



THE DANISH  
INSTITUTE FOR  
HUMAN RIGHTS

# THE HUMAN RIGHTS IMPACTS OF FISHERIES SUBSIDIES

ANALYSIS, IMPLICATIONS AND RECOMMENDATIONS  
(WORKING DRAFT)

**THE HUMAN RIGHTS IMPACTS OF FISHERIES SUBSIDIES:**  
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(WORKING DRAFT)

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This report was developed and published with financial support of the Swedish International Development Cooperation agency (SIDA) through the 'Sustainable Oceans – Pursuing a Human Rights-Based Approach to Fisheries and aquaculture' project designed and implemented by the Danish Institute for human rights from 2018-2022.

**e-ISBN:** 978-87-7570-091-2

**Cover photo:** Pham Hung

**Layout:** Michael Länger

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This paper titled ' THE HUMAN RIGHTS IMPACTS OF FISHERIES SUBSIDIES: ANALYSIS, IMPLICATIONS AND RECOMMENDATIONS is a working draft and will be revisited and finalized in due course.

The authors of this paper invite feedback and comments for consideration and incorporation in a forthcoming final version.

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Danish Institute for Human Rights, June 2022

# CONTENTS

<b>1</b>	<b>GLOSSARY</b>	<b>4</b>
<b>2</b>	<b>INTRODUCTION</b>	<b>6</b>
<b>3</b>	<b>WHAT ARE FISHERIES SUBSIDIES?</b>	<b>7</b>
	3.1 THE ISSUE	7
	3.2 INTERNATIONAL ACTION TO COMBAT HARMFUL FISHERIES SUBSIDIES	9
<b>4</b>	<b>TYPOLGY</b>	<b>12</b>
<b>5</b>	<b>CASE STUDIES</b>	<b>14</b>
	5.1 REPUBLIC OF CHILE	14
	5.2 REPUBLIC OF INDONESIA	16
	5.3 REPUBLIC OF GHANA	18
<b>6</b>	<b>IMPACTS OF FISHERIES SUBSIDIES ON HUMAN RIGHTS</b>	<b>20</b>
<b>7</b>	<b>RECOMMENDATIONS AND SUGGESTED NEXT STEPS</b>	<b>21</b>
	7.1 RECOMMENDATIONS TO STATES	21
	7.2 RECOMMENDATIONS TO INTERGOVERNMENTAL ORGANISATIONS	23
	7.3 RECOMMENDATIONS TO CIVIL SOCIETY	25

# 1 GLOSSARY

Artisanal fisheries	Fisheries in which fisherfolk (artisans) utilise low levels of technology to harvest marine resources
Biologically sustainable yield (BSY)	The rate of harvest of marine resources that enables a stock to regenerate itself over time. Harvests that surpass the BSY are considered unsustainable.
Bycatch	Marine organisms which are inadvertently caught in the harvest of target stocks
Coastal States	Countries with coastlines, whose economic and legal jurisdiction extend into maritime zones
Distant water fishing (DWF)	Fishing sponsored by a State which occurs beyond its maritime zones, either in the high seas or within the maritime zones of other States
Exclusive Economic Zone (EEZ)	A maritime zone that extends up to 200 nautical miles from a coastal State, over which the coastal State may exercise exclusive rights to fishing and other economic activities
Externality	The dislocation of cost from one entity to another (often uninvolved) entity
Fisheries subsidies	Financial contributions from governments that confer benefits to the fishing industry
Fishing effort	The intensity of fishing operations in a given area/targeting a given resource (related to amounts of fishing vessels, frequency of fishing trips, and equipment efficiency)
Fixed-cost inputs	Inputs to fishing firms which cost a fixed amount and are purchased one time, such as vessels and equipment
Foreign access agreement	An agreement that enables foreign vessels to fish in the exclusive economic zone of a coastal State
Fleet	A group of vessels associated with a sector of the fishing industry, similar in size, levels of technology, and fishing capacities
Free, prior and informed consent (FPIC)	Indigenous peoples must be consulted on issues which impact their rights to self-determination, as stipulated in the UN Declaration on the Rights of Indigenous Peoples
Gigatonnes (GT)	A unit of measurement used to measure fish harvests
High seas	Areas of the ocean that lie beyond State jurisdiction
Human rights impact assessment	An assessment undertaken to evaluate the human rights impacts of certain policies, legislation, practices or projects
Human rights impacts	Positive, negative or neutral effects on people's enjoyment of their human rights
Illegal, unreported and unregulated fishing (IUU fishing)	Fishing which occurs outside of management regimes and permission structures

Large-scale fisheries (LSF)	Fisheries characterized by fleets of large industrial vessels, with high capacities for fishing, storing, and processing harvests. (Also referred to as industrial fisheries.)
Maximum sustainable yield (MSY)	The largest possible harvest of a stock that allows it to regenerate over time, while ensuring the maximum economic benefit from its utilisation
Marine capture	Fishing of wild stocks, occurring in an uncontrolled marine environment (separate from aquaculture)
Marine protected area (MPA)	A delimited section of ocean where human activities are limited, according to the management objectives of the coastal State
Nautical mile	Maritime unit used to measure distances at sea (1.52 kilometres / 1.1508 statute miles)
Organisation for Economic Co-operation and Development (OECD)	An intergovernmental organisation comprised of 38 member States that focuses on economic development
Regional fisheries management organisation (RFMO)	An intergovernmental organisation that coordinates the utilisation of specific marine resources in a given geographical area
Stock	A unique population of marine organisms, distinguished by species type, seasonality, or geographical range
Small-scale fisheries (SSF)	Fisheries in which individual fishers do not harvest industrial-level yields. Unlike artisanal fishing, small-scale fishers may use industrial-level technologies in fishing operations
Special and differential treatment (SDT)	Concessions or leniencies available to developing and least-developed Members in the application of WTO Rules
Total allowable catch (TAC)	The limit on the amount of harvest to be taken from a particular fishery, measured in tonnes or numbers of organisms
Territorial sea	Waters extending up to 12 nautical miles from the low-tide baseline of a State, where the State enacts full sovereignty over navigation, environmental regulations, and resource use
UN Food and Agriculture Organisation (FAO)	United Nations agency that monitors global agriculture, food security, and nutrition
Variable-cost inputs	Inputs to fishing firms which may change in quantity and price, depending on fishing effort, for example, consumables like bait and fuel
World Trade Organisation (WTO)	International organisation in which member States negotiate rules and frameworks for global trade
WTO Member	One of the 164 countries or customs unions that have acceded to the World Trade Organisation
WTO Ministerial Conference	Bi-annual meeting of WTO ministers, representing the highest decision-making body of the WTO
WTO Negotiating Group on Rules	Group of WTO Members which negotiates technical rules, including rules on WTO disciplines for fisheries subsidies

## 2 INTRODUCTION

The human rights impacts of fisheries subsidies is an underexplored theme. When observed through a human rights lens, it becomes clear that there are significant adverse implications from subsidy schemes that could have been avoided if more efforts had been invested in achieving policy coherence between fisheries subsidies, development commitments as outlined in the 2030 Agenda for Sustainable Development, and legally binding human rights treaties.

This working paper aims to analyse the human rights impacts of fisheries subsidies by applying a human rights typology to the different types of subsidy schemes rather than the usual typology of beneficial, harmful or ambiguous subsidies. In addition, the paper provides three case studies to illustrate the dynamics at play in specific country contexts. Finally, this paper concludes with a series of recommendations to States, companies, intergovernmental organizations and civil society actors who each play a crucial role in ensuring that fisheries subsidies do not cause harm and rather promote the realization of human rights.

Stakeholders are invited to share feedback and comments to this working draft, which will then be considered in the final editing of the paper. We hope that by putting out this draft paper now, it can contribute to generating discussions on the topic and serve as the basis for further engagement and action to promote a human rights focus in relation to fisheries subsidies by the WTO and other actors working on the topic.



Photo: Raul Pandit

## 3 WHAT ARE FISHERIES SUBSIDIES?

Fisheries subsidies are economic policy tools used by governments to benefit the fishing industry.<sup>1</sup> Although fisheries subsidies have been in use for centuries,<sup>2</sup> most contemporary subsidy programmes were devised during the 20th century.<sup>3</sup> During this era of industrialisation and development, governments targeted fisheries subsidies to modernise and strengthen their domestic fishing sectors, respond to economic crises, and, in some cases, manage environmental issues.<sup>4</sup>

The World Trade Organisation (WTO) defines subsidies as 'financial contributions' from WTO Member governments<sup>5</sup> that confer benefits<sup>6</sup> to an enterprise, industry, or group thereof.<sup>7</sup> These 'financial contributions' can constitute direct payments;<sup>8</sup> concessional credits;<sup>9</sup> tax relief;<sup>10</sup> or government-provided goods and services, including policy changes that implicitly impact industry.<sup>11</sup> (For a complete list of fisheries subsidies, see [Table: impacts of fisheries subsidies on human rights](#)). Using this broader toolbox, governments can tailor subsidies to fit the specific needs of their fishing industries. For example, fisheries subsidies may be targeted towards fishing corporations to enhance equipment and fleets; to individual vessel operators to reduce the prices of expendables such as fuel or bait; or directly to fishers to supplement their incomes or insurance. Governments may also choose to bear costs on behalf of the industry, i.e., by becoming loan guarantors or by purchasing the rights for fleets to access foreign exclusive economic zones (EEZs). In effect, fisheries subsidies may enable a nation's fishing industry to maintain or expand its range, to retain or employ more personnel, and ultimately, to conduct operations with less regard for the true economic 'bottom line.'

