks can go a long way in resolving this vexing issue of inhuman incarceration of fishers. This will also be a principal concern of the forthcoming conference on the Indian Ocean Region, organized by ICSF and the International Ocean Institute, to be held in Chennai, India, between 9 and 13 October.