

Securing Fundamental Freedoms

Although over 50 years have passed since the introduction of international human rights instruments pledging ‘the equal rights of men and women’, discrimination against women persists

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“Adopt specific measures to address, strengthen and protect women’s right to participate fully in all aspects of small-scale fisheries, eliminating all forms of discrimination against women...”

The hopes of women living in fishing communities around the globe were expressed in the above statement issued by the Civil Society Workshop in Bangkok, held prior to the Global Conference on Small-scale Fisheries in the same city in October 2008. The statement was presented to the 28th Session of the Committee on Fisheries (COFI) of the Food and Agricultural Organization of the United Nations (FAO) held in Rome in March 2009. The statement as a whole reflects the outcome of considerable work undertaken by civil society organizations to advocate a ‘human rights-based approach’ to small-scale fisheries. But looking back, what do these words mean: ‘adopting specific measures’ towards ‘eliminating all forms of discrimination against women’? They express no

doubt a radical and transformatory goal for a traditionally highly male-defined sector. Is the ‘human rights-based’ approach, as it is currently articulated, able to realize these aspirations? If not, what perspectives and strategies can help realize these freedoms for women?

What does a human rights-based approach actually mean for women in fisheries? UNIFEM, the United Nations Development Fund for Women, defines a human rights-based approach

as “a framework for the pursuit of human development that is normatively based on, and operationally directed to, the development of capacities to realize human rights”. Its origins lie in legally-binding inter-national instruments that reflect international consensus on a framework of entitlements and obligations to achieve human rights—the 1948 Universal Declaration of Human Rights and subsequent human rights conventions and treaties, including the 1979 Convention on the Elimination of All forms of Discrimination against Women (CEDAW).

Taken together, these instruments set a standard of rights for all people everywhere, recognizing the inherent dignity and equal and inalienable rights of all human beings. And yet, despite the fact that more than half a century has passed since the introduction of many of these instruments, and the provisions they contain discrimination against women remains a global phenomenon. Women face daily violations of their human dignity and freedoms. Why? Recently, feminist and gender-just analyses of the human rights framework have argued that mainstream international human rights law, and the conceptions of equality and rights that flow from this, reflect ‘male stream’ experience and notions of equality, and, as a result, fail to adequately challenge the basis of women’s discrimination. They argue that one of the main obstacles to the protection of women’s rights in international human rights law has been the assumption of gender-neutrality in law, which is based on a liberal notion of an individual as a ‘genderless rights-bearer’. This failure to cite sex/gender differences, and the inequalities attached to these differences, result in the perpetuation of the myth that equal treatment will lead to equality.

Closely linked to this is the way in which the scope of human rights law has been interpreted—what constitutes ‘public’ interest and what is ‘private’, in the sense of being beyond the reach of international law? Historically, much of what constitutes the ‘private’ sphere concerns the social relations within communities, households and domestic relationships that shape women’s everyday experience of life and livelihood. Traditionally this sphere has not received attention in international human rights law.

This division between the ‘public’ and ‘private’ sphere is also reflected in some of the international instruments aimed at protecting social and economic rights. For example, the

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Shoe dhoni fishers in Kakinada, Andhra Pradesh, India. Much of women’s work is in the ‘private’ sphere

International Covenant on Economic, Social and Cultural Rights (ICESCR), in its definition of the right to just and favourable work conditions (Article 7), focuses on paid work in the public sphere, neglecting the private sphere where much of women's work in fisheries is performed.

This is true even where attempts have been made to address family responsibilities, for example, in the 1981 "Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities". A legally binding instrument, this convention conceptualizes the issue of women's equal treatment in a way that fails to address the fact that women are clustered within particular types of work; that women carry the brunt of familial responsibility; and hence, that specific measures are needed to transform the social relations that shape these responsibilities.

International fisheries instruments have been shaped along similarly 'gender-neutral' lines, resulting in the failure of these instruments to adequately conceptualize the gendered experiences of men and women in relation to fisheries. In most instances, these instruments are completely silent on the discrimination faced by women and silent also on the specific measures that should be adopted to protect and promote women's rights.

The United Nations Fish Stocks Agreement 1995, Article 24 2 (b) merely requires States to take into account "... the need to avoid adverse impacts on, and ensure access to, fisheries by subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous people...". As noted in *Yemaya* No. 29, the FAO's Code of Conduct for Responsible Fisheries (CCRF) adopts a similarly gender-neutral stance when urging states to ensure the participation of all stakeholders, with no specific reference to gender differences and discrimination. Yet, despite this silence, the CCRF does cover a range of issues of critical importance to furthering women's economic, social and cultural rights, which, if articulated in a more gender-sensitive way, would provide guidance to member States on the specific measures that they could adopt to eradicate discrimination against women in the sector and promote the full enjoyment of their basic human rights.

In order to address the neglect of women's specific experiences of discrimination and human rights violations, and to develop international jurisprudence on women's rights, several women's rights instruments have been developed. The CEDAW is central in this regard and has been an important tool in attempting to mainstream a gender approach into international human rights law. Significantly,

the definition of the scope of CEDAW and the responsibility of the state address the 'private' sphere.

The obligation on states to adopt specific measures to eliminate both *de jure* and *de facto* discrimination against women is clearly articulated. However, recent reflections by many women human rights activists and theorists have highlighted concerns with CEDAW and other 'gender mainstreaming' instruments. Radicic, in a paper on Feminism and Human Rights, articulates one of the key concerns:

"gender mainstreaming has mostly been concerned with the integration of gender concerns into the preexisting framework of international human rights law, rather than transforming the framework itself.... 'Adding women' (and stirring) cannot secure inclusiveness of international human rights law... The very framework of international human rights law, therefore, needs to be reconceptualized to include the concerns, values and ethics associated with women" (Radicic, 2007).

It is clear that the process of developing a human rights-based approach to fisheries, which is a key concern of several civil society organizations in small-scale fisheries, must interrogate the premises upon which this approach rests. Their efforts have highlighted the links between women's work in the 'public' and 'private' sphere and the indivisibility of family-household-community relations. They have strongly advocated a transformatory and gender-based perspective that takes into account the full contribution of women in small-scale fisheries. They have argued for a re-thinking of the false separation of the 'public' and 'private' spheres through which relations of production are separated from the social relations that sustain this production. They have drawn attention to the way in which stages in the fish supply chain have been alienated from the underlying community basis that supports all life and development.

The challenge now facing the sector appears to be the need to lobby international human rights bodies to ensure that all future work based on general human rights instruments incorporates a gendered perspective, clearly identifying the areas where women continue to experience discrimination in both the public and private sphere as well as in the intersection of these spheres. Further, we need to advocate specific measures that will promote a more integrated perspective to the range of life giving and sustaining processes in small-scale fishing communities, reflecting the indivisibility of the human, social and ecological dimensions of life. ■