



Human Rights vs. Property Rights:

*Implementation and Interpretation
of the SSF Guidelines*

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This document is produced on mandate from WFFP for the purposes of building capacity of its national and local level members across the world to understand the meaning and context of Rights Based Fishing (RBF) and to enable its members to engage in further debate on the topic. It is also produced to advance the Human Rights Based Approach (HRBA) that the SSF Guidelines are rooted in. The document contextualizes and historicizes the contemporary discussions around RBF and HRBA and clarifies that RBF differs fundamentally from the HRBA.

WFFP expresses gratitude to the support provided by the TNI and AK in the development of this document. These three organizations are jointly responsible for the views expressed here. In the spirit of dialogue and participation that is part of the CFS and COFI tradition, this text is intended to clarify perspectives, inform discussions and encourage healthy debate. Above all this document is a contribution to an ongoing process of deepening the understanding of RBF and HRBA among WFFP's members and allies who work on small-scale fisheries.

Key Points of this Brief:

- The Human Rights Based Approach (HRBA) and the Rights-Based Approach (RBA) to fisheries represent two very different and contradictory approaches. Where the RBA with its focus on, so-called, 'economic efficiency' has led to widespread social disruption in fishing communities, the HRBA has profoundly positive structural, political, material, and cultural implications if implemented fully. As such, the HRBA to fisheries is a key tool in the struggle for social justice and food sovereignty.
- In recent years, the RBA to fisheries has undergone a 'renewal', and has been increasingly framed as a win-win-win solution that can cater to all needs at once i.e. small-scale fisher communities, the environment, and profits. However, behind this new rhetoric lie the same privatization policies that fisher peoples have denounced as 'ocean grabbing'.
- In tune with other global governance processes, fisheries policy at the international level is increasingly characterised by 'multi-stakeholderism', where fundamentally opposing interests are glossed over and are expected to be resolved through compromise in order to bring all 'stakeholders' to the same table. There is however, a crucial distinction between 'stakeholders' (anyone who can claim a 'stake' in a process) and *human rights*-holders (those for whom the realization of their human rights is inextricably linked to their customary and socially defined rights to fishing grounds and/or for whom conflicts over fisheries affect their human rights). Such distinctions should be respected.
- Moving forward in the pursuit of social justice and food sovereignty requires that fisher peoples' movements and their allies do the following:
 - Engage in awareness-building activities to reframe political debates that vilify fisher peoples and undermine their rights;
 - Tactically and strategically push for recognition of human rights in policy processes from the local to the international level, and for policy spaces in which the effective participation of fisher people is respected;
 - Significantly increase capacity-building, political formation, and education activities to support the mobilization and engagement of small-scale, artisanal, and indigenous fishers.

Introduction

For years, representatives of small-scale and artisanal fishers have been engaging with processes in the UN Food and Agricultural Organization's Committee on Fisheries (COFI). This engagement has involved asserting their rights towards COFI's member states and influencing processes in COFI. In 2014, after years of struggle by small-scale and artisanal fishers to contribute ideas to the drafting process and ensure that these were included in the final version, the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines¹) were approved in COFI. The SSF Guidelines is the first and only international instrument dedicated to securing the human rights of fisher peoples. While the text is not perfect, the approval nonetheless marked a historic victory for fishing communities around the world. Now that the text is approved, the challenge is to take these potentially transformative Guidelines and put them into practice at the national and local level in the current phase of implementation. Many fishing communities and their allies are actively working to build awareness among fishers, activists, lawyers, and decision-makers about this powerful instrument and a number of workshops on the implementation of the SSF Guidelines have provided important spaces for exchanging ideas and experiences in these efforts.

During the 32nd session of the FAO Committee on Fisheries (COFI) in July 2016, a number of issues specifically relevant to the SSF Guidelines, as well as for small-scale and artisanal fishers more generally were discussed. Namely, agenda item nine discussed two distinct and, as this brief argues, conflicting proposals for how to move forward with implementation and governance related to small-scale fisheries globally. The first proposal presented the development of a Global Strategic Framework (GSF) for the implementation of the SSF Guidelines. The second proposal focused on developing a global work plan on 'User Rights'. COFI approved both of these proposals, which represent important milestones in the global discussion on SSF.

These two proposals reflect a much longer history of competing political visions and strategies for how to engage with small-scale fishers. On one hand, user rights can be understood as an extension of the 'Rights Based Fisheries' agenda, which has historically promoted the privatization of fishing and tenure rights through programs like Individual Transferable Quotas (ITQs), Catch Shares, or Transferable Fishing Concessions (TFC). On the other hand, the GSF proposal was promoted by the civil society working group on fisheries of the International Planning Committee on Food Sovereignty (IPC), including representatives from fisher organizations (WFFP, WFF, and ICSF), in order to outline a clear path forward for implementation of the SSF Guidelines that ensures effective participation by SSFs and upholds a HRBA.

In order to clarify these differences, contextualize the decisions taken at COFI, and inform future initiatives, the following text briefly outlines the lead-up to these two agenda items. This background provides the basis for politically mapping the range of current efforts to implement the SSF Guidelines. Finally, we present some points of discussion moving forward with the implementation of the SSF Guidelines according to the HRBA.

Rights-based approach to fisheries

The idea of the ‘tragedy of the commons’ was made famous by Garret Hardin in 1968.³ Writing in the *Journal Science*, he argued that natural resources held in common would inevitably be destroyed through the competing individual interests of users in exploiting the resources as much as possible for private gain. As a result, he concluded, the only way to avoid overexploitation and this ‘tragedy’ would be through control or coercion by either the state or private entities.

While many are familiar with Hardin’s argument and the wide controversy it sparked, few are aware that in fact, fisheries economists had already made similar arguments in the mid 1950s, focusing on the dynamics surrounding property rights in fisheries. In 1954, Scott Gordon, for example, placed ‘the commons’, at the heart of the discussion on the ecological and economic crisis then occurring in fisheries.⁴ He argued that the depletion and overexploitation of fisheries resources resulted from a lack of property rights to these resources. This would inevitably lead to individual fishers continuing to invest in order to maximize profits from the ‘open access’ commons. This would, in turn, lead to overfishing, as the rational fisher would catch as many fish as possible, leading to a ‘race for fish’. In tune with neoclassical reasoning, Gordon argued that the only way this ‘crisis’ could be avoided was by introducing clearly defined and strongly enforced (private) property rights as a management tool in fisheries.

Inspired by this first intervention, many fisheries economists followed in Gordon’s footsteps, carrying out the same analysis and reaching the same policy conclusions. The next landmark publication came in 1989 when a group of fisheries economists produced a book called ‘Rights Based Fishing’. The economists apply Gordon’s reasoning, but frame their ideas as ‘rights based fishing’ and identify Individual Transferable Quotas (ITQs) as the policy proposal that most closely adheres to Gordon’s logic. ITQs essentially turn claims to a certain quota of fish stock into private property, often accompanied by a market to create ‘free’ trade as the means of distributing these new property rights. Indeed, the authors stress how ITQs are ‘one of the great institutional changes of our times: the enclosure and privatization of the common resources of the oceans’.⁵

Despite the use of the term ‘rights’, which could encompass different types of rights, ‘rights-based fishing’ is primarily about establishing *property* rights, and for the most part *private* property rights, in fisheries -- it has very little, if anything, to do with *human* rights. For small-scale fisher peoples’ movements, real world experiences with rights-based fisheries has often meant massive social disruption in fishing communities through increases in distinction between social classes, with severe impacts on the struggle for equity and social justice. Small-scale fisher peoples’ movements have therefore been contesting the term ‘rights-based fishing’ whenever and wherever it is mentioned in fisheries policy discussions. Despite this opposition from representative movements, rights-based fisheries has spread widely in policy discussions since the term was put forward in the late 1980s and it can now be found in fishery reform processes around the world.⁶ In the past six to eight years, the term ‘rights-based fishing’ and an associated focus on creating the right ‘incentives’ for individual use of fisheries resources has received increasing attention from a wide range of interests, including (environmental) NGOs, financial actors, and multilateral institutions.

