SHOULD STATES AND INTERNATIONAL ORGANIZATIONS ADOPT A HUMAN RIGHTS APPROACH TO FISHERIES POLICY?

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Abstract Non-governmental organizations (NGO) and fisherfolk organizations already use human rights principles and legislation to campaign for the social, economic and cultural rights of fishing people. Yet, despite the widespread adoption of human rights principles by NGOs and United Nations agencies over the last 20 years and the human rights-basis of the influential FAO Code of Conduct for Responsible Fisheries, progress with application of this approach in fisheries has lagged behind other sectors until recently. It has been overshadowed by concerns to clarify and limit fishing access and use rights to prevent ecological collapse and address economic inefficiencies. Recent attention to gender equity, child labour, fair trade and rights to decent work in the fishery sector point, however, to rising attention to human rights-based approaches. Human rights approaches fit well with wider development agendas, utilize existing legal and policy frameworks, improve accountability of donors and states to their citizens, and can have positive impacts on fisherfolk's ability and motivation to participate in fisheries management for sustainability. They do not always require expensive and protracted legal process to implement and many have proven successful in fostering social and economic development both in fisheries and other sectors. Mindful of the risk of depoliticizing people's struggles for rights and co-opting the rights agenda to support business-as-usual, international agencies, aid donors and states can support responsible fisheries more effectively if they adopt a more explicit human rights approach in their development programming and governance frameworks.

Introduction

Non-governmental organizations and civil society groups are already using human rights legislation and principles in their campaigns for social and environmental justice (for example ICSF 2007 EJF 2010, Sharma, this issue). Researchers are also assessing fishery governance mechanisms in terms of their compatibility or potential conflict with human rights (for example Davis and Jentoft 2001; Charles 2011; Allison *et al.* 2011). We can therefore say that human rights approaches are already a component of governance and an arena for research on governing fisheries, but perhaps they have not received enough recognition by fisheries sector organizations, and by fisheries researchers. This special edition of 'Maritime Studies' has aimed to highlight what has been done and what might

be achieved if states and others involved in fisheries governance and development were to more explicitly adopt a human rights perspective, rather than, for example, narrower perspectives related just to fishing rights reforms or welfare provision. The specific question posed by this concluding essay is: should governments and international agencies be adopting a more explicit human rights orientation to their work in fisheries management and development? This is precisely the debate currently taking place within the UN Food and Agriculture Organization (FAO) Fisheries and Aquaculture Division and between FAO and its member states and partners, as highlighted in the editorial introduction to this volume. This is linked to the wider adoption of human rights approaches in the declarations and policies of the United Nations organizations since the 1990s (Cornwall and Nyamu-Musembi 2004).

The state and its development partners in multilateral and bilateral funding and advisory agencies continue to play a central role in governing fisheries and attempting to shape their development. Whether or not these influential actors choose to use their convening power, influence on member states and budgets in supporting human rights approaches is therefore an important and overlooked question in the study of fisheries. This paper builds on the content of papers in this special edition to outline some arguments for and against the more explicit adoption of and pursuit of a human rights-based agenda in the fisheries sector by state fishery management agencies and intergovernmental organisations.

I am a student of the fisheries, not a moral philosopher or legal expert, and I do not attempt to assess the underlying moral and legal principles of human rights approaches; these are comprehensively explained elsewhere (for example Steiner and Alston 2007). My arguments are based on a critical 'informal logic' (Walton 1989) applied to the application of human rights approaches, to consider both the merits and weaknesses of arguments for and against their explicit adoption in fisheries governance programmes and policies implemented by states and their international and regional development partners. I propose seven arguments for the adoption of a human rights and seven against; one for each of the seven seas. All the potential arguments I detail are based on those that I have been confronted with. I support my arguments with evidence drawn largely from my two main fields of experience: fisheries science and the study of international development, in which I have worked with international organizations, bi-lateral donors, NGOs and research and academic organizations.

Throughout this paper, when I refer to the 'rights based approach' I am using the short-hand terminology of international development sector workers to refer to the human rights based approach to development. I am not referring to the process where common pool or open access fisheries are converted to private or communal property, which has also become known as the 'rights based approach to fisheries' (Hannesson 1991). Allison *et al.* (2011) elaborate on both definitions and argue that the term rights-based fishing should encompass both the clarification or strengthening of fishing rights and the defense of human rights, where these are violated. Such synthesis would align the fisheries-sector terminology with that used more widely in economic and social development, while also

arguing for explicit consideration of social and economic justice in the allocation of fishing rights.

