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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Fisheries and the right to food in the context of climate change**

### **Report of the Special Rapporteur on the right to food, Michael Fakhri**

#### *Summary*

In the present report, submitted to the Human Rights Council pursuant to Council resolution 43/11, the Special Rapporteur on the right to food, Michael Fakhri, provides a framework for the advancement of the rights of small-scale fishers, fish workers and Indigenous Peoples and a guide for States to ensure that the world's aquatic ecosystems are biodiverse and safe and that States fulfil human rights obligations despite climate change challenges.



## I. Introduction

### A. Overfishing, climate change, and the coronavirus disease (COVID-19) pandemic

1. Just as there is no life without water, there is no life for millions of people in coastal and riparian communities without small-scale fishers and fish workers. The full enjoyment of human rights by small-scale fishers and fish workers is therefore a necessary precondition for the realization of the right to food by everyone. In the present report, the Special Rapporteur focuses on small-scale fishers, fish workers and Indigenous Peoples reliant on fishing, because they are on the front lines of climate change. He thanks States, members of civil society and experts for their inputs and consultations. The report is built upon and advances the work done by previous mandate holders and in the context of the International Year of Artisanal Fisheries and Aquaculture.<sup>1</sup>

2. Small-scale fishers have been warning governments about the dangers of overfishing since at least the 1860s. For over a century and half since then, small-scale fishers' ecological concerns have been ignored, as large-scale fishing has increased in mechanization and capacity, harvesting at rates faster than the stock could rebuild. Governments were blinded by large profits and assumed that fish stocks would always be at abundant levels.<sup>2</sup>

3. In the past 50 years, overfishing tripled; today, one third of the world's assessed fisheries are currently pushed beyond their biological limits. Meanwhile, 60 per cent of the world's fisheries are being fished at capacity. The global biomass of large predatory fish targeted by fisheries has fallen by two thirds over the past century. One third of freshwater fish are threatened with extinction owing to overexploitation, pollution and habitat destruction.<sup>3</sup> Overfishing not only threatens the environment but also undermines the food security and livelihood of billions of people.

4. Moreover, among food systems, small-scale fisheries are some of the most vulnerable to climate change.<sup>4</sup> Members of coastal communities and Indigenous Peoples on coasts, especially in the Arctic and on small islands, have been among the first people to experience the disruption and violence wrought by climate change.

5. The COVID-19 pandemic hit the fishing sector hard. Travel restrictions meant that fishers were unable to get their catch to markets and consumers, leading to a decline in demand and prices. The closure of ice-storage facilities, which were not considered essential services, made it impossible for fishers to preserve their catch. Many fishers were thus forced to "dump" their catch back into the sea.

6. During the pandemic, many workers in the processing, harvesting and marketing industries lost their jobs. Moreover, working on fishing vessels and in post-harvest handling, packaging and processing increased risks of virus transmission and outbreaks of COVID-19 because of close quarters; lack of regular supplies, including personal protective equipment; and intermittent access to medical care. Immediately after the imposition of the lockdowns, many migrant fish workers were stranded, often having to survive without any relief or assistance from the government. The pandemic has had a devastating impact on women fish processors and vendors, particularly women heads of household, who represent the majority of this workforce. This led to greater declines in women's employment and increased rates of gender-based violence. With closed schools and strained health systems, women's and girls' unpaid care and domestic work intensified.<sup>5</sup>

<sup>1</sup> See [A/59/385](#), [A/67/268](#), [A/73/164](#) and Food and Agriculture Organization of the United Nations (FAO), *International Year of Artisanal Fisheries and Aquaculture 2022: Final Report* (Rome, 2023).

<sup>2</sup> Mark Kurlansky, *World Without Fish* (New York, Workman Publishing, 2011).

<sup>3</sup> [A/76/179](#), para. 24; see also <https://www.fao.org/3/cc0461en/online/sofia/2022/status-of-fishery-resources.html>.

<sup>4</sup> FAO, *Impacts of Climate Change on Fisheries and Aquaculture* (Rome, 2018).

<sup>5</sup> FAO, *The State of World Fisheries and Aquaculture 2022: Towards Blue Transformation* (Rome, 2022), pp. 197 and 209. See also <https://www.ilo.org/asia/publications/issue->

7. The pandemic, climate change, pollution and overfishing are brutally harming small-scale fishers, fish workers and their communities. Nevertheless, small-scale fishers, fish workers and Indigenous Peoples remain stewards of the world's waters; they have demonstrated a capacity to adapt to climate change and play an important role in restoring, conserving, protecting and jointly managing local aquatic and coastal ecosystems.<sup>6</sup> They are integral to most countries' recovery from the pandemic and food system transformation, considering that small-scale fisheries employ more people than all other ocean economic sectors combined.<sup>7</sup> Including subsistence and secondary sector workers and their dependents, it is estimated that about 600 million livelihoods depend at least partially on fisheries and aquaculture,<sup>8</sup> 95 per cent of those workers are in the global South. Based on recent annual averages, small-scale fishing accounts for 90 per cent of the world's capture-fishing employment. Of the 92 million tons of fish captured annually, 40 per cent are captured by small-scale fishers.<sup>9</sup>

8. Yet small-scale fishers and fish workers are still often marginalized or ignored by governments, international organizations and businesses when environmental and commercial plans are devised and implemented. Their human rights are often violated – whether through exploitation or dispossession from territorial waters – as a result of industrial fishing fleets and large-scale aquaculture servicing global seafood buyers, the establishment of no-fishing reserves for conservation (“marine protected areas”), coastal development and industrialization of seascapes, the construction of dams, and offshore oil and gas operations.

9. In the present report, the Special Rapporteur uses the term “fisheries” to encompass the capturing (or hunting), farming, harvesting and processing of fish and shellfish. He does not address the hunting of marine mammals, since this a different economic sector and is governed by its own set of legal regimes and institutions, although the ways of life of some coastal communities and Indigenous Peoples are organized around the hunting of fish and marine mammals.

## B. Small-scale fishers and fish workers

10. It is important to understand the difference between small-scale fishers and fish workers, since each constituency has something different at stake and its own set of legal instruments. Nevertheless, these interests and instruments overlap and many of the rights available to small-scale fishers are available to fish workers. Also, an individual holds a plural, dynamic set of identities. For example, many small-scale fishers work as fisheries workers for wealthier fishers or large-scale, commercial fishers, either seasonally or for a certain period to pay off debts. Workers in the fisheries sector may actually fish, and/or engage in activities such as cleaning and processing fish, selling fish, cleaning boats and gear or working in storehouses. They may capture fish during some seasons and seek employment at different times of year or in different years. Moreover, as described more fully below, determining which activities are within the gamut of “fisher” versus “worker” is often distinguished in gendered ways. What makes someone a worker is not the type of work, but the conditions of their work, which is primarily defined by the fact that an employer pays them an income.

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[https://www.unhcr.org/refugees/briefs/WCMS\\_842605/lang--en/index.htm](https://www.unhcr.org/refugees/briefs/WCMS_842605/lang--en/index.htm); <https://focusweb.org/impacts-of-covid-19-on-small-scale-and-traditional-fishers-and-fishworkers-in-india/>; and <https://focusweb.org/covid-19-outbreak-socio-economic-impact-on-small-scale-fisher-and-aquaculture-in-indonesia/>.