User Rights and the Global Work Program

The most recent example of new attention to 'rights-based fishing' frameworks is the FAO's project proposal and work plan advanced in the past two years to develop and spread knowledge and awareness about the role of what the FAO calls 'user rights' in fisheries. This culminated in the presentation of the 'Global Work Program' at the COFI meeting in July 2016.⁷ While many of the related documents mention human rights and the SSF Guidelines, this user rights agenda strongly resembles previous efforts, predating the adoption of the SSF Guidelines, to push a privatization or 'rights-based' agenda. Leading up to the COFI meeting a series of international gatherings were held in which the user rights program was developed: in Cambodia in March 2015, in Italy in October 2015, and in Uganda in March 2016.⁸

The first conference in March 2015 in Cambodia was called 'Tenure & Fishing Rights 2015: A global forum on rights-based approaches for fisheries', or simply 'User Rights 2015'. This event brought together 140 participants from 38 countries to discuss 'the importance of tenure and rights for responsible resource management and equitable development in fisheries'.⁹ The conference was attended by representatives from the World Forum of Fish Harvesters and Fish Workers (WFF), the World Forum of Fisher Peoples (WFFP), and the International Collective in Support of Fishworkers (ICSF), who contributed critical comments about the conference's focus on property rights instead of human rights in fisheries. As noted by Sherry Pictou, a member of the Coordinating Committee of WFFP, this difference is crucial:

[There is a] fundamental difference between Property Rights-Based and Indigenous Rights-Based Fisheries ... the International Guidelines on Securing Sustainable Small Scale Fisheries and the International Tenure Guidelines are premised on the human rights approach, including indigenous rights, not property rights.¹⁰

Similarly, observing that very few of the 140 participants represented fisher peoples, Arthur Bogason of WFF commented on the fact that,

the forum seems to be centered around property rights and catch shares [...] Whose agenda is the forum taking forward?¹¹

Despite these and many other critical comments by fisher peoples' representatives, the FAO moved ahead with the user rights agenda; first, with a much smaller gathering of 15 'experts' and 8 FAO representatives in Italy in October 2015, under the title 'Friends of User Rights 2015'. Here the group put together a draft outline for the global work program. At the third conference, held in Uganda, this draft was discussed and reviewed before it was finally presented at COFI.¹²

All meetings were dominated by actors who do not represent small-scale fisher peoples.¹³ Those small-scale fishers who were able to participate expressed concern over the direction of the program. But the process continued in spite of this, leading to the presentation and adoption of the global work program at COFI in July 2016. This means that the FAO will, in the coming years, 'advance knowledge on rights-based approaches' and provide 'knowledge, institutional support and assistance for developing rights-based fisheries management systems'¹⁴.

Clearly, the FAO is a large institution with complex internal power dynamics and external pressure from powerful corporate interests. Despite this, some very productive collaborations have been made possible between fisherfolk organizations and the FAO, including the approval of the SSF Guidelines themselves and the agreement to develop the Global Strategic Framework for implementation (discussed in the next section). However, as the quotes from fisherfolk representatives above suggest, the user rights agenda represents a major turn away from the SSF Guidelines, with their focus on a human rights-based approach, and a major step towards a property rights approach. The manner in which the user rights agenda has emerged raises questions about the interests motivating this approach. The following section gives some background on the history of user rights.



Entebbe User Rights Meeting, March, 2016. Source: FAO 2016 Advancing a global work program for rights-based approaches for fisheries. Report. Available at: <http://www.fao.org/3/a-bl142e.pdf>

From privatization to user rights: same ideas, new language

Although the user rights agenda has received increased attention in the past two years, the ideas behind it are not new at all but draw on the work by the fisheries economists mentioned above. Ragnar Arnason, for example, one of the co-editors of the 1989 book, played a key role in the process, participating in all three meetings. At another FAO conference in 1999, titled 'Fish Rights,' Arnason¹⁵ argued that 'without property rights, human society seems doomed to abject poverty. In fact, with little or no property rights, human society would be primitive indeed, not much different from the more advanced versions of animal societies.'¹⁶ In this presentation he praised Individual Transferable Quota (ITQ) systems, such as those developed in Iceland and New Zealand fisheries¹⁷ as the closest thing to a 'perfect property right'.¹⁸ This view is based on '4 key characteristics' against which, Arnason argued, property rights can be evaluated:

- 1 **Transferability** (ensuring 'economic efficiency')
- 2 **Durability** (facilitating long-term planning)
- 3 **Exclusivity** (ensuring only a certain amount of 'users')
- 4 **Security** (ownership rights are protected by the state)

These criteria led him to conclude that the most perfect property right is *private*, in this case ITQ systems. Following Gordon's reasoning, these four elements are considered necessary to create economic incentives to prevent people from destroying fisheries resources.

This 'tragedy of the commons' reasoning is what guides the user rights process, but instead of calling for outright privatization, as fisheries economists have done historically, the language is now more vague, speaking instead of 'secure tenure rights'. In this new incarnation of the old ideas there seems to be a recognition of many other types of ownership apart from private (e.g. community) and an acknowledgement of concerns that have been raised over privatisation (referring to 'ocean grabbing'¹⁹). Yet the final agenda remains the same: in this view 'catch shares' (as ITQs have been called in the US) deliver the most secure tenure right and hence the optimal solution.

The two figures to the left (see below) are from Arnason's 1999 text explaining what a 'perfect property right' looks like according to the four characteristics mentioned above (top left), leading him to conclude that New Zealand's and Iceland's ITQ systems are 'perfect' (bottom left figure). The two figures to the right are from a 2016 background document to the user rights meeting in Uganda. Despite the figure at the top right being marked as 'tenure', it is nearly the same figure as Arnason's next to it. The figure at the bottom right shows how in this 'new' analysis, 'catch shares' is the closest to a 'perfect' fishing right. This shows how an analysis that stresses the pivotal role of (private) property rights in fisheries management and thus the need for a 'rights-based approach' to fisheries has become 'common-sense' and highly influential. Also, as noted in an 'issue fact sheet' on the FAO's website, 'the increasing scarcity of fisheries resources and the growing demand for fish and fish products will continue to expose the unsustainable nature of open access utilisation of fisheries resources. In turn, this will increase pressure for fisheries management bodies at all levels to more specifically define and enforce property rights'.

Fisher peoples' movements like WFFP and WFF, along with critical academics, have been denouncing the rights-based approach for years as a tool for dispossessing small-scale fisher people.²² In 2014, WFFP and allies released a report on the global ocean grab, identifying the privatization of aquatic resources through reform of fisheries policy as a key driver of such dispossession across the globe.

Figure 6 The quality map of two property rights

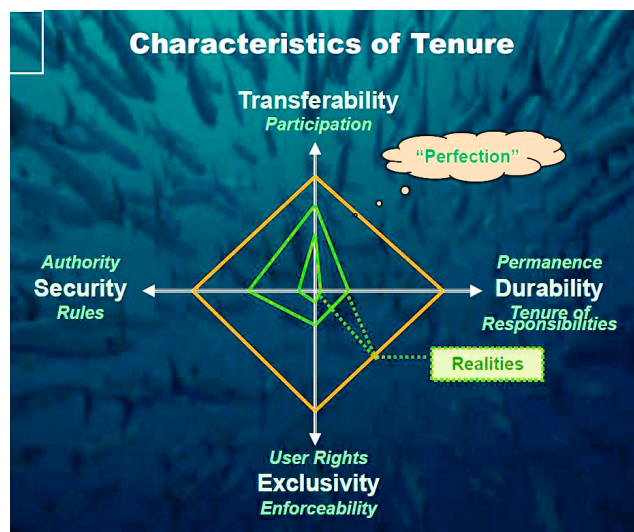
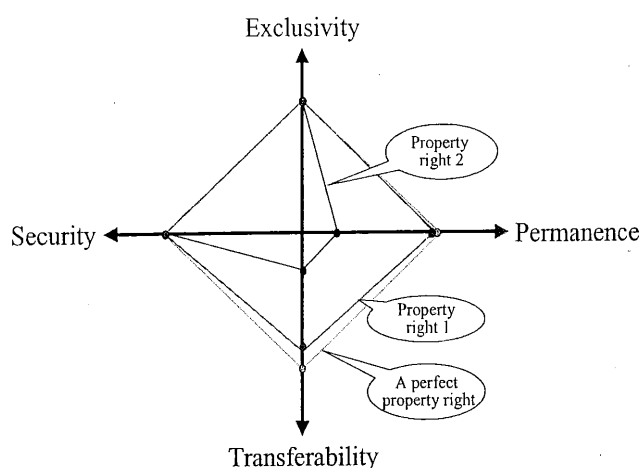
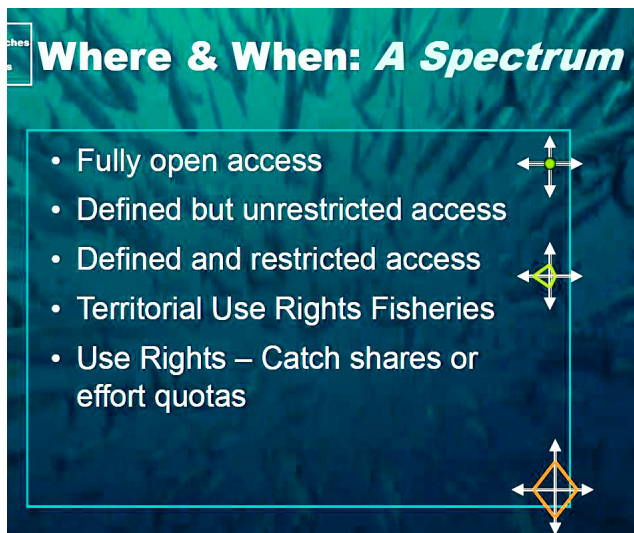
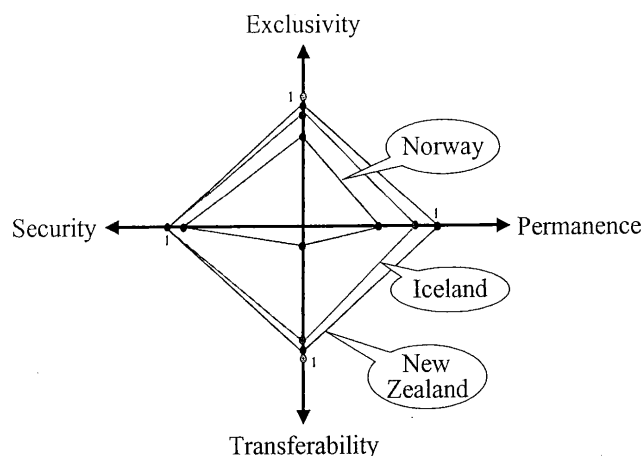