I learned that social injustice was an important issue confronting fisherfolk when I lived in Malawi in the early 1990s and worked on a development project on Lake Malawi. One of the villages near to where I lived in Senga Bay occupied the scenic Elsie's Cove, at Senga Point, adjacent to rich fishing grounds on a fine beach, with forested hills and rocky headlands providing some shelter from both the northerly *mpoto* squalls and from waves generated by the *mwera* (south east trade winds). It also had access to a tarmac road, nearby health clinic and schools. I got to know a few of the men and youths who fished there when I and colleagues accompanied them on fishing trips out onto the lake. The village shared its beautiful location with a luxury hotel further down the same beach. There were concerns from the hotel management over noise, theft from or harassment of guests, water pollution and the smell of sun-drying or smoking fish. The hotel owner at the time discovered that the fishers were unofficially settled on land owned by Malawi Railways (who also ran the lake's ferry services). With the assistance of the Malawi government of the time, the hotel owner used this lack of the fishers' rights to the land they were settled on to have the villagers evicted and their houses bulldozed. The site was taken over by the hotel and managed as a campsite. It is still (in 2011) managed by the hotel which is now under new ownership. It is seldom used.

The fishermen and their families scattered to live and work in more challenging locations, either being absorbed into crowded settlements further along Senga Bay's beaches (where most land has also been appropriated for weekend cottage development for wealthy people from Malawi's capital, Lilongwe) or they moved into inaccessible pockets of swampy land further north, where malaria, bilharzia and hippopotamus attacks were significant added risks. There was no economic analysis to indicate that the gains from tourist revenues and employment at the hotel would exceed the benefits from the fishing village and no fishery management rationale for the destruction of the village; fishing effort was redistributed but not reduced. This community was unable to secure the support of its own government in reaching a compromise with the hotel owner – an expatriate whose claims on the support of the state to defend his livelihood must have been more tenuous than those of the several hundred fisherfolk and their families who were displaced. A few years later, I came across an account of this incident in a paper by two anthropologists (Derman and Ferguson 1995), who framed it as an incidence of human rights violations, typifying the dispossession of Malawian fishing communities by urban and foreign elites occupying the beaches of southern lake Malawi, largely for leisure and recreation.

Since then, I have worked in fishing communities – both rural and urban – in Eastern and Southern Africa, and, to a lesser extent, in West and Central Africa, Southeast Asia, the Pacific, northern Europe and South America. In every place I have worked, in addition to concerns over the state of fish stocks and over-exploitation and contested claims over fishing rights, fisherfolk usually faced other threats: eviction from the land they had settled on; upstream modification to the rivers and floodplains they depended on; discrimination on grounds

of ethnicity or as international migrants; conflicts related to children's work or gender relations; and neglect in provision of everything from infrastructure to sexual health services. The emerging picture was that many fishing communities were neglected and marginalized, despite being centers of economic activity that were clearly more dynamic than many of the farming villages I visited nearby in the same countries (Allison 2005). If development had a role in these settings, it seemed to me it was to recognize and support this economic dynamism, and create the conditions by which some of the money generated from fishing communities could be effectively channeled into ways to support the human and social development of fishing-dependent regions and economies.

Those of us writing about these issues in both the fisheries and international development literature were framing them as welfare concerns that could be addressed through identifying or diagnosing the problem and mobilizing community development, getting appropriate government budget support or targeted allocation of international aid. We cast around in development theory for entry points to argue for appropriate support to fishing communities that addressed social inequities while recognizing the need for limited access in common pool resource contexts. To make the case for support to fishing communities we suggested building capital and capabilities and strengthening livelihoods (Allison and Ellis 2001); reducing vulnerability (Béné 2009); building resilience (Andrew *et al*. 2007); making governance more interactive or adaptive (Kooiman *et al*. 2005; Plummer and Armitage 2007); supporting the welfare function of fisheries (Béné *et al*. 2010) or improving fisherfolk's wellbeing (Coulthard *et al*. 2011). The ecosystem approach to fisheries claims to do all of these, and more, by also considering more explicitly the ecological component of the human-environment fishery system (De Young *et al*. 2008; Garcia and Cochrane 2005). Others saw fisheries development as a problem of addressing overcapacity, illegal fishing and weak access and use rights, to create wealth that would address these economic and social inequities through better-functioning markets supported by enlightened, pro-poor state policy (Cunningham *et al*. 2009).

All of these approaches were, in a sense, a combination of the technical, the bureaucratic and the charitable. A case was made for welfare and governance deficits of various kinds (from elite capture to climate change vulnerability), and a series of technical and institutional solutions were proposed to address them. Sometimes the problems were best dealt with by state agencies, other times by NGOs or by fisherfolk themselves, or by markets. Sometimes there was a need for knowledge transfer or capacity development to give suggested reforms a greater chance of success. Seldom was anyone held to account for the situation or its resolution.

