

**INTERNATIONAL COLLECTIVE IN SUPPORT OF
FISHWORKERS (ICSF)
INTERNATIONAL OCEAN INSTITUTE (IOI), INDIA**

**FORGING UNITY:
Coastal Communities and the Indian Ocean's Future**

Conference Organized at IIT Madras
Chennai, India, 9 – 13 October 2001

**The Elusive Line that Reduces Fishworkers to Mere
Numbers**

A South Asian Labour Forum (SALF) Presentation
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Abstract

The sustained efforts of the South Asian Labour Forum (SALF) towards addressing the plight of the detained fishworkers of India and Pakistan have borne fruit. After a long four years, the Pakistani and Indian governments finalized the list of 35 Indian fishing boats and 193 fishworkers and 29 Pakistani boats and 195 Pakistani fishworkers, who were exchanged on 15 July 1997 and repatriated to their home countries.

Since then, SALF has been instrumental in the release of fishworkers in 1998 and also in 1999, at a time when the bilateral relations between the two countries deteriorated. These releases were followed by two more periodic releases, one each in the next two years as signs of goodwill gestures. SALF has intervened whenever the detention of fishworkers has become prolonged and also helped both the governments to finalize the list of arrested fishworkers.

SALF believes that the arbitrary arrest of fishworkers and their imprisonment should be stopped permanently. The ridiculous practice of 'exchange protocol' should be done away with. Instead, a proper policy, in consonance with UNCLOS, should be framed to release the arrested fishworkers immediately after they are apprehended.

Introduction

Naushad Ali, from Karachi, Pakistan, was on board *Al Ameer*a along with his fellow fishworkers, when fishing boat was apprehended by the Indian Coast Guard on 8 October 1989. After a torturous process of captivity, court appearances, jail terms and a prolonged detention in police custody, Naushad and the other crew members of *Al Ameer*a were finally released by the Indian authorities in early 1998.

It was the night of Diwali in October 1993, when Dhanji Harji Rathod's boat was captured by the Pakistan Maritime Security Agency. Dhanji and the other crew members of the boat *Dhan Laxmi* were sent to Landhi jail, Karachi. Hailing from Mangrol in the Indian State of Gujarat and the island of Diu, these fishworkers could finally get back to their families only in July 1997.

Both Naushad and Dhanji earn their livelihood from fishing in the Arabian Sea and are among approximately 1,500 Pakistani and Indian fishworkers arrested by the maritime security agencies of the two countries since 1987. Captured and incarcerated for alleged violation of maritime boundaries, they have been reduced to mere numbers in the diplomatic exercises between these two countries.

The arrest and imprisonment of fishworkers: the context

The Arabian Sea around the Gulf of Kutch and across Kori Creek and Sir Creek - the mouth of the Indus Delta - is where a large number of fishworkers from Pakistan and India congregate to earn their livelihood. This is also the region from where most of the fishworkers are arrested. These fishworkers are arrested for alleged violation of maritime boundaries and also territorial waters, in some cases. A number of arrested Pakistani and Indian fishworkers have told a South Asian Labour Forum (SALF) Fact Finding Team in May 1997 that, in the absence of a visible demarcation line, they are unable to understand whether they have actually crossed the maritime boundary or not. Many of these fishworkers also said that they were probably picked up from their own waters.

K. C. Pande, the Commandant of the Coast Guard, Porbandar, told the Fact Finding Team, "There are no signs on the sea which demarcate the sea border. Above all, there is no agreed boundary on the Arabian Sea between India and Pakistan. For their mutual convenience, the patrolling agencies have worked out an imaginary line along the Sir Creek Region off the coast of Kutch."

According to the Gujarat Marine Product Exporters Association, the sea waters off the Rann of Kutch and the Indus Delta is the richest fishing ground in South Asia. The various creeks are rich with high-value shrimps. This is probably the reason why the fishworkers prefer this region, knowing full well the perils of their venture. The Indian fishworkers from Gujarat are increasingly venturing into this area as their catch off the Saurashtra coast is decreasing alarmingly, mainly due to overfishing by trawlers, pollution and discharge of industrial waste into the sea waters.