Figure 7 Iceland, New Zealand and Norway The quality of quota property rights



The human rights-based approach (HRBA) to fisheries

In addition to denouncing the negative effects of rights-based fisheries programs, small-scale and artisanal fisherfolk have been actively developing and promoting a *human* rights-based approach to fisheries; this is the backbone of the SSF Guidelines. The Guidelines are primarily focused on addressing food insecurity, promoting social justice, and ensuring respect for the human rights of impoverished, vulnerable, and marginalized communities of fisherfolk, peasants, pastoralists, indigenous, and rural peoples around the world. Fisherfolk face high rates of poverty, malnutrition, social exclusion, and displacement on a daily basis; these Guidelines can provide crucial protection of their rights and serve as important tools in their efforts to change their circumstances. However, interpreting these concepts in practice is not always straightforward. When implementing these Guidelines it is useful to think about the HRBA as consisting of three main criteria:

1 *Multi-dimensional/holistic:*

Fundamental to this approach is the principle that all human rights are indivisible, interrelated, and interdependent. It is true that there are different categories of rights like those specified in the International Covenant on Civil and Political Rights (such as the human right not to be held in slavery or subjected to arbitrary arrest, or the right to political participation), and those specified in the International Covenant on Economic, Social and Cultural Rights (such as the rights to work, housing, social security, adequate food and nutrition, and an adequate standard of living). Some people refer to civil and political rights as first generation rights, and economic, social, and cultural rights as second generation rights. However, this gives the impression of a hierarchy, which is not chronologically accurate and it undermines the principle of indivisibility first made clear in the 1968 Proclamation of Tehran.²³ The ideas of indivisibility and interrelatedness highlight the fact that the fulfilment of some human rights should not limit the fulfilment of others. In fact, they are mutually reinforcing. For example, if a fisher is excluded from political participation it is impossible for her to change the circumstances that may render her food insecure. But if she is food insecure it is not feasible for her to effectively participate in politics. These rights are interrelated and inseparable. The implications of this principle are that any HRBA to the management or control of fisheries must take a multi-dimensional/holistic view of human rights. Moreover, this stands in contrast to initiatives based narrowly on concerns for 'economic efficiency' with a primary focus on facilitating profit accumulation.

2 *Pro-poor (in decision-making and impact):*

The spirit of the HRBA is grounded in principles of social justice. They are univesal; everyone has human rights. But these rights are specific to one's cultural, social, economic, political, and civil context. For example, multi-generation fishing communities hold rights to those areas because of their particular history and relationship to fishing grounds, which not everyone holds. To ensure that everyone's basic rights are respected universally, special attention must be paid to the communities, especially women and children, that are most marginalized. In other words, equal treatment does not always mean justice.

In many cases, women, indigenous, small-scale, and artisanal fishing communities suffer more from poverty, food insecurity, and social exclusion even though they are the traditional caretakers and inhabitants of contested marine and inland water areas. This view recognizes that within these groups, women are often even more marginalized, and further steps must be taken to protect their rights and ensure that they are able to participate in decision-making. A HRBA therefore prioritizes the rights and participation of vulnerable and marginalized communities over and above other groups. In other words, they are not equal 'stakeholders' among other corporate or private sector actors.

Small-scale fisherfolk are human rights-holders; their rights as customary users and caretakers of fisheries resources are inextricably connected with their human rights, yet both types of rights are frequently violated. Therefore, in order to ensure universal respect for human rights, the protection of small-scale fisherfolk’s customary systems and practices must be a priority for any fisheries policy in the HRBA. When it comes to decisions about developing and implementing policy, because of the challenges many fisherfolk face, extra care must be taken to ensure their effective participation.

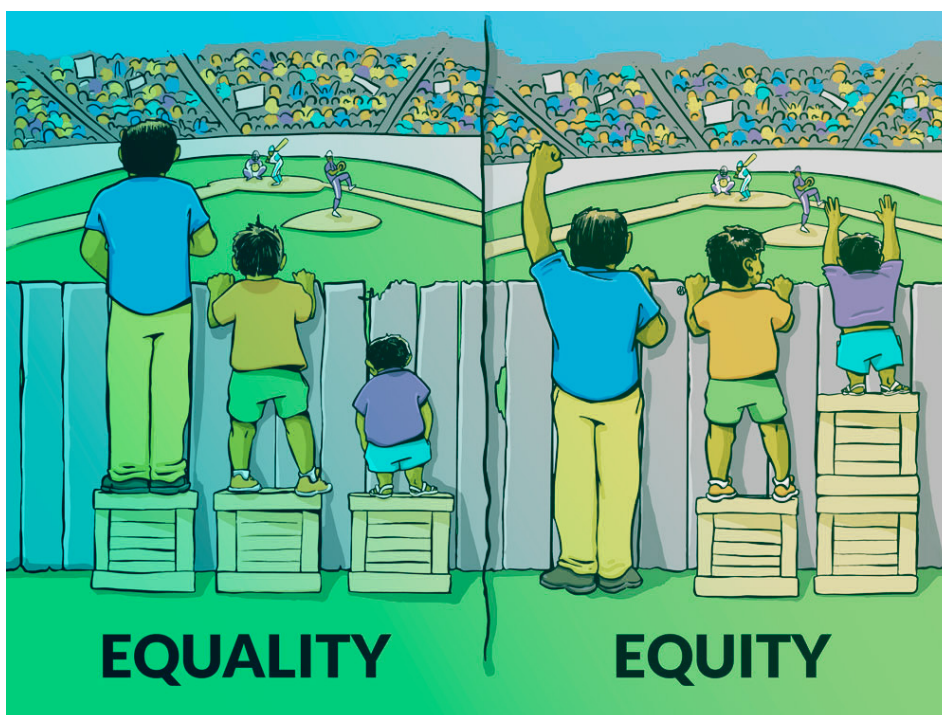


Image credit: Angus Maguire <http://madewithangus.com/portfolio/equality-vs-equity/>

3 *Accountability structure – the state as the only duty bearer:*

The obligation of nation states to anchor the human rights system is key. Unlike user rights, human rights are based on both moral grounds and international treaties and obligations, which the FAO and member states must respect, protect, and fulfil within their territories, as well as extraterritorially in some cases. States join the UN voluntarily (193 have done so), but joining means that they assume the responsibility to legally accept and implement human rights and their related obligations. This is a key difference between the HRBA and a purely ‘moralistic’ approach (i.e. charity or corporate social responsibility). **A purely moralistic approach does not typically involve legal obligation or accountability structures. In the human rights system on the other hand, once states sign on to the UN charter and ratify the respective treaties, they become state parties and are thus obliged to respect, protect, and fulfil human rights for all people.** If states fail to regulate and subject human rights abusers, e.g. oil companies that have destroyed traditional fishing grounds, to a court of law, they themselves become human rights violators.

Taking the human rights-based approach seriously by upholding these three criteria has profound implications. In many situations this suggests that structural transformation is needed to challenge the current distribution of control and wealth, and particularly concentrations of market power in the fisheries sector. In other words, ensuring respect for the political, civil, economic, social, *and* cultural rights of small-scale fishers may affect the future profits of some vested interests. A background paper for an FAO workshop on the human rights-based approach to the SSF Guidelines explicitly highlights these tensions:

The very focus of the approach on root causes and structural issues is a major source of challenge because it would require changing established practices, attitudes and privileges. Its interest in power relations could also put it at odds with entrenched interests. Rearranging a rights-based approach fisheries scheme in accordance with the imperatives of a human rights based approach may require that some people lose or share their fishing rights.²⁴

The SSF Guidelines are therefore highly politically contested and their rigorous implementation according to a HRBA is not likely to be a 'win-win' for all. For these reasons, it is important to understand the different political tendencies driving the range of actors who are rushing into implementation efforts. Clarity about the HRBA and the importance of the three criteria outlined above provide a baseline against which to evaluate other initiatives, which may fall short of, dilute, or undermine the HRBA.

The Global Strategic Framework adopted by COFI

The organizations (WFF, WFFP, ICSF, and allies) that worked to articulate the HRBA in relation to fisheries and negotiate the SSF Guidelines have been developing a proposal to give substance to effective participation of SSF organizations in the implementation of the SSF Guidelines. This will ensure that they are implemented in a way that upholds the HRBA.

