

The implementation of the WTO Fisheries Subsidies Agreement should Support the Human Rights of Small-Scale Fishers

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Abstract

This brief summarises key messages on how the implementation of the WTO Agreement on Fisheries Subsidies (AFS) should consider implications for the human rights of small-scale fishers. This brief is based on the [One Ocean Hub research article](#) by Switzer, Morgera and Webster, "Casting the net wider? The transformative potential of integrating human rights into the implementation of the WTO Agreement on Fisheries Subsidies" (2022) 31 *Review of European, Comparative & International Environmental Law* 360-373 and a [Danish Institute for Human Rights report](#) (2022). The brief identifies recommendations to States members of the WTO, and to the Food and Agriculture Organisation of the United Nations (FAO) in its capacity-building initiatives.

1. A brief introduction to Fisheries subsidies

According to the Food and Agriculture Organisation of the United Nations (FAO), in 2020, global capture fisheries production reached 90.3 million tonnes, with an estimated value of USD 141 billion (FAO, 2022). However, around 33% of fishery stocks are currently fished at biologically unsustainable



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KEY MESSAGES

WTO Member States should, in implementing the AFS:

- Consider that removal of subsidies could have negative impacts on small-scale fishers' human rights (including due to overlaps between small- and large-scale fisheries);
- Ensure environmental, socio-cultural and human rights impact assessments are conducted prior to removal of subsidies at the national level;
- Use the "grace period" for developing countries to enhance capacities and an enabling environment to conduct these assessments;
- Pay particular attention to the effective recognition and protection of cultural rights of small-scale fishers (including tangible/ intangible cultural heritage) and of their ecological knowledge and customary norms;
- Pay particular attention to the protection of the human rights of women and children in small-scale fisheries;
- Ensure that the WTO Committee on Fisheries Subsidies introduce additional human rights-related reporting requirements;
- Redirect financial resources previously earmarked for harmful fisheries subsidies towards the progressive realisation of core economic, social and cultural rights;
- Prioritise the funding of small-scale fishers-led initiatives for sustainable fisheries e.g., by introducing exclusive artisanal fishing zones and exclusive user rights for small-scale fishers and favouring their access to means of transport and processing;
- Prioritise the funding for fisheries co-management with small-scale fishers that respectfully integrates their knowledge and customary laws.

levels (FAO, 2022). Fisheries resources continue to decline due to a multitude of factors, including overfishing, habitat degradation and loss, climate change, poor management practices, illegal, unreported and unregulated (IUU) fishing, and growing capacity of large-scale fishing vessels to harvest fish stocks. One of the contributing factors to these impacts are fisheries subsidies.

Fisheries subsidies have been valued at USD 35.4 billion in 2018. Some fisheries subsidies may have beneficial effects in that they can be used to conserve and enhance existing fish stocks (Sumaila et al., 2007). However, certain other types of fishery subsidy are likely to have more harmful effects by artificially reducing the costs of fishing, potentially leading to overcapacity and overfishing. Subsidies can also promote IUU fishing, by granting subsidies to vessels or operators which use such subsidies to set sail outside jurisdictional waters in areas that are prohibited or engage in other fishing activities that are considered IUU fishing. This undermines a vast array of efforts to combat this type of activity. More generally, fisheries are allocated inequitably by States across the fishing industry. For example, of total subsidies, 81% (USD 28.8 billion) were provided to large-scale fishers, with 19% (USD 6.6 billion) provided to the small-scale fishing sector (Schuhbauer et al., 2022). This promotes unfair competition between the large and small-scale fisheries sectors and detrimental impacts upon small-scale fishers, who already are often subject to adverse impacts caused by large scale fisheries.