The region where most of the fishing boats are apprehended by the security agencies lies 70 to 80 km off the port of Jakhau in Gujarat and a few km from Koteswar in the Gulf of Kutch. In fact, a large number of captured Pakistani fishing boats were anchored in Koteswar and the fishworkers were first taken to Bhuj and then transferred to Jamnagar and Porbandar jails.

UNCLOS and the maritime boundary dispute

Though the United Nations Convention on the Laws of the Sea (UNCLOS) has a very clear guidelines regarding protection and utilization of precious marine resources vis-a-vis the territorial integrity and sovereignty of the coastal States, today the innocent fishworkers of Pakistan and India earning their livelihood in the Arabian Sea are a much troubled and harassed lot primarily due to the absence of a maritime boundary agreement between the two countries and the insensitivity shown by the governments of the two countries towards the human dimension of the tragedy that has unfolded.

In security parlance, the non-existence of a bilateral maritime agreement in an UNCLOS regime is seen as a dispute, giving rise to possible conflict situations. For India and Pakistan, this non-compliance with UNCLOS is linked to the border dispute over the 60-mile long estuary of Sir Creek in the marshes of the Rann of Kutch. This Sir Creek area lies on the land border between the Indian State of Gujarat and the Pakistani province of Sindh.

Following UNCLOS 1983, ratified in November 1994, Pakistan and India, being two adjacent coastal States, could have demarcated their maritime boundaries and formulated a bilateral agreement. But the Sir Creek dispute has thwarted this process. Pakistan contests its claim over the Sir Creek based on the map agreed to in 1914 by the Princely State of Kutch and the British India Government. This map places the boundary on the east bank of the Creek. India insists on treating the line in the middle of the Creek as the boundary.

In 1994, New Delhi offered to delineate the boundary seawards, which was rejected then by Islamabad, fearing that any acceptance would lead inadvertently to the demarcation of a marine boundary without actually solving the land dispute. The concept of Exclusive Economic Zone (EEZ) and Continental Shelf under the UNCLOS regime might have also helped in hardening their stand. If a line is drawn in the centre of Sir Creek, as demanded by India, then Pakistan would lose 2,246 sq km of EEZ. If the line is drawn on the east bank of the Creek, then Pakistan would gain approximately 1300 sq km of EEZ.¹ Consequently, a huge area of continental shelf will change hand. UNCLOS also necessitates the adjacent coastal States to declare a baseline before a median line is drawn to demarcate the maritime boundary. Only Pakistan has so far declared a baseline in 1996.

The continuing maritime dispute thus violates the rights of the innocent fishworkers to earn their livelihood and is precipitating a serious human tragedy as

¹ Ayesha Siddiq-Agha, Maritime Co-operation Between India and Pakistan: Building Confidence at Sea, Cooperative Monitoring Centre (US) Occasional Paper, November 2000

well. Continuing and indiscriminate arrest and apprehension of the fishworkers on either side of the border has led to insecurity among the seagoing fisherfolk in the Arabian Sea. It has also led to a conflict-like situation between the two countries on a non-conflictual issue. The only silver lining is that the UNCLOS regime will have to eventually step in if the dispute is not solved by 2004.

Implications of the absence of a bilateral maritime agreement

Though both Pakistan and India have not agreed to a maritime boundary, the two countries, however, have enacted laws protecting their maritime boundaries, EEZ, territorial waters and continental shelf.

The maritime boundaries of Pakistan are governed by Exclusive Economic Zone (Regulation of Fishing) Act, 1975 and Territorial Waters and Maritime Zones Act, 1976. The maritime boundaries of India are governed by Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 and (The) Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981.

These Acts, therefore, are being enforced on the fishworkers fishing along the coast of Pakistan and India for transgressing an imaginary boundary line--an imaginary boundary line, which is invisible and not demarcated. For this alleged violation, the fishworkers are imprisoned and are liable to a hefty fine ranging between Rs. 10 lakhs to 15 lakhs, whereas Parts 2 and 3 of the Article 73 of the UNCLOS, 1983 states:

Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.

And,

Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.

As a matter of general international law, a coastal State may enforce any measures necessary to ensure compliance with its laws and regulations in jurisdictional zones. The power of the coastal States is one of police and control. However, violators can not be met with measures which amount to retaliation or summary punishment. Even bilateral fishing agreements now provide for the release of a seized vessel if a bond has been deposited. Furthermore, both legislation and fishing agreements envisage prompt notification of clause in Article 73 (4) of UNCLOS.