<sup>6</sup> FAO, Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication, para. 5.5; Xochitl Édua Elías Ilosvay, Jorge García Molinos and Elena Ojea, “Stronger adaptive response among small-scale fishers experiencing greater climate change hazard exposure”, *Communications Earth & Environment*, vol. 3 (2022); and <https://www.righttofoodandnutrition.org/stewards-our-waters-and-seas-time-recognize-and-support-small-scale-fishers>.

<sup>7</sup> Phillipa J. Cohen and others, “Securing a just space for small-scale fisheries in the blue economy”, *Frontiers in Marine Science*, vol. 6 (April 2019), p. 2.

<sup>8</sup> FAO, *The State of World Fisheries and Aquaculture 2022*, p. xvi.

<sup>9</sup> FAO, Duke University and WorldFish, *Illuminating Hidden Harvests: The Contributions of Small-Scale Fisheries to Sustainable Development* (Rome, 2023), p. xxxv.

11. A human rights-based approach therefore does not only draw from an intersectional analysis of discrimination and oppression and ensure policy coherence. It also encourages solidarity among small-scale fishers and workers, emphasizing gender justice and recognizing the unique position of Indigenous Peoples.

### C. Small-scale fishers

12. There is no singular definition of a small-scale fisher. Similar terms include artisanal fishers or fisherfolk. Small-scale fishers typically involve fishing households who use small-scale fishing vessels. They depend on small amounts of capital and energy, usually in the form of family, household or cooperative labour, and fish close to shore with short stints into the body of water. What counts as small, however, is very context specific for each country and covers a wide range of sizes globally.

13. Small-scale fishers tend to be firmly rooted in local communities, traditions and values, and as such provide food and livelihoods for entire communities across generations. People also migrate to engage in small-scale fishing. Small-scale fishing is a way of life as much as it is a livelihood, and it is how many communities create meaning and value in their daily life; therefore, people's cultural rights are at stake. Unlike large vessels, which are often supported through foreign capital, small vessels are directly linked to local communities, ensuring vibrancy in small ports and creating social and cultural value.

14. Small-scale fisheries include capture fishing and cultivated fishing (artisanal or traditional aquaculture). Small-scale fishers can harvest for household consumption (subsistence), for income (commerce) or for both. Small-scale-fisher commerce can cover several different activities. Small-scale fishers often sell in local markets but can also sell across borders within a region. In developing countries, fish caught by small-scale fishers are an important source of protein and essential micronutrients. Informal-fishery market chains contribute to the livelihoods of hundreds of millions of people.<sup>10</sup> Small-scale fishers may own or lease their boats and fishing gear.

15. In sum, small-scale fishing, compared to other fishing operations, is more labour intensive and less mechanized, has a relatively smaller ecological and carbon impact and is central to coastal and riparian social, economic and cultural life. One can assess scale by looking at the type of gear, mechanization, vessel size, fishing locations, storage/preservation requirements, and labour and commercial relationships, and at how the catch is used after harvest.<sup>11</sup>

16. Ultimately, however, determining what is small scale is a social, cultural and political, rather than technical, question. States should define small-scale fishing through a transparent and meaningful public process and using human rights-based approaches.<sup>12</sup>

17. The Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication<sup>13</sup> recognize small-scale fisheries as essential to social, economic and environmental development; they use a human rights-based approach to integrate social, economic and environmental development goals. The Voluntary Guidelines are the culmination of years of advocacy by fisher and fish-worker organizations and were developed through the participation of over 4,000 fishers, fish workers and others from over 120 countries. They were negotiated and endorsed by States through the Food and Agriculture Organization of the United Nations (FAO) Committee on Fisheries in 2014. They are considered one of the principal international instruments contributing to the sustainable

<sup>10</sup> Cohen and others, "Securing a just space".

<sup>11</sup> FAO, Duke University and WorldFish, *Illuminating Hidden Harvests*, p. 22.

<sup>12</sup> Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication, para. 2.4.

<sup>13</sup> Unless otherwise specified, in the present document "Voluntary Guidelines" refers to the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication.

and secure development of fisheries and a key tool for achieving various Sustainable Development Goals.<sup>14</sup>

18. The Voluntary Guidelines are key to fulfilling the right to food in the broadest sense, in the context of climate change and biodiversity loss. They provide an authoritative interpretation of peoples' legal entitlements in regard to small-scale fishing and concomitant State human rights obligations, enabling policy coherence across institutions.<sup>15</sup> As such, they must be interpreted in the light of international law and relevant human rights instruments such as the United Nations Declaration on the Rights of Indigenous Peoples, the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. Any contradictions and tensions within international law and among the instruments must be interpreted in a way that advances the full realization of human rights.

19. The Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication are necessary to address the long-standing political marginalization and exclusion of small-scale fishing communities. Small-scale fishers have the right to active and free participation, directly and/or through their representative organizations, in the entire decision-making process related to the preparation and implementation of policies, programmes and projects that may affect their lives, land and livelihoods.<sup>16</sup> In turn, States must consult and cooperate in good faith with coastal and riparian communities, taking into consideration existing power imbalances between different parties and avoiding discrimination against vulnerable groups.<sup>17</sup> States must ensure these consultations enable the active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes prior to the implementation of activities such as: the implementation of large-scale projects; the adoption of policies and management measures related to the migration of fishers and fish workers, international trade, climate change and disasters; inland and marine spatial planning; and the setting of research priorities.<sup>18</sup>

20. For example, Uganda enacted the Fisheries and Aquaculture Act, 2022, to regulate the conservation and management of fish resources and involve diverse groups, including women, youth and other sectors, in that area. As part of this effort, Uganda formed a national task team in November 2022, comprising representatives of civil society organizations, government officials and other stakeholders, to develop a national plan of action for implementing the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication. Furthermore, civil society organizations in Uganda have established forums that unite small-scale fishers and policymakers at the national, regional and international levels to engage in discussions regarding the status and concerns of small-scale fishing communities.<sup>19</sup> The Governments of the United Republic of Tanzania and Zimbabwe have also implemented national plans of action implementing the Voluntary Guidelines.<sup>20</sup>

<sup>14</sup> See <https://www.fao.org/3/cb4939en/cb4939en.pdf>.

<sup>15</sup> Voluntary Guidelines, sect. 10.

<sup>16</sup> *Ibid.*, para. 3.1, guiding principle 6; United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, arts. 2 and 10; and FAO, *International Year of Artisanal Fisheries and Aquaculture 2022*, p. 4.

<sup>17</sup> United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, art. 2 (3); and Voluntary Guidelines, para. 3.1, guiding principle 6.

<sup>18</sup> Voluntary Guidelines, paras. 5.10, 6.10, 7.7, 7.9, 9.2, 9.6 and 11.9; and United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, arts. 10 (1) and (2).

<sup>19</sup> Submission from FIAN Uganda.