### 3.1 THE ISSUE

As economic policy tools, fisheries subsidies are neither 'good' nor 'bad.' Depending on how they are implemented, however, fisheries subsidies can either enhance or adversely impact human rights realisation. Where fisheries subsidies distort the true cost of fishing,<sup>12</sup> they may enable industries to overequip and over-develop their fleets, facilitating a level fishing effort that is unsustainable for marine resources. Subsidies can also encourage the fishing industry to operate inefficiently, in locations where depleted stocks or high transit costs might have otherwise suppressed profits. A 2018 study found that production in 54% of high-seas fishing grounds would have been unprofitable without subsidies.<sup>13</sup>

“ Of the estimated USD 35 billion per year allocated to fisheries subsidies, USD 22 billion are thought to encourage overcapacity and overfishing,<sup>14</sup> depleting the very stocks on which the global fishing industry depends.

If stock depletion is the 'true cost' of overcapacity and overfishing, understanding who pays for the costs is key. In economics, the displacement of cost from one entity to another is known as an externality. Externalities from overcapacity and overfishing are particularly acute for communities whose nutritional needs rely on fish. Fish is

the primary source of protein for an estimated 3 million people worldwide.<sup>15</sup> In some coastal communities in least-developed countries, fish can comprise up to 80% of local diets.<sup>16</sup> For individuals within these communities, the subsidised overfishing of decreasing marine resources can impact their rights to adequate food<sup>17</sup> and with it, the right to health<sup>18</sup> and to an adequate standard of living.<sup>19</sup>

In addition to those who depend on fish for nutrition, individuals who depend on fishing for employment and livelihoods also suffer externalities from overcapacity and overfishing. This is especially true where heavily-subsidised and less- or not subsidised fishing sectors compete for the same stocks. The majority of the world's fishers (around 97%) live in developing countries, with 90% of all fishers employed in small-scale fishing operations.<sup>20</sup>

However, 85% of global fisheries subsidies are allocated not to small-scale coastal fisheries, but to large industrial fleets.<sup>21</sup> Coastal fishing communities that utilise the same marine resources as subsidised fleets may find themselves disadvantaged, forced to expend increasing effort even as catch sizes decrease.<sup>22</sup>

Fishers may choose to engage in riskier fishing operations, endangering their lives for diminishing catches.<sup>23</sup> They may seek to compensate for lost profits through illegal fishing activities which further deplete marine resources.<sup>24</sup> For labourers in small-scale and artisanal fisheries, fisheries subsidies can impact the right to just and favourable conditions of work,<sup>25</sup> especially the right to work in safe and healthy work conditions.<sup>26</sup>

Fisheries subsidies can also impact the labour rights of crews on distant-water fishing operations and of workers who construct fisheries infrastructure. As mentioned above, some fisheries subsidies enable vessels to engage in distant water fishing (DWF). Lack of enforcement and oversight of labour conditions on fishing vessels on the high seas can prevent accountability for vessel operators, who may forego labour and safety standards to increase profit margins. At worst, labourers on distant-water vessels can even be conscripted into slavery.<sup>27</sup> Such abuses in distant-water fishing operations have obvious implications for the human rights of vessel personnel, including the right to just and favourable work conditions,<sup>28</sup> the right to safe and healthy work conditions,<sup>29</sup> the right to an adequate standard of living,<sup>30</sup> and the right to not be held in slavery or servitude.<sup>31</sup> The labour rights of workers who construct or operate fishing infrastructure, such as port and landing facilities, processing centres, and market locations, can also be impacted by fishing subsidies. Fisheries subsidies for infrastructure that are provided without monitoring and accountability standards or grievance redress mechanisms may contribute to indirect labour rights impacts.

When States sign and ratify international human rights treaties, they assume obligations under international law to respect, protect, and fulfil human rights. This includes the duty of States to protect against human rights abuse by third parties, including by business enterprises. States can fail to ensure adequate respect for human rights when providing fisheries subsidies directly, by adopting policies without paying due regard to potential negative human rights impacts, and indirectly, by subsidising



fishing companies that cause, contribute, or are directly linked to adverse human rights impacts. Accordingly, States should assess the human rights impacts of any existing or potential fisheries subsidies to ensure that they fulfil their duties under international human rights law.

Just as States should measure their fisheries subsidisation policies against their international human rights obligations, relevant international fora should also evaluate harmful fisheries subsidies with a human rights lens. The following section considers action which has been taken at the international level to identify, define, and ultimately limit the use of 'harmful fisheries subsidies.'

### **3.2 INTERNATIONAL ACTION TO COMBAT HARMFUL FISHERIES SUBSIDIES**

Since fisheries subsidies influence international trade, they are supervised by the World Trade Organisation (WTO). The WTO began to consider harmful fisheries subsidies in the late 1990s.<sup>32</sup> At its 4th Ministerial Conference (MC4) in 2001, the WTO agreed to formally negotiate anti-dumping and subsidies rules, including rules on harmful fisheries subsidies.<sup>33</sup> At MC6 (2005), Ministers clarified that the Negotiating Group on Rules should seek to prohibit subsidies 'that contribute to overcapacity and overfishing.'<sup>34</sup> However, consensus-building attempts met an impasse in 2011.<sup>35</sup> Negotiations were not reenergized until 2015, when 190 countries adopted the 2030 Agenda for Sustainable Development.

The 2030 Agenda outlines a global commitment to 'achieving sustainable development in its three dimensions—economic, social and environmental.'<sup>36</sup> Crucially, its 17 Sustainable Development Goals and 169 targets 'seek to realize the human rights of all.'<sup>37</sup> Under SDG target 14.6, States committed to 'prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing, and refrain from introducing new such subsidies.'<sup>38</sup> This commitment specifically targeted the WTO fisheries subsidies negotiations, with 'effective special and differential treatment for developing and least developed countries' set to comprise 'an integral part.'<sup>39</sup> SDG target 14.6 substantially intersects with other targets under SDG 14 (Life Below Water),<sup>40</sup> as the prohibition of harmful fisheries subsidies envisaged in SDG target 14.6 would enhance the realisation of SDG target 14.2 on coastal marine ecosystem management, SDG target 14.4 on IUU fishing, and SDG target 14.5 on marine protected areas.<sup>41</sup>

Though SDG target 14.6 was to be met in 2020, ten years ahead of the full 2030 Agenda, its deadline ultimately elapsed without a WTO agreement. Between 2015 and 2020, the WTO Negotiating Group on Rules resumed its work on harmful fisheries subsidies. But consensus remained elusive, and the deadline for Ministerial agreement was delayed on several occasions, from 2017,<sup>42</sup> to 2019,<sup>43</sup> and again to 2020.<sup>44</sup> When the global COVID-19 pandemic<sup>45</sup> caused the indefinite postponement of what would have been Ministerial Conference 12 (MC12) in June 2020, responsibility for the Agreement shifted to the December 2020 Trade Negotiations Committee and General Council meetings. Both committees failed to reach agreement, and the WTO reset the deadline once more to 2021.

Throughout 2021, the Negotiating Group on Rules continued to modify the agreement, producing multiple new draft texts. Following intensive negotiations in November 2021, a new variant of COVID-19 postponed the MC12 for a second time, delaying Ministerial consideration. WTO Director General Ngozi Okonjo-Iweala reset the deadline to February 2022, but the Chairman of the Negotiating Group on Rules later clarified that agreement could be expected no earlier than the summer break.<sup>46</sup> On 17th June 2022, with negotiators working through the eleventh hour of the rescheduled 12th Ministerial Conference, the Agreement on Fisheries Subsidies was finally secured.<sup>47</sup> Civil society and academic experts offered mixed reviews of the deal in the days that followed.<sup>48</sup> While praising the WTO for concluding decades of negotiations,<sup>49</sup> many organisations and experts found the agreement to be incomplete.<sup>50</sup>

In terms of the content of the Agreement reached, it includes a prohibition of subsidies contributing to IUU fishing with transparency and notification provisions. A dedicated trust fund to provide technical assistance and capacity building for developing countries to implement the agreement is also included, which is a welcome element. The Agreement also includes a strong prohibition of subsidies for fishing on the unregulated high seas, a positive development for the most vulnerable areas lacking an established and coordinated fisheries management regime. In addition, the provision on overfished stocks will bring sustainability rules for subsidies regarding the most vulnerable stocks in the first phase of the Agreement.