In the 31st session of COFI in 2014, COFI welcomed the proposal for a Global Assistance Program (GAP) to support the implementation of the SSF Guidelines, identify roles, and develop future work in a participatory manner. A follow-up workshop later that year to continue developing the GAP led to the establishment of an FAO Umbrella Program in September 2015. This Umbrella Program, which has provided a partnership framework for donors to activate projects with a common goal and supported implementation efforts thus far, was set up with four key components:

- 1 Raising awareness:** knowledge products and outreach
- 2 Strengthening the science-policy interface:** sharing of knowledge and supporting policy reform
- 3 Empowering stakeholders:** capacity development and institutional strengthening
- 4 Supporting implementation:** collaboration and monitoring

As this work progressed, with the participation of the IPC Fisheries Working Group among others, it became clear that there was a need to develop a complementary mechanism to the Umbrella Program to focus more specifically on coordinating, monitoring, and governance of implementation efforts in a way that ensures the effective participation of small-scale and artisanal fisher organizations – the people the Guidelines are intended to benefit.

This gave rise to a mechanism called the Global Strategic Framework (GSF) for the implementation of the SSF Guidelines, which was presented for approval during the 32nd session of COFI in July 2016. The details of how this mechanism will function are still to be developed, as noted in the meeting report: 'The Committee invited the FAO to further spell out the purpose, role and structure of the SSF-GSF'.²⁵ Importantly though, an advisory group was proposed where representatives from WFF and WFFP will influence how the GSF operates. The architecture of the mechanism was proposed by the Fisheries Working Group of the IPC and is designed to prioritize the voice of the SSF in the implementation process. Finally, a knowledge platform was proposed where other interested actors (academics, NGOs, etc.) can support this work with research and information. Currently, this proposal is being elaborated.

Widespread agreement was expressed by a number of member states and organizations on the floor of the session (India, Kenya, Brazil, Somalia, Korea, South Africa, Panama, Morocco, USA, Uruguay, Afghanistan, Cambodia, Russia, EU, Oman, Bahamas, Lake Victoria Fisheries Organization (LVFO), Caribbean Regional Fisheries Mechanism, Southeast Asian Fisheries Development Center, the Sub-Regional Fisheries Commission, and FishForever) and the proposal was approved to move forward.

In response to this agenda item, the CSO statement at COFI stated:

We believe that the GSF constitutes an important element in order to ensure the implementation of the SSF Guidelines according to a human rights and holistic approach and in order to achieve the objectives set out in them, particularly the realization of the human right to adequate food, poverty eradication as well as the sustainable utilization, responsible management and conservation of fisheries resources.

It should be noted that the text discussed during the 32nd session of COFI in July 2016 was significantly abbreviated compared to the initial proposal articulated by WFF and WFFP. Nonetheless, unlike the User Rights Global Work Program, the GSF represents the most significant global level effort towards implementation of the SSF Guidelines that is being developed *by* and *for* SSF, consistent with the HRBA that inspired those Guidelines in the first place.

Tenure rights and SSF

An important dimension of the fisheries sector and component of the holistic implementation of the SSF Guidelines relates to tenure rights in fisheries. In other words, how is access to and control over marine and inland aquatic resources distributed and managed? Chapter 5 of the SSF Guidelines provides guidance on how to allocate tenure rights in fisheries in line with the HRBA and clearly refers to another human rights-based framework adopted in 2012, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, or the 'Tenure Guidelines' (TGs), as the standard to follow. However, no law or standard is self-implementing. Instead, laws or standards are used or implemented by real people and are therefore subject to interpretation, and to potentially competing interpretations. Not all users or uses of the TGs, or the SSF Guidelines for that matter, are the same. Even when the language of human rights appears on paper, the spirit of human rights rooted in social justice is not always used or implemented in reality. Scrutinizing the issue of tenure rights in fisheries helps to highlight some of the differences between the user rights agenda and the GSF.

User rights and tenure rights: Misusing the Tenure Guidelines as a Trojan horse' for private property?

Although a HRBA is the cornerstone of the SSF Guidelines, these *human* rights have had almost no impact on the 'rights-based' literature by fisheries economists described above. As mentioned, fisheries economists are primarily concerned with 'economic efficiency' and creating what are perceived to be the right incentives to leverage individual resource users' self-interest for 'sustainability'. From this perspective, human rights are simply not the primary issue. Notably, the only substantial engagement from the user rights framework with the two sets of Guidelines fought for by social movements has been approaching fisheries through the lens of the TGs and engaging with Chapter 5 of the SSF Guidelines, which also relates to tenure.²⁶

As explained above, the user rights framework is rooted in a particular interpretation of 'tenure', which has historically emphasized private property rights. This emphasis gives rise to questions about the reasons for this intense focus on a very narrow view of 'tenure', and thus a very particular interpretation of the TGs. Who is pushing this interpretation? And why is there so little focus on implementing the SSF Guidelines and the HRBA they embody?

GSF and tenure rights

This focus on private property rights stands in contrast to the social justice spirit of both the TGs and the SSF Guidelines, which advocate for preferential access and control for poor, vulnerable, and marginalized groups. To this end, the GSF can be seen as an effort to create the architecture that can support implementation of the SSF Guidelines at the local level according to a HRBA. The TGs are seen as an important international instrument to bolster these efforts. In order to protect the rights of fisher peoples, peasants and indigenous communities, many social movements and civil society organizations, including WFFP and La Via Campesina, have been actively involved in negotiating, promoting and using the TGs since their adoption, both alone and in combination with the SSF Guidelines.

These two sets of Guidelines are complementary and mutually reinforcing. Thinking about and implementing the SSF Guidelines together with the TGs also highlights some important and often overlooked issues within fisheries. On one hand, institutionally, this reveals the very different degrees of participation permitted in COFI (where the SSF Guidelines were approved) versus the CFS (the body that approved the TGs). In COFI, CSOs are only allowed to comment on issues after all governments have spoken (and before decisions have been taken, if the COFI chair allows), while in the CFS, CSOs are granted the right to negotiate the text during the decision-making process. On the other hand, conceptually, the potentially complementary nature of these two sets of Guidelines is promising. However, how this will develop in practice has yet to be determined. A recent report by the Civil Society Mechanism highlights the following:

Linking the Tenure Guidelines to the SSF Guidelines has raised the importance of often marginalized and neglected inland and riparian small-scale fisher struggles to access resources in lakes, rivers and dams. At the same time, the principles in chapter 5 of the SSF Guidelines have provided specific entry points to support the implementation of the Tenure Guidelines. However, the convergence of both instruments for the benefit of small-scale fishers still needs to be ensured, requiring more effort by all actors, in particular states.²⁷

Indeed, rather than supporting the leadership of social movements in their ongoing work to implement the SSF Guidelines and the TGs, the user rights agenda has developed prior to and independently of the process that developed the GSF proposal, instead spearheading its own plan for how tenure rights should be managed in fisheries. Addressing this disregard for the proposals made by communities whose human rights are at stake, the fisheries working group of the IPC made the following statement in response to the user rights discussion during the COFI session:

In particular we see the Global Strategic Framework for Implementation of the SSF Guidelines presented in agenda point 9 as the primary sphere within which such issues should be addressed in the future [...] Given the interconnected nature of the land, fisheries and forest resources that fishing communities rely on to survive and thrive, we feel that the human rights based approach provides an appropriately integral and broad framework under which all programs dealing with tenure rights and allocation of resources, conservation initiatives, knowledge sharing and capacity building should be subsumed.

As the distinct approaches to tenure rights demonstrate, the user rights agenda and the HRBA behind the GSF are embodiments of different historical political processes and tendencies. These agenda items discussed and approved at COFI represent two of the main global initiatives currently being planned. Both of these will impact on implementation efforts. We have highlighted some of the conceptual differences between these two proposals; however, in practice the implementation of the SSF Guidelines can seem more problematic. As mentioned above, the process of implementation is indeed highly politically contested. To help navigate this political landscape, we try to map out some of the different positions among groups whose work relates to the implementation of the SSF Guidelines, in light of the three criteria of the HRBA outlined above (Multi-dimensional/holistic; pro-poor in decision-making and impact; and accountability mechanisms backed by the state).

The SSF Guidelines and their implementation

Broadly speaking, the FAO identifies two contrasting approaches in fisheries policy: '[The] Rights Based Approach and [the] Human Rights-Based Approach clearly come from different directions – the first as a management and/or economic model to sustainable use of fisheries resources and the second as a method that makes human rights, particularly of vulnerable and marginalized groups, measurements of progress in fisheries governance and development'.²⁸ In current efforts around implementation of the SSF Guidelines, different groups are pushing projects that reflect these two distinct agendas. First, some institutions and NGOs (e.g. the World Bank, WWF), which are otherwise active in fisheries policy and whose efforts to push the rights-based approach in fisheries impact the rights of small-scale fishers, have only minimally engaged with these Guidelines. Second, at the other end of the spectrum, groups representing small-scale fisherfolk like WFFP and WFF are actively fighting for a leadership role in SSF Guidelines implementation efforts. This is seen as a way to stop and roll back the human rights violations that result from a single focus on private property rights – e.g. violations of civil and political rights in Iceland²⁹ and economic, social, and cultural rights in South Africa.³⁰ In the face of this conflict, we have seen the rise of different multi-stakeholder initiatives in global fisheries policy-making. These initiatives attempt to bring a wide range of different actors – from transnational corporations, to environmental NGOs, to fishers' movements – together around the same table. The belief is that a pragmatic win-win solution that involves all groups can be found without profoundly altering the current system. This aversion to structural change means that multi-stakeholder initiatives are highly unlikely to support the implementation of the SSF Guidelines according to a HRBA.