<sup>20</sup> Submission from the Government of Zimbabwe; see also [https://www.fao.org/fileadmin/user\\_upload/ssf/documents/Tanzania\\_National\\_Plan\\_of\\_Action\\_Book.pdf](https://www.fao.org/fileadmin/user_upload/ssf/documents/Tanzania_National_Plan_of_Action_Book.pdf).

## D. Indigenous Peoples

21. Indigenous Peoples' connection with seas and rivers reflects the deep intertwining of their livelihoods, food security and culture. Of the over 476 million Indigenous people in the world,<sup>21</sup> around 27 million rely on fishing for their livelihoods and food security.<sup>22</sup> On average, coastal Indigenous Peoples' per capita consumption of seafood is 15 times higher than that of non-Indigenous populations.<sup>23</sup> Similarly, traditional fish harvests from rivers are pivotal for inland Indigenous Peoples.

22. At stake for Indigenous Peoples facing the commodification and overexploitation of aquatic resources is their inherent right to self-determination.<sup>24</sup> As such, Indigenous Peoples are entitled to control and govern their coastal and riparian ecosystems through their own tenure systems. In turn, States must protect and respect Indigenous tenure.<sup>25</sup>

23. Additionally, States' are obliged to fully realize Indigenous Peoples' right to free, prior and informed consent, which is the right of Indigenous Peoples to give or withhold their consent for any action that would affect their lands, territories or rights. This includes a duty to provide Indigenous Peoples with a special and differentiated consultation process.<sup>26</sup> Indigenous women and girls face relatively high risks of violence, especially in the course of advancing their land and territorial rights, and the risks are even higher when they oppose the implementation of development projects undertaken without their free, prior and informed consent. States should promote and support the meaningful, real and informed participation of Indigenous women and girls in political and public life and at all levels, including in decision-making positions.<sup>27</sup>

## E. Gender

24. Gender is a socially constructed category that distributes power among different groups and assigns different value to their work. In some communities, it is culturally unacceptable for women to fish. Globally, much of women's work contributes to pre- and post-harvest work. In other communities, if women fish it is often economically undervalued and politically discounted.

25. Patriarchal power is further entrenched when gender is treated as strictly binary, excluding fa'afafine, two-spirited and transgender persons and persons of other genders. Unfortunately, statistics disaggregated by gender focus only on women.

26. Women make up half of the overall workforce throughout fishery and aquaculture value chains, occupying critical roles. The vast majority of women are engaged in the informal, lowest paid, least stable and least skilled segments of the workforce. Women are

<sup>21</sup> See <https://www.un.org/en/fight-racism/vulnerable-groups/indigenous-peoples>.

<sup>22</sup> Andrés Cisneros-Montemayor and others, "A global estimate of seafood consumption by coastal Indigenous peoples", *PLoS ONE*, vol. 11, No. 12 (2016).

<sup>23</sup> *Ibid.*

<sup>24</sup> A right set out in the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic Social and Cultural Rights and the United Nations Declaration on the Rights of Indigenous Peoples. See also [A/HRC/51/24](#), para. 34.

<sup>25</sup> United Nations Declaration on the Rights of Indigenous Peoples, arts. 25 and 26; and Voluntary Guidelines, sect. 5.

<sup>26</sup> Inter-American Court of Human Rights, *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, Judgment, 27 June 2012, paras. 165 and 166; and African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, communication No. 276/2003, 4 February 2010, para. 212.

<sup>27</sup> Convention on the Elimination of All Forms of Discrimination against Women, arts. 7, 8 and 14; Committee on the Elimination of Discrimination against Women, general recommendation No. 39 (2022), paras. 22, 45 and 46; and United Nations Declaration on the Rights of Indigenous Peoples, arts. 21 (2) and 22.

often made invisible and not identified as workers because they are part of the fishing household.<sup>28</sup>

27. In certain segments of the processing sector worldwide, up to 85 per cent of the employees are women. The disproportionate amount of women's work in processing arises from discriminatory perceptions that women are more compliant, flexible and meticulous and accept lower pay than men. These patriarchal norms lead to poorly paid, precarious work for women, with little to no recognition provided at the policy level.<sup>29</sup> In times of scarcity, in some communities, women have had to offer sex to boat owners and boat crew in exchange for fish; in some communities, when a woman is a successful fisher, she is accused of witchcraft and persecuted.<sup>30</sup>

28. States should therefore take a gender-justice approach to fully realize the rights of and opportunities for people of all genders, redistributing power and ensuring equality among all genders.

29. States must also adopt specific measures to address gender-based discrimination, while creating spaces for civil society organizations, in particular for women fish workers and their organizations, to participate equally in all decision-making processes.<sup>31</sup> For example, Bangladesh has several programmes that benefit women and provide capacity-building and financial assistance, enhancing their post-harvest practices, marketing and value-chain development.<sup>32</sup>

## F. Fish workers

30. Fishery work is one of the three most hazardous occupations and is described by the International Labour Organization (ILO) as “dirty, dangerous and difficult”.<sup>33</sup> Yet States often fall short of their obligations and fail to monitor the sector and implement applicable national health and safety regulations, causing unsafe and unhealthy conditions across the sector.

31. Each fish worker, on average, provides for three dependents or family members. For each worker involved in capture fisheries, about four jobs are produced in the secondary activities, including fish trading, processing and selling, many of which are performed by women.<sup>34</sup>

32. Commercial fisheries are well-known for being dangerous and for their high rates of fatality, injury and disease. Most fatal incidents occur at sea, either from overexposure to heat, sun and salt water or because of the dangerous equipment, inoperative machinery or inadequate safety equipment. Inland fish workers often lack adequate safety equipment and may suffer fatal accidents caused by unstable fishing platforms. The health of aquaculture workers is compromised by prolonged exposure to toxic chemicals and antibiotics in the water, which make aquaculture increasingly dangerous.<sup>35</sup> Post-harvest workers, most of

<sup>28</sup> FAO, *The State of World Fisheries and Aquaculture 2022*, p. 207.

<sup>29</sup> *Ibid.*, p. 71

<sup>30</sup> Namaganda Rehema Bavuma and Park Muhonda, “Fisherwomen’s struggle for their right to food and nutrition: challenges and coping strategies of fisherwomen in Uganda and Malawi”, in *Right to Food and Nutrition Watch: Stewards of Our Waters and Seas – Time to Recognize and Support Small-Scale Fishers* (Global Network for the Right to Food and Nutrition, 2022).

<sup>31</sup> Convention on the Elimination of All Forms of Discrimination against Women, art. 14; Committee on the Elimination of Discrimination against Women, general recommendation No. 34 (2016), paras. 35 and 36; and Voluntary Guidelines, para. 8.2.

<sup>32</sup> International Planning Committee for Food Sovereignty, *People-Centred Assessment of the Implementation of the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Eradication: Bangladesh, India, Indonesia, Malaysia, and Sri Lanka* (2023), p. 38. Available at [https://www.foodsovereignty.org/wp-content/uploads/2023/11/SSF-Guidelines\\_Report\\_AP\\_web.pdf](https://www.foodsovereignty.org/wp-content/uploads/2023/11/SSF-Guidelines_Report_AP_web.pdf).

<sup>33</sup> A/HRC/40/56, para. 20.