To conclude, for the Agreement regarding subsidies on overcapacity and overfishing to truly deliver on achieving the commitment world leaders agreed upon with SDG 14.6, the elements that were left out in the final draft need to be reconsidered. On a more positive note, it is worth mentioning, that by reaching this agreement, the first aspect of SDG target 14.6 has been met, and that in itself is a significant step. Furthermore, the Agreement is the first legally binding multilateral trade agreement that has an environmental focus and supports sustainability.

Lastly, the Agreement has established a new institutional body, the Committee on Fisheries Subsidies. The Committee will review how the agreement will be operationalized and will identify any future modifications. Another welcome development is the establishment of a dispute settlement mechanism under Article 10 of the Agreement, where member states that find other states not abiding by the Agreement can file a grievance against the states in question.

Now, for the Agreement to enter into force, two thirds of the WTO member states have to ratify it, which is urgent. Once this has happened, there is a need to enhance the agreement in a number of areas.

Although the final Agreement on Fisheries Subsidies prohibits Members from subsidising IUU fishing<sup>51</sup> or fishing that targets overfished stocks,<sup>52</sup> the Agreement failed to 'prohibit...fisheries subsidies which contribute to overcapacity and overfishing' as envisaged by SDG 14.6.<sup>53</sup>

The agreement is therefore less ambitious than its preceding draft texts,<sup>54</sup> which would have prohibited Members from granting or maintaining subsidies that contribute to overcapacity and overfishing,<sup>55</sup> except where Members had implemented measures to ensure biologically sustainable use.<sup>56</sup> Though the exception would not have directly expanded human rights considerations within the Agreement, it would have enabled Members to protect capacity-enhancing subsidies which improve economic, social and labour rights realisation, so long as they are biologically sustainable. Since biologically unsustainable fisheries subsidies often negatively impact human rights, this combination of prohibition of subsidies that contribute to overfishing, and exemption in case other measures ensure biologically sustainable use, would have encouraged WTO Members to retain subsidies that are 'beneficial' for rights realisation. Along with most of the 'overcapacity and overfishing' draft language, both the prohibition and exemption were ultimately discarded from the final Agreement.<sup>57</sup>

The Agreement might have balanced the removal of overcapacity and overfishing subsidy regulations by bolstering provisions for notification and transparency, measures which could have indirectly improved human rights realisation for fish-dependent people: This would have been the case, if reporting about the context of a subsidy, including the status of targeted stocks, was a condition for payment of subsidies. Such measures would have been likely to indirectly encourage Members to uphold their human rights obligations. However, Article 8 on Notification and Transparency of the final Agreement was also thinned from the most recent draft text. The majority of the reporting 'requirements' set by the Agreement are to be followed not unequivocally, but 'to the extent possible.'<sup>58</sup> Members are no longer obliged to report catch data for subsidy-targeted species<sup>59</sup> or to report on the provision of fuel subsidies,<sup>60</sup> widely considered to be the most harmful type of fisheries subsidy. Even more alarming, a provision that would have required Members to report known instances of forced labour was also excluded from the final Agreement.<sup>61</sup> In removing these reporting requirements, the WTO has missed an opportunity to promote human rights accountability in its fisheries subsidies work.

The Agreement will likely not have been the last chance for the WTO to discuss human rights and fisheries subsidies. Further negotiations on tabled issues, including about subsidies which contribute to overcapacity and overfishing, are expected to be held at MC13 in 2023. In the interim, the WTO Negotiating Group on Rules must contend with the expert criticism that has been levied since MC12. By failing to discipline subsidies which encourage overcapacity and overfishing while setting only loose reporting standards,<sup>62</sup> the Agreement fails to promote and protect human rights. By doing so, it falls short of keeping up the level of ambition set in earlier drafts and misses the opportunity to establish coherence with human rights obligations and commitments made in the 2030 Agenda for Sustainable Development. Ahead of MC13, civil society advocates, academics, and WTO negotiators should thus expand the definition of 'harmful fisheries subsidies' to incorporate due consideration for human rights.

## 4 TYPOLOGY

Previous categorisations of fisheries subsidies as beneficial, harmful, or ambiguous have largely been determined based on the impact of subsidies on maximum sustainable yield (MSY)<sup>63</sup> or biologically sustainable yield (BSY). Within this frame, beneficial subsidies prevent overexploitation of marine resources, while harmful fisheries subsidies enable the overexploitation of marine resources. Between beneficial and harmful, ambiguous subsidies neither promote nor detract from sustainable fisheries management.<sup>64</sup>

In general, fisheries subsidies which benefit select groups of fishers and which reduce the marginal costs of operations are linked to higher negative socioeconomic and environmental impacts.<sup>65</sup> When the marginal cost of operations decreases and profitability increases, fishers are encouraged to fish. Increasing fishing where marine resources are already depleted can move a sector into a state of ‘overcapacity,’ i.e., a state in which the sector removes marine resources beyond what is sustainable. When overcapacity translates into overfishing, it may adversely impact those who depend on a marine resource for nutrition or livelihoods.

In contrast, fisheries subsidies which do not target the marginal costs of select fishers, but attempt to confer benefits evenly across the industry, are less linked to negative socioeconomic and environmental impacts.<sup>66</sup> For example, when governments invest in fisheries research, management, or enforcement—protecting the resource that the sector relies upon—fisherfolk universally benefit.

Based on economic theory, subsidies can be organised on a spectrum from ‘less associated’ to ‘more associated’ to negative socioeconomic, labour-related, and environmental impacts.<sup>67</sup> However, it is important to recall that subsidies are never issued outside of a political, environmental and economic context.<sup>68</sup> An important conditioning factor of a given subsidy is the size of the beneficiary. Subsidies can increase fishing effort in both small-scale and large-scale fisheries, but the magnitude of that effort varies. For instance, an artisanal fisherman receiving discounted bait is less likely to pressure marine resources than an industrial trawl operator who receives the same discount. At the same time, savings from bait subsidies might more immediately benefit the artisanal fishers’ quality of life, than it benefits the owner of the trawl vessel, let alone those working on the vessel. It is important to consider not only the form of the subsidy, but the recipient—whether they are a vessel owner or operator, fisher, or processor, and whether their operations are small or large-scale.<sup>69</sup> Therefore, while general trends related to fisheries subsidies’ impacts on human rights can be extrapolated (as has been attempted in the [Table on the impacts of fisheries subsidies on human rights](#)), it is important for all duty-bearing governments to perform independent analyses which take into account differing national circumstances. Rather than using the underutilisation or overexploitation of the maximum sustainable yield to evaluate fisheries subsidies, this briefing paper qualifies fisheries subsidies according to their potential **human rights impacts**.

## TYPOLOGY OF FISHERIES SUBSIDIES:

**Beneficial:** those which help States fulfil their human rights obligations and encourage businesses to operate in ways that enhance human rights realisation

**Harmful:** those which undermine State and business responsibilities to protect and respect human rights

**Ambiguous:** those which can positively and negatively impact human rights.



Photo: Anh Kiara

## 5 CASE STUDIES

The following analysis presents several case studies which demonstrate beneficial, harmful, or ambiguous fisheries subsidies under a human rights lens.



### 5.1 REPUBLIC OF CHILE

With 4,000 miles of coastline, the Republic of Chile is the world's 10th largest marine capture producer.<sup>70</sup> In 2020, Chilean fisheries constituted 4% of global fisheries production<sup>71</sup> and 4% of global exports<sup>72</sup> (worth USD 6 billion).<sup>73</sup> In the same year, the five most commercially viable stocks in Chile—valued at USD 382.1 million—were fished under Total Allowable Catch (TAC) limits.<sup>74</sup> However, contemporary 'sustainability' follows decades of unsustainable fishing<sup>75</sup> that has, over time, depleted 70% of Chilean stocks.<sup>76</sup> Accordingly, marine capture now occupies a much smaller role than aquaculture in the Chilean seafood sector, at only 9% of its total value in 2018.<sup>77</sup>

This decline can be mapped against the history of the Chilean fisheries industry. As the marine capture sector developed from 1960s through the 1980s under the heavy influence of government subsidisation, it was subjected to few sustainability controls.<sup>78</sup> The Chilean government eventually imposed TAC limits on commercial stocks in the 1990s.<sup>79</sup> Rather than prevent stock depletion, TAC limits actually promoted unsustainable levels of fishing effort,<sup>80</sup> with firms attempting to capture as much of the annual TACs as possible before their exhaustion.<sup>81</sup> To end this 'Olympic Race' period,<sup>82</sup> the Chilean Congress enacted an Individual Transferable Quota (ITQ) system<sup>83</sup> in 2002.<sup>84</sup> Quota allocation prevented the free-for-all of the 1990s, but did not prevent stock depletion,<sup>85</sup> likely because quotas were disproportionately awarded to large-scale commercial fishers over small-scale and artisanal fishers.<sup>86</sup>