2. A brief introduction to the WTO Fisheries Subsidies Agreement

Fisheries subsidies have been discussed within the World Trade Organisation (WTO) - an intergovernmental organisation with 164 Members - since 2001. In June 2022, the AFS was adopted. When it enters into force, it will prohibit WTO Members from providing subsidies to vessels or operators engaged in IUU

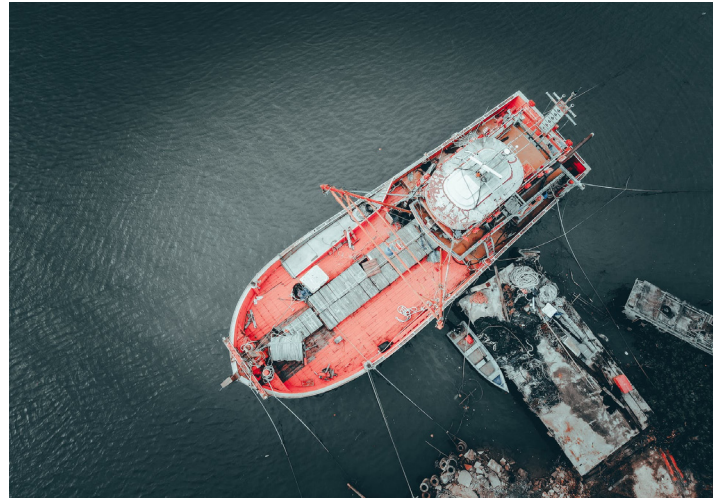


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fishing or activities, as well as from subsidising fishing or fishing related activities regarding an overfished stock.

Developing and least developed countries will be exempt for two years from any actions stemming from these prohibitions for subsidies granted or maintained up to and within their exclusive economic zone, an area which can extend up to 200 nautical miles from a country's coast. The AFS contains further obligations for all Members in the form of a general prohibition on subsidising fishing or fishing activities in areas outside the jurisdiction of a coastal State or a regional fisheries management organisation/arrangement (RFMO/A).

The AFS directs that technical assistance and capacity building should be made available to developing and least developed countries, with a voluntary Fisheries Funding Mechanism established to support the provision of such assistance. Notification and transparency obligations are also set out under the AFS, with a view to, 'strengthen(ing) and enhanc(ing) notifications of fisheries subsidies, and to enable more effective surveillance of the implementation of fisheries subsidies commitments' (Art 8.1 AFS). This information is to be received by



Photo: Nessim Stevenson

a Committee on Fisheries Subsidies which will meet at least twice a year to, among other things, 'afford Members the opportunity of consulting on any matter relating to the operation of this Agreement or the furtherance of its objectives' (Art 9.1 AFS). Notably, the Committee is directed to, 'maintain close contact with the FAO and with other relevant international organisations in the field of fisheries management, including relevant RFMO/As' (Article 9.5 AFS).

The AFS will enter into force and become legally binding on the WTO Members who have accepted it once at least two-thirds of the 164 WTO Members accept the AFS. At present, close to 40% of this threshold for acceptance has been met ([WTO website, n.d.](#)). Meanwhile, negotiations are continuing within the WTO to develop disciplines on subsidies which promote overfishing and overcapacity, and if these negotiations are successful, the AFS will be revised accordingly.

Although human rights language has not been used in the negotiation of the AFS nor in the final text to the Agreement, there are well established impacts of fisheries subsidies on human rights. Former UN Special Rapporteurs have noted harmful impacts on the right to food protected in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), which has been ratified by 149 WTO members. To give an example, in some coastal communities in least-developed countries, fish can comprise up to 80% of local diets. For individuals within these communities, the subsidised overfishing of decreasing marine resources can impact their rights to adequate food, and with it, the right to health and to an adequate standard of living. On top of these impacts, fisheries subsidies can also affect other rights. They can, for



Photo: Nessim Stevenson

example, artificially suppress the true cost of fishing, encouraging vulnerable fisheries workers to enter a dangerous profession where their right to safe and healthy working conditions may not be realised. Subsidies can also promote overfishing, affecting fishers' right to work due to depletion of fish stocks; where there is no fish, there is no fishing.