<sup>34</sup> ILO, *Work in Fishing Convention and Recommendation, 2007: Action Plan 2011–2016* (Geneva, 2011), p. 1.

<sup>35</sup> Submission from Fellesforbundet – seafood and aquaculture workers.

whom are women, experience unique hazards associated with damp and dangerous processing facilities, and inevitably develop serious health problems.<sup>36</sup>

33. The Special Rapporteur also received worrying reports about fish workers' employment security and the right to a living wage. Fish workers, especially in developing countries, remain unable to pay for basic needs and services for themselves and their families. As many activities are seasonal, workers may only receive periodic income, and scheduled payments can be made late or withheld entirely throughout the supply chain.

34. Unlike the ILO standards relating to seafarers,<sup>37</sup> the ILO framework does not include a minimum basic wage figure for fish workers.<sup>38</sup> As a result, salaries are usually less than national minimum wages and rank among the lowest per capita income. Many fishers work informally or are self-employed, and thus are excluded from labour protections and do not benefit from social protection schemes, including social security, workers' compensation and health insurance. In small-scale fisheries, most workers operate under oral agreements that lack fixed or enforceable terms and benefits.<sup>39</sup>

35. Fish workers, especially in small-scale operations,<sup>40</sup> are often denied their right to freedom of association or to form labour unions because States do not legally recognize their employment and because of the remote and isolated work conditions. Employers in industrial, large and medium-size operations often refuse to recognize the labour rights of fish workers and are hostile to labour activists.<sup>41</sup>

36. Women, children and migrant workers are particularly vulnerable to the most severe forms of exploitation, including trafficking in persons, fraudulent and deceptive recruitment, forced labour, physical, mental and sexual abuse, homicide, abandonment and discrimination. The lack of protection for women fish workers is largely attributed to the prevalence of informal and "hidden" work arrangements. Women continue to face discrimination and gender-based violence throughout the industry, with more occupational risks, less secure employment than men and fewer opportunities to unionize.

37. Employing children in this dangerous sector is considered among the worst forms of child labour, yet it is prevalent in small-scale and aquaculture enterprises. Widespread poverty in fishing and aquaculture communities is conducive to child labour, as such labour is considered cheap and necessary to ensure food security for families.<sup>42</sup> Reportedly, of all children in child labour, about 48 per cent undertake hazardous work, about half are between 5 and 11 years old and about 42 per cent are girls.<sup>43</sup>

38. Migrant fish workers, who comprise a significant segment of the fisheries workforce, suffer the most severe forms of abuse, including contemporary forms of slavery such as forced labour, bonded labour and trafficking in persons. This is tied to illegal fishing, overfishing and unenforced labour standards.<sup>44</sup> Trafficking and forced labour among migrant

<sup>36</sup> Submissions from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF); the Finnish Food Workers' Union; the Norwegian Food and Allied Workers Union; and the Food Federation and Allied Workers Union of Zimbabwe.

<sup>37</sup> See [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_845493/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_845493/lang--en/index.htm).

<sup>38</sup> See ILO, "The Work in Fishing Convention, 2007 (No. 188): getting on board", document No. GDFWF/2013, p. 4.

<sup>39</sup> Submissions from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and the Food Federation and Allied Workers Union of Zimbabwe. See also FAO, "How is COVID-19 affecting the fisheries and aquaculture food systems" (April 2020) and FAO, "The effect of COVID-19 on fisheries and aquaculture in Asia" (May 2020).

<sup>40</sup> Which are specifically referenced in article 13 (5) of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas.

<sup>41</sup> Submission from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations.

<sup>42</sup> A/HRC/40/56, para. 39.

<sup>43</sup> Alliance 8.7, *Global Estimates of Child Labour: Results and Trends, 2012–2016: Executive Summary*, p. 5

<sup>44</sup> See <https://www.ilo.org/global/topics/forced-labour/policy-areas/fisheries/lang--en/index.htm>.

workers are especially prevalent on the high seas, often beyond the reach or oversight of relevant State authorities.<sup>45</sup>

39. One of the most effective ways to ensure dignified work, secure livelihoods and the realization of human rights is through social protection. Social protection also creates a fair, well-regulated sector that in turn enables resource conservation.<sup>46</sup> Countries with robust social protection systems in place were those most adept to respond rapidly to the impacts of the COVID-19 pandemic, by tweaking existing social protection programmes to alleviate income losses in fisheries and aquaculture through temporary cash and in-kind transfers, as well as input subsidies (e.g. fuel).<sup>47</sup>

40. Social protection and decent work have been recognized as priority issues.<sup>48</sup> However, at the national level, most of the relevant international commitments and instruments have not been fully adopted or implemented,<sup>49</sup> and the fishery sector is relatively farther behind.

## II. Climate change, fish stock depletion and biodiversity degradation: issues of governance and inequality

41. The proportion of biologically unsustainable fisheries increased from 10 per cent in 1974 to 34.2 per cent in 2017. Moreover, climate change is projected to create irreversible losses in the ecosystems of many regions, with negative consequences for human ways of life, economy and cultural identity. Climate change is also raising water temperatures and changing the pattern of fish migration as fish stocks shift from lower to higher latitude regions, causing fishers to shift poleward and diversify harvests. These changing patterns increase the risk transboundary management conflicts among fisheries users, and negatively affect the equitable distribution of seafood. Plant and animal populations have already vanished locally, and the projected trend indicates a rise in extinction rates, particularly in warmer regions. It is clear that reducing overfishing and unsustainable practices would increase fish stocks and increase the adaptive capacity of fishing.<sup>50</sup>

42. The exploration and extraction of oil and gas in open waters and the life cycle of offshore projects are escalating threats for both the climate and small-scale fishers. Offshore projects account for over 30 per cent of the world's oil and gas production. By exacerbating the climate crisis, posing a threat to entire marine ecosystems and generating economic and physical displacement, offshore activities directly undermine a number of human rights and endanger the food security of entire regions.

43. Undersea pipelines can create safety hazards by entangling fishing equipment and vessels, endangering life and property. Routine discharges from transport vessels contaminate oceans with hydrocarbons, toxic metals and dangerous chemicals in a rampant practice called "bilge dumping".<sup>51</sup> Noise pollution from drilling and exploration activities interferes with fish communication and migration patterns. Construction of infrastructure often destroys crucial fish habitats. Even after an offshore project is closed, unplugged or poorly plugged wells and abandoned infrastructure can continue to leak oil, radioactive materials and other toxins into the ocean.<sup>52</sup>

<sup>45</sup> A/HRC/40/56, para. 42.

<sup>46</sup> FAO, *The State of World Fisheries and Aquaculture 2022*, pp. 134 and 135.

<sup>47</sup> See <https://www.fao.org/policy-support/tools-and-publications/resources-details/en/c/1382680/>.

<sup>48</sup> See, for example, target 1.3 of the Sustainable Development Goals; ILO, *Social Protection Floors Recommendation*, 2012 (No. 202); ILO, *Work in Fishing Convention*, 2007 (No. 188); *Voluntary Guidelines*, sect. 6; and FAO, *2021 COFI Declaration for Sustainable Fisheries and Aquaculture* (Rome, 2021).