Preferential treatment of large-scale industrial fishing continued under the controversial<sup>87</sup> 2012 'Longueira Law' (named after the Minister of the Economy who oversaw the legislation.)<sup>88</sup> Artisanal fishers' demands to replace the ITQ system with an equitable open auction system<sup>89</sup> were met in the legislation. Simultaneously, however, the Longueira Law awarded 20-year renewable concessions for major commercial stocks<sup>90</sup> to the industry's four largest industrial conglomerates.<sup>91</sup> While the law expanded some environmental safeguards, opponents nonetheless argued that its favourable treatment of commercial industry would not curb domestic overfishing but instead would continue to threaten artisanal livelihoods.<sup>92</sup> The artisanal sector mounted a series of protests when it emerged that policymakers had received irregular payments from industry before enacting the Longueira Law.<sup>93</sup> Indigenous plaintiffs impacted by the law also submitted petitions to the Constitutional Court of Chile, though their claims were dismissed.<sup>94</sup> Sustained opposition to the law has culminated in efforts for its annulment, which gained serious government consideration in late 2021.<sup>95</sup>

Industry concessions under the Longueira Law have impacted the realisation of human rights in small-scale and artisanal fisheries. Long-lasting, pre-guaranteed concessions allow industry to bypass the open auction system, enabling industrial

fishing firms to start operating before artisanal fishers receive their quotas. Industrial fishing outfits are more immune to weather and climate deterrents than their artisanal counterparts,<sup>96</sup> and their fishing methods can be much more intensive, even resulting in harmful bycatch.<sup>97</sup> Disproportionate support to the high-intensity industrial sector increases pressure on marine resources, reducing their availability for artisanal fishers. Small-scale fishers represent the majority of the Chilean marine capture fleet,<sup>98</sup> with 13,138 vessels<sup>99</sup> to 125 industrial vessels in 2020.<sup>100</sup> Yet the Longueira Law awards a competitive advantage to industrial fishing, violating the right to non-discrimination held by small-scale and artisanal fishers.<sup>101</sup>

Competition with industry can also challenge the safety of artisanal fishers. The General Law of Fisheries and Aquaculture reserves a 5 nautical mile margin of the territorial sea, known as the **Area de Reserva a la Pesca Artesanal (ARPA), for artisanal fishing**.<sup>102</sup> However, with marine resources decreasing within the ARPA, artisanal fishers frequently travel<sup>103</sup> 12-15 nautical miles into the open ocean,<sup>104</sup> a feat which can be extremely hazardous to smaller vessels.<sup>105</sup> Moreover, when artisans vacate the ARPA, the industrial fleet may illegally fish in their absence.<sup>106</sup> By promoting the depletion of marine resources in safe, designated fishing areas, the Longueira Law concessions have impacted the rights of Chile's 94,000 artisans<sup>107</sup> to just and favourable conditions of work and to safe and healthy working conditions.

This is particularly important for coastal Indigenous peoples in Chile. Though marine capture is no longer a significant component of the overall Chilean GDP, in artisanal fisheries—especially customary Indigenous fisheries—successful marine capture fundamentally contributes to human rights realisation. Protections for customary marine resource use were extended to coastal Indigenous groups in 2008 under the Law on Marine Coastal Spaces of Indigenous Peoples (called 'ECMPO', or the 'Law Lafkenche' in Spanish),<sup>108</sup> but its implementation has been slow.<sup>109</sup> In 2013, petitioners to the Constitutional Court of Chile from the **Lafkenche** group of the **Mapuche** people argued that the Longueira Law concessions violated their rights to self-determination and contravened the ILO Convention 169.<sup>110</sup>

Despite the legacy of the Longueira Law, subsidies and support programmes for small-scale fisheries have increased in recent years. In 2018, Chile directed CLP 2397.6 million (USD 3.7 million) to subsidies which directly benefit individuals and companies, a 957% increase from SSF subsidy levels in 2010.<sup>111</sup> These subsidies targeted access to infrastructure (USD 7 million), vessel modernisation (USD 3.7 million), marketing and promotion (USD 3 million), education and training (USD 2.8 million), and management to stock enhancement (USD 60 thousand).<sup>112</sup> Chile also subsidised fisher's access to insurance in 2014-2016 but ceased this subsidy in 2017.<sup>113</sup> The National Institute for the Sustainable Development of Artisanal Fisheries and Small-scale Aquaculture assists communities in production diversification, technical assistance/training, and infrastructure development.<sup>114</sup> Finally, recent legislation on fishing coves has focused attention on development in 461 targeted communities.<sup>115</sup> These subsidies can benefit human rights realisation for the 35,000 Chileans employed in marine capture and the 41,500 Chileans employed in fish processing.<sup>116</sup>

Chile has also been lauded for establishing marine protected areas (MPAs) in 40% of its waters (about 1.5 million km<sup>2</sup>).<sup>117</sup> While these may be beneficial from a purely

environmental standpoint, some of the MPAs were established without free, prior and informed consent (FPIC) of Indigenous peoples.<sup>118</sup> Where the establishment of MPAs suppressed the rights of Indigenous peoples to participate in the use, management and conservation of resources, they prevent the full realisation of Indigenous rights to self-determination.



## 5.2 REPUBLIC OF INDONESIA

As the largest archipelago in the world, of the Republic of Indonesia support a US 12.5-billion-dollar fishing industry<sup>119</sup> that provides nutrition to 270 million people.<sup>120</sup> Fish constitute 53% of animal protein consumed in the country,<sup>121</sup> with Indonesian demand for marine products three times the global average.<sup>122</sup> Reflecting both nutritional dependency<sup>123</sup> and a growing significance to country's GDP,<sup>124</sup> catch sizes in Indonesia rose from 4 million tonnes/year in the early 2000s<sup>125</sup> to 7 million tonnes in 2019,<sup>126</sup> with mackerel, skipjack tuna, and shrimp as primary targets.<sup>127</sup> Indonesia captured the second-largest quantity of global marine resources in 2018, alongside Peru.<sup>128</sup> Despite these impressive commercial catches, Indonesia may be under-utilising its total marine resources, as its domestic fisheries are unevenly distributed across the country's 17,500 islands.<sup>129</sup> In most currently-fished areas, however, stocks are fully or over-utilised.<sup>130</sup> Because both overutilisation and underutilisation can impact the human rights of fisherfolk, this uneven distribution of fishing effort must be taken into account when evaluating Indonesian fisheries subsidies.

The Indonesian government subsidises its fisheries more heavily than any other developing country,<sup>131</sup> providing an average of USD 0.9 billion per year.<sup>132</sup> Between 2017 and 2020, the central government of Indonesia invested 53% of its fisheries support into infrastructure.<sup>133</sup> These investments supported construction, maintenance and increased access to ports, landing facilities, and other centres.<sup>134</sup> Many of these investments have been for 'club good infrastructure' which increase levels of access for some fisherfolk, but may be unavailable to the general public.<sup>135</sup> In 2017, the Indonesian Ministry of Maritime Affairs and Fisheries (MMAF) supported the development of 12 maritime and fisheries centres across the country.<sup>136</sup> With support from foreign direct investment, Indonesia aspires to create 30 more centres.<sup>137</sup> These centres are beneficial to nearby fishing communities, but may impact the right to non-discrimination of more distant fishing communities who will remain underserved by infrastructure investments. Since the Indonesian central government has historically not prioritised fisheries management, it may inadvertently improve infrastructure in overfished areas, encouraging unsustainable levels of fishing effort and jeopardizing the nutrition and livelihoods of fisherfolk.

Still, improvements in infrastructure are less directly linked to overcapacity and overfishing<sup>138</sup> than variable-cost input support,<sup>139</sup> which represents the second-highest amount of Indonesian central government subsidies.<sup>140</sup> Fuel alone comprises about 50% of total central government fisheries support.<sup>141</sup> The central government spent IDR 2,257 billion (USD 166.59 million) on fuel provision in 2019, a 260% increase from 2017.<sup>142</sup> Since 2012,<sup>143</sup> only vessels below 30 gigatonnes [GT] have been eligible for fuel discounts, at limited monthly quantities.<sup>144</sup> To access these discounts, vessel operators must adhere to registration and verification protocols that are differentiated for higher-capacity and lower-capacity vessels.<sup>145</sup> Although vessel-class distinction helps to prevent



inequities between large-scale and small-scale fishers,<sup>146</sup> the system is not perfect. Fishers are the intended beneficiaries of fuel support, yet the economic benefits of fuel support are often reaped by vessel operators and owners,<sup>147</sup> who have higher incomes than their crews<sup>148</sup> but represent a smaller portion of the sector.<sup>149</sup> The amount of fuel allocated is higher than the amount of fuel consumed, indicating that some fishing communities may face access barriers.<sup>150</sup> Fuel subsidies can create feedback loops encouraging fishers to consume more fuel to receive more support.<sup>151</sup> Large-scale vessels with higher fuel expenditures receive more support in proportion to smaller-scale vessels,<sup>152</sup> perpetuating uneven distribution of fisheries support between LSF and SSF.<sup>153</sup> Finally, variable-cost support distorts the economics of fisheries, enabling fishers to target economically inefficient areas.<sup>154</sup> Where high operational costs have made under-utilised Indonesian fisheries unattractive,<sup>155</sup> variable-cost input support can help fishers access stocks. Yet since Indonesian fisheries subsidies are not harmonised with sustainability assessments, variable-cost input support may just as easily encourage resource over-exploitation, jeopardising coastal peoples' rights to adequate food, right to self-determination, and right to work.<sup>156</sup>