R. Venkatramani, a senior Supreme Court Counsel and member of the SALF Fact Finding Team, is of the view that, in the case of fishworkers from either country, in the absence of lines of demarcation being drawn and the prohibited zones being made clear, no intention to violate the law can be attributed to them.

In other words, a bilateral agreement is a pre-condition for humane enforcement of law since the basic tenets of the agreement have to be incorporated in the corpus of the law and this needs to be emphasized over and over again.

Otherwise, the fishworkers will continue to be arrested arbitrarily and languish in jail for indefinite periods, only to be released at the will of the States or as part of a diplomatic exercise and goodwill gestures on the basis of what can be called an "exchange protocol" (as has happened in 1987, 1988, 1993 and from July 1997 right up to the run-up to the Indo-Pak Summit in July 2001). The innocent fishworkers, in search of livelihood, are thus turned into "Prisoners of War".

Enforcement of laws and the human tragedy

K. C. Pande, the Commandant of the Coast Guard, Porbandar, acknowledged to the SALF Fact Finding Team, that "fishing boats can unwillingly and unknowingly cross into other's territory because of tidal currents, wind force, cyclone and engine failures. The captured Pakistani fishing boats have no navigational aids. Also, no Pakistani fishing boats were found with arms and ammunitions on board." In this connection, Venkatramani also says that natural factors such as the tidal forces, oceanic currents, etc. have to be accorded due room before one can reach a conclusion or draw an inference that the lines of demarcation have been willfully crossed. It would be preposterous and against all notions of fair play to accuse persons of violating the law despite serious deficiencies in its implementation or that the law has so far not been rendered implementable.

Both the then Foreign Minister of India I. K. Gujral and the Home Minister Indrajit Gupta admitted to the SALF delegation, which met them in New Delhi on 4 December 1996, that the captured fishworkers are innocent and nothing incriminating has been found on them. Still, these fishworkers are arrested, imprisoned, hauled up to the courts and detained for indefinite periods.

The clue lies in the candid admission of the Coast Guard officials that there is a practice of 'tit for tat' among the enforcement agencies of the two countries: "They capture so many of our boats and, in retaliation, we capture that many of theirs." As the political climate between the two countries vitiates, the innocent fishworkers are made scapegoats of deteriorating mutual relations. Even the children are not spared. Between 1993 and 1996, the Pakistani agencies arrested and detained 36 Indian children apprehended on Indian fishing boats who were accompanying their relations. A series of interventions by human rights organizations and trade unions across the borders finally resulted in their release in March 1996.

Manji Dayar (18) and Nanji Murji (12) were two such children. Hailing from the Vanakvada village of Diu, they fearfully remembered the day in November 1994 when they were caught in the ocean. It was early morning. There was firing in the air. The Pakistani Navy stopped their boat and cut the net. All the people on board, including the father of Nanji, were taken to Karachi and kept in police custody for three days and then sent to Landhi jail. The children were later shifted to the Edhi Home. Manji has become a wage labourer and would never venture into the sea in

the future. Nanji was studying in Standard VII when he was captured. After returning, he did not continue his studies.

Ghani Rehman, the captain of *Al Jaison* fishing boat, captured by the Indian Coast Guard in November 1994, spent more than three years in Porbandar jail before being sent back to Karachi. Being the only earning member of his family, Ghani's wife and children barely survived the trauma. Mohammed Hussain, on board *Al Kabutar*, was arrested in November 1996. During the next six months, his parents died and his wife and children were left to fend for themselves.

Naushad Ali, Muhammed Iqbal, Abu Usmaan, Ali Abu Samariya, Babul Gulmuhammad, Gaunar Khan Bahadur, Nisar Ahmed, Ibrahim and Khamisa were all fishing on board *Al Ameera* when they were caught by the Indian Coast Guard on 8 October 1989. Ibrahim and 12 others on board *Al Subhanallah* were also apprehended in January 1988 and taken to Bhuj jail. They were charged under the MZI Act, the Passport Act, the Foreigners Act and the Gold Control Act. All these delayed their trial procedures and they were kept in jail custody until September 1996, when the Gujarat High Court quashed all the charges levelled against them and ordered them to be deported. The High Court refused to take cognizance of offence under the Passport Act and the Foreigners Act since they are not applicable beyond the territorial waters. These 22 fishworkers were then unlawfully detained in the custody of Porbandar police until a very strong intervention by the SALF partners in India and Pakistan finally forced the Indian authorities to release them from illegal captivity.