What has been missing from all this analysis and the recommendations emerging from it is a sense that the persistence of poverty and hunger was a violation of rights, or had arisen as a result of such violations. While fisheries science and management has often been criticized for being too narrowly focused on 'technical fixes' (for example Degnbol *et al*. 2006) the same critique can be leveled at socio-economic policy fixes to problems of poverty and resource decline in fisheries. An explicit commitment to a human rights approach has the potential

to change all this; it makes state agencies and their advisors and partners legally responsible for doing what they can to address social inequities, and it forbids them to take actions that violate human rights, whatever the justification for the greater economic good.

The papers in this special edition of MAST have examined experiences and potentials for adopting a human rights approach, from fisheries management and human development perspectives, and in cases ranging from local self-determination in small-scale fisheries, through nation-building in South Africa, to the consideration of international trade law. So, if we accept that there has been limited analysis of root causes of poverty and unsustainable fishing, lack of clear accountability to citizens for management decisions, and limited acknowledgement of political process, can this situation be improved if state fishery agencies and the international organizations supporting them pursue a human rights approach more explicitly?

Seven reasons to adopt a human rights approach

1. *A human rights approach aligns the sector with wider trends in development thinking*

Development policy has moved beyond the macro-economic recipes of the 'Washington Consensus' of the 1980s and early 1990s ('stabilize, privatize, liberalize': Rodrik 2006) to emphasise institutional development in various forms, notably through democratization and decentralization, strengthening civil society and participatory approaches (Maxwell 2005). As part of the greater attention being paid to governance issues from the mid 1990s, human rights approaches reemerged alongside the return of the State as a target and beneficiary of international development assistance. The United Nations Development Report of 2000 espoused a rights based approach to development (UNDP 2000). Arguments for upholding the rights of the poor and vulnerable were built on critiques that the structural adjustment programmes of the IMF in the 1980s contravening human rights in their pursuit of development through the imposition of market reforms and privatizations (Abouharb and Cingranelli 2007).

Fisheries development thinking is not immune to these larger currents of thinking, and so in the 1980s we saw the state disappearing from fisheries credit and extension service provision, from fish price regulation and from running services like landing sites and ice plants (for example in Malawi – Allison *et al*. 2002). In some cases, this stimulated market reform and growth, in others, it led to deepening poverty and the disappearance of important support services to the most vulnerable, depending on how well liberalized markets were working and whether government was able to provide an enabling or disenabling context for local development (e.g. Freeman *et al*. 2004, for Kenya). In the 1990s we saw increasing attention to governance reform in fisheries, including the spread of community or co-managed fisheries (Wilson *et al*. 2003). Since 2000, we have seen growing focus on poverty reduction, food security, environmental sustainability and justice issues in fisheries, in response to the increasing concerns for equity,

sustainability and human security (Béné *et al*. 2007; Jentoft and Eide 2011). Adoption of a human rights based approach is a natural extension to trends and forces larger than the fishery sector and it would seem prudent, if nothing else, to move with them if the sector is to attract appropriate levels of development assistance. It is also likely that the fishery sector could learn and benefit from the experiences of successful human rights-based reform in other sectors.

2. *Poverty is a violation of economic rights that may be caused by a lack of political and civic rights*

> "…no substantial famine has ever occurred in any independent and democratic country with a relatively free press" (Sen 1997:12).

Amartya Sen's point is that the right to food (an economic right) is much more likely to be violated when the rights to free speech and to challenge government policy (civil and political rights) are not upheld.

The human rights laid out in the main declarations are generally referred to as civil and political on one hand and social, economic and cultural on the other. The former include rights to life, liberty, property, freedom of expression and assembly, political participation, a fair trial, privacy and home life, and protection from torture. The latter include rights to work, education, social security, to "enjoyment of the highest attainable standard of physical and mental health" (shortened to the Right to Health), and to adequate food, clothing and housing, and to the continuous improvement of living conditions (the Right to Development). Whereas the civil and political rights are typically guaranteed through judicial mechanisms, including at international level, the economic, social and cultural rights have generally been dependent upon domestic welfare mechanisms in the absence of any dedicated international judicial machinery (ICHRP 2008).

The response of a government to acute suffering often depends on the pressure that is on it and this is where the exercise of political rights can make a real difference – voting, criticizing, petitioning and protesting. Thus, the power of political and civic human rights can be harnessed to get something done about the violation of social, economic and cultural rights. The clearest examples of this link between political and social, economic and cultural rights are in the campaigns for the rights to livelihood by indigenous peoples displaced by conquest and colonisation (Wiessner 1999; Thornberry 2002). In the fishery sector, where fisherfolk may be of different ethnicity from land-based peoples, social and economic marginalization has political origins and can therefore be addressed through the judicially more powerful political and civic rights. Moeniba Isaacs (this volume) provides an example from South Africa.