<sup>49</sup> FAO, *The State of World Fisheries and Aquaculture 2022*, pp. 134 and 135.

<sup>50</sup> Intergovernmental Panel on Climate Change, Hans-Otto Pörtner and others, eds., *Climate Change 2022: Impacts, Adaptation and Vulnerability* (2022), pp. 19, 61, 200, 381, 382, 766 and 767.

<sup>51</sup> Submission from the Center for International Environmental Law – joint contribution (42 signatories).

<sup>52</sup> *Ibid.*

44. The installation of offshore infrastructure is often accompanied by the creation of exclusion zones that prevent fishers from accessing fish stocks, leading to loss of livelihoods and food insecurity. In Guyana, for example, platform supply vessels cross and obstruct the traditional fishing grounds.<sup>53</sup> Despite official notices on marine safety, illiteracy among fishers prevents them from being informed, leading to safety risks and minimal compensation for damages.

45. Extractive industries contribute to climate change by affecting ocean temperatures, acidity and currents, as well as the distribution and behaviour of fish populations. In Mexico, water temperature has risen in various regions, generating meteorological phenomena, such as Hurricane Otis.<sup>54</sup> In 2022, fishers in Durban, South Africa experienced devastating floods, with over 400 people killed in a few days. Fishers lost houses and loved ones and were then prohibited from fishing for months afterwards.<sup>55</sup> In the Niger delta, oil spills and gas leaks continue to cause significant environmental damage. Several offshore projects threaten marine artisanal fisheries in Mauritania, Senegal and South Africa. Although some of the companies responsible have been brought before national courts in host countries, it is still difficult for small-scale fishing organizations to obtain any relief.<sup>56</sup>

46. There are, however, some small, encouraging developments. In South Africa, for example, small-scale fishers achieved notable successes in building solidarity through litigation. Three High Court judgments handed down in 2022 and 2023 address the right to adequate consultation, recognition of customary rights and the impact of oil and gas exploration on the human rights of small-scale fishers.<sup>57</sup>

47. Climate change science, however, can only partially help coastal and fishery communities. Adaptation is as much a set of political, social and cultural decisions as it is an economic and ecological decision. This includes territorial use rights for fishing, locally managed marine areas and customary tenure. Tenure systems are key in fisheries management since they determine who can access, use and control land and water resources.

48. Ultimately, a community's ability to adapt to climate change is determined by the ability of shared norms, values and understandings to enable cooperation; the degree of community participation in decision-making; and the ability to simultaneously work with traditional, Indigenous and scientific knowledge systems. In fact, fishers with a high degree of localized knowledge are on the front line, since they can quickly identify signals of change within their environment, recognize the need to adapt and identify ways to overcome new challenges.<sup>58</sup>

49. Climate change creates profound inequality because it harms those who have contributed the least to greenhouse gas emissions. In turn, inequality – especially in terms of income and gender – undermines the ability to effectively enact sustainability policies, and also undermines inclusive decision-making processes, the fair and equitable sharing of benefits, and the benefits derived from tradition and Indigenous knowledge.<sup>59</sup>

<sup>53</sup> Submission from Janette Bulkan, Associate Professor, and John Palmer, Honorary Research Associate, University of British Columbia.

<sup>54</sup> Submission from the Government of Mexico (in Spanish).

<sup>55</sup> Submissions from Jackie Sunde, One Ocean Hub small-scale fisheries research team, University of Cape Town, and from the KwaZulu-Natal Subsistence Fisherfolk Forum.

<sup>56</sup> Submission from the Coalition for Fair Fisheries Arrangements.

<sup>57</sup> See submission from the KwaZulu-Natal Subsistence Fisherfolk Forum.

<sup>58</sup> Intergovernmental Panel on Climate Change, *IPCC Special Report on the Ocean and Cryosphere in a Changing Climate* (2019), pp. 534–538; and Intergovernmental Panel on Climate Change, Pörtner and others, eds., *Climate Change 2022*, p. 767.

<sup>59</sup> Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, *Summary for Policymakers of the Global Assessment Report on Biodiversity and Ecosystem Services* (Bonn, 2019), p. 17.

### III. International law

#### A. United Nations Convention on the Law of the Sea

50. The United Nations Convention on the Law of the Sea delineates marine sovereignty and is fundamental to fisheries governance. Coastal States have full sovereignty up to 12 nautical miles from their baseline, in the area known as territorial sea (arts. 2 and 3). States also have full sovereign rights enumerated in the Convention, which include managing and exploiting marine resources, up to 200 nautical miles from their baseline, in their exclusive economic zone (arts. 55–57).

51. Sovereign boundaries cut across the distribution of many species, creating shared stocks between States. Accordingly, States have a duty to coordinate and ensure the conservation and development of shared stocks (arts. 63, 64 and 118). These cooperative terms are detailed in the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks and operationalized through intergovernmental regional fisheries management organizations or arrangements on a regional or species basis. There are still no accurate estimates of the number of exploited marine species shared by neighbouring States. Recent studies, however, show that catches from transboundary species – stocks that cross the exclusive economic zones of two or more bordering coastal States – are declining more than those from non-transboundary species.<sup>60</sup> This highlights that effective and equitable international, regional and subregional cooperation is more important than ever to protect sustainable small-scale fisheries.<sup>61</sup>

52. The Convention unfortunately conceptualizes the ocean as a natural resource to be exploited and managed, in which a State must enable as much extraction as possible. The Convention represents an attempt to temper an extractive prime directive by reconciling it with the need to replenish fish stocks and biodiversity.

53. Specifically, States must establish policies that determine a maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States (art. 61 (3)). States are required to develop management schemes based on scientific evidence that ensure “proper conservation” and avoid overexploitation (art. 61 (2)). Concurrently, they are mandated to promote “optimal utilization” to achieve social and economic development goals (art. 62). There is no predetermined formula that guides States on how to calibrate between optimal socioeconomic utilization and proper conservation. If a State is unable to harvest the entire allowable catch within its exclusive economic zone, it must grant other States access to the surplus of allowable catch, subject to national conservation measures (art. 62 (2)).

54. States must ensure that living resources are not endangered by overexploitation and that harvested species’ populations are maintained or restored to levels that can produce their maximum sustainable yield (art. 61 (2) and (3)). Nevertheless, the Convention offers flexibility to harvest at rates either above or below that yield based on “relevant environmental and economic factors” (art. 61 (3)). Unfortunately, for decades, States have interpreted the Convention in a way that enabled overfishing, mostly by large-scale operations. Moreover, the metric of maximum sustainable yield measures fish population in a way that does not account for the specific biological conditions a population needs to reproduce and flourish, and at times has incentivized overfishing.<sup>62</sup> In sum, the Convention does not reflect the ocean as a source of life in its fullest sense, and communal, cultural and spiritual concerns are left out.

<sup>60</sup> Juliano Palacios-Abrantes and others, “The transboundary nature of the world’s exploited marine species”, *Scientific Reports*, vol. 10 (2020).

<sup>61</sup> See also the Voluntary Guidelines, para. 10.8.

<sup>62</sup> Philip Larkin, “An epitaph for the concept of maximum sustained yield”, *Transactions of the American Fisheries Society*, vol. 106, No. 1 (1977).