Fixed-cost input support, including the provision, construction, and modernisation of vessels and equipment, can also contribute unsustainable levels of fishing effort.<sup>157</sup> Unlike variable-cost input support, however, fixed-cost support more directly benefits fishers, with positive impacts to human rights realisation. A subsidies analysis in three Indonesian provinces (Maluku, North Sulawesi, and Aceh)<sup>158</sup> found that fixed-cost input support may reduce poverty, support livelihood security,<sup>159</sup> and increase fishers' safety.<sup>160</sup> As a majority of Indonesian fishing vessels lack motors<sup>161</sup> and on-board tracking devices,<sup>162</sup> provision of such equipment can reduce life-threatening risks. Nonetheless, fixed-cost support can be constrained by access barriers. For some under-resourced communities, forming the fishing cooperatives required to receive subsidies can be prohibitive.<sup>163</sup> Additionally, fixed-cost support programmes targeted for marine capture disproportionately benefit men, as women are more likely to be employed in processing.<sup>164</sup> In general, however, where fixed-cost support improves fishing conditions without promoting resource overexploitation, it can enhance economic and social rights realisation for fisherfolk.<sup>165</sup>

As the Indonesian fishing sector develops, its government has pledged to enhance fishing community welfare. The MMAF Strategic Plan aims to increase sector employment and entrepreneurship.<sup>166</sup> In 2017, the MMAF took another step in protecting the rights of fishers in Indonesian waters through Ministerial Regulation No. 2/2017, also known as the Regulation on Fisheries Human Rights Certification Requirements and Mechanism, which creates a certification mechanism to ensure the Indonesian fishing industry is free from human rights violations. Under the regulation, companies that fail to obtain human rights certification will not be allowed to operate in Indonesian waters. Among the requirements are a human rights policy, means of due diligence and a remediation system in cases where violations may have occurred. To ensure the wellbeing of both fishers and port workers, each company in the fisheries sector will be required to submit a human rights audit report.<sup>167</sup> The central government of Indonesia also delegates an average of 10% of fishing industry support<sup>168</sup> for additional welfare improving measures, including insurance assistance,<sup>169</sup> fisheries management<sup>170</sup> and production research,<sup>171</sup> marketing and promotion assistance,<sup>172</sup> and livelihood diversification programmes,<sup>173</sup> and fisheries management<sup>174</sup> and production-related research.<sup>175</sup>

Fisheries management may not seem immediately tied to welfare. But identifying maximum sustainable yields and managing Indonesian fisheries at sustainable levels would enable fisherfolk to reap the full benefit of the country's rich marine resources, with positive benefits for nutrition, livelihoods and community development. For the 1.5 million Indonesians whose livelihoods depend on fisheries, sustainable fisheries development would improve the realisation of human rights.<sup>176</sup> Government support measures must be monitored against ecological and social indicators, including degree of access to subsidies by target groups,<sup>177</sup> lest they negatively impact human rights. It is essential that Indonesia continues to build fisheries management and monitoring capacity in order to sustainably develop its fishing sector while simultaneously fulfilling its human rights obligations.



### 5.3 REPUBLIC OF GHANA

The Republic of Ghana has one of the highest rates of fish dependence in Africa,<sup>178</sup> with fish representing up to 60% of national protein intake.<sup>179</sup> This demand is being increasingly met by imports<sup>180</sup> as stocks have collapsed in the last two and a half decades.<sup>181</sup> Between 1996 and 2016, landings of the culturally important *Sardinella* species within the Ghanaian SSF sector diminished from 136 to 29 thousand tonnes.<sup>182</sup> In the same time frame, total landings in the Ghanaian SSF sector fell from 300 to 180 thousand tonnes, despite increased sectoral capacity.<sup>183</sup> On average, the incomes of Ghanaian small-scale fishers declined by 49.6% in 2019.<sup>184</sup> For the 2.5-3 million Ghanaians whose livelihoods depend on fisheries,<sup>185</sup> declining viability of Ghanaian small pelagic fish stocks can severely impact the realisation of economic and social rights.<sup>186</sup> This collapse in small pelagic stocks can be linked to overcapacity and overfishing across the fisheries artisanal, semi-industrial, and industrial sectors.<sup>187</sup>

Subsidies to the Ghanaian fishing industry are a major contributor to overfishing and overcapacity. In 2016, the sector received about 30 million USD worth of capacity-enhancing subsidies from international and domestic sources.<sup>188</sup> The Ghanaian government distributes about 200 million Ghanaian cedis (USD 40 million) per year to the SSF sector.<sup>189</sup> These subsidies lower the prices of both fixed-cost and variable-cost inputs, including nets, outboard motors, and premix fuels.<sup>190</sup> In 2016, the government of Ghana was estimated to allocate USD 4.5 million per year to subsidise outboard motors,<sup>191</sup> nearly halving their costs for fisherfolk.<sup>192</sup> Outboard motors are essential to increasing the range-capacities of the 15,000 wooden canoes in the Ghanaian SSF sector.<sup>193</sup> In 2021, the government of Ghana was estimated to have subsidised about 70% of the market cost for fuels,<sup>194</sup> including fuels that were specially pre-mixed to avoid diversion from the canoe sector.<sup>195</sup> These fixed-cost and variable-cost inputs can sustain or increase fishing effort, even as stocks decrease. Accordingly, capacity-enhancing subsidies may infringe upon the rights of fisherfolk 'to a healthy environment and to the conservation and protection of the environment.'<sup>196 197</sup> Capacity-enhancing subsidies can also distort profit margins, making it difficult for those entering or leaving the sector to make informed economic choices.<sup>198</sup>

In Ghana, variable-cost inputs are also extremely susceptible to diversion and discriminate allocation, promoting inequities within the sector. In the case of pre-mixed fuel, for example, a middle market has emerged in which racketeers purchase low-cost subsidised fuel, then resells to fisherfolk at higher prices.<sup>199</sup> This middle market is often

enabled by political connections, leading to 'unequal power' dynamics within fishing communities.<sup>200</sup> While a standard unit of pre-mixed fuel should sell for 520 Ghanaian cedis, it can be resold for upwards of 4,000 Ghanaian cedis after-market diversion.<sup>201</sup> A survey conducted by the Environmental Justice Foundation (EJF) reported that although 80.4% of SSF fishers received subsidised pre-mix fuel,<sup>202</sup> fuel availability was unequal and unpredictable.<sup>203</sup> The impacts of diversions include reduced frequency of fishing, catch reduction, outboard motor damage, and increased engagement in illegal fishing.<sup>204</sup> In all, artisanal fishers receive just between 20%<sup>205</sup>-40%<sup>206</sup> of domestic subsidies, despite being their primary target.

Internationally-sourced subsidies also play a major role in supporting the Ghanaian fisheries sector, specifically the industrial trawling sector. Most Ghanaian trawlers are 'financed by distant water fishing companies based in China.'<sup>207</sup> In 2019, EJF reported that 8 Chinese companies owned 44% of trawl vessels flagged to Ghana.<sup>208</sup> Capacity within the internationally-subsidised industrial trawl fleet has vastly outpaced the artisanal canoe fleet.<sup>209</sup> Trawlers have contributed to the rise of illegal saiko fishing, in which industrial vessels target the small pelagic stocks reserved for artisanal fisheries, then trans-ship them to canoes for resale. Unreported **saiko** catches are thought to have removed up to 100 thousand tonnes of small pelagic stocks.<sup>210</sup> Where foreign-financed vessels engage in **saiko** or other illegal fishing practices, such as prohibited gear use, juvenile fish capture, EEZ incursion, or illegal trans-shipment, they further depress stocks and create negative impacts in artisanal fishing communities. Additionally, human rights and labour abuses have been reported on board Ghanaian industrial vessels.<sup>211</sup>

The negative environmental and social impacts associated with subsidies can prevent the realisation of Ghanaian fishers' human rights, specifically rights related to work<sup>212</sup> and an adequate standard of living.<sup>213</sup> Although pre-mixed fuel and motor subsidies are allocated to support small-scale fisherfolk, they may indirectly depress livelihoods where they depress fish stocks. Similarly, international subsidies which over-enhance the industrial trawl sector negatively impact socioeconomic conditions in the Ghanaian fishing sector. Since the Ghanaian government bears the duty to respect, protect and fulfil human rights of all Ghanaians, it should consider phasing-out the capacity-enhancing subsidies within national fisheries which hamper human rights. Savings could be re-invested to phase-in subsidies which promote the realisation of human rights in the fisheries sector,<sup>214</sup> such as through subsidised social security and pension programmes,<sup>215</sup> support for income diversification,<sup>216</sup> and support for health and life insurance for small scale fishers.<sup>217</sup>