3. *There is an existing legal and policy framework to uphold citizens' human rights in almost all states*

Governance reform proposals in fisheries usually propose creating new institutions, organizations, and legislative and policy reforms. Adopting a human rights approach would just making use of legislation and policy that is already in place but underutilized. No expensive reform programmes are necessary and finance can go directly into ensuring state accountability and capacity to deliver on its re-

sponsibilities. Most states have ratified the original Declaration of Human Rights, and the majority are also signatories to the many subsequent legal and policy instruments associated with the Human Rights-based approach to development (Table 1).

Table 1: Some key human rights instruments

Universal Declaration of Human Rights, 1948; 1988
Universal Declaration on the Eradication of Hunger and Malnutrition, 1974
Convention on Elimination of All Forms of Discrimination Against Women, 1979; 1981
Convention on the Rights of the Child, 1990
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990
ILO Declaration on Fundamental Principles and Rights at Work, 1998

Although there is now a comprehensive framework to hold states to account for failing to uphold the rights of their citizens, the existing human rights legal framework is ill equipped to deal with violations committed by non-state actors, such as transnational corporations, international non-governmental organizations and multi-state actors such as the international finance institutes. Under globalization, human rights law may thus require rethinking (Narula 2006).

In fisheries, there is scope for bringing human rights instruments to bear on a range of fishery governance failures and neglect and injustice in social and economic development. Campaigns highlighting human rights violations on board illegal fishing boats (EJF 2010) humanize a technical and legal issue and add a moral imperative to the economic case for eliminating illegal fishing, as made in the World Bank/FAOpublication on the 'Sunken Billions' (Willmann *et al*. 2009). The International Collective in Support of Fishworkers (ICSF) have published an online guide to human rights legislation pertinent to the fisheries sector and fishing-dependent communities, making accessible information to address issues such as gender inequity, illegal eviction, and neglect or discrimination in state health service and educational provision (www.icsf.net).

4. Human rights approaches are becoming widely used in other sectors

In considering the further adoption of a human rights approach, fisheries are not alone among natural resource and other sectors. Human rights approaches in wildlife conservation and in forestry have been assessed (Johnson and Forsyth 2002; Brockington *et al*. 2006)), and the human right to water, proposed a long time ago (Gleik 1998), was recently officially ratified by UN resolution (UN News 2010). There is also a right to health (Gruskin *et al*. 2007), to food (Mechlem 2004) and access to disaster relief (Boyce 2000). These are all applications of economic, social and cultural rights applied to contexts where there is concern that states and other 'duty bearers' are not doing their utmost to uphold the rights of the most vulnerable people among their citizens. In the health sector, for example, alongside blatant violations to health such as torture, inhumane executions and unethical medical experimentation are "more subtle activities that have severe and longlasting effects on health and human rights, such as absences of basic health-care systems, policies keeping medicines unaffordable, and [government]

tolerance of discrimination against groups such as injecting drug users, people with mental health disorders, illegal immigrants or homeless people" (Gruskin *et al*. 2007:449). In the forestry and water sector, they help ensure that vulnerable people are not excluded without compensation or harmed by developments aimed at improving the economic management of these resources through privatization (Mehta 2005).

The fisheries sector confronts similar issues to other natural resource sectors during its current phase of transitions to aquaculture (which may displace common property users, violating rights to livelihood if they remain uncompensated), of promoting sector engagement in global trade (which may reduce food availability domestically, or exclude those without the capitals and capabilities to access global markets) and of making fishing rights more exclusive to protect resources and maximize economic benefits (which may, for example, allocate fishing rights. The lessons from other sectors may be useful in ensuring such policy reforms to not violate human rights, such as rights to development, to decent work and to food (Charles, this volume). A good example of the interplay between human rights and fishing rights issues is the case of fishing quota allocation in New Zealand, where Maori people used legislation on indigenous peoples' rights as a means to campaign for allocation to them of a share of fishing rights (McCormack 2011).

5. HR approaches fit with existing community development and self-help initiatives

Most recent development and fishery governance reforms champion participation, empowerment, local self-determination, and transparency and accountability in decision-making. These are the building blocks of the rights-based approach as applied in practice. The overall design is also already there in the various international conventions and declarations (Table 1) and in national legislation. There is therefore a relatively small conceptual shift to make from existing approaches, to adopt a rights approach. It is, however, a fundamental shift; as has already been emphasized by Sharma (this volume): it means viewing development as a right not an option for charitable concern: it constitutes a shift from basic needs to rights and from beneficiaries to claimants.