## B. Convention on Biological Diversity

55. There is an even more acute tension between conceptualizing nature as a natural resource versus the source of life in the Convention on Biological Diversity. The parties to the Convention adopted the Kunming-Montreal Global Biodiversity Framework in 2022. They agreed, among other targets, to conserve 30 per cent of the world's lands, inland waters, coastal areas and oceans by 2030 – the “30x30 target” (target 3). Target 19 provides that at least \$200 billion should be devoted to this conservation agenda by 2030, 90 per cent of which is to come from private finance, with an emphasis on blended finance. The framework encourages States to in effect subsidize private investment.

56. During negotiations, Indigenous Peoples and members of civil society were concerned that target 19 would change people's relationship to the land and waterways, turning the ecosystem into a financial market.<sup>63</sup> As such, target 19 also includes a commitment to “enhancing the role of collective actions, including by indigenous peoples and local communities, Mother Earth centric actions and non-market-based approaches including community based natural resource management and civil society cooperation and solidarity aimed at the conservation of biodiversity”. Mother Earth-centric actions are defined as an “ecocentric and [human] rights-based approach enabling the implementation of actions towards harmonic and complementary relationships between peoples and nature, promoting the continuity of all living beings and their communities and ensuring the non-commodification of environmental functions of Mother Earth”. The Framework is to be implemented through a human rights-based approach (paras. 6 and 7 (a), (g) and (n)).

57. Reconciling the concepts of nature as a financial market and as Mother Earth is unlikely. It is also well recognized that conservation efforts that create protected areas excluding people, as envisioned under the 30x30 target, often violate human rights, especially for Indigenous Peoples.<sup>64</sup> As discussed below, conservation finance, including “blue finance” for oceans, as currently structured, carries serious risks of human rights violations.

## C. Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction

58. The Agreement on the Conservation and Sustainable Use of Marine Biological Diversity, which at the time of writing was not yet in force, will place a portion of the world's oceans into marine protected areas in an effort to limit overfishing and biodiversity loss and regulate shipping lanes. Read alongside the Convention on Biological Diversity, the ambition is to conserve 30 per cent of the world's high seas. The high seas are the parts of the ocean that lie outside a country's exclusive economic zone and cover about half the earth's surface. The high seas are a crucial habitat for life. They also produce roughly half of the world's oxygen, mainly from plankton.<sup>65</sup>

59. Creating marine protected areas, or other area-based management tools, on the high seas without doing anything to address power imbalances might push more industrial fleets into the exclusive economic zones of developing countries.<sup>66</sup> This creates a significant risk of threatening local food security. More generally, States must not lose sight that one of the objectives of the Agreement is to support food security and other socioeconomic objectives, including the protection of cultural values (art. 17 (d)). Given the central role small-scale fishing plays in coastal communities, this objective can be met only if States respect, protect and fulfil human rights in coastal communities, especially in the context of area-based management tools.

<sup>63</sup> Andre Standing, “Blue finance: how much debt can the ocean sustain? Implications for coastal fishing communities in South Africa” (Amsterdam, Transnational Institute, 2013).

<sup>64</sup> See [A/71/229](#) and [A/77/290](#).

<sup>65</sup> See <https://oceanservice.noaa.gov/facts/ocean-oxygen.html>.

<sup>66</sup> See <https://www.cffacape.org/publications-blog/an-ambitious-high-seas-treaty-must-not-come-at-the-expense-of-coastal-fishing-communities>.

## D. World Trade Organization

60. The Agreement on Fisheries Subsidies is the first World Trade Organization (WTO) agreement to explicitly address environmental issues, and is not yet in force. The Agreement establishes a set of disciplines on subsidies contributing to illegal, unreported and unregulated fishing and overfished stocks. The Agreement applies only to marine wild capture fishing and fishing-related activities at sea (art. 1), thereby excluding inland fishing and aquaculture and onshore activities such as packaging and processing.

61. The current Agreement is interim; member States must still adopt disciplines around illegal, unreported and unregulated fishing and overfished stocks. Without settling the remaining disciplines, the Agreement will be terminated within four years of entry into force, unless otherwise decided by the WTO General Council (art. 12).

62. Generally, the crux of WTO subsidy negotiations is determining what counts as legitimate government support to ensure a fair and stable market (good subsidies) versus what counts as public funds being used to grant commercial actors an unfair benefit in international markets or that incentivize unwanted behaviour (bad subsidies). What is at stake for fisheries is a profound degree of inequality among developing and developed States and small-scale and large-scale fishers. In 2018, global subsidies amounted to \$35.4 billion, 87 per cent of which were from countries with a high human development index value. Approximately 80 per cent of global subsidies were dedicated to the large-scale fishing sector and 19 per cent to small-scale fishing. Globally, per fisher, large-scale fisheries in developed countries were subsidized at a rate 36 times higher than those in developing countries, and small-scale fishers in developed countries were subsidized at a rate 21 times higher than those in developing countries.<sup>67</sup>

63. At one point during negotiations, the Agreement included language that explicitly granted special and differential treatment for small-scale fishers.<sup>68</sup> Unfortunately, that language was dropped, leaving language on special and treatment for developing countries up to and within the exclusive economic zone (art. 3.8). Since small-scale fisheries represent 90 per cent of the fisheries workforce in developing countries,<sup>69</sup> the fate of many of the world's small-scale fishers depends on developing and least-developed countries' trade policies.

64. WTO members agree that the livelihoods of small-scale fishers must be protected.<sup>70</sup> But without any distinction for small-scale fishers at WTO, developing and least-developed countries are free to subsidize large-scale fishers and prioritize their operations over small-scale fishers. Human rights, especially through the Voluntary Guidelines, can provide a way to ensure that the WTO Agreement, when finalized and implemented, protects the livelihoods of small-scale fishers and contributes to an ecologically viable ocean.<sup>71</sup>

### 1. Illegal, unreported and unregulated fishing

65. The WTO Agreement (art. 3 (1)) prohibits States from granting or maintaining any subsidy to a vessel or operator engaged in illegal, unreported and unregulated fishing or fishing-related activities in support of such fishing.<sup>72</sup>

<sup>67</sup> Anna Schuhbauer and others, "The global fisheries subsidies divide between small- and large-scale fisheries", *Frontiers in Marine Science*, vol. 7 (2020). See also U. Rashid Sumaila and others, "Updated estimates and analysis of global fisheries subsidies", *Marine Policy*, vol. 109 (November 2019).

<sup>68</sup> See <https://focusweb.org/policy-livelihood-challenges-for-indias-fishing-communities-implications-of-the-wto-agreement/>, video 1.

<sup>69</sup> See [https://oneoceanhub.org/wp-content/uploads/2022/06/Policy-brief\\_HUMANRIGHTS\\_Smallscalefisheries\\_OOH.pdf](https://oneoceanhub.org/wp-content/uploads/2022/06/Policy-brief_HUMANRIGHTS_Smallscalefisheries_OOH.pdf).

<sup>70</sup> See [https://www.wto.org/english/news\\_e/news23\\_e/fish\\_28apr23\\_e.htm](https://www.wto.org/english/news_e/news23_e/fish_28apr23_e.htm).