## 6 IMPACTS OF FISHERIES SUBSIDIES ON HUMAN RIGHTS

HIGHER RISK OF OVERCAPACITY AND OVERFISHING		IMPACTED SOCIO-ECONOMIC RIGHTS	IMPACTED LABOUR RIGHTS	CASE STUDY EXAMPLES
MORE LIKELY TO NEGATIVELY IMPACT HUMAN RIGHTS				
SUBSIDIES LINKED TO FISHING EFFORT	<p><b>Variable-cost input-based support (VCIB)</b></p> <ul style="list-style-type: none"> <li>• Direct payments - price support programmes</li> <li>• Fuel</li> <li>• Bait</li> <li>• Ice</li> <li>• Tax relief</li> <li>• sales tax exemptions</li> <li>• fuel tax exemptions</li> </ul>	<p>Variable-cost input-based support (VCIB) can promote unsustainable levels of fishing efforts. For nutritionally and economically dependent populations, variable-cost-input support can adversely impact the right to adequate food, <b>right to self-determination, right to the highest level of physical and mental health, and the right to an adequate standard of living</b>. On its own, such support is not thought to significantly improve the lives of small-scale fishers. Additionally, variable-cost-input support that is favourably channelled to large-scale fishers (LSF) may impact the right to non-discrimination of small-scale fishers.</p>	<p>Variable-cost input-based support (VCIB) subsidies artificially suppress the true cost of fishing, encouraging vulnerable workers to enter a dangerous profession where their <b>right to safe and healthy working conditions</b> may not be realised. Discriminate VCIB support can improve work conditions for large-scale fishers but not small-scale fishers, impacting the <b>right to just and favourable conditions of work</b> for small-scale fishers. Finally, resource depletion by VCIB support can generally impact the <b>right</b> of fisherfolk <b>to work</b>—where there is no fish, there is no fishing.</p>	<ul style="list-style-type: none"> <li>• Although fuel subsidies in Indonesia are allocated differently between large-scale and small-scale fishers, remote and distant fishing communities face barriers to access.</li> <li>• In Ghana, a politically-connected middle-market prevents equal access to pre-mix fuels</li> </ul>
SUBSIDIES LINKED TO LEVEL OF HARVEST	<p><b>Output-based support</b></p> <ul style="list-style-type: none"> <li>• Direct payments</li> <li>• Fish price support</li> <li>• Surplus fish purchases</li> </ul>	<p>Depressed market demand ordinarily sends fishers an economic signal to fish less. Output-based support can remove this deterrence, encouraging fishing operations to run at surplus. Where this surplus encourages overfishing and overcapacity, output-based support impact the <b>right to adequate food, right to self-determination, right to the highest level of physical and mental health, and the right to an adequate standard of living</b> for individuals in fishing dependent communities.</p>	<p>By encouraging overfishing, output-based support may impact fishers' <b>right to work</b>, especially in small-scale fisheries which lack capacity.</p>	

<p>SUBSIDIES LINKED TO FISHING CAPACITY</p>	<p><b>Fixed-cost input-based support (FCIB)</b></p> <p>For vessel, engine, gear and processing equipment (construction, renewal, and/or modernisation)</p> <ul style="list-style-type: none"> <li>• Direct payments</li> <li>• Concessional loans from banks</li> <li>• Guarantees against default on commercial loans</li> <li>• Loan restructuring</li> <li>• Lowered interest rates</li> <li>• Government funded loans</li> <li>• Technological development for production</li> <li>• Payment of foreign access fees/agreements</li> </ul>	<p>Fixed-cost input-based support (FCIB) can contribute to unsustainable levels of fishing efforts which can negatively impact human rights, such as the <b>right to adequate food, right to self-determination, right to the highest level of physical and mental health,</b> and the <b>right to an adequate standard of living.</b> However, fixed-cost input-based support benefits fishers more directly than variable-cost-input based support. As one-time provisions, they are less susceptible to discriminate allocation and consumption, and less likely to impact fishers' <b>right to non-discrimination.</b> For instance, large-scale vessels and small-scale vessels both receive motor subsidies one-time, whereas large-scale vessels continuously and disproportionately benefit from fuel subsidies compared to small-scale vessels.</p>	<p>Fixed-cost input-based support (FCIB) can equip small-scale fishers with the inputs they need to minimise professional hazards, positively impacting the <b>right to safe and healthy working conditions</b> and the <b>right to just and favourable conditions of work</b> as well as the <b>right to life.</b> But where fixed-cost input-based support encourages overfishing, it can also suppress fishers' <b>right to work.</b> As mentioned above, where there is no fish, there is no fishing.</p>	<ul style="list-style-type: none"> <li>• In Indonesia, support for motors and electronic tracking devices improves fisher safety. This support benefits men more than women in the sector.</li> <li>• Subsidies for outboard motors in Ghana have been crucial to expanding the capacity of the artisanal fleet.</li> </ul>
	<p><b>Fishing firm viability support</b></p> <ul style="list-style-type: none"> <li>• Concessional credits</li> <li>• Direct loans</li> <li>• Loan guarantees</li> <li>• Equity infusions</li> <li>• Tax relief</li> <li>• Special income tax deductions</li> <li>• Tax deferrals</li> </ul>	<p>Viability support is provided to fishing firms (companies) which struggle to net profits. Depressed profits may indicate underlying resource scarcity. Under normal market conditions, decreased profits would depress fishing effort, allowing stock recovery. Fishing firm viability support may positively impact fishers' <b>right to self-determination</b> and <b>right to an adequate standard of living</b> in the short term, but detriment industry viability—and the realisation of the above rights—in the long-term. In time, the <b>right to adequate food</b> and <b>right to the highest level of physical and mental health</b> can also be negatively impacted.</p>	<p>Fishing firm viability support may encourage continued fishing effort of depleted stocks, challenging fishers' long-term <b>right to work.</b></p>	

		AMBIGUOUS IMPACT ON HUMAN RIGHTS		
SUBSIDIES POTENTIALLY AFFECTING FISHING EFFORT OR CAPACITY	<p><b>Exclusive-use/club good infrastructure (infrastructure unavailable to the general public)</b></p> <ul style="list-style-type: none"> <li>• Port development</li> <li>• Landing facility development</li> <li>• Market infrastructure</li> <li>• Storage infrastructure</li> </ul>	<p>Safe, clean, and accessible infrastructure is a necessary component of fisheries operations. Exclusive provision, however, may disadvantage certain fishers and processors, impacting their <b>right to non-discrimination</b>.</p> <p>Port development and the development of other infrastructure facilities to enhance the fisheries sector may also have an adverse impact on land and resource rights of coastal communities that live and depend on the land where such facilities are built.</p>	<p>Labour conditions in infrastructure construction and maintenance, such as port development, may have an adverse impact on the <b>right to just and favourable conditions of work</b> and <b>right to safe and healthy working conditions</b>.</p>	<ul style="list-style-type: none"> <li>• In recent years, a majority of Indonesian fisheries subsidies have constituted club-good infrastructure investments. 12 maritime and fisheries centres are under development in Indonesia, impacting the right to non-discrimination of fisherfolk who cannot access these centres.</li> </ul>
	<p><b>Workforce/labour policy</b></p> <ul style="list-style-type: none"> <li>• Fisheries education/training programmes</li> <li>• Special permits for migrant workers</li> </ul>		<p>Education and training programmes can help fisherfolk realise their <b>right to safe and healthy working conditions</b> and the <b>right to just and favourable conditions of work</b>.</p>	<p>Chile provides education and training through its National Institute for the Sustainable Development of Artisanal Fisheries and Small-scale Aquaculture.</p>
	<p><b>Production related research and development</b></p>	<p>Research and development related to production can increase fishing efficiency. In the short term, more efficient production benefits fishers' <b>right to adequate food, right to the highest level of physical and mental health, right to an adequate standard of living, and right to self-determination</b>. However, these rights can be negatively impacted in the long-term if production efficiencies promote unsustainable fishing efforts.</p>	<p>Research and development that makes production safer can help fisherfolk realise their <b>right to safe and healthy working conditions</b> and <b>right to just and favourable conditions of work</b>. But if production efficiencies promote unsustainable fishing efforts in the long-term, they may adversely impact the <b>right to work</b>.</p>	<p>Indonesia directs some subsidies for production research and development.</p>
	<p><b>Reduction of capacity</b></p> <ul style="list-style-type: none"> <li>• Vessel decommissioning payments (buyback schemes)</li> <li>• Pension and retirement programmes for individual fishers</li> <li>• Fishing community assistance <ul style="list-style-type: none"> <li>• Income diversification programmes</li> <li>• Non-fisheries educational/training programmes</li> </ul> </li> </ul>	<p>Subsidies that encourage fisherfolk to exit the industry can alleviate the burden on depleted marine resources, protecting the <b>right to adequate food, right to the highest level of physical and mental health, and right to an adequate standard of living</b> for individuals in fisheries-dependent communities.</p> <p>In addition, income diversification programmes and non-fisheries training programmes positively benefit fishers' <b>right to self-determination</b>.</p>	<p>Where capacity-reducing subsidies enable fisherfolk to find alternative livelihoods, they may positively impact their <b>right to work, right to safe and healthy working conditions</b> and <b>right to just and favourable conditions of work</b>. As resources become less strained and fisheries become more sustainable, the <b>right to work</b> of labourers who choose to remain in fisheries will also be protected.</p>	<p>In the early decades of Chilean fisheries, the government reduced fisheries capacity when it outpaced fisheries productivity.</p>