There are a number of well-developed guidelines and 'lessons-learnt' in implementing human rights-based development approaches, based on solid practical experience. These include guides for civil society organizations to engage in rights-based advocacy (Boesen and Martin 2007), on realizing the economic and social rights of marginalized women (Kapur and Duvvury 2006) and on implementing the Right to Food in FAO's programming (FAO 2005). ICSF and other organizations operating at national level are practiced in working with fishing communities to campaign for their rights (Sharma, Isaacs, this volume). The approach could simply build on and help reclaim the original politically powerful meanings of participation and empowerment. Critical to this is improving access to judicial process and making legal institutions more responsive to poor people's claims (Anderson 2003).

6. *Responsible fisheries and ecosystem-based management already provide a context for human rights approaches*

The FAO Code of Conduct for Responsible Fisheries (FAO 1995), while not explicitly referring to human rights legal conventions, contains among its provisions, statements on "effective participation…in decision making…related to fisheries management, development, international lending and aid" [Article 6.13], on the responsibility of states to ensure that "all fishing activities allow for safe, healthy and fair working and living conditions" [Article 6.17] and that "States should appropriately protect the rights of fishers and fishworkers, particularly those engaged in subsistence, small-scale and artisanal fisheries, to a secure and just livelihood" [Article 6.18], (FAO 2007). The FAO Code of Conduct has been widely adopted, but is variably implemented (Pitcher *et al*. 2009); a major part of FAOswork programme is to support its member states to improve the implementation of the Code (the 'Fishcode programme'). Similarly, the ecosystem approach to fisheries is an extension of the Code and provides guidelines for its appropriate implementation (de Young *et al*. 2008). Much of the Code of Conduct concerns itself with technical fishery management issues, rather than the type of commitments implied in the above quotations. If FAO and its partners commit to adopting a human rights approach to fisheries development, then this implies greater attention (and allocation of resources) to the few provisions of the Code that address human rights issues.

7. *Human rights approaches to natural resources governance can be highly effective*

Aside from the moral imperative to uphold rights (Sharma, this volume), the most compelling reason for adopting a rights-based approach is that it can work well to achieve development and natural resource management outcomes. As fisheries governance is widely acknowledge to be failing in many areas, and as we are making too little progress towards eradicating poverty and hunger and meeting other millennium development goals, adopting something that has worked well in previous cases seems like a good idea.

There are many examples of the importance and influence of human rights campaigns in improving natural resource governance. Growing biofuels in poor countries to offset rich country carbon emissions has come under scrutiny as a climate mitigation strategy, thanks to it being framed as a violation of citizens' Rights to Food; this has led to a more considered strategy for renewable energy development (ICHRP 2008). Human rights campaigns were instrumental in bringing regulation to the lucrative trade in 'blood diamonds' used to fuel conflict in Angola (Global Witness 1998) and later Sierra Leone and Liberia. The campaign has become a paradigmatic case study in how a small organization with a very limited budget (the human rights NGO Global Witness) can leverage global support and effect a major global policy change (Bieri 2010). One of the most prominent cases of human rights campaigning is the 25-year long struggle of the Ogoni people of the Niger Delta (many of whom are fisherfolk) to hold to account oil companies for allegedly colluding with the then military dictatorship of Nigeria in the systematic violation of their human rights (including the execution in 1995 of the prominent Ogoni human rights activist Ken Saro Wiwa). Additionally, a

US$ 1 billion claim against Shell Oil filed in October 2011 by Nigerians from the delta, to seek redress for the environmental and social costs of decades of harmful oil industry activities in the Niger Delta (France 24, 2011). These cases, which test the liability of transnational companies in human rights law, are being seen as potential landmarks in global governance.

The Fair trade movement is founded on human rights principles, and provides a framework for ensuring that the growth in global trade brings benefits to those without the power to influence terms of trade, by invoking notions of justice. In fact the NGO Oxfam, an original advocate for fair trade, now structures many of its campaigns around the broader notion of 'Economic Justice', with explicit reference to economic rights (Oxfam 2007). There are examples in fisheries trade too: pressure from human rights organizations was instrumental in bringing improved labour and safety standards to shrimp processing, through campaigns highlighting gender discrimination and the use of child labour in some major shrimp exporters, including Bangladesh and Thailand (Solidarity Center 2008). With value chains now under greater scrutiny, governments have been forced to monitor commercial fish farming operations much more closely to ensure they comply with labour and environmental standards. Similar issues are likely to apply in the capture, processing and trade of wild-caught fish.

Arguments against adopting a human rights framework

1. Oh no, not another framework!

Both development and fisheries management professionals have recently gone through a process of searching for ways to improve their practice. The old certainties of the neoliberal Washington Consensus on development policy, and on older, statist models of fisheries management through government-regulated technical measures have both been replaced by scores of competing models, approaches and frameworks. In development, there are ideas an policies based on enhancing capabilities, sustaining livelihoods, increasing wellbeing, reducing vulnerability, strengthening markets, strengthening civil society, increasing participation, and on community-led development, decentralization, export-led growth, regional integration, and so on. Some of these ideas and initiatives have been carried over into fisheries and aquaculture development, where they inform or mingle with more fishery-sector based ideas and instruments: wealth-based fisheries, co-management, individual transferable quotas, marine protected areas, interactive governance, adaptive governance, eco-labelling, resilience, responsible fisheries and the ecosystem approach. This clutter of ideas, analytical frameworks, policy orientations, governance instruments and management tools surely doesn't need expanding with yet another framework and approach?

As with development ('the post-Washington Confusion', Rodrik 2006) we may well have to endure a period of confusion and contestation if we are to improve the governance of fisheries in the longer term. Some of us may think we've found the answers to all problems of fishery governance and it is just a matter of scaling-out implementation but it seems clear that solutions will be context

specific and may require the judicious application of more than one approach to identify and address the key issues. The fundamental questions when considering adding more ideas and approaches to the fisheries governance toolkit are: do they bring new understanding that is helpful, and do they bring new governing instruments that work? In the case of human rights approaches, I would answer "yes" to both, for the seven reasons given previously.

2. It is a western agenda that imposes its values on other cultures

It is sometimes argued – usually by the governments of countries accused of violating their citizens rights – that human rights are a western agenda, in that they place too much emphasis on individual rights and freedoms, and not enough on the collective national good and citizens' shared responsibilities. It is also argued that they are culturally constructed, for example in their preoccupations with contemporary western notions of a work-free childhood and of equality for women.

Two examples of a challenge to these ideas will suffice to call them into question. First, Amartya Sen (1997) argues that the notion of 'Asian Values' has recent (20th century) origins that are more to do with the desire by autocratic leaders of some Asian countries to subjugate their citizens and hold on to power than with any cultural differences between Asians and Westerners relating to fundamental human rights. Older, pre-colonial Asian texts make many references to principles akin to those in the Universal Declaration of Human Rights. These precede the development of similar ideals of equality and human dignity in western society. Second, an influential strand in the evolution of the economic, social and cultural rights – the idea of a 'right to development' – has its origins in the post-colonial 'third world', not the West. Indeed western countries were largely resistant because it would have meant redress for the colonial past and for exploitative trade that had deepened global inequality (Uvin 2010). In rejecting or sidelining the right to development, the wealthier countries transferred the burden of upholding rights to health, education, food and so on to the governments of the poorer countries, while retaining the political choice to support them or not, according to their politics and the preferences of their taxpayers. Aid has been framed as charity ever since.

The implications in fisheries are that we should not overlook the issue of lower wages and less secure employment for women than men in fish processing factories (Islam 2008), or the exploitation of children as cheap and expendable labour in some fisheries (Iversen 2006). States who fail to address these issues in their legislation and policy implementation, to the best of their capacity, are in contravention of universally agreed rights, to which they are usually signatories. There is no reason not to hold them to account.

3. It is idealistic and unrealistic

"Governments in developing countries cannot provide or assure adequate levels of healthcare and education. Given that legal systems in most developing countries are inequitable and underdeveloped and that enforcement mechanisms are weak, allowing citizens to make legal claims of inadequate service provision will further politicize courts, weaken their capacity to adjudicate existing rights, and possibly

increase government spending even where it is inequitable or inefficient" (Gauri 2003:468).

If governments can't afford health and education for all its citizens, then is it any use insisting they provide them for fisherfolk? Achieving human rights sets goals and standards for development for all and simply asks that duty-bearers strive to meet them, without discrimination. We do not at any time suggest that fisherfolk's rights are a greater priority than anyone else's; to do so would violate the principle of universality. We simply ask that where disadvantage exists compared to other citizens; states and their development partners have obligations to address them. Meeting human rights obligations is indeed a challenge but so is meeting the Millennium Development Goals or any other development or management target. The key difference in adopting a human rights framework is, once again, that these are legal rights and responsibilities, not just policy choices and aspirations.

In the fisheries sector, we have policy ideals around managing ecosystems sustainably and maximizing economic rents or welfare functions that, by and large, we have not achieved. It does not stop us trying. The humbler ideal of ensuring that the rights of poor and vulnerable people are not violated in the pursuit of these goals seems neither more idealistic nor less realistic than these more commonly stated goals.

4. It is expensive and slow

There is a common misconception that adopting a human rights approach means an endless series of slow, expensive and divisive legal cases that will clog up the courts and bankrupt all involved. There are indeed examples of human rights campaigns that have been long and expensive – the case of the Ogoni people against Shell Oil in the Niger Delta, mentioned earlier, is one such case – but most human rights campaigns don't go through the courts, employing a mix of 'bearing witness' (documenting violations and omissions and bringing them to wider public attention), conducting advocacy campaigns, petitioning, voting, convening debate and discussion, and public protest (Uvin 2010).

For those who would argue that worrying about human rights (for example decent work, child labour, gender inequality, lack of rights for migrant workers etc) puts a brake on the speed of economic development, and therefore condemns more people to poverty, there is some evidence that it doesn't (Seymour and Pincus 2008); indeed growing empirical evidence suggest that that enabling equal access to education for girls and boys is associated with faster economic growth (Klasen 2002).

For fisheries, there have been campaigns to improve working conditions in fishing and fish processing which have mobilized consumer awareness and choice and lobbied major seafood buyers to uphold corporate social responsibility principles in their supply chains (Solidarity Center 2008; EJF 2010). These activities have not been costed against other approaches to effecting policy change – for example those that use detailed technical and economic analysis to inform policy. Nor have different approaches to fisheries development been systematically evalu-

ated for comparative development outcomes. This would be a useful area for future policy research in fisheries.

5. It's too political

Development occurs through policy choices, which are partly techno-rational, and partly political. We tend to minimize the latter, and political economy analysis, briefly fashionable in the 1980s (Bailey 1988) is still rare in fisheries although it has been a major theme of development research in other natural resource sectors (e.g. Blaikie's 1985 classic on political economy of soil erosion in developing countries). Policy analysis and policy implementation in fisheries and in development are inescapably political activities. Human rights approaches are no more political than any other action to address poverty and inequality, it is simply that the political content is more overt than the hidden politics of, say, a report promoting a welfarist or neo-liberal strategy for economic development.

The intervention by states to uphold the rights of their most vulnerable citizens may involve challenging abuses of power by the more powerful. Human rights activities are thus political in nature. Human rights abuses are frequently addressed by civil society organizations and advocacy groups, or by those who bear witness by documenting and highlighting abuses of power or neglect of responsibilities by states. Challenges to states policy are inevitably political. All of this proceeds through often emotive testimonial, advocacy, accusation and counter-accusation, the threat or reality of legal action, lobbying, petitioning, public protest, and direct action which may result in violence. For the peace-loving rational technocrat it's a nightmare. Why would anyone want to push their organization to get embroiled in all that?

Realistically, the best one could hope for with regard to FAO's role in upholding human rights in fishing communities would be to provide an articulated set of principles applicable to the fishery sector and provide its member states' fishery officials with technical and financial support to uphold them. This set of principles will also make it easier for development funding agencies like the World Bank, Swedish SIDA or the UK's DFID, or multilateral organizations like FAO, to be held to account by others if any of their programmes result in human rights violations. Some of these prospects are no doubt threatening to those concerned, but increased accountability can have positive impacts on the practice of development, and on its outcomes (Eyben 2008).

6. Promoting human rights as a mainstream agenda risks de-politicising it

The need for international agencies and aid organizations to avoid being seen as overtly political is probably behind an understandable caution to adopt a human rights approach. When they do become involved with human rights there is therefore a risk that the main strength of the approach – its legally-mandated moral challenge to the abuse of power or the neglect of responsibilities – is set aside as 'too political'. International agencies see the advantages of being portrayed as champions of the poor but may baulk at the political implications of upholding challenges to power or holding some of their member states to account. There is

therefore skepticism among human rights activists on real commitment by the international organizations and donor programmes:

> ... there is a lot less in the emerging human-rights-in-development regime than meets the eye. Much of it is about the quest for the moral high ground: draping oneself in the mantle of human rights to cover the fat belly of the development community, avoiding challenging the status quo too much, or questioning oneself or the international system ... This is to be expected: most of this rethinking constitutes a voluntary act by people in New York, Washington, London or Geneva – smart and well-intended, most of them, but not exactly in great need of overthrowing the established order. This stuff has not been fought for by the masses in whose name it is adopted. It is not part of a fundamental reshuffling of the cards of power, or a redistribution of resources worldwide: no such dynamic has occurred. As a result, one could expect little more, maybe, than fluff, self-congratulation and more or less hidden transcripts of power (Uvin 2010:171)

A willingness to partner non-governmental organizations and civil society groups that help put human rights principles into practice would be one way of demonstrating a real commitment by the UN system, as would a willingness to confront member states who open violate rights, or who fail to consider them in their economic development planning. In fisheries, this type of dialogue is exemplified by that between FAO, The World Bank, ICSF, environmental NGOs and others that was conducted at the 2008 Bangkok Conference on Small-scale Fisheries – from which this special edition of 'Maritime Studies' was derived.

7. It is nothing to do with fisheries and therefore it is not our problem

There are legitimate concerns by fisheries scientists, advisors and managers that addressing human rights is outside their remit and their competence. In trying to broaden their already challenging mandate by engaging in areas in which they have no experience, they will simply dilute efforts to address fisheries governance failures that threaten resource supplies and the economic benefits that flow from them. Human rights concerns are secondary to the need to ensure there are economic benefits flowing from fisheries. To counter this, we have argued elsewhere that people with secure human rights are better able to benefit from market and governance reforms to increase the economic benefits from fisheries (Allison *et al*. 2011).

What we call for is not a replacement of fisheries-focused analysis and support by organizations like FAO's Fisheries and Aquaculture Division, but simply a recognition that fishing is not the only thing that fishing people are interested in. Like the rest of us, they have interests and concerns that impinge on their ability to do their job and to fulfill their responsibilities as fishery access right-holders. It is no good saying these other concerns are the preserve of other agencies, when often, the problem is that those other agencies are not there in fishing communities to see the issue, while those of us who work on fisheries often are. We therefore

have a duty to bring these issues to the attention of those who can do something about them.

One example of this is the work I and many others have done to highlight the high prevalence of HIV and incidence of AIDS in fishing-communities around the world (Kissling *et al*. 2005). I was not an epidemiologist or health expert, but I was working in African fishing villages where people kept telling me AIDS was a major problem. Neglect of the human right to health was one cause – many fisherfolk were living in unofficial settlements where government health services were not provided, or the rhythm of their working lives was such that they were simply unable to access health care which was provided only during hours when they were out fishing. Infections and illnesses thus went untreated, and HIV positive people remained unable to access treatment and care services, leading to increased viral transmission probabilities, infection rates and mortality rates. Through partnership with an anthropologist specializing in health issues (Allison and Seeley 2004; Seeley and Allison 2005) we aimed to bring this issue to the attention of both fishery development and health policy audiences, something I think we contributed to doing. In human-rights parlance, we 'bore witness' to a violation of the right to health, and what we and other such witnesses did may have assisted fisherfolk and their development partners in their claims on this right

There is also a very direct and pragmatic reason for fishery management agencies and advisors to be aware of human rights issues: if the fisherfolk you work with perceive the government as perpetrating, condoning or ignoring injustice, then they are not likely to embrace compliance with state-based fishery management relations nor want to cooperate with the state in co-management arrangements or other forms of stakeholder-based governance (Allison *et al*. 2011).

Synthesis

Human rights approaches vary in their emphasis and application, but most organizations using a rights-based or human rights approach are either involved in strengthening the capacity of duty-bearers (both state and non-state actors) and building the capacity of citizens to claim their rights, either by working alongside them as advocates or by seeking to provide opportunities for people to empower themselves (Cornwall & Nyamu-Musembi 2004).

Human rights approaches will be most effectively pursued by the people whose rights are not being upheld –those who are marglinalized or discriminated against, and who are able to mobile support to bring their case to the attention of duty-bearers. International agencies and aid organizations can, however, help to create an enabling environment for citizens to claim their rights, and for duty-bearers to develop the capacity to meet their responsibilities towards their citizens. This essay has evaluated some of the arguments for and against adoption of a human rights approach and concludes that potential gains in terms of development outcomes in fishing dependent communities and regions and strengthening of fisheries governance outweigh the likely costs and risks of adopting human rights approach. The FAO Code of Conduct for Responsible Fisheries is already based on

human rights principles and upholding it requires adoption of a human rights-based approach. As with other areas of fisheries governance, there are success stories to learn from and build upon, from on-going reforms to global fish trade (Charles, this volume) to successes with recognizing the right to livelihood of indigenous people with cultural and economic links to fisheries (Pedersen 2008). The papers in this volume of 'Maritime Studies' illustrate the rationale, the means of engagement at local to global levels, and the difficulties and potential rewards of supporting fisherfolk to claim their rights. International agencies, states and their development partners could lend their further support to these important activities. With greater awareness of human rights in fisheries, rights violations of the type I witnessed in Malawi 20 years ago should not so easy to perpetrate.

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