<sup>71</sup> Stephanie Switzer, Elisa Morgera and Elaine Webster, "Casting the net wider? The transformative potential of integrating human rights into the implementation of the WTO Agreement on Fisheries Subsidies", *Review of European, Comparative and International Environmental Law*, vol. 31, No. 3 (November 2022).

<sup>72</sup> See also target 14.6 of the Sustainable Development Goals.

66. However, the phrase “illegal, unreported and unregulated fishing” conflates several distinct activities into one notion.<sup>73</sup> Illegal fishing refers to activities that contravene the United Nations Convention on the Law of the Sea, regional or national conservation measures and national laws and relevant international obligations of States (WTO Agreement, art. 3<sup>74</sup>). Sometimes national efforts to combat illegal fishing have led to overzealous arrests, the destruction of property, including fishing gear and boats, and physical assault.<sup>75</sup> Moreover, unreported or unregulated fishing activities are not necessarily illegal; for example, many small-scale fishers work in informal markets and their activity would be unfairly caught under the umbrella category.<sup>76</sup> Thus, disciplines against illegal, unreported and unregulated fishing could place a significant burden on developing and least-developed countries along with small-scale fishers.

67. In responding to the Agreement’s conceptual ambiguity, States should turn to the Voluntary Guidelines, which provide practical guidance. Accordingly, States are strongly encouraged to ensure that the information necessary for responsible small-scale fisheries and sustainable development is available, including on illegal, unreported and unregulated fishing. This includes taking a holistic perspective that allows States to make nuanced, context-specific distinctions regarding what counts as illegal, unreported or unregulated fishing and paying particular attention to the situation of vulnerable and marginalized groups.<sup>77</sup>

68. Moreover, States should recognize local norms and practices – including customary tenure systems and other systems that grant preferential access to fishery resources and land to small-scale fishers, Indigenous Peoples and ethnic minorities – as regulated fishing.<sup>78</sup>

## 2. Overfished stocks

69. The WTO Agreement prohibits member States from granting or maintaining subsidies for fishing or fishing-related activities regarding an overfished stock as determined by the relevant regional fisheries management organizations or associations (arts. 4 (1) and (2)). A stock is generally considered overfished when it is exploited beyond an explicit limit set to ensure safe reproduction.<sup>79</sup> The Agreement provides for an exception “if such subsidies or other measures are implemented to rebuild the stock to a biologically sustainable level” (art. 4 (3)). A biologically sustainable level is the level determined by the State having jurisdiction over the area where the fishing or fishing-related activity is taking place or by a relevant regional fisheries management organization or association, based on the best scientific evidence available to it. However, many developing and least developed States do not have the resources to establish the appropriate monitoring mechanisms to measure and determine sustainable levels. Some have ironically called this provision special and differential treatment for developed countries, since richer countries have the resources to marshal the evidence necessary to invoke this exception and subsidize their fisheries, granting them a market advantage over fishers in developing and least-developed countries.<sup>80</sup>

70. This power imbalance can be addressed by States or regional fisheries management organizations or associations through the Voluntary Guidelines, which provide that States should recognize the role of small-scale fishing communities and Indigenous Peoples to restore, conserve, protect and co-manage local aquatic and coastal ecosystems (para. 5.5). Moreover, “best scientific evidence” must include scientific knowledge augmented by

<sup>73</sup> A/67/268, paras. 48 and 49; and Eva R. van der Marel, “Problems and progress in combating IUU fishing”, in *Strengthening International Fisheries Law in an Era of Changing Oceans*, Richard Caddell and Erik J. Molenaar, eds., (Oxford, Hart, 2019).

<sup>74</sup> Citing FAO, *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*, sect. 3.1.

<sup>75</sup> Submission from FIAN Uganda.

<sup>76</sup> Voluntary Guidelines, para. 6.6.

<sup>77</sup> *Ibid.*, para. 11.5.

<sup>78</sup> *Ibid.*, paras. 5.1–5.4.

<sup>79</sup> See [https://www.wto.org/english/thewto\\_e/glossary\\_e/overcapacity\\_fishing\\_e.htm](https://www.wto.org/english/thewto_e/glossary_e/overcapacity_fishing_e.htm).

<sup>80</sup> See <https://focusweb.org/policy-livelihood-challenges-for-indias-fishing-communities-implications-of-the-wto-agreement/>, video 1.

traditional and Indigenous knowledge of coastal and riparian communities,<sup>81</sup> which is well recognized as crucial to adapting to climate change. In so doing, a member State or regional fisheries management organization or association can more easily determine small-scale fishing sustainability.

### 3. Overcapacity and overfishing

71. Overcapacity and overfishing are the most important issues regarding fishery subsidies and remain the subject of future WTO Agreement negotiations. Of all subsidies in 2018, approximately 63 per cent (\$22.2 billion) supported programmes that encouraged, or had the potential to encourage, overcapacity and overfishing, 30 per cent were beneficial and 7 per cent had the potential to lead to either sustainable yields or overexploitation of fish stocks.<sup>82</sup> Overcapacity generally refers to the ability of a fleet to fish at levels that exceed the sustainable catch level in a fishery, often leading to overfishing.<sup>83</sup>

72. States should use future Agreement negotiations as an opportunity to reintroduce language that explicitly enables States to support small-scale fisheries more readily by repurposing subsidies away from large-scale operations that have overfished, thereby meeting the State obligation to progressively realize the right to food.<sup>84</sup>

## IV. Commodification and financialization of the oceans and aquatic life

### A. Blue economy

73. The terms “blue economy” and “blue growth” are gaining popularity; they conceptualize the oceans and coasts as economic assets (leaving out fresh water). The idea of “blue” (like “green”) is that businesses and governments must now consider issues of oceanic ecosystem degradation and climate change when calculating profit margins and economic growth.

74. The World Bank has defined “blue economy” as “the sustainable use of ocean resources for economic growth, improved livelihoods, and job creation while preserving the health of ocean ecosystems”.<sup>85</sup> It includes renewable energy, fisheries, maritime transport, waste management and tourism. In blue economy initiatives, human rights are usually ignored or treated as tertiary concerns, with the main focus on economic growth and sustainability. Moreover, in such initiatives, food security is usually overlooked or poorly addressed. In many international and national blue economy agendas, small-scale fishers are marginalized or excluded and social and cultural objectives are undervalued.

75. In blue economy initiatives, the problem is framed to be that the world’s oceans are experiencing an environmental crisis but still offer an “untapped economic frontier”.<sup>86</sup> The purported source of the problem is that the oceans are treated as public goods and governed through traditional systems of communal or common property resource management. The offered solution is to expand the transformation of the oceans into private property.<sup>87</sup>

76. How the problem and solution are framed highlights the empirical limitations of the notion of “blue economy”. The incentive to overfish and pollute has not been driven by treating oceans as a public good or commons. Overfishing, pollution and aquatic habitat

<sup>81</sup> Convention on Biological Diversity, art. 8 (j); Voluntary Guidelines, paras. 11.4, 11.6, 11.7 and 11.9; United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, arts. 18 (3), 19 (2), 20 (2) and 26; and United Nations Declaration on the Rights of Indigenous Peoples, art. 31.