Rights-based approach:

The past years have seen a marriage of economic efficiency and sustainability discourse in debates surrounding fisheries policy. This union of economic efficiency with sustainability arguments is pivotal in what can be seen as a makeover of privatization policies for fisheries, using 'strategically benign rhetoric'³¹ so that they seem more sustainable. In September 2008, 54 years after Gordon's article and 40 years after Hardin's, the journal *Science* published an article with the headline 'Privatization prevents collapse of fish stocks'.³² The article referred to a 'global study' by a trio of fisheries economists. In this global study, authors argued not only that privatizing the fish stock would ensure economic efficiency, but also that individual ownership would promote 'stewardship' of the resources.

In this way, the fisheries economists repackaged Gordon et al.'s old arguments to be more in tune with the language of 'sustainable use' of fisheries resources. Proponents are no longer blatantly speaking of the 'enclosure and privatization of the common resources', as was the case in 1989, but instead stress that essentially the same policies will now produce different results: 'more fish, more income for fishers and more return for investors'.³³ However, as recently warned by a group of sociologists: '[e]nclosure through privatization of access and commodification of rights can take many forms, even if the language changes.'³⁴

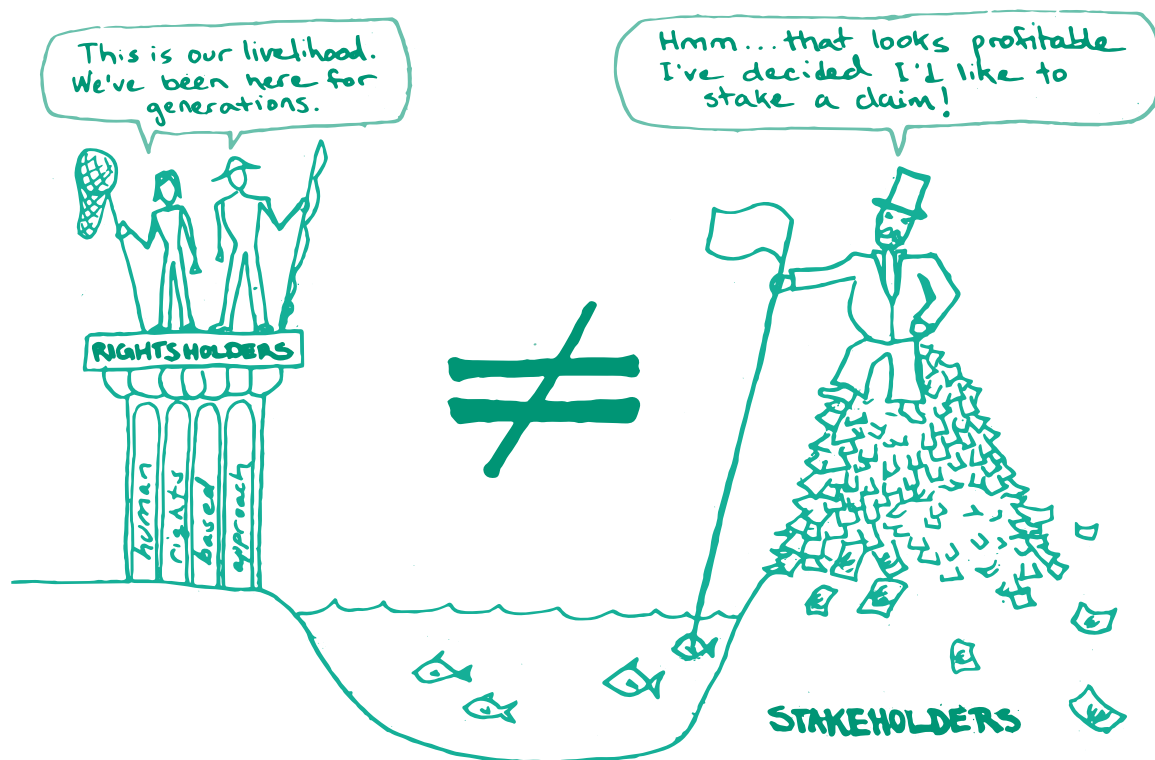
Especially since 2008, the makeover of the rights-based approach in fisheries has been picked up by a wide-range of actors, bringing together those who historically advocated for privatization with those primarily focused on the environment. References to the 2008 study as well as many other similar analyses by fisheries economists abound in a key 2009 publication by the World Bank, adding ecological rhetoric to classic privatization schemes. The publication concludes: 'The most critical reform is the effective removal of the open access condition from marine capture fisheries and the institution of secure marine tenure and property rights systems.'³⁵ At the same time many transnational environmental NGOs engaged in fisheries have been swayed to support rights-based approaches. As argued by the WWF in a 2012 report, 'Rights-Based Management can transform global fisheries performance and has proven to achieve balance between economic, ecological and social needs around the world.'³⁶

More recently, many of these actors have begun to show interest in the implementation process of the SSF Guidelines. For example, organizations like the Environmental Defense Fund have staff dedicated to coordinating work on the SSF Guidelines, and the WWF, Oxfam, and many others engage actively in spaces like COFI. However, their continued emphasis on rights-based approaches is clearly at odds with the HRBA. Rather than taking a multi-dimensional approach, this position promotes the privatization of fishing rights, and focuses entirely on property rights rather than human rights in order to ensure smooth functioning of the market, which it is assumed will resolve issues of distribution or equity. Governance is based on the most fundamental assumptions of neoclassical economics: the establishment of clear property rights and the functioning of free market forces.

Additionally, involving the private sector to make use of the untapped economic benefits of coastal fisheries is core to this approach. This aligns with an overall focus within this tendency on mobilizing private sector interests and investments by promoting oceans as good business. Although supporters of rights-based approaches often claim to be taking a pro-poor approach, participation in decision-making about how to use and manage fisheries is determined by the market. By formalizing property rights, fully integrating fisheries systems into the market, and leveraging resource users' individual self-interest ('ownership promotes stewardship'), it is presumed that environmental and economic problems will rectify themselves, eliminating the need for the state to step in as a regulator. Accountability mechanisms are weakened, not strengthened. In sum, privatization of fishing rights is fundamental and, in this view, the SSF guidelines can be used as a tool in the process.

An example of how this agenda is being pushed is the Coastal Fisheries Initiative (CFI), which has as a target that the SSF Guidelines are reflected in the national policies of a number of the countries involved.³⁷ The CFI aims at reforming fisheries in six countries across three continents: Cape Verde, Cote D'Ivoire, Ecuador, Indonesia, Perú, and Senegal. Over a period of four years, \$235 million (US dollars) will be distributed through projects in these countries. The program is headed by the FAO together with UNEP, UNDP, Conservation International, WWF, and the World Bank, and is funded jointly by the Global Environmental Facility (GEF), the implementing governments, environmental NGOs, foundations, and private sector actors.

Country programs are now being implemented across these countries. While these will obviously vary depending on the specific context, the CFI's overall project framework document is indicative of its approach. According to the document, 'coastal fisheries³⁸ are often characterized by perverse incentives that encourage overfishing and overinvestment'.³⁹ These 'perverse incentives' are a result of a lack of clear or secure tenure rights, especially in the EEZs of developing countries. The root causes of the environmental and economic crisis in fisheries identified as falling squarely within the tragedy of the commons frame. The alternative solution put forward by the CFI is to put in place new or amended fisheries management tools that create the appropriate incentives by introducing so-called secure tenure and access rights. By clearly establishing who owns what and for how long, 'a more responsible behaviour is expected and the incentives behind the 'race for fish' are dismantled'.⁴⁰ Secure tenure rights are also seen as a vital step in terms of 'catalyzing private sector involvement'.⁴¹



Human rights based-approach:

In clear contrast to the rights-based approach, WFFP, WFF, ICSF, and allies have been articulating and defending the HRBA at the global level throughout the negotiations of the SSF Guidelines, in order to stop and roll back violations of fishers' human rights. Ensuring that the HRBA is the overarching framework to interpret the SSF Guidelines has been paramount in these efforts and this means constantly defending this view and clearly contrasting it with the rights-based approach — even within UN spaces. The GSF proposal, described above is the clearest global example of the work WFFP, WFF, and ICSF have done, as part of the CSO working group on fisheries within the IPC, to articulate and defend what the HRBA means in the context of implementation of the SSF Guidelines.

In order to ensure that this approach is multi-dimensional and holistic, WFFP in particular has been strengthening alliances and synergies with other social movements to advance a broad political agenda. One way of doing this has been to strengthen the connection between the implementation of the SSF Guidelines and the TGs. Much of the work on implementation of the TGs that also follows a HRBA is being spearheaded by La Via Campesina (LVC) and other groups within the IPC. This means that WFFP's work fits into a broader multi-dimensional struggle to build alternatives based on human rights and food sovereignty, understood as people's control over their food systems. This goes hand-in-hand with agroecology – a science, a practice, and a movement that promotes engaging with the natural world in a way that respects the environmental and social cycles in a given place. As a Korean peasant once said, agroecology without food sovereignty is only a technological fix; and food sovereignty without agroecology is an empty political discourse. To this we might add, the SSF and TGs without food sovereignty and agroecology are like a carpenter with tools but no vision and no blueprint. Engagement in the IPC and deepening alliances with LVC has helped incorporate both of these concepts into WFFP's work. That said, food sovereignty and agroecology are contextually specific concepts, which depend on the leadership of food producers and marginalized communities in defining and defending what they mean in each place. Therefore, WFFP is in the midst of articulating what these ideas mean to fisherfolk. The International Coordinating Committee has formed a working group on the topic and is planning an educational exchange to bring farmers and fishers together to discuss what these issues mean to them.