	<p><b>Public good infrastructure</b> Note: the WTO Agreement on Subsidies and Countervailing Measures does not consider public good ('general') infrastructure to be subsidies.</p> <ul style="list-style-type: none"> <li>• Ports</li> <li>• Landing facilities</li> <li>• Market facilities</li> <li>• Storage facilities</li> </ul>	<p>Safe, clean, and accessible infrastructure is a necessary component of fisheries operations. Universal access to public good infrastructure protects fisherfolk's <b>right to non-discrimination</b>.</p>	<p>Poor labour conditions in infrastructure construction and maintenance such as port development or development of other facilities may impact the <b>right to just and favourable conditions of work</b> and <b>right to safe and healthy working conditions</b>.</p>	<p>Chile has targeted legislation to develop infrastructure in 461 fishing coves.</p>
	<p><b>Marketing and promotion</b></p> <ul style="list-style-type: none"> <li>• Transport</li> <li>• Retail</li> <li>• Certification</li> </ul>			<p>Chile provides subsidies for marketing and promotion efforts.</p>
	<p><b>Preferential treatment for domestic fisheries</b></p> <ul style="list-style-type: none"> <li>• Tariffs</li> <li>• Foreign vessel landing bans</li> <li>• Import quotas</li> <li>• Prohibitions on foreign direct investment</li> </ul>	<p>States that extend preferential treatment to domestic fisheries may help deter competition from large-scale distant-water fleets. This protects domestic fleets from unfair competition and facilitates better management of marine resources. For nutritionally dependent communities, this can positively impact their <b>right to adequate food, right to the highest level of physical and mental health, right to an adequate standard of living, and right to self-determination</b>.</p>	<p>Ensuring that domestic fleets are not outcompeted by foreign fleets can positively benefit the <b>right to work</b> of domestic fisherfolk. Although foreign fleets can sometimes provide work opportunities to local labourers, reports have shown that such work opportunities do not always safeguard the <b>right to just and favourable conditions</b> or the <b>right to safe and healthy working conditions</b>. Preferential treatment for domestic fisheries may discourage distant water vessels from entering a jurisdiction, preventing potential labour rights violations.</p>	<p>Foreign-owned vessels in Ghana have contributed to illegal fishing practices that deplete pelagic stocks. In addition, violation of labour rights have reportedly occurred on foreign-owned vessels.</p>

		MORE LIKELY TO POSITIVELY IMPACT SOCIOECONOMIC RIGHTS		
SUBSIDIES MOSTLY REMOVED FROM FISHING EFFORT OR CAPACITY	<p><b>Income Support</b></p> <ul style="list-style-type: none"> <li>• Direct payments <ul style="list-style-type: none"> <li>• Individual fisher assistance</li> <li>• Unemployment insurance</li> <li>• Health insurance</li> <li>• Direct income support</li> <li>• Compensation for closed seasons</li> </ul> </li> <li>• Tax relief <ul style="list-style-type: none"> <li>• Special income tax deductions</li> <li>• Deferred tax programmes</li> </ul> </li> <li>• Fishing community support</li> <li>• Development projects</li> <li>• Housing assistance</li> </ul>	<p>Income support and fishing community support can alleviate economic and environmental pressures on fisherfolk, preventing overfishing. In turn, sustainable use of marine resources positively impacts the <b>right to adequate food, right to the highest level of physical and mental health, right to an adequate standard of living, and right to self-determination.</b></p>	<p>Fisherfolk who experience less of an economic and environmental burden are less likely to engage in unsafe fishing practices. By removing this pressure, income support and fishing community support positively impact the <b>right to just and favourable conditions of work</b> and the <b>right to safe and healthy working conditions</b> for fisherfolk. When income and community support decouples fishing profits from basic socio-economic necessities, fishing communities are less encouraged to overexploit marine resources. Sustainable use of marine resources protects the <b>right to work</b> for fisherfolk.</p>	<p>Chile subsidised insurance for fisherfolk from 2014-2016 but has since discontinued this subsidy.</p>
SUBSIDIES ENHANCING FISH STOCKS	<p><b>General research and development</b></p> <ul style="list-style-type: none"> <li>• Stock assessment <ul style="list-style-type: none"> <li>• Technological development for stock assessment</li> </ul> </li> <li>• Data mobilisation</li> </ul> <p><b>Fisheries management</b></p> <ul style="list-style-type: none"> <li>• Development of management programmes</li> <li>• Development of conservation areas</li> <li>• Fisheries monitoring/surveillance</li> <li>• Fisheries enforcement</li> <li>• Stock enhancement</li> <li>• Stock supplementation (hatcheries programmes)</li> <li>• Habitat restoration work</li> </ul>	<p>Subsidies for general research and development and fisheries management allow States to set informed policies for sustainable marine resource use. The sustainable development of marine resources can positively impact the <b>right to adequate food, right to the highest level of physical and mental health, right to an adequate standard of living, and right to self-determination</b> in fishing dependent communities.</p> <p>However, it remains important that States develop fisheries management policies with free, prior, and informed consent (FPIC) of local and Indigenous communities. Conservation programmes that are implemented without proper consultation can create adverse impacts for the <b>right to self-determination</b> in fishing dependent communities. In particular, special attention must be paid to the <b>rights of Indigenous peoples.</b></p>	<p>Subsidies for general research and development promotes the sustainable use of marine resources, which protects the long-term <b>right to work</b> for fisherfolk.</p>	<ul style="list-style-type: none"> <li>• In Chile, the Longueira Law imposed legislated inequities onto the Chilean fisheries sector, violating small-scale fishers' <b>right to non-discrimination</b> and jeopardising other socioeconomic rights.</li> <li>• The Chilean Longueira Law also negatively impacted the <b>rights of Indigenous peoples.</b></li> <li>• Some marine protected areas in Chile were established without the free, prior, and informed consent of Indigenous peoples.</li> </ul>
LOWER RISK OF OVERCAPACITY AND OVERFISHING				



## 7 RECOMMENDATIONS AND SUGGESTED NEXT STEPS

In light of the above analysis of the potential human rights impacts related to fisheries subsidies, in particular to small-scale, artisanal fishers, the below section provides a series of recommendations for States that pay out subsidies, as well as companies that receive such subsidies, and to other stakeholders including intergovernmental organizations and civil society.

### 7.1 RECOMMENDATIONS TO STATES

As the primary duty bearers under international human rights law, States are obliged to respect, protect and fulfil the realisation of human rights. Accordingly, States must anticipate and understand the human rights impacts of their government policies. Fisheries subsidies policies can positively impact the realisation of economic and social rights and labour rights, especially in nutritionally and economically dependent communities.

States that are parties to relevant human rights instruments should assess their fisheries subsidies policies with a human rights lens, by ensuring policy coherence between fisheries subsidies policies and human rights policies and plans—for example, by incorporating their assessment of fisheries subsidies into national human rights plans.

Due to the indirect relationship that subsidies create between States and individuals, assessing the human rights impacts of fisheries subsidies may not always be simple and straightforward. Many fisheries subsidies are availed within the **State-business** nexus, flowing from States to third-party business intermediaries before impacting the rights of labourers, processors, and fisherfolk. Nonetheless, States are bound to take all reasonable measures to prevent adverse human rights impacts by private actors and investigate such human rights violations, as well as to enact punitive measures and provide mechanisms for redress.

These obligations are outlined in the UN Guiding Principles on Business and Human Rights (UNGPs). The UNGPs reiterate that States must respect, protect and fulfil human rights and fundamental freedoms, and stipulate that a breach of rights and obligations must be matched with appropriate and effective remedy. Fundamentally, 'States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication' (UNGP 1).

Under UN Guiding Principle 4, 'States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including,

where appropriate, by requiring human rights due diligence.' Commentary to the principle further elaborates that 'the closer a business enterprise is to the State, or the more it relies on statutory authority or taxpayer support, the stronger the State's policy rationale becomes for ensuring that the enterprise respects human rights.'

Finally, UN Guiding Principle 8 urges that States adopt the necessary policies, laws and processes to implement their international human rights law obligations, whilst simultaneously ensuring that the relevant government departments and agencies, including those responsible for trade, act in an informed manner compatible with human rights obligations.