<sup>82</sup> Sumaila and others, “Updated estimates and analysis of global fisheries subsidies”.

<sup>83</sup> See [https://www.wto.org/english/thewto\\_e/glossary\\_e/overfishing\\_overfished\\_stocks\\_e.htm](https://www.wto.org/english/thewto_e/glossary_e/overfishing_overfished_stocks_e.htm).

<sup>84</sup> International Covenant on Economic, Social, and Cultural Rights, arts. 2 (1) and 11.

<sup>85</sup> “Riding the blue wave: applying the blue economy approach to World Bank operations” (2021), p. 8.

<sup>86</sup> Cohen and others, “Securing a just space”.

<sup>87</sup> World Bank, “Riding the blue wave”, p. 8.

degradation have been politically driven by granting primacy to corporations and profit-generation, not holding businesses accountable and belying a holistic appreciation of aquatic life.

77. In fact, small-scale fishers self-governing through communal marine tenure systems often create broad-based benefits by governing certain spaces as a public good. For example, in Sri Lanka, the customary tenure system known as the *padu* system is managed by monthly meetings during which members decide the rotation of fishing sites among the particular families and villages. The system of shared ownership and rotating access through a lottery mechanism fosters impartial fisheries management. The system ensures a fair distribution of benefits and acts as a powerful deterrent against overfishing and the depletion of marine resources. Moreover, the approach guarantees secure and impartial access to fishing grounds, significantly diminishes conflicts and promotes sustainable coexistence among diverse groups of fishers.<sup>88</sup>

78. Over the past decades, some countries have developed “rights-based approaches” to fisheries that have privatized fishing and tenure rights through programmes such as individual transferable quotas, catch shares or transferable fishing concessions. This approach allocates access to a fishing area or a share of a fishery’s total allowable catch to a group or an individual, and allows for the transfer or selling of those rights. Rights-based approaches to fisheries are fundamentally different than a human-rights based approach. The rights in question are narrowly construed in economic terms, leaving out social, cultural and political concerns. It enables profound degrees of inequality, since those with the most purchasing power and capital can purchase fishing rights or exploit existing rights. In fact, rights-based approaches have squeezed out small-scale fishers, have not necessarily been economically efficient or sustainable and have increased the rates of human rights violations,<sup>89</sup> and many blue economy initiatives have devastated coastal communities and small-scale fishers.

## B. Blue transformation

79. FAO is trying to balance economic interests with human rights through its Blue Transformation programme. Blue Transformation is the FAO vision to expand aquatic food systems and increase their contribution to nutritious and affordable healthy diets, ensuring environmental stewardship and inclusive growth, especially for those communities that depend on fisheries and aquaculture, leaving no one behind.<sup>90</sup>

80. The Blue Transformation initiative is driven by a desire to increase production to meet rising demand. Global consumption of aquatic foods increased at an average annual rate of 3.0 per cent from 1961 to 2019, a rate almost twice that of annual world population growth (1.6 per cent) for the same period. The rise of per capita consumption of aquatic foods has been primarily influenced by increased supplies, changing consumer preferences, advancements in technology and income growth.<sup>91</sup>

81. The Blue Transformation initiative aligns with the growing popularity of proposing aquaculture as a way to adapt to the global decline of fish stocks and respond to growing food insecurity.<sup>92</sup> In the 1950s, 4 per cent of fish produced was from aquaculture. By 2020, 49 per cent (88 million tons) of fish produced was from aquaculture and 51 per cent (90 million tons) was from capture fisheries. Also by 2020, aquaculture accounted for 56 per cent of the amount of aquatic animal food available for human consumption.<sup>93</sup>

<sup>88</sup> International Planning Committee for Food Sovereignty, *People-Centred Assessment*, pp. 18 and 19. See also submission from Ekologi Maritim Indonesia.

<sup>89</sup> Edward H. Allison and others, “Rights-based fisheries governance: from fishing rights to human rights”, *Fish and Fisheries*, vol. 13, No. 1 (March 2012); and World Forum of Fisher People, Afrika Kontakt and Transnational Institute, “Human rights vs. property rights: implementation and interpretation of the SSF Guidelines” (Amsterdam, 2016).

<sup>90</sup> FAO, *Blue Transformation in Brief* (2023).

<sup>91</sup> FAO, *The State of World Fisheries and Aquaculture 2022*, p. 81.

<sup>92</sup> Intergovernmental Panel on Climate Change, *Climate Change 2022*, p. 779.

<sup>93</sup> FAO, *The State of World Fisheries and Aquaculture 2022*, p. 1.

82. However, addressing increasing rates of hunger is different than addressing increasing consumption rates. Hunger and malnutrition are not caused by a lack of food and are therefore not a production problem. Food production rates matter, but hunger and malnutrition occur when there are political breakdowns and institutional weaknesses.<sup>94</sup> When aquaculture is proposed as a solution, it is in response to increased consumption rates; those consumption rates have been fuelled by overfishing and economic development, and create the risk of long-term food insecurity due to the depletion of wild fish stock.

83. Moreover, great risks are associated with aquaculture. When fish, like any organism, are confined in high density, there is a greater chance of disease or parasites. Accordingly, fish farmers sometimes use antibiotics, increasing the global risk of antimicrobial resistance. There is also a significant risk that farmed fish will escape into the wild. When non-native farmed fish escape, they may spread disease or parasites and potentially alter the wild gene pool.

84. Many farmed fish are carnivorous species that require feed products harvested from wild fish stock, thereby creating another source of pressure on wild fish stocks and disrupting ecosystems.<sup>95</sup> Moreover, global feed companies are exacerbating food insecurity in some communities. For example, over half a million tons of pelagic fish that could feed over 33 million people in the region are instead extracted from the ocean along the coast of West Africa and converted to fishmeal and fish oil, primarily in order to feed farmed fish and livestock, mostly in Asia and Europe.<sup>96</sup>

85. Even given recent technological and scientific advancements, the Special Rapporteur strongly recommends that States exercise great caution around aquaculture. For aquaculture to be socially, economically and environmentally viable, a robust regulatory regime is required. Moreover, it is important to distinguish artisanal aquaculture from industrial aquaculture, recognizing that industrial aquaculture carries higher risks and therefore requires more stringent regulation. There is a high risk that aquaculture could serve growing consumption rates but create larger, more complex problems as a result.

86. Since the rate of fish production significantly exceeds the rate of population growth, it may be that rates of fish consumption are exceeding planetary boundaries. Generally, States should ensure they meet the needs of people for whom fish is critical to their health and well-being and for whom other comparable sources of food are not readily available or affordable.<sup>97</sup>

### C. Blue finance and conservation

87. A more recent phenomenon is the rise of “blue finance”, in which the ocean is increasingly conceptualized and organized through financial elites, institutions and markets. This financialization of the ocean is creating greater degrees of inequality and opaque governance, and raises significant risks of human rights violations, especially for coastal communities, Indigenous Peoples and small-scale fishers.

88. This is part of the larger phenomenon of governing conservation initiatives through financial arrangements. Conservation finance treats the problem of environmental degradation and climate change as a shortcoming of public and philanthropic spending – a financial gap. The