In order to make sure that the impact of the SSF Guidelines is pro-poor and that fisherfolk are able to effectively participate in decision-making about how fisheries are managed and how the SSF Guidelines are interpreted, WFFP and WFF has placed significant emphasis on capacity-building among members. Much of the work they have already begun at the local level focuses on stopping human rights violations and empowering fishers to assert their role as rights-holders in their struggles and to hold duty-bearers (states) accountable to their human rights obligations. This work is being done through workshops coordinated at the local level, from Bear River First Nation in Canada to South Africa and Myanmar. Regional workshops in the Mekong River Delta and Central America provide spaces for debate and training among fishers' organizations, community groups, government representatives, and researchers. WFFP and its allies are also developing popular materials about implementation and gender in SSF to facilitate outreach work in fishing communities.

Finally, in order to motivate states to take seriously their role as duty bearers, regional efforts by WFF and WFFP, in collaboration with the FAO, have focused on influencing governments and policy-makers. For example, they have been developing an approach to engage with the African Union (AU) and inform the AU Fisheries Report Program. Part of this work will focus on how the AU can facilitate regional or national government engagement on implementation of the Guidelines. A significant aspect of this work is that WFF and WFFP members in Africa agreed with the FAO to develop a work program for the FAO in Africa for the next two years. This joint program is still under development.

Multi-stakeholderism to the rescue?

As this comparison between a RBA and the HRBA shows, these views do not co-exist in harmony. WFFP and allies have consistently pointed out how privatization schemes displace small-scale fishers and make way for ocean grabbing.⁴² However, there are many voices claiming that these approaches are complementary. As stated by the FAO, 'Soft law instruments such as the Small Scale Fisheries guidelines focus on specific components of the fisheries sector that need special attention. New initiatives are developing to strengthen and complement these efforts such as the Blue Growth Initiative (BGI) and the Coastal Fisheries Initiative (CFI).'⁴³

This glossing over of opposition is facilitated by 'multi-stakeholder dialogue'. The word, 'stakeholder', has overt political consequences in terms of who are considered to be legitimate actors and partners in solving global issues; legitimate rights-holders (people) are put on par with other actors (e.g. corporations and investors). '... [W]hen public-interest actors use the term 'stakeholder', they automatically accept that it also means TNCs/business, and are thus buying into the rhetoric of the neoliberal economic system and its model of governance.'⁴⁴

Especially with the recent makeover of the RBA, transnational (environmental) NGOs like the Environmental Defense Fund, Oxfam, Conservation International, and WWF, as well as corporate actors, are asserting their role in multi-stakeholder dialogues concerning fisheries. And increasingly, states are urging them to participate. At the inter-state level, there is broad consensus about the need to mainstream the principles of the SSF Guidelines into regional, national, and local level policy.⁴⁵ However, multi-stakeholderism has had serious impacts on the role of states in governance and on their accountability for protecting, respecting, and fulfilling human rights. The now-common use of 'stakeholders' is emblematic of a long process that has gradually shifted norms about who gets to take part in global governance decision-making processes. In the past 20 years, private sector actors have gradually gone from being actors *regulated* by states, to increasingly being seen as *partners* of states in solving pressing global issues.

To be sure, a broad range of actors have historically been consulted in the UN-based multilateral system. However, especially since the Earth Summit in Rio 1992, a shift has taken place, whereby these diverse actors – notably the private sector, but also scientists and large NGOs – are not just consulted, but are actively taking part in ‘governance’. Thus, the Agenda 21 adopted at the Earth summit in 1992 states, ‘Governments, business and industry, including transnational corporations, should strengthen partnerships to implement the principles and criteria for sustainable development.’⁴⁶ Two years later in 1994, the UNDP endorsed Public-Private Partnerships as a mechanism for the provision of urban water, waste management, public transportation, and energy. From then on, the partnership between the UN and the private sector has gradually strengthened, which Kofi Annan announced in 1997 would be one of his priorities as secretary-general. He followed this up in 2000 with the launching of the Global Compact together with the International Chamber of Commerce (including organisations like Unilever and Goldman Sachs), which stresses the partnership between government bodies and the private sector generally. Today private sector actors are actively encouraged to take part in solving global issues – not least issues relating to oceans and fisheries governance. As Naoko Ishii, CEO and Chair of the Global Environmental Facility remarked at the #OurOceans Conference held in Washington in September 2016, ‘We cannot secure our ocean’s future without the active involvement of the private sector.’

But what happens when representatives of fisherfolk disagree with this increasing involvement of ‘stakeholders’ in critical questions of who gets access to what, on which terms, and to what ends? WFFP and WFF lament this involvement in a statement from last year on the FAO’s Coastal Fisheries Initiative (CFI):

... from day one, the CFI contravened the basic principle of participation of the VGSSFE, which emphasizes that affected small-scale fishing communities should be involved in decision making prior to decisions being taken. Instead, through their version of ‘consultation’ (i.e. answering questionnaires and participating in workshops) we were reduced to the level of other ‘stakeholders’ on par with private-sector representatives, academics etc. although we are the ones who represent the people who stand to be most affected by the CFI.

The increasing ‘corporate capture’ of global governance processes related to fisheries,⁴⁷ runs counter to the HRBA and raises important tactical and strategic questions for fisher peoples’ movements in relation to the on-going implementation of the SSF Guidelines: how can they best engage in the different policy processes that are opening up in relation to implementation? At what point does a decision-making space become so compromised that participation risks legitimizing the status quo? Where, when, and how is it possible to exert real influence in the struggle for human rights and food sovereignty?

Resisting multi-stakeholderism: The Global Partnership for Oceans

Multi-stakeholder processes are increasingly well-entrenched and considered mainstream (e.g. the Sustainable Development Goals) in the realm of global fisheries governance. Nonetheless, some of the most powerful of these have been successfully resisted and opposed by global fishers' movements. For example, in 2012 the World Bank launched the now defunct Global Partnership for Oceans (GPO). The GPO, in its own words⁴⁸, sought to end unsustainable harvesting of ocean resources, habitat destruction, and ocean pollution through a number of measures by 2022. The program was launched in Singapore at The World Ocean Summit 2012 – a bi-annual event hosted by The Economist. At the launch, the then president of the World Bank, Robert Zoellick, proclaimed that over \$1.5 billion (US dollars) would be raised over five years to secure these measures.⁴⁹ While in his speech Zoellick did not come much closer to defining what these measures would be, the program's draft framework document (released in January 2013, but until then not open to the public) shed light on how it planned to achieve sustainability: 'Reduce the open access nature of fisheries by creating responsible tenure arrangements, including secure access rights for fishers and incentives for them to hold a stake in the health of the fisheries'.⁵⁰ Throughout the framework document, in tune with the shift to more 'strategically benign rhetoric', instead of private property rights, the World Bank referred interchangeably to 'clear and secure access rights', 'responsible tenure arrangements', 'spatial rights' or simply 'fishing rights' or 'rights'. Furthermore, reflecting the merger of economic efficiency with sustainability discourse, the document was replete with the term 'sustainability': on 57 pages 'sustainable' or 'sustainability' appeared 110 times.

The GPO quickly received widespread support from a range of 'stakeholders' spanning states and state agencies, private sector actors, NGOs, philanthropic foundations, etc. However, crucially, rights-holder representatives in the fisheries sector forcefully resisted the GPO. In March 2013, WFFP and WFF released a powerful statement calling on governments to oppose the GPO⁵¹. The statement criticizes the lack of meaningful inclusion of fisher peoples in the development of the GPO (similar to the procedural critique voiced towards the CFI quoted above), as well as the resulting emphasis on rights-based fisheries which, as they argued, would have severe negative impacts on fisher communities across the world. With reference to their experiences, they conclude:

These examples document how RBF leads to de facto exclusion of small-scale fishers and the concentration of fishing rights with an elite minority. They provide evidence that RBF is incompatible with small-scale fishing, and is likely to result in the loss of traditional fishing management practices. Furthermore, they show that the 'ownership promotes stewardship' thesis is far from a universal truth, as claimed by the GPO.

Throughout the following two years, WFFP, WFF, and allies have continued to insist that there were (and are) fundamental differences between the RBA and the HRBA. Furthermore, they argued, the difference between these two positions could not be negotiated away, merely by WFFP and WFF becoming part of the GPO and sitting around the same 'stakeholder' table as rights-based proponents in the GPO, like transnational corporations (e.g. Darden Restaurants) or environmental NGOs (e.g. Environmental Defense Fund). As a result of this continued and concerted advocacy and resistance, the GPO was ultimately abolished in 2015 due to lack of funding for the program, with the final death-blow coming from the Norwegian development fund NORAD, which argued that the GPO 'would probably not contribute to poverty reduction'.⁵²

How future multi-stakeholder proposals—be they for the implementation of the SSF Guidelines or on other issues related to the sector—can best be resisted will depend on the specifics of the situation, but this real-world example shows that even the most powerful coalitions of actors *can* successfully be resisted.

