

Unpacking a human rights-based approach to small-scale fisheries:

How the integrated protection of substantive and procedural human rights can contribute to achieving multiple Sustainable Development Goals

The human, social and cultural dimensions of the fisheries sector have been historically overlooked by governments and stakeholders around the world. Only in the last decades has concern for fisheries sustainability broadened to encompass the recognition, protection and promotion of human rights of fishers, fishworkers, and their communities, while on land or at sea. This is a critical advance especially for the fisheries subsector known as small-scale or artisanal fisheries. Small-scale fishers represent more than 90% of the fisheries workforce in developing countries, but face persisting challenges of marginalization, vulnerability, poor living and working conditions. Small-scale fisheries operate in inland and marine waters, contributing to nutritious food, income, jobs, and the identity of millions of coastal and rural communities around the globe.

The need for understanding and ensuring the protection of human rights in small-scale fisheries is reflected in the [Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication \(SSF Guidelines\)](#), adopted by consensus of Member States of the Committee on Fisheries of the Food and Agriculture Organization of the United Nations (FAO), in 2014. The message in the SSF Guidelines

is clear: its objectives¹ 'should be achieved through a human rights-based approach' (HRBA). Yet, for a comprehensive application of the HRBA to small-scale fisheries, **the human rights of small-scale fishers and their communities need to be understood in their full scope and interactions.** The benefits of this more considerate and integrated understanding of the HRBA can also contribute to achieving multiple Sustainable Development Goals (SDGs).

¹ These objectives include: to support the progressive realization of the right to adequate food; to improve the socio-economic situation of fishers and fish workers; to achieve the sustainable utilization, prudent and responsible management and conservation of fisheries resources; to provide guidance for the development and implementation of ecosystem friendly and participatory policies, strategies and legal frameworks; and to enhance public awareness and promote the advancement of knowledge on the culture, role, contribution and potential of small-scale fisheries, considering ancestral and traditional knowledge.



Photo Credit: Jackie Sunde

KEY POINTS

- Implementing the SSF Guidelines in accordance with the human rights-based approach means ensuring the protection and promotion of the procedural and substantive rights of small-scale fishers, fishworkers and their communities.
- Holistic protection of procedural and substantive rights of small-scale fishers can contribute to policy coherence (SDG 17), coordinated application of international obligations, and SDG co-benefits;
- Small-scale fishers' procedural human rights (SDG 16) include specific guarantees for indigenous peoples, peasants, women, children and environmental human rights
- Small-scale fishers' substantive rights are inter-dependent (tenure, livelihoods, food, water, culture, health: SDGs 1-6) and their integrated protection can enhance also environmental management (SDGs 13-15) to the benefit of everyone's right to a healthy environment.
- IYFA provides a great opportunity to: raise awareness about the human rights challenges of small-scale fishers, fishworkers and their communities; build new and strengthen partnerships around the protection of human rights in the sector; and amplify the voices of human rights-holders in the small-scale fisheries sector.

The [International Year of Artisanal Fisheries and Aquaculture \(IYAFA\) 2022](#) provides a unique opportunity to advance the recognition, protection and promotion of substantive and procedural human rights. [The IYAFA's Global Action Plan](#) specifically states that the activities under IYAFA should follow a HRBA. FAO is the lead agency for celebrating IYAFA and coordinating activities that showcase the challenges, achievements and good practices in small-scale fisheries worldwide.



FAO and the collaborative research initiative One Ocean Hub jointly put forward this policy brief to identify key opportunities to implement the HRBA to small-scale fisheries holistically, clarifying the obligations arising from substantive and procedural human rights of small-scale fishers, fishworkers, and their communities from the current international legal framework, and analysing their links with relevant SDGs.

1. The Human Rights-Based Approach to Small-Scale Fisheries

The HRBA under the SSF Guidelines is premised on the obligations of States parties to core international human rights treaties – such as:

- the International Covenant on Civil and Political Rights,
- the International Covenant on Social, Economic and Cultural Rights,

- the Convention on the Elimination of All forms of Discrimination Against Women,
- the Convention on the Rights of the Child, and
- the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Other key instruments informing the HRBA to small-scale fisheries are:

- the UN Declaration on the Rights of Indigenous Peoples,
- the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas
- the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security,
- the Voluntary Guidelines on the Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.

" the human rights of small-scale fishers and their communities need to be understood in their full scope and interactions."

All these instruments clarify the international human rights standards underlying the HRBA to ensure the human rights of small-scale fishers, fishworkers and their communities are recognized, respected, protected and promoted.

In addition to supporting policy coherence (SDG 17.14) and the alignment of duties under different international environmental, ocean and human rights treaties, applying the HRBA to small-scale fisheries can support the linkages between the SDG14 (target 14.b 'provide access of small-scale artisanal fishers to marine resources and markets') and SDG 16 ('accountable and inclusive institutions'), notably with respect to procedural human rights. Better understanding substantive human

Case study:

To enhance participation of small-scale fishers in relevant decision-making in South Africa, researchers and fishers developed an 'embodied mapping' process to make draft maps and consultation documentation more understandable. The process entails fishers using their bodies as reference points for land-marks and noticeable boundaries with a view to developing an alternative, community-led map that would include their areas of interest and their concerns. This allows for a more nuanced understanding of the implications of a draft management plan for a marine protected area (which was translated into isiXhosa (the local language), in preparation for the meeting with authorities. The alternative maps were then relied on to engage public authorities in discussing past inequalities and exclusions from ocean-related decision making, in the context of a management process for a marine protected area. This allowed communities to discuss their concerns in their own language and on the basis of understandable maps and documentation. As a result, the authorities expressed a commitment to include small-scale fisheries cooperatives in the decision-making forum for the Amathole marine protected area. (Pereira, Francis and McGarry, 2021)

rights can support implementation of SDG 14.b together with several other SDGs.

2. The procedural side of the HRBA to Small-Scale Fisheries

In procedural terms, the HRBA to small-scale fisheries seeks to ensure the inclusion and participation of coastal and rural small-scale fishers, fishworkers, and their communities in inclusive, transparent and accountable decision-making processes that may have an impact on their lives. These processes include the design, implementation, monitoring and evaluation of legislation, programmes, projects and guidance on sustainable fisheries, as well as policies, laws and activities that may have an impact on fisheries or on small-scale fishers' rights. In this context, the HRBA calls for giving special attention to the needs of vulnerable and marginalized groups.

Respect and protection of **procedural rights** of small-scale fishers include:

- **access to information** on the planning, conservation, management, production, processing, marketing and distribution of fish and their



Photo Credit: Sirkka Tshiningayamwe

products, and on the decision-making processes that affect them, by:

- providing all relevant information in objective, understandable,

"the HRBA calls for giving special attention to the needs of vulnerable and marginalized groups"

affordable and timely manner to enable small-scale fishers to understand potential impacts on their human rights and support the exercise of their participatory rights;

Case study:

In the 2022 judgment of the Western Cape High Court in Cape Town, South Africa, the judge concluded that adequate consultations with local small-scale fishers before starting seismic testing for offshore oil and gas exploration (Vrancken, 2022; Sunde, 2022) also depend on the recognition and consideration of the intangible spiritual and cultural beliefs of the small-scale fishing communities pertaining to the sacredness of the ocean as the home of their ancestors. The decision thus demonstrated the potential of protecting cultural rights in a way that also strengthen procedural rights; as well as the alignment of public duties on the protection of small-scale fishers' cultural and subsistence rights and benefits to everyone's right to a healthy environment (safe climate versus future offshore fossil fuel extraction).

- making documents and guiding materials available to the public and in various languages, including dialects peculiar to small-scale fishing communities;
- devise access to information in a way that small-scale fishers can have a real opportunity to decide and adequately participate in relevant decision-making processes.
- **participation in decision-making** processes that affect small-scale fishers by:
 - supporting the self-identification of human right-holders representatives and ensuring their fair representation;
 - providing culturally-sensitive opportunities for integration of representatives from small-scale fisheries organizations and small-scale fishing communities into debates, knowledge-sharing and decision-making processes at an early stage and with adequate opportunities to express their views;
 - ensuring that public authorities take into account and integrate these views and explain their decisions to the public;

- integrate indigenous and local knowledge in decisions;
- taking additional steps to support the participation of marginalized communities.
- **access to justice** by:
 - adopting laws that contribute to the protection of small-scale fishers' rights that are widely publicized, applicable to all, equally enforced and consistent with existent universal obligations;
 - ensure the right to an effective remedy for anyone whose rights are violated (including the right to appeal);
 - ensuring guarantees to due process in all legal proceedings; and
 - ensuring the right to effective remedies or other form of compensation for violations of human rights, and the respect for the rule of law.

Additionally, the procedural side of the HRBA to small-scale fisheries fosters due regard for **cross-cutting human rights issues**:

- **children's rights** (SDG 4):
 - ensuring children's access to education,
 - supporting children-friendly information and participation,

Case study:

In Algoa Bay, South Africa, the Hub and partner researchers are exploring photographic storytelling, to start discussions between indigenous and local communities (including women and youth) and decision makers on the inclusion of culture (particularly intangible cultural heritage) in marine spatial planning, (Strand et al 2022, Strand et al, forthcoming; One Ocean Hub, 29 March 2022).

- considering children's views and concerns in decision-making processes, and
- giving primary consideration to children's best interests in decisions.
- **gender equality** (SDG 5), notably with regard to women's rights in the ownership, acquisition, planning, management, administration, enjoyment and disposition of natural resources, their environmental monitoring, control and surveillance, non-discrimination, as well as women's participation in and benefit sharing from reforms of the fisheries sectors, by:
 - supporting gender-balanced representation, genuine participation and effective consultation in fisheries institutions;
 - gather and rely on gender-disaggregated data for fisheries management, conservation and research;

- using gender-neutral text in policies, legislation and other formal and informal communications;
- establishing gender-responsive enabling institutional, legal and policy frameworks, that are adequately budgeted;
- mainstreaming a gender perspective in relevant development policies, strategies, plans and programmes, with a view to enhancing women's agency, their fair and equitable participation along with their leadership;
- developing and implementing temporary special measures to rural women to benefit from the public distribution, lease or use of fisheries and from reform policies, investments and management of natural resources in rural areas, giving priority to landless rural women in the allocation of fisheries.

- **climate change** (SDG 13):

- ensuring full and effective consultation with small-scale fishers, Indigenous peoples, peasants and other concerned communities so they are able to contribute to the design and implementation of climate change adaptation and mitigation policies, including through the use of their traditional practices and knowledge;



Photo Credit: Eric Nathan

- fostering awareness-raising of climate change issues in small-scale fishing communities and all other relevant communities;
- making available transparent access to climate change adaptation funds, facilities and culturally appropriate technologies suitable for climate change adaptation.

• **culturally-appropriate approaches and legal pluralism:** customary rules and rights of indigenous peoples and other local communities, as well as their traditional forms of organization are of particular importance in the context of small-scale fisheries and their communities, specifically with reference to customary tenure systems, and customary fishing grounds, as well as the recognition, respect and protection of local norms and practices. Consideration of cultural heritage (SDG 11.4)

- respecting traditional and customary rules and values of the small-scale fishing communities in consulting with them or integrating their knowledge and viewpoints in decision-making processes;



Photo Credit: Eric Nathan



Photo Credit: Marly Muudeni Samuel

- taking due account of these rules and values when formulating policies, regulatory frameworks, and institutional arrangements that affect the concerned communities.

It is also fundamental to consider the recognition of small-scale fishers as:

- **environmental human rights defenders** individually or in groups, striving to protect and promote human rights relating to the environment on which the enjoyment of human rights depends, even whether they are not self-identify as defenders. This entails:
 - providing a safe and enabling environment for defenders to operate free from threats, harassment, intimidation, and violence;

- adopting and implementing laws that protect human rights defenders; publicly recognizing the contributions of human rights defenders to society and ensuring that their work is not criminalized or stigmatized;

"providing for effective remedies for violations, including appropriate compensation"

- developing, in consultation with human rights defenders, effective programmes for protection and early warning;
- providing appropriate training for security and law enforcement officials;
- ensuring the prompt and impartial investigation of threats and violations and the prosecution of alleged perpetrators; and
- providing for effective remedies for violations, including appropriate compensation.

- **Indigenous peoples and peasants**, whose rights should be respected by:
 - including consideration of their rights in impact assessments (e.g., environmental impact

assessments prior to, and post to, large-scale undertakings and activities are carried out; other socio-cultural environmental impact assessments; and strategic environmental assessments prior to, and post to, the development of plans, programmes and strategies that may affect access to fisheries resources and other rights);

- seeking free, prior, and informed consent (FPIC) before decisions affecting Indigenous peoples' lands, fishing grounds, fisheries resources and their knowledge, and ensure good-faith consultation with peasants about these decisions; and
- fair and equitable distribution of the benefits arising from the conservation and sustainable use of fisheries resources.

3. The substantive side of the HRBA

Substantive rights of small-scale fishers, fishworkers and their communities include, but are not limited to, their right to life, health, food, water, property and tenure,

"In all these instances, protection of tenure also contributes to the protection of the right to livelihoods (SDG 1) and non-discrimination, including for women (SDG 5)"

participation in cultural life, decent work and labour rights, healthy environment, adequate standard of living, education, freedom from all forms of discrimination, and self-determination.

These rights are inter-related and inter-dependent. For instance, to fully enjoy their right to food, small-scale fishers depend on being able to fish and have access to fishing



Photo Credit: Jacki Bruniquel

grounds and fisheries resources in accordance with their tenure rights and cultural rights. The realization of such rights fulfills fundamental and basic human needs depends on various actions by public authorities. In addition, States need to regulate and monitor companies and other private actors so as to prevent them from infringing the human rights of small-scale fishers, fishworkers and their communities. The procedural rights discussed above are therefore needed to prevent or challenge States' omission or inability to meet their duties of providing such basic needs to the people in their territories either through public authorities or by regulating and controlling private companies.

- The **right to tenure** in small-scale fisheries means their rights to access to fishing grounds, and adjacent land, for carrying out fishing activities (harvesting) and fishing-related activities (e.g. boatmaking, preparation of fishing gears, processing, trading and marketing). Tenure is usually associated with the right to property and the right to participate in cultural life. According to the SSF Guidelines, the Tenure Guidelines, and the UNDROP, legitimate tenure rights include customary tenure rights to resources, as well as the restoration of access to

traditional fishing grounds in the event of natural disasters and/or or armed conflicts. The right to tenure also entails protection from arbitrary displacement. In all these instances, protection of tenure also contributes to the protection of the right to livelihoods (SDG 1) and non-discrimination, including for women (SDG 5).

- The **right to adequate food** (SDG 2) is fulfilled when people alone or in a community have access to adequate food or means for its procurement. The ability for people to feed themselves from natural resources is an important element of this right, and therefore fish and aquatic resources have a direct impact on the right to adequate food, not only for people who depend on aquatic resources for food and livelihoods but also to satisfy the nutritional needs of vulnerable populations near and far from these resources, nutrition and livelihoods. Former UN Special Rapporteur Oliver De Schutter described in his 2012 report the "explicit link between the right to food and the rights of those who produce it to fair access to resources such as fish and water". In addition, he envisaged two notions of the right to food - "adequate food" and "freedom from hunger", highlighting the

importance of fish as a source of protein and of micronutrients, especially for impoverished people. Protecting the right to food, therefore, also contributes to protecting the right of small-scale fishers and their communities to health (SDG 3) and is particularly important for children.

- **The right to a healthy environment** is essential for small-scale fishers and their communities since they depend directly on a healthy environment to subsist, however this right is affected by factors beyond their control such as climate change, environmental degradation, ocean acidification, and the destruction of mangroves, which affects both aquatic resources, and communities and their means of subsistence. Small-scale fishers are often excluded

"Small-scale fishers are often excluded from decision-making on environmental protection"

from decision-making on environmental protection, such as climate change adaptation and mitigation measures (SDG 13) or conservation measures such as marine protected areas but also land-based ones (SDG 15), that are often taken without proper consultation of affected communities. Protecting the right to a healthy environment, for small-scale fishers is linked to the protection of their right to tenure, food (SDG 2), water (SDG 6), and adequate standard of living among others (SDG 1).

- **Labour rights and decent work (SDG 8.8)** are fundamental to small-scale fishworkers to ensure they benefit from, inter alia, social security and standards for safety at work, while being recognized



Photo Credit: Sirkka Tshiningayamwe

as professional fishworkers, able to further develop their technical capacities through professional training. Ensuring these rights can prevent small-scale fishworkers from suffering severe violations of labour rights (e.g., abusive working hours, inappropriate occupational safety and health, child labour, and forced labour). These violations are linked to the informality, seasonality, remoteness, hazardous nature, and exploitation of migrant workers. Ensuring the protection of labour rights and decent work in small-scale fisheries can ultimately contribute to promoting their technical capacities to contribute to agricultural productivity (SDG 2.3), providing equal access to quality technical and vocational training (SDG 4.3), providing adequate support to women fishworkers (SDG 5.4), and ensure the adequate regulation of the small-scale fishing sector (SDG 14.b.1).

- **Cultural rights** in the context of small-scale fisheries include the respect for local languages (e.g., dialects of Indigenous fishing communities), regard for the role of cultural heritage (e.g., traditions and knowledge passed over generations) in livelihoods practices in fisheries (SDG 1), and assessments of actual and potential negative impacts on ocean culture arising from ocean-

related decision (SDG 11.4). For instance, often environmental impact assessments only consider shipwrecks as cultural heritage, and pay little attention to other tangible and intangible cultural heritage, such as oral histories, traditions, cultural practices and ceremonies, places of spiritual significance, and indigenous cultural heritage. This also applies to climate policies (SDG 13), which are still in the process of fully integrating, the importance of small-scale fisheries culture and the need to include marginalised coastal and ocean-dependent communities and indigenous peoples in the dialogue. On the other hand, the protection of the right to culture can contribute to the protection of tenure and human rights to food (SDG 2), non-discrimination (SDG 10) and to a healthy environment (SDGs 13-15).



In conjunction with:



Food and Agriculture Organization of the United Nations

Funded by:

