

The Missing Element

The fisheries sector can contribute to the progressive realization of the right to food, which, like other human rights, is a birthright inherent in every human being

All over the world, the fisheries sector, among others, constitutes an essential component for achieving the right to food. According to a recent study by the Food and Agriculture Organization of the United Nations (FAO) (“Right to Food and Fisheries”, *Right to Food Studies*, FAO, 2009, available at www.fao.org/righttofood), this sector represents the source of livelihood for 41 mn people, most of them living in developing countries. This is the reason why it is crucial to put in place responsible practices to promote sustainable fisheries.

Yet, promoting sustainable fisheries is not enough if people do not have adequate access to them. Sound policies, strategies and laws are needed to guarantee accessibility in equal and sustainable ways, especially for the most vulnerable sectors of the population. When thinking about the final purpose of those strategies and policies, human welfare and the respect of people’s rights are, without any doubt, the main priorities to reach.

The right to food offers a legitimate framework for actions related to fisheries work at the national level: it is a human-rights obligation that serves as an overarching objective to be reached, as well as an operational tool which enables the translation of human-rights principles into concrete actions at local levels. Both the legal recognition of the right to food as a fundamental human right, and the Right to Food Guidelines (Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security, unanimously adopted by FAO’s Council

in 2004) as practical tool to achieve this right, are complementary mechanisms to fulfill the promise of food security for all by right.

This article points out three major issues of the fisheries sector that require concrete actions under a human-rights framework in order to realize the right to food:

- the access issue;
- the participation of rights holders in decisions affecting their livelihoods; and
- the need to focus on the most vulnerable sections of the population.

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The right to food is the inherent right of every human being to have physical and economic access, at all times, to nutritious and culturally acceptable food not only to be free from hunger, but, above all, to enjoy a healthy life. It is not charity, nor is it the right to free handouts. The right to food, like other human rights, is a birthright, inherent in every human being. A person does not have to do anything to deserve it.

Human rights

First recognized in the Universal Declaration of Human Rights (UDHR) in 1948, the right to food has been gradually strengthened with the passage of measures at the international level. The 160 State Parties to the International Covenant on Economic,

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A woman with dry fish in Kalmie Katanga Region, Democratic Republic of Congo.
In ensuring the right to food, positive action needs to be taken in favour of those who are marginalized

Social and Cultural Rights (ICESCR) have accepted the realization of the right to food as a legal obligation. This has profound implications.

For one, the right to food is not an option but rather a moral and a legal obligation for States. States Parties to the ICESCR have accepted the legal obligation to respect, protect and fulfill the right to food. By respecting the right to food, States must avoid undertaking measures that negatively affect the realization of this human right. For instance, if a State puts in place excessive taxes on fish trade, it could severely diminish the income of subsistence fishers and, therefore, affect their economic accessibility for purchasing food. The direct consequence of this type of action can result in a violation of the right to food of subsistence fishers.

Secondly, by protecting the right to food, States must prevent—by legal and other political measures—third parties such as interested private companies, for instance, from obstructing the enjoyment of people's access to food.

Finally, by fulfilling the right to food, States must facilitate and provide the right to food. To 'facilitate' means to promote the implementation of legislation, policies, strategies and programmes that are conducive to achieving the right to food for all. This comprises interventions regarding infrastructure, education, sound labour and social-security laws, and institutional mechanisms for participation, management and claims.

Safe and nutritious food

Although the overall objective of the right to food is to reach sustainable ways for feeding oneself in dignity, when individuals are not able to access food by their own means for reasons beyond their control, States have the obligation to provide them with safe and nutritious food in order to protect them from hunger. Food assistance must be provided as a last resort in emergency situations, and it is not, as such, a final objective to be achieved.

In the implementation of these obligations, States will need to take

progressive steps to the maximum of their available resources until the full enjoyment of this human right.

With the adoption of the Right to Food Guidelines in 2004, States achieved consensus about what needs to be done in all the most relevant policy areas to make the right to adequate food a reality for all. The Guidelines comprise specific orientation, among others, on access to natural resources, education, institutions, monitoring, legislation, economic policies and food aid, and thus constitute a coherent framework to tackle the root causes of hunger.

Aiming to translate human-rights principles into concrete actions, the Guidelines complement the ICESCR and constitute a practical instrument at the national level. Fisheries is one of the sectors addressed in the Right to Food Guidelines. The most relevant recommendations relate to the access to natural resources, the participation of all stakeholders in decision-making processes, and the preferential treatment for vulnerable sectors of the population.

Regarding the access to fisheries resources, the Right to Food Guideline 8.1 calls States to “facilitate sustainable, non-discriminatory and secure access to, and utilization of, resources ...and protect the assets that are important for people’s livelihoods”.