What is to be done?

In the face of the tensions described above, small-scale fisherfolk, indigenous peoples, and allies around the world are on one hand struggling to resist the rights-based approach in all of its manifestations (ITQs, Catch Shares, User Rights, etc.). On the other hand, they are actively proposing and building alternatives. This struggle is ongoing and support from diverse groups is needed. Some concrete ways to take this work forward include the following:

1 *Reframe the debate:*

As we have explained in this report, the language of user rights can be seen as an attempt to talk about old (and highly contested) ideas in a new way in order to garner support. Countering this agenda requires unmasking what is really behind this clever communications strategy. By publicizing the history, the real life consequences, and the political power dynamics behind the user rights agenda, we can help to reframe the debate. This type of communications work provides crucial information that can be used to debunk myths, raise awareness, and strengthen alliances between small-scale fishers and the general public, policy-makers, and other civil society organizations. Two of the most common myths upon which the rights-based agenda is founded, which must be challenged, are:

- a 'The human rights-based approach is compatible and complementary to the rights based approach'. In fact, they are contradictory. The RBA upholds the status quo while the HRBA has profound transformative structural, political, material, and cultural implications if implemented fully.
- b 'Small-scale fishers are not able to properly manage marine and aquatic resources without formal property rights'. This myth helps to marry privatization with ecological agendas, in the context of climate change. However, historically and today, small-scale and artisanal fishers are not just fishers, they are ecological stewards, closely in tune with the natural environment that they rely on economically, culturally, and spiritually. The recent and increasing use of agroecology and food sovereignty language by WFFP to convey this point, does not mean these practices are new. It means that fisher and peasant movements have recently found common political ground upon which to build stronger alliances that provide real adaptation and mitigation strategies for a climate-changing world. This means that small-scale fishers together with peasants practicing agroecology are one of our best frontline defences against climate change.

This report has been deliberately published on November 21, 2016 in an attempt to use World Fisheries Day to raise awareness and debunk these dangerous myths. Timing the publication of materials that can reframe the debate with symbolic or important events is one way to amplify this work.

2 *Engaging with decision-makers:*

Advocacy work and facilitation of discussion is needed at the local, national, and international levels in order to ensure the implementation of the SSF Guidelines according to the HRBA. Specific ways we can demand that national and local governments engage with the SSF Guidelines include the following:

- a** Reform or create new policies based on the SSF Guidelines
- b** Make aspirational commitments in relation to the human rights principles outlined in the guidelines
- c** Reframe local concerns as human rights issues
- d** Open spaces for participatory governance and monitoring
- e** Report on local compliance with human rights treaties
- f** Conduct human rights-based audits and impact assessments⁵³

At the international level important alliances within organizations like the FAO must be cultivated and strengthened. At the same time the lack of coherence within and across FAO activities undermines efforts to implement the SSF Guidelines according to the HRBA and must be constantly challenged.

At all levels there is a need to constantly fight for effective participation of SSFs and for gender parity in all processes related to the sector; with the rise of multi-stakeholderism this is becoming increasingly difficult. The common refrain, 'It is not about us without us' rings true here. Processes where guidelines for implementation exclude small-scale fishers – in some cases together with decision-makers and NGOs – must be called out for running counter to the SSF Guidelines themselves. Other actors who also participate in those decision-making spaces (academics, policymakers, NGOs, etc.), must use their privilege to call attention to this principle if they find themselves in a space where it is not being respected.

3 *Don't wait for the state*⁵³

While the Guidelines are addressed to states, social movements and allies should not wait for the state to act. Capacity-building, political formation, and education activities to support the mobilization and engagement of small-scale, artisanal, and indigenous fishers are needed *now*. In order to claim the SSF Guidelines as a tool to be used by fishers themselves, it is important to make them known, to provide educational spaces that explore how to use them, and to share knowledge and experiences related to these efforts. At the same time, small-scale fisher organizations like WFFP and WFF have been at the forefront of articulating how the HRBA to fisheries should develop in practice. In many cases, what is really needed is for their leadership to be supported and their perspectives taken seriously.

Appendix 1

	Agroecology	Human rights-based approach	User rights & make-over of rights-based fisheries	Rights-based fisheries approach
Key texts	Agroecology and fisheries draft WFFP statement from Bangkok CC meeting, April 2016	Small-scale fisheries Guide	Costello et al., 2008; FAO's technical guide on the TGs in Fisheries; Cambodia, Italy, and Uganda meeting reports	Academic work by fisheries economists: <i>Rights-Based Fishing</i> by Neher et al. (1989) reports
What is the problem? Key starting point, and/or priorities	Primary goal is to transform structures of power in society & put the control of the food system in the hands of those who feed the world	Primary concern is food insecurity and respect for universal, inalienable, and indivisible human rights of the most marginalized fishing communities around the world	Primary concern is establishing 'secure tenure rights' to solve a range of issues: socio-economic and environmental	Primary concern is economic efficiency . Crises in fisheries result from fisheries not yielding economic rent due to lack of property rights.
Logic of distribution of resources. Who gets what?	Human rights and preferential access for marginalized groups	Human rights and preferential access for marginalized groups	Unclear – stresses that 'no one size fits all' but does not otherwise elaborate	The market decides through private property rights. Goal = 'economic efficiency', not equal distribution of resources
How do we relate to the natural world?	The environment cannot be understood as separate from food producers or their socio-economic realities. This relationship cannot be reduced to economic incentives.	Need to ' promote sustainable development ' through an ecosystems-based approach	Tragedy of the commons approach ⁵⁵ 'limiting the number of people fishing is usually an essential ingredient of sustainable fisheries.' 'Ownership promotes stewardship.'	Tragedy of the commons approach. Respect for nature is created through economic incentives or crisis.
Why and how do we use natural resources?	To build alternative economies that provide dignified jobs, respect the environment and human rights	Use fishing practices that minimize environmental harm to sustain current and future livelihoods for many people	Economic growth and capital accumulation	Economic growth and capital accumulation
Who are the fisheries 'experts'?	Promotes collective knowledge-building by and for fishing communities themselves. Learning processes are horizontal, peer-to-peer.	'Knowledge, culture, traditions and practices of small-scale fishing communities, including indigenous peoples, are recognized and, as appropriate, supported'	'Multi-stakeholder approach' – FAO attempts to bring many different actors together and through dialogue reach 'common solutions'	Fisheries economists
Jobs	Small scale fishing jobs should be protected and are all part of an interconnected socio-economic system. We must make visible and value the work of women in the sector.	Small scale fishing jobs should be protected as they serve as an 'economic and social engine, providing food and nutrition security, employment and other multiplier effects to local economies.' (p. v)	Loss of jobs in the fishing sector is a given. Emphasis on ' alternative incomes and livelihood to small-scale fisheries	Loss of jobs in the fishing sector is a given '... but since rights based fishing promises a bonus of greater efficiency, the potential losers can be compensated.'
Governance of tenure and access	Affirms the right of small-scale and artisanal food producers to maintain control over natural resources through diverse tenure rights including customary or collective rights	Small-scale fishing communities need to have secure tenure rights ⁵⁶ to the resources that form the basis for their economic, social and cultural well-being 'as appropriate, redistributive reform ' (p. 6)	ITQs, Territorial User Rights in Fisheries (TURFs), Wealth Based Fishing, Rights Based Fishing, Catch shares	ITQs, Territorial User Rights in Fisheries (TURFs), Catch Shares – all of these as a first step in a much wider privatization of the entire eco-system
Conservation	Small-scale, indigenous and artisanal fishers know how to (and already do!) incorporate conservation activities into their daily work	'Small-scale fishing and indigenous communities restore, conserve, protect and co-manage local aquatic & coastal ecosystems' (p. 5)	Ensuring the right ' incentives ' will create sustainable fisheries. The financial sector has a key role to play in 'financing the transition'. In combination with: Marine Protected Areas	Economic efficiency will automatically solve any environmental problems

Endnotes

- 1 The SSF Guidelines can be accessed in different languages here: <http://www.fao.org/fishery/ssf/guidelines/en>
- 2 See items 9.1 and 9.2 in the agenda, which can be found in Annex 1 of the report of the meeting: <http://www.fao.org/3/a-mr484e.pdf>
- 3 Hardin, G. 1968. The Tragedy of the Commons. *Science*. 162 (3859), p. 1243-1248
- 4 Gordon, H.S. 1954. The economic theory of a common-property resource: the fishery. *Journal of Political Economy* 62 (2), p. 124-142
- 5 Neher, P.A., Arnason, R. & Mollet, N. 1989. *Rights Based Fishing*. Kluwer Academic Publishers. Dordrecht / Boston / London
- 6 For a recent overview, see: Longo et al. 2015, *The Tragedy of the Commodity: Oceans, Fisheries and Aquaculture*. Rutgers University Press.
- 7 For all the documents presented in this session, see: <http://www.fao.org/about/meetings/cofi/documents/en/>
- 8 For the meeting reports from each of these, see: <http://www.fao.org/about/meetings/user-rights-2015/resources/conference-documents/en/>
- 9 FAO, 2015. *Tenure & Fishing Rights 2015: A global forum on rights-based approaches for fisheries*, 23-27 March 2015, Siem Reap, Cambodia <http://www.fao.org/3/a-i5812e.pdf> p. iii.
- 10 Ibid p. 3.
- 11 Ibid p. 7.
- 12 For the program as presented to COFI, see: <http://www.fao.org/3/a-mq773e.pdf>
- 13 For list of participants see the meeting reports: <http://www.fao.org/about/meetings/user-rights-2015/resources/conference-documents/en/>
- 14 FAO 2016, Report of the 32nd Session of the Committee on Fisheries, Rome 11-15 July 2016, p. 16 <http://www.fao.org/3/a-mr484e.pdf>
- 15 The same Arnason was also part of the World Bank-led Global Partnership for Oceans (e.g. as a member of the 'Blue Ribbon Panel' that provided 'guidance' to the partnership: <http://documents.worldbank.org/curated/en/2013/10/18516203/indispensable-ocean-aligning-ocean-health-human-well-being-guidance-blue-ribbon-panel-global-partnerships-oceans>)
- 16 Árnason, R. 2000. Property rights as a means of economic organization, in *Use of Property Rights in Fisheries Management: Proceedings of the FishRights99 Conference*
- 17 As Olson (2011) explains in her survey of experiences with ITQ-systems around the world, in both Iceland and New Zealand this has led to marked concentration and consolidation favouring large-scale operations with severe impacts on community sustainability and traditions. See: Olson, J. 2011. *Understanding and contextualizing social impacts from the privatization of fisheries: an overview*. *Ocean & Coastal Management*. 54, p. 353-363
- 18 Árnason, R. 2000. Property rights as a means of economic organization, in *Use of Property Rights in Fisheries Management: Proceedings of the FishRights99 Conference*
- 19 For more on Ocean Grabbing, see: *The Global Ocean Grab – a primer* http://worldfishers.org/wp-content/uploads/2015/01/The_Global_Ocean_Grab-EN.pdf See also Bennet, N. et al. 2015. *Ocean grabbing*. *Marine Policy*, Vol. 57, p. 61-68
- 20 FAO 2016. *DRAFT: A technical guide for fisheries: applying the voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the fisheries sector*, February 2016. FAO – The document was circulated to meeting participants
- 21 FAO Fisheries and Aquaculture Department [online]. *Property rights and fisheries management*, Rome 2005. <http://www.fao.org/fishery/topic/13335/en>
- 22 See WFFP's and WFF's critique of the rights-based fisheries perspective in the *Global Partnership for Oceans*: http://worldfishers.org/wp-content/uploads/2015/11/WFFP-WFF-Call-on-Governments_GPO_200313.pdf For critical analysis from academia see Macinko, S. 2014, *Lipstick and catch shares in the Western Pacific: Beyond evangelism in fisheries policy*, *Marine Policy* 44 p. 37-41; and also Camppling, L. & Havice, E. 2014, *The problem of property in industrial fisheries*, *The Journal of Peasant Studies* Vol. 41, 5, p. 707-727.
- 23 *Proclamation of Tehran*, International Conference on Human Rights, 22 April-13 May 1968, UN Doc. A/CONF.32/41.
- 24 FAO 2016. *Background paper for Exploratory Workshop: Human rights-based approach to the implementation and monitoring of the SSF guidelines*, 24-26 October, 2016, Rome, FAO p. 24
- 25 FAO 2016, *Report of the 32nd Session of the Committee on Fisheries*, Rome 11-15 July 2016, p. 14 <http://www.fao.org/3/a-mr484e.pdf>
- 26 For example, the background document for the user rights meeting in Uganda mentioned above was specifically on *Applying the Tenure Guidelines in the Fisheries Sector*.
- 27 See p. 7 in the report by the Civil Society Mechanism: http://www.fao.org/fileadmin/templates/cfs/Docs1516/OEWG_Monitoring_CSM_Monitoring_Report_VGGT_final1_EN.pdf
- 28 FAO 2016. *Background paper for Exploratory Workshop: Human rights-based approach to the implementation and monitoring of the SSF guidelines*, 24-26 October, 2016, Rome, FAO p. 12
- 29 As the Human Rights Committee ruled in 2007: http://www.worldcourts.com/hrc/eng/decisions/2007.10.24_Haraldsson_v_Iceland.htm
- 30 As the South African High Court ruled in 2007 (see p. 13): http://www.ohchr.org/Documents/Issues/Food/SRRTF%20BN%2005_SouthernEasternAfrica_en.pdf
- 31 See Macinko 2014 (footnote 9) and Macinko's keynote speech at WFFP's 6th General Assembly for a general overview of the spread of privatisation in fisheries policy: <https://www.youtube.com/watch?v=UTzNJMoXYaw>
- 32 <http://science.sciencemag.org/content/321/5896/1619.1> The study spread widely and was picked up by influential Western media under similarly polemical titles, including in *The Economist*: <http://www.economist.com/node/12253181> and the *New York Times*: <http://www.nytimes.com/2008/09/19/science/19fish.html>
- 33 http://www.huffingtonpost.com/david-bank/post_10965_b_9114238.html
- 34 Longo et al. 2015, *The Tragedy of the Commodity: Oceans, Fisheries and Aquaculture*. Rutgers University Press. p. 53
- 35 World Bank 2013. *The Sunken Billions: The Economic Justification for Fisheries Reform*. p. xxi Available at: http://publications.worldbank.org/e-commerce/catalog/product?item_id=8948306
- 36 WWF 2012, *Rights-Based Management: Conversing Fisheries. Protecting Economies*. Available at: http://assets.worldwildlife.org/publications/567/files/original/WWF_RightManagement_brochure_final.pdf?1366230179&_ga=1.73305883.960860839.1452866308 While it may, from the neoclassical perspective, provide 'economic efficiency', we have discussed the social consequences above and the ecological merits have recently come into question in academic literature e.g.: <http://www.ecologyandsociety.org/vol20/iss4/art7>
- 37 See p. 2 of the CFI's Program Framework Document, available at: <http://worldfishers.org/wp-content/uploads/2015/11/GEF-CFI-Framework-document.pdf>

- 38 As pointed out in the document, 'coastal' in this instance refers to all fisheries within the EEZ.
- 39 CFI's Program Framework Document, available at: <http://worldfishers.org/wp-content/uploads/2015/11/GEF-CFI-Framework-document.pdf> page 6.
- 40 *ibid* page 18
- 41 *ibid* page 23
- 42 See ocean grabbing brief
- 43 FAO 2015c. Oceans and sustainable development: integration of the three dimensions of sustainable development, namely environmental, social and economic. FAO Contribution to Part I of the Report of the Secretary General on Oceans and the Law of the Sea. Submitted to the Sixteenth Meeting of the United Nations Open-Ended Informal Consultative Process on Oceans and the Law of the Sea (ICP 16). Pg. 7. Available at: http://www.un.org/depts/los/general_assembly/contributions_2015/FAO.pdf
- 44 Lhotska, L. 2015. 'The Origins of 'Multi-Stakeholderism' – Why Words Matter' p.27, In: Right to Food and Nutrition Watch 2015
- 45 FAO 2015c (see footnote 28) p. 20
- 46 Quoted in Sogge, D. 2014. 'The camel's nose in the tent of global governance' p. 18. In: State of Power 2014: Exposing the Davos Class, TNI: Amsterdam
- 47 See also Barbesgaard, M. 2016. 'The Privatization and Corporate Capture of Global Fisheries Policy' in Right to Food and Nutrition Watch 2016 p. 34-37
- 48 World Bank 2013. Draft: The Global Partnership for Oceans Framework Document. Accessed in February, 2013 from: <http://www.globalpartnershipforoceans.org/sites/default/files/images/GPO%20Framework%20Doc%20Draft%20clean%20%2818%20February%202013%29.pdf> Website no longer active, and documents not accessible online.
- 49 See his full speech here: <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:23126181~pagePK:34370~piPK:34424~theSitePK:4607,00.html>
- 50 World Bank 2013, p.4
- 51 The statement is accessible here: http://worldfishers.org/wp-content/uploads/2015/11/WFFP-WFF-Call-on-Governments_GPO_200313.pdf
- 52 As reported in Development Today: http://worldfishers.org/wp-content/uploads/2015/11/Development-Today_-_World-Bank-winds-up-fisheries-initiative.pdf
- 53 Based on criteria put forward by Kamuf Ward 2012. "Bringing Human Rights Home: How State and Local Governments Can Use Human Rights to Advance Local Policy," Columbia Law School, Human Rights Institute pg 1.
- 54 As argued by Franco and Monsalve 2016. ICAS Colloquium, The Hague, Netherlands.
- 55 The belief that resources held in common will inevitably be destroyed as more and more users driven by economic gain compete for a limited amount of resources. In fisheries, 'too many fishers chasing too few fish'. Often leads to the view that private property rights are the way to solve the 'tragedy'.
- 56 The term 'tenure right' is used in accordance with the Tenure Guidelines.



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