As well as being guided by the UNGPs, States assessing fisheries subsidies should be guided by the FAO Code of Conduct for Responsible Fisheries. The FAO Code of Conduct urges States to ensure that fisheries policies, programmes and practices 'do not result in negative social, including nutritional, impacts.'<sup>218</sup> In addition, States are to protect 'the rights of fishers and fish workers, particularly those engaged in subsistence, small-scale and artisanal fisheries,' and to afford them ('where appropriate') preferential access to marine resources under national jurisdiction.<sup>219</sup> Finally, States are to develop institutional and legal frameworks and govern access to marine resources, 'taking into account the rights of coastal fishing communities.'<sup>220</sup>

Institutional and legal frameworks for marine resource management should also be considered when States analyse human rights impacts of fisheries subsidies. In many coastal and fish-dependent communities, economic, social and labour rights realisation depends on the sustainable and continued use of marine resources. Human rights impacts of fisheries subsidies are thus often connected to their environmental impacts. To understand this linkage, States must prioritise sound fisheries management that looks at social, human rights and environmental impacts holistically. This includes setting regulations that respect biologically sustainable yields; that facilitate robust data collection and mobilisation; and that implement meaningful enforcement mechanisms. States cannot fully understand the impact of fisheries subsidies without understanding the resources they target.

Performing human rights analyses of existing subsidies is not, however, sufficient for States to uphold their international human rights obligations. States should also assess the potential human rights implications of future fisheries subsidies before they are offered and implemented and offer public information to stakeholders via transparency and accountability mechanisms. Moreover, States should continually monitor the human rights impacts of all subsidies, taking steps to mitigate any identified negative human rights impacts. States must take appropriate steps to ensure that those who have suffered harm within their territory and/or jurisdiction have access to effective remedy (UNGP 25). When planning to change or remove existing fisheries subsidies, States should also assess the potential adverse human rights impacts of such removal on potentially affected stakeholders and account for this accordingly, through, for example, adequate social security measures.

Beyond State-held duties to ensure that business enterprises do not breach human rights, States should, as stipulated by UNGP 4, require that businesses receiving State support through subsidies undertake effective human rights due diligence where

appropriate (UNGPs 17 – 22). This could be achieved, for instance, by requiring that business enterprises commit to respecting human rights, as required under Pillar 2 of the UNGPs, and conduct human rights due diligence as a precondition for receiving any fisheries subsidies. Since human rights due diligence is an ongoing process, States should only avail fisheries subsidies to business enterprises that demonstrably respect and uphold human rights, in an ongoing, provable manner.

Therefore, States should:

- Ensure policy coherence between fisheries subsidies policies and human rights laws, policies and plans as well as trade laws and policies;
- Build the capacity of relevant fisheries ministries and departments on human rights more generally to assess the potential human rights impacts of fisheries subsidies on rights-holders;
- Address and mitigate any identified negative human rights impacts caused by fisheries subsidies;
- Provide effective access to remedy to those who have been harmed by fisheries subsidies, in particular small-scale fishers, fishers, fish workers and coastal communities;
- Take additional steps to ensure that business enterprises being supported by fisheries subsidies operate in accordance with internationally recognised human rights standards and soft law instruments such as the UN Guiding Principles on Business and Human Rights.

## **7.2 RECOMMENDATIONS TO INTERGOVERNMENTAL ORGANISATIONS**

At the international level, discussions about fisheries subsidies have largely excluded human rights. As explained in this paper, the commonly-used 'beneficial, ambiguous, harmful' typology evaluates subsidies according to their impacts on marine resources. Beneficial fisheries subsidies are understood to encourage the sustainable use of marine resources, harmful fisheries subsidies encourage their overexploitation, and ambiguous fisheries subsidies fall somewhere in between. Given the strong linkages between the sustainable use of marine resources and the realisation of economic, social and labour rights in fishing-dependent communities, however, the 'beneficial, ambiguous, harmful' typology should also include due consideration for human rights. Human rights considerations could, in other words, be incorporated into intergovernmental organizations' current assessment frameworks. For example, when analysing the sustainability of fisheries support measures, the Organisation for Economic Cooperation and Development (OECD) considers not only the form of fisheries support and the health of targeted stocks, but the existing management systems which contextualise the subsidy, as well as its relationship to IUU fishing. Human rights could form another factor within this expanded framework.

When the WTO revisits fisheries subsidies disciplines in the future, Members must decisively prohibit subsidies that promote overcapacity and overfishing, as these practices deplete the marine resources upon which many economic and social rights depend. However, the WTO should also grant leeway to capacity-building subsidies which benefit human rights realisation. WTO Members could consider re-instating the exemption that would have enabled Members to continue providing capacity-enhancing subsidies that improve economic, social and labour rights realisation, so long as the subsidies did not deleteriously impact biological sustainability.<sup>221</sup>

At the same time, the WTO must ensure that any such opt-out clauses are complemented by robust mechanisms for transparency and accountability. An example that could be replicated in future protocols can be found in the 10th June draft text, which mandated that Members submit regular notifications on fisheries subsidies<sup>222</sup> before invoking any exceptions.<sup>223</sup> As previously stated, one such opt-out provision, Article 5.1.1, was not included in the final Agreement. However, a similarly-worded exemption remains under Article 4 for Subsidies Regarding Overfished Stocks,<sup>224</sup> and Article 6<sup>225</sup> leniencies for least-developed countries have also been re-distributed across the Agreement.<sup>226</sup> Such exceptions facilitate the special and differential treatment for developing and least developed countries envisaged by SDG target 14.6 and may be necessary to safeguard fisheries subsidies with positive human rights impacts. But in order to ensure that subsidies protect, rather than challenge, human rights, Members must commit to share information. It is problematic that these exemptions are no longer conditioned by reporting requirements in the final Agreement. Future protocols should seek to balance these exceptions with strengthened provisions for transparency and accountability, especially as they relate to human rights.

Ultimately, the 17th June Agreement will not conclude the harmful fisheries subsidies negotiations. Resolution to outstanding issues will be sought within a new institutional body, the Committee on Fisheries Subsidies.<sup>227</sup> In addition to receiving relevant informational reports from Members, the Committee 'shall review the operation of this Agreement with a view to identifying all necessary modifications'<sup>228</sup> and may submit amendments thereof. The Committee should consider human rights issues when identifying and proposing necessary modifications. Forced labour could present a starting point to human rights discussions. The 10th June draft text would have required Members to annually notify the Committee about vessels and operators using forced labour,<sup>229</sup> and the Committee could re-instate the requirement in an amendment or future implementation protocol. However, as has been outlined in this paper, forced labour is just one of many of the potential human rights impacts of harmful fisheries subsidies. The Committee should also introduce additional human rights reporting requirements under Article 8, or devise additional mechanisms to expand human rights consideration. Moreover, the Committee cannot develop these objectives in a vacuum. The Committee on Fisheries Subsidies should consult experts on the socioeconomic and human rights impacts of subsidies, as well as stakeholders working with human rights issues, in order to enter an informed, equitable implementation phase.

Finally, as the Agreement on Harmful Fisheries Subsidies bridges from negotiations to implementation, the Committee should be open to increased inter-institutional cooperation, not only 'with the UN Food and Agriculture Organization (FAO) and other relevant international organisations in the field of fisheries management,'<sup>230</sup> but also with international organisations in the field of human rights. The WTO intends to draw expertise from the FAO, International Fund for Agricultural Development (IFAD), and the World Bank<sup>231</sup> as it administers a new funding mechanism for Technical Assistance and Capacity Building.<sup>232</sup> As the funding mechanism develops, it should follow best practices for the provision of finance and human rights, including on public participation and grievance redress mechanisms, and be open to collaboration with other intergovernmental organisations and agencies. The FAO, OECD, the UN Conference on Trade and Development (UNCTAD), and the UN Office of the High Commissioner for Human Rights (OHCHR) and its Working Group on Business and Human Rights should

further develop the general link between fisheries and human rights impacts. These organisations should continue to advocate for stronger human rights considerations within the implementation of the Agreement on Fisheries Subsidies.

### 7.3 RECOMMENDATIONS TO CIVIL SOCIETY

Though the WTO Agreement on Fisheries Subsidies represents a historic step forward towards preventing the adverse impacts of subsidies on human rights, its shortcomings should be challenged by civil society. In the interim period between the adoption and implementation of the Agreement, civil society should keep trained eyes on fisheries subsidies—especially on subsidies which may adversely impact human rights realisation. Since reporting requirements under the WTO Agreement do not currently include human rights-related provisions, civil society and other interested stakeholders should continue to conduct relevant independent research. Civil society must also advocate for the inclusion of human rights accountability mechanisms within Agreement amendments or future protocols as the WTO Committee on Fisheries Subsidies considers implementation. Continued advocacy will be crucial to ensure that the WTO finalises regulations for subsidies encouraging overcapacity and overfishing, strengthens its reporting requirements, and hold States and private sector actors accountable for fisheries subsidies which negatively impact human rights. Finally, civil society can encourage the WTO to adopt an expanded definition of harmful fisheries subsidies, recognising that beyond impacts to biological sustainability, harmful fisheries subsidies can prevent the full realisation of human rights.

By bridging gaps between disparate international and local actors, civil society will play an important role in facilitating human rights coherence in the Agreement on Fisheries Subsidies. Collaboration between fisheries management regimes, trade and human rights bodies, and relevant actors and stakeholders will need to continue as the Agreement is implemented. The Agreement would not have been reached on 17th June without the strategic and sustained pressure of civil society groups. If two-plus decades of harmful negotiations can be any indication, civil society should prepare for the long-haul.



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