Fisheries subsidies are also connected to the right to take part in cultural life protected in ICESCR Article 15. These connections include impacts on culturally important fish species, and impacts on tangible and intangible heritage, expressed, for example, in the cultural significance of small-scale fishers' traditional fishing vessels. The protection of small-scale fishers' cultural rights also has impacts on their civil and political, as well as

GHANA CASE STUDY

Effects of subsidies to large-scale fishers

In Ghana, large-scale fishers catch fish stocks that are reserved for artisanal fishers, so artisanal fisheries are less able to catch these fish stocks themselves due to the competition with large-scale fishers.

The large-scale fishers then trans-ship fish to small-scale fishers' canoes for re-sale, thereby involving small-scale fishers in illegal fishing operations. In this context, the phasing out of subsidies relating to large-scale fisheries, including to IUU fishing, might have negative impacts on small-scale fishers' access to food and livelihoods. This is because small-scale fishers may have become dependent on or otherwise 'locked in' to illegal activities due to the difficulty of protecting their rights to food and livelihoods.

Effects of subsidies to small-scale fishers

Small-scale fishers receive, in principle, US\$40 million in subsidies on nets, outboard motors and fuel, thereby supporting the protection of their right to food. But a racketeers' middle

market for fuel has emerged that resells low-cost subsidised fuel to small-scale fishers at high prices, thereby negatively impacting on small-scale fishers' economic rights and leading to small-scale fishers engaging in illegal fishing.

Capacity-related subsidies that support the use of small-scale fishers' canoes contribute to the protection of cultural rights. These canoes are expressions of their cultural heritage and customary laws, including communities' sustainable fisheries knowledge and management practices, as these are embodied in inscriptions and paintwork on the canoes. Ongoing negotiations within the WTO to discipline subsidies contributing to overfishing and overcapacity, and which could see the eventual removal of these subsidies could negatively impact on these cultural dimensions, with potential knock-on effects on culture-related supplementary or alternative livelihoods for small-scale fishers. There is a need in the ongoing negotiations on overcapacity and overfishing to perform a human rights impact assessment of the removal of such subsidies generally, as well as for small-scale fishers' specifically.

Source:
One Ocean Hub article (pages 363-364)
building on DIHR report (page 18-19).

other human rights, and to their opportunities to contribute to sustainable fisheries. The UN Special Rapporteur on Cultural Rights emphasised in 2022: ‘the low regard for knowledge pluralism ...of small-scale fishers, and the historical stereotyping of Indigenous peoples hindered their potential contribution to sustainable economic development, in particular their potential contribution through a holistic and integrated environmental ethos’ (UN Doc A/77/290).

There can also be impacts on the rights of protected groups within fishing communities, including women and children, that should be analysed on the basis of relevant provisions under the UN Convention on the Elimination of All Forms of Discrimination against Women and the UN Convention on the Rights of the Child (notably in the light of the 2023 [UN General Comment on Children’s Rights and a Healthy Environment](#), with a special focus on climate change).

3. Fisheries subsidies removal: positive and potential negative impacts on small-scale fishers’ human rights

On the one hand, removal of harmful fisheries subsidies can support the protection of small-scale fishers’ human rights. The majority of fisheries subsidies are granted to large-scale fishers, to the detriment of small-scale fishers. 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. Accordingly, removal of fisheries subsidies targeted at large-scale fisheries may have the potential to positively impact the realisation of the right to food and related rights of small-scale fishers and coastal communities. On the other hand, removal of subsidies could potentially have negative impacts on small-scale fishers’ human rights, because in some instances small-scale fishers are involved in large-scale fisheries.

4. Opportunities to contribute to the fulfilment of small-scale fishers’ human rights through reinvestment of funds

The removal of certain subsidies arising from the implementation by countries of the WTO AFS opens up an important opportunity to redirect financial resources previously earmarked for subsidies towards the progressive realisation of core cultural, economic and social rights, such as:

- Introducing exclusive artisanal fishing zones and exclusive user rights for small-scale fishers, where appropriate;
- Taking appropriate measures to favour access to means of transport and processing, as well as facilities for selling products on local, national and regional markets at prices that guarantee a decent income and livelihood;
- Supporting co-management based on the recognition and



Photo: Nessim Stevenson

integration of small-scale fishers’ knowledge and customary norms as part of the protection and full realisation of their cultural rights;

- Creating special protections for children in small-scale fishers’ communities (social progress, improvement of living standards);
- Co-developing projects for the full realisation of rights to food, an adequate standard of living, culture and a healthy environment for small-scale fishers, including climate change adaptation and mitigation measures.