First Information Reports (FIRs) and jail documents available with SALF clearly point out that the Passport Act and the Foreigners Act have been frequently used by the enforcement agencies to delay the procedure of justice and prolong the agony of the arrested fishworkers and their families back home.

Velji Lakshman, a fishworker from the Vanakvara village of Diu, was arrested by the Pakistani Navy in October 1993 and kept in Landhi jail Karachi. In his letter to his family back home, Velji wrote, "They caught us by force in the ocean. For five days, we were kept in the boat itself. Then they took us to jail. We get one cup of pulses and two loaves of bread to eat. The bread is half-baked. Even our enemies should never suffer jail..."

Mulji Lakshman was in Pakistani jail for more than three years. Back home, his wife Ramila and their two sons and two daughters were spending their days in dire hardship. Ramila used to get work for 10-15 days in a month and earn Rs.350-400. She met the Collector, Commissioner and others for the release of her husband. She pleaded for financial help. Ramila got only false promises. Mulji had written to Ramila, "There are no clothes to wear. No bed to sleep on. Half-a-bread in the morning. Two in the afternoon... Take care of the children. Do not have any hope for us."

Raja Ram, the owner and captain of the fishing boat *Naran Prasad*, was captured along with his other crew in October 1994 by the Pakistani security agencies and

charged with violation of territorial waters. Raja Ram said, "We were definitely picked up from Indian waters. We had been away for less than 24 hours when we were arrested." Raja Ram was in his early forties and had four children. He returned to his home in Diu in July 1997, but lost his boat and his son Dhiru. Both he and Dhiru were arrested. Dhiru escaped from the juvenile jail in Karachi and the family had not heard of him since then. Raja Ram's wife was shocked to silence. She could only mutter that she got her husband back but lost her son. For them, life would never be the same again.

The SALF Fact Finding Team, which visited the arrested Pakistani fishworkers in Porbandar jails and the families of detained Indian fishworkers, concluded:

1. Since the late 1980s, the only way out for both the arrested Pakistani and Indian fishworkers is the protocol of exchange of prisoners. They are exchanged and not released.
2. It is an open secret in the official circles that, irrespective of the fishworkers being acquitted or released from jails after serving out their sentences, they have to wait for the next round of exchange to take place.
3. The exchange of prisoners takes place on the basis of long-drawn negotiations between the two governments. The fishworker detainees are never told or communicated the reasons or the grounds for their detention or about impediments in the way of their release.
4. Those who were detained in jails, as well as those who were detained in police camps, have been deprived of their rights under Article 21 of the Indian Constitution and guarantees under the International Covenant on Civil and Political Rights.
5. It needs to be noticed seriously that the legislations themselves, in the absence of provisions for their implementation, would constitute unconstitutional encroachment on the rights of these fishworkers.

Interventions by labour organizations

'Fishworkers in Jail' was the first issue taken up by the Preparatory Committee, South Asian Labour Forum (SALF), in which the trade unions and labour support groups from South Asia are the constituents. SALF was formed in Kathmandu in May 1996 at a South Asia-level Consultation.

For the first time, the trade unions forged an alliance, on a seemingly non-economic issue, that too on something that very remotely affects them. Central trade unions, trade unions of workers in the informal sector and labour support organizations established solidarity among themselves that led to a co-ordinated action to uphold and protect the rights of fishworkers to earn their livelihood. Not only was the method employed by the trade unions unconventional, it was also a unique instance of international solidarity.

The SALF initiative across Pakistan, India, Sri Lanka and Bangladesh contributed to bringing to the forefront, the human aspect, in a situation where diplomatic exercises and difficult bilateral relations have wantonly violated the rights of the fishworkers. They are treated not as human beings but as mere numbers in diplomatic communications.

An important aspect of the SALF initiative was that simultaneous action took place both in India and Pakistan. The fishworkers and national trade unions in Pakistan, together with PILER, carried on a concerted campaign to seek the release of both Indian and Pakistani fishworkers.

In July 1996, the National Fishworkers' Forum (NFF), India, in a letter to the Indian Foreign Minister, I. K. Gujral, requested him "to take necessary steps to release these innocent fishworkers who were incarcerated in Pakistani jails for no reason of theirs."

On 4 December 1996, a SALF delegation, comprising trade union representatives from India, Pakistan, Sri Lanka, Bangladesh and Nepal, met Gujral and Indrajit Gupta, the then Home Minister of India.

Following this meeting, the SALF partners in Pakistan launched a press campaign focusing on the prolonged detention of fishworkers. Many journalists in Pakistan took the initiative to gather more information about the detained fishworkers. Comprehensive reports prepared by investigative journalists appeared in the newspapers.

The SALF Pakistan partners, in collaboration with the Fishermen's Co-operative Society and the Human Rights Commission, paid visits to all the jails in Sindh province where the Indian fishworkers were detained, compiled a comprehensive list of 242 arrested fishworkers and also distributed clothing, blankets, medicines, etc. among them.

SALF Pakistan continued to keep in touch with various government agencies, including the successive Prime Ministers and Foreign Ministers, and kept the pressure on.

In the meantime, on 15 April 1997, the Indian trade unions, AITUC, CITU, HMS and AICCTU, in a joint statement released in Delhi, stated, "The government should set aside the convictions of Pakistani fishermen and start the due process for their release. The Government of India should also take initiative in formulating a long-term policy, whereby such arrests and long-term detention of innocent fishermen are not repeated."

The Indian Chapter of SALF decided in April 1997 to send a Fact Finding Team of labour leaders, legal expert and mediapersons. The team was to meet the Pakistani fishworkers in Indian jails and the family members of the Indian fishworkers jailed in Pakistan. The team also decided to make an on-the-spot assessment of the situation arising out of these arbitrary arrests and to come out with a

comprehensive report on the entire problem, with specific observations and recommendations. This Fact Finding visit was undertaken in Gujarat and Diu between 21-23 May 1997. The report of the team was released on 14 July 1997.

Eventually, the sustained efforts of SALF towards addressing the plight of the detained fishworkers bore fruit. After a long four years, the Pakistani and Indian governments finalized the list of 35 Indian fishing boats and 193 fishworkers and 29 Pakistani boats and 195 Pakistani fishworkers, who were exchanged on 15 July 1997 and repatriated to their home countries.

Since then, SALF has been instrumental in the release of fishworkers in 1998 and also in 1999, at a time when the bilateral relations between the two countries deteriorated. These releases were followed by two more periodic releases, one each in the next two years as signs of goodwill gestures. SALF has intervened whenever the detention of fishworkers has become prolonged and also helped both the governments to finalize the list of arrested fishworkers.

SALF, however, has failed to make any headway in forcing the governments to formulate short- and long-term policies to address the periodic arrests of fishworkers for violating marine boundaries. They have not also come any closer to a bilateral agreement. Deteriorating relations and the long-drawn dispute over Sir Creek are two major reasons for this failure. However, both the countries have agreed to treat the plight of the fishworkers as a humane issue and have taken a positive approach towards releasing the arrested fishworkers as quickly as possible, without detaining them for indefinite periods.

Possible solutions

1. The arbitrary arrest of the fishworkers and their imprisonment should be stopped permanently. The ridiculous practice of 'exchange protocol' should be done away with. Instead, a proper policy, in consonance with UNCLOS, should be framed to release the arrested fishworkers immediately after they are apprehended.
2. India and Pakistan should immediately formulate a bilateral maritime agreement that should clearly define the demarcation line and practical measures like light buoys should be used to make the actual line visible.
3. The continuing dispute over Sir Creek can not play havoc on the livelihoods of thousands of fishworkers. Both the countries should strive for a temporary and working solution and agreement until the dispute is settled.
4. Considering the regional dimension of the issue, there must be a regional maritime agreement at the SAARC level.
5. Fishworkers organizations and trade unions across South Asia should be represented and consulted on any bilateral or regional negotiation regarding this matter.