The shift from an open-access regime to a limited access to fishing resources has often been motivated by considerations of environmental sustainability. Indeed, it is a concrete and essential measure to guarantee the availability of fish supplies in the future, and, consequently, the realization of the right to food. Limited access was introduced to tackle the severe consequences of open regimes, such as the depletion of stocks, excess harvesting, and their environmental, social and economic effects. At the same time, limited access potentially has a negative impact on the food-security situation of the poorer groups, as shown in the case of South Africa (see box). However, when properly targeted, limited fishing rights can be a step towards strengthening people’s capacity to feed themselves

in a dignified manner. It is, therefore, essential that fisheries strategies, policies, legislation and programmes pay particular attention to use rights of small-scale, subsistence and indigenous fishers. The human-rights principles of non-discrimination comes to play very strongly in this context, meaning that positive action needs to be taken in favour of those who are marginalized. A particular challenge is the empowerment of women. Transparency, accountability and the rule of law are other determinant principles for sustainable limited fishing rights. Finally, it is essential to rely on legislative and non-legislative accountability and claims provisions that ensure redress in case of human-rights violations.

Decisions in the fisheries area should provide mechanisms for engaging, in a meaningful manner, local fishing communities and other stakeholders in the formulation and implementation of policies.

The South African Case

The South African case shows the importance of having access to recourse mechanisms as a legitimate way to protect the rights of the most vulnerable sectors of the local population.

A group of 5,000 artisanal fishers in South Africa launched a class action following the adoption of the Marine Living Resources Act (MLRA) of 1998. The fishers claimed that the national authorities failed to provide them with adequate fishing rights since they were not given legal recognition as ‘artisanal fishers’ within the MLRA. They argued that the implementation of the MLRA violated their right to food as recognized in the South African constitution of 1996. A decision issued by the Court, as well as an agreement reached with national authorities, enabled the group of fishers to reach interim relief measures and initiate a negotiation process for a new fishing policy in which their condition would be changed.

The Right to Food Guideline 2.6 echoes this concern by encouraging States to “promote the participation of the poor in economic policy decisions”, and Guideline 5.4. calls on States to

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ensure that institutions provide for “full and transparent participation of the private sector and of civil society, in particular, representatives of the groups most affected by food insecurity”. Active participation can range from consultations to the establishment of mechanisms of co-management which contribute not only to increasing participation but also to the empowerment of communities that depend on fishing activities. In this regard, access to transparent information as well as educational means for active and meaningful participation are essential conditions for the realization of the right to food in the fisheries sector. Capacity and needs assessments and evaluations are necessary to ensure that the voice of marginalized groups are heard. Legal mechanisms for participation will also enable persons and groups to use legal

institutions and procedures to defend their rights, including the right to food.

A third subject to consider when implementing the right to food in the fisheries sector is preferential treatment for the most vulnerable sectors of the population. The guiding principle of non-discrimination entails that measures do not exclude individuals or groups on the basis of race, sex, religion, language or social status, and that corrective measures should be taken to redress a violation that is taking place.

Specific positive measures in the fisheries sector can be undertaken to redress discriminatory violations. For instance, if subsistence fishers are not able to ensure their livelihoods as a consequence of the restricted access to fishing resources, targeted policies need to be put in place to redress this *de facto* discrimination. Right to Food Guideline 3.7 specifically encourages States to increase, in a sustainable manner, the productivity of the fisheries sector through the adoption of policies targeting small-scale and traditional fishers. The obligation of the State to prioritize disadvantaged groups requires measures which explicitly benefit these groups or which compensate them for disadvantages suffered. The South African case mentioned above is a tangible example for this: fishers were protected through an interim relief measure that enabled the artisanal sector to have access to fishing resources until the government had finalized its new subsistence fishing policy. Special attention needs to be given to indigenous peoples and their relation to natural resources, and to the access to opportunities and economic resources of vulnerable groups, as mentioned in Guidelines 8.1. and 8.2.

People’s welfare

A sound understanding of the linkages between the right to food and the fisheries sector is necessary in order to ensure that measures related to fisheries are truly conducive to the realization of the right to food at the national level. In the implementation of national policies, people’s welfare is the final objective to reach. Thus, human-rights considerations must

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A scene from the 2nd Session of the FAO Committee on World Food Security, 2006. A sound understanding of the linkages between the right to food and the fisheries sector is necessary

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Shrimp fishermen on the way from Sarankola to the Sundarban region in Bangladesh. Fisheries and food policies must factor in preferential treatment for vulnerable populations.

be an integral part of the diagnosis and the recipe addressing gaps within the fisheries sector. Focusing on the obligations of the State to respect, protect and fulfill the right to food, and on the integration of right-to-food principles in measures related to the fisheries sector, will ensure that the root causes of food insecurity are tackled. At the same time, in the design of the solution, a human-rights-based approach will ensure the promotion of economic, social and environmental sustainability, social justice and equity.

When designing and implementing strategies, policies and laws, States should concentrate their efforts in integrating and improving vulnerable people's livelihoods. In that sense, establishing concrete mechanisms facilitating active participation from civil society and the private sector is essential to define long-term strategies ensuring benefits for all. The realization of the right to food is a final objective to be achieved. It also constitutes a framework under which the fisheries sector can contribute to its progressive

realization. In the past decades, measures to eradicate hunger focused mainly on the technical aspects of food production and supply. They hardly addressed the structural, political and social root causes of hunger. By putting the integrity of every human being at the centre of political discussions, the right to food provides the missing element in today's efforts to fight hunger, including efforts in the fisheries sector. 3

For more



www.fao.org/righttofood

Right to Food

www.un.org/en/rights/

United Nations and Human Rights

www.fao.org/righttofood/publi_01_en.htm

**Voluntary Guidelines:
Right to Food**