5. Policy recommendations for the implementation of the AFS

When implementing the AFS, undertake meaningful human rights, socio-cultural and environmental impact assessments at the national level: the AFS special and differential treatment provisions for developing countries and LDCs in respect of the prohibition on subsidies on overfished stocks and IUU fishing grant a grace period or so-called ‘peace clause’ of two years in respect of the removal of such subsidies once the Agreement enters into force. This period could be used to allow such countries to undertake human rights, socio-cultural and environmental impact assessment, as well as introduce meaningful opportunities for participation in decision-making for human rights actors. Assessments and participation should specifically provide for the specific needs of women and children. Further provisions on special and differential treatment in the WTO Fisheries Subsidies Agreement provide an entry point for the consideration of human rights as part of the ‘specific situation’ of LDCs e.g. under Art 6 AFS; ‘[a] Member shall exercise due restraint in raising matters involving an LDC Member and solutions explored shall take into consideration the specific situation of the LDC Member involved, if any’.

Include human rights expertise and considerations at the international level: the WTO Fisheries Funding Mechanism—which already foresees cooperation with the FAO—should also include human rights expertise and require human rights

protection or fulfilment, based on prior impact assessments, before funding is allocated. The WTO Committee on Fisheries Subsidies could introduce additional human rights-related reporting requirements and put in place other approaches for the consideration of human rights impacts.

Promote monitoring, peer review and individual redress mechanisms: Also internationally, a variety of bodies could support human rights learning and monitoring, such as: the WTO Trade Policy Review Mechanism; the Universal Periodic Review, which allows UN member States to review the human rights record of other member states; as well as individuals and groups' complaints under the ICESCR Optional Protocol.

Also in respect of the ongoing negotiations on subsidies liable to contribute to overcapacity and overfishing, undertake human rights impact assessments of relevant proposals. introduce meaningful opportunities for participation in decision-making for human rights actors. Assessments and participation should specifically provide for the specific needs of women and children. Further provisions on special and differential treatment in the WTO Fisheries Subsidies Agreement provide an entry point for the consideration of human rights as part of the 'specific situation' of LDCs e.g. under Art 6 AFS; '[a] Member shall exercise due restraint in raising matters involving an LDC Member and solutions explored shall take into consideration the specific situation of the LDC Member involved, if any'.

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RECOMMENDATIONS TO FAO

In providing advisory services and other capacity-building activities to its Member States, FAO should support the implementation of the WTO AFS in accordance with the human rights-based approach enshrined in the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines), and therefore support:

- The review of national fisheries legislation, with a view to identifying any barriers to the protection of small-scale fishers' human rights (see [FAO Toolkit](#)), with particular attention to cultural rights and the human rights of women and children;
- provide technical assistance to strengthen national fisheries legislation for the protection of small-scale fishers' human rights;
- The analysis of the risks that removal of subsidies could have negative impacts on small-scale fishers' human rights (including due to overlaps between small- and large-scale fisheries);
- The development of capacities for Member States to conduct environmental, socio-cultural and human rights impact assessments prior to removal of subsidies at the national level, with a view to safeguarding small-scale fishers' human rights;
- The creation of legislative and other conditions for redirecting financial resources previously earmarked for harmful fisheries subsidies towards the progressive realisation of small-scale fishers' human rights, including small-scale fishers-led initiatives for sustainable fisheries and fisheries co-management;
- Raising awareness among relevant fisheries, environmental and other authorities about the need to protect small-scale fishers that act as environmental human rights defenders in national debates and activities in respect of both the implementation of the WTO AFS, as well as the ongoing negotiations on overcapacity and overfishing.