

SEPTEMBER 2019

## **HUMAN RIGHTS IN FISHERIES AND AQUACULTURE IN AFRICA UNPACKED**

### **Key messages of the Expert Meeting on operationalising a human rights-based approach to sustainable fisheries and aquaculture sectors in the African region**



The fisheries and aquaculture sectors in Africa are extremely complex with multiple drivers that lead to both positive and negative human rights impacts. Moreover, developments in the sectors disproportionately affect the human rights of certain rights-holder groups, such as children, women, migrants and indigenous peoples.

The African Union recognises that the fisheries and aquaculture sectors provide nutrition and food security, livelihoods, employment, export

and foreign currency, conservation and biodiversity values that are of global significance. African States are looking to expand the fisheries and aquaculture sectors, as reflected in Goal 6 of the African Agenda 2063 (accelerating Africa's ocean economy for economic growth). Likewise, targets 14.7 and 14.b of the 2030 Agenda aim to increase the economic benefits to developing countries from the sustainable use of marine resources, and to ensure access of small-scale fishers to resources and markets. Consequently, the United Nations Economic Commission for Africa promotes the "Blue Economy" agenda and there is a rapid proliferation of initiatives across the continent. However, the human rights impacts and implications of the sector are not yet well understood or addressed.

Human rights issues and opportunities within the fisheries and aquaculture sectors were the centre of the discussions during a two-day Expert Meeting held in Nairobi, Kenya from 31 July-1 August 2019. The meeting brought together over 30 participants, representing fishing communities, UN agencies, National Human Rights Institutions (NHRIs), international financial institutions, academia and civil society organizations. The Danish Institute for Human Rights (DIHR) organised the meeting in collaboration with the UN Food and Agriculture Organization (FAO) and the Network of African National Human Rights Institutions (NANHRI), and with the support of the Swedish International Development Cooperation Agency (Sida).

**The African Commission on Human and Peoples' Rights** calls on States to adopt a human rights-based approach to natural resources governance, including in fisheries, international cooperation, investment agreements and trade regulation (resolution No. 224).

Participants discussed the regional trends and frameworks relevant to the fisheries and aquaculture sectors in Africa, the key human rights issues and impacts, as well as needs, gaps and challenges associated with the sectors across their value chains. The meeting also identified good practices, strategies and opportunities to address the issues and operationalise a human rights-based approach in the two sectors.

This document presents the key messages that emerged from the deliberations, and points towards areas of proposed actions.

## **10 KEY MESSAGES FROM THE EXPERT MEETING**

- 1. The realisation of fundamental human rights, such as the right to food and to an adequate standard of living** of fisheries workers in Africa is directly dependent on available and accessible fish stocks. Small-scale fisheries workers often live in remote areas with no or limited employment opportunities and service delivery from the State. Decreasing fish stocks and/or limited access to marine resources and markets increase poverty and denial of fundamental economic, social and cultural rights.
- 2. States' human rights obligations:** According to international human rights law, States are the primary duty-bearers, and are required to respect, protect and fulfil human rights. This includes putting in place and implementing fisheries and aquaculture related laws, policies, plans and projects that contribute to respecting, protecting and fulfilling human rights. For example, securing tenure rights to fishery resources, providing social security protection and delivering essential services and ensuring equitable benefits.
- 3. Human rights provide legal standards and principles:** By claiming their human rights, fishing and aquaculture communities (the right-holders) can rely on a legal framework to hold States and companies accountable through judicial or non-judicial mechanisms, for example by filing complaints to their National Human Rights Institutions. The rights-holders must be able to realise the right to access to information and to participate in decision-making.
- 4. Labour rights, instruments of the International Labour Organisation (ILO) and ratification of the ILO Work in Fishing Convention, 2007 (No. 188):** States should promote decent work and improved labour conditions in the fisheries and aquaculture sectors, both large and small-scale as well as formal and informal, including through specific national labour laws and regular inspections. The ILO Declaration on Fundamental Principles and Rights at Work declares that all ILO members States have an obligation to respect, to promote and to realize the principles concerning the fundamental rights which set out in ILO's core

### **Human rights principles:**

- Non-discrimination and equality;
- participation and inclusion;
- accountability.

international labour standards<sup>1</sup>. This applies to all workers, including fishers. The ILO Work in Fishing Convention (No. 188) sets out standards for all fishers and all fishing vessels engaged in commercial fishing operations, and sets more stringent requirements to larger vessels of 24 meters and over, and vessels at sea for longer periods (e.g. over 3 days). Ratifying States commit to exercising control over fishing vessels, through inspection, reporting, monitoring, complaint procedures, penalties and corrective measures, and may then also inspect foreign fishing vessels visiting their ports and take appropriate action. The ILO Protocol to the Forced Labour Convention, 1930, adopted in 2014 is a highly relevant instrument for States to combat forced labour in the sectors.

5. **Companies' human rights impacts** : Based on the UN Guiding Principles on Business and Human Rights, companies in the fisheries and aquaculture sectors (or other industries affecting fishing communities) have the responsibility to respect human rights (do no harm), including practising human rights due diligence, e.g. conducting human rights impact assessments of their operations and engaging with rights-holders, such as those workers, communities or consumers who are negatively affected by their operations.
6. **Access to remedy**: Where human rights are adversely affected, States must take appropriate steps to ensure access to effective remedies. Such remedies could be provided through judicial, administrative, legislative or other appropriate means, and could comprise investigation, punishment and redress. Likewise, companies should also make grievance mechanisms at company-level available, to directly remediate and address any identified impacts before they escalate or worsen. Companies should also cooperate and collaborate in good faith with other mechanisms, such as OECD National Contact Points and National Human Rights Institutions.
7. **State-led initiatives on Illegal, Unregulated and Unreported (IUU) fishing, tenure and small-scale fisheries must** build on and comply with the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (the VGGT Guidelines) and the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (the SSF Guidelines), when designing interventions to end IUU fishing.
8. **Coordination and collaboration between State authorities**: Efficient management of the sectors requires improved coordination between relevant State authorities. Fisheries inspectors often cannot identify and report possible labour and human rights violations to the competent authorities and vice-versa. Fisheries inspectors and labour inspectors require sufficient resources, technical knowledge, capacity and leadership support.
9. **African National Human Rights Institutions** can use their mandate to promote and protect human rights of fisheries workers, and to address negative impacts of the fisheries and aquaculture industries. 33 out of 54 African countries have a National Human Rights Institution. They have an important mandate and role in bridging the knowledge gap, giving

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<sup>1</sup> Fundamental principles and rights at work defined by the ILO: Freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

advice, handling complaints and holding States and companies accountable for human rights violations in the sectors.

10. **Data and knowledge gap:** Human rights issues and impacts in the sectors are not well understood and addressed. The meeting concluded that little to none is known about the human rights impacts of large and small-scale aquaculture, e.g. in terms of the right to health, a healthy environment, land tenure, working conditions and childrens' rights. More data and knowledge exchange is needed regarding the human rights implications of the laws and policies that are driving the rapid developments within the fisheries and aquaculture sectors at national and regional levels, such as the Blue Economy agenda. Human rights expertise and capacity-building can be provided by the National Human Rights Institutions.

## **KEY HUMAN RIGHTS ISSUES IN FISHERIES AND AQUACULTURE IN AFRICA**

Human rights are indivisible and interdependent, but several specific human rights issues are salient within the fisheries and aquaculture sectors.

### **Labour rights**

- Large and small-scale fishing present differentiated problems, but commonly identified labour issues include Occupational Safety and Health (OSH); problematic access to health care, and no or weak work agreements leading to insufficient rest and remuneration, as well as social security issues. Most African countries have generic labour laws although e.g. OSH issues in the fisheries sector are different from other sectors.
- Little is known about labour issues in the aquaculture sector in Africa, but it is assumed that challenges to labour standards exist, especially related to OSH issues and child labour. As the aquaculture sector is growing, the need to understand the labour and human rights implications (positive and negative) is growing.
- Workers engaged in fish processing and fish market activities are often not employed under formal terms and are deprived of access to appropriate tools and personal protective equipment, e.g. gloves and smoking devices with closed chimneys. Moreover, discrimination on the basis of gender and minority status exists.
- Child labour exists in both fisheries and aquaculture sectors in Africa. Fishing is considered a hazardous, labour-intensive and dangerous sector, thus presenting one of the worst forms of child labour. Due to poverty, children are working or being traded to work in the sectors, infringing their human rights to education, food, clothing, shelter, family life and possibly the right to life.

### **Women's rights**

- Women and men have distinct roles in fisheries and aquaculture. Women are traditionally employed in fish processing and market activities, while men traditionally work in fishing. Women's human rights violations in the fisheries and aquaculture sectors are complex and context-specific.

- Women and men are exposed to different health risks. Fish smoking is predominantly carried out by women, who may suffer health issues from inhalation when using devices that do not have closed chimneys.
- There are reports of women being subjected to gender-based violence and exploitation at the workplace and in cases where sexual services are provided in exchange for access to fish markets or fish to sell, in East Africa.
- Exclusion or discrimination at the work place is reflected in remuneration, work agreements, participation in decision-making processes, access to complaint mechanisms, representation as well as participation in trade unions and other fisheries related organisations.
- Women are often excluded or discriminated against in decision-making processes within their communities and in dealing with State authorities.
- Exclusion or discrimination is found in access to finance, tenure or access rights, and their ability to invest in revenue-generating assets, e.g. equipment and input need for aquaculture production, fishing, processing and access to markets.

#### **The right to food, to an adequate standard of living and to social security**

- The production of fishmeal and fish oil products is problematic from a human rights perspective, as the commonly used fish species are also essential for food security and are already overexploited.
- The realisation of the human rights to adequate food, clothing, housing, medical care and necessary social services for the people employed in the fisheries and aquaculture sectors is linked to the levels of poverty and discrimination that they face. Their situation is influenced by laws, policies and a host of other complex factors driving development in the industries.
- The realisation of the rights of small-scale fisheries and aquaculture workers is often linked to tenure and access systems to land and marine resources. Moreover, poor infrastructure may limit their access to fish markets.
- When State authorities limit or ban access to marine resources for small-scale fishers, social protection becomes essential to uphold human rights for those affected. Examples of social protection responses include preferential fishing zones, emergency relief, in-kind transfers, cash or food for work programmes, livelihood training, technical support and replacement of equipment, unemployment benefits and health-related social security systems.

**Factors leading to positive or negative human rights impacts** for the people depending on fisheries and aquaculture for their livelihoods include: changes in laws, policies, plans, fisheries agreements, trade agreements, subsidies, declining fishing stocks, fuel prices, environmental changes, climate change, pollution, conservation, tourism, ocean-based energy, mining, shipping, demands from consumers etc.

#### **Customary rights to lands, territories and resources and a healthy environment**

- The expansion of industrial fisheries and aquaculture adds to the existing pressure on the rights to lands, territories and resources of indigenous peoples and coastal communities.

States should ensure that small-scale fisheries workers and their communities have secure, equitable, and socially and culturally appropriate tenure rights to fishery resources, fishing areas and adjacent land, with special attention paid to women with respect to tenure rights, in accordance with the SSF Guidelines.

- Overfishing, climate change and environmental pollution adds to the competition over lands, territories and marine resources. States should develop policies and plans to address the impacts of climate change in fisheries, including strategies for adaptation, mitigation and for building resilience, in full and effective consultation with fishing communities, including indigenous peoples, men and women, paying particular attention to vulnerable and marginalized groups in line with the SSF Guidelines.
- Large-scale aquaculture projects often lack Environmental Impact Assessments (EIA) or not done properly with limited or no public participation as part of the EIA process. Conflicts between aquaculture companies and common resource users, including indigenous communities have been reported in the continent.
- Across the continent, there are many examples of the customary rights of fishing communities being violated in the context of large-scale development projects. Communities are often not informed and consulted on the development of mega projects linked to, for instance, tourism, extractive industries, aquaculture and port construction. Consequently, such projects are often developed without agreement or consent, resulting in loss of livelihoods and jobs and displacement without compensation.

## **SIX CATEGORIES OF PROPOSED ACTION**

The meeting produced an extensive list of proposed actions, which can be found in the full report of the meeting. The below list is a summary and categorisation of the proposed actions.

1. **Addressing the knowledge gap** regarding human rights impacts and implications of the fisheries and aquaculture sectors by producing new knowledge products, research papers and documentation. Specific topics for knowledge generation include the human rights impacts of aquaculture production and fisheries agreements; companies' responsibilities to respect human rights; roles and responsibilities of the State, companies and civil society in promoting participation, non-discrimination, accountability and transparency, and; improving access to remedy; human rights implications of the "Blue Economy" agenda, and; the potential role of the Regional Fishery Management Bodies in Africa in contributing to the respect for, protection and fulfilment of human rights. Likewise, participants highlighted the need for a compilation of human rights-related jurisprudence related to fisheries and aquaculture as well as good practice related to secure tenure and access rights, as well as social protection for fishing-dependent communities.
2. **Tools and guidance** on how to implement a human rights-based approach to fisheries and aquaculture strategies, plans and programmes. Ideas included the development of a compendium of good practices; unpacking and developing an understanding of the link between Illegal, Unregulated and Unreported fishing and human rights; the development of recommendations on how to strengthen collaboration between competent authorities, and;

development of guidance on how National Human Rights Institutions can use their mandate to promote and protect the human rights of people working in, or affected by, the fisheries and aquaculture sectors.

3. **Capacity-building and outreach** to assist actors in the fisheries and aquaculture sectors understand the human rights impact and implications, and assist human rights actors understand how to address human rights violations in the fisheries and aquaculture sectors. Ideas included human rights campaigns; support to the African Non-State Actor platforms and the New Partnership for Africa's Development (NEPAD) in working with human rights; initiatives to create awareness of business responsibilities in the sectors; technical and legal assistance to States to implement the Voluntary Tenure Guidelines, the Voluntary Small-Scale Fisheries Guidelines and generally pursue a human rights-based approach to fisheries and aquaculture, and assistance to States and companies that want to implement the UN Guiding Principles on Business and Human Rights in the sectors.
4. **Strategic coordination and collaboration** between actors within the human rights and fisheries and aquaculture sectors. Suggestions included the strengthening of cooperation between the different competent authorities at a regional or national level to identify and report illegal fishing and possible labour and human rights violations; addressing the fisheries and aquaculture sectors in the context of National Action Plans on Business and Human Rights. Moreover, the 2030 Agenda for Sustainable Development, and in particular SDG 14, should be used as a platform to implement human rights and develop strategic collaboration to further operationalise a human rights-based approach to fisheries and aquaculture in the region.
5. **Getting the legal and institutional frameworks right:** countries are encouraged to ratify ILO C188, the International Maritime Organisation (IMO) Cape Town Agreement and the FAO Port State Measures Agreement (PSMA) and to develop sector-specific labour laws and give fisheries workers specific legal rights. Likewise, they need to ensure secure tenure and access rights and social protection policies for small-scale fisheries and aquaculture workers.
6. **Contribution to major initiatives, events and processes:** Engage with the African Union platforms and networks for fisheries and aquaculture, including the African Non-State Actor platforms, the Agenda 2063 and the 2030 Agenda. Use relevant fisheries, development or human rights platforms, fora and events to campaign and address the human rights agenda in fisheries and aquaculture in Africa. Examples include the Regional Sustainable Development Forum organised the United Nations Economic Commission for Africa the World Fisheries Day; the 2022 International Year of Artisanal Fisheries and Aquaculture; and the first Africa Aquaculture Conference organised by the African Chapter of the World Aquaculture Society in Egypt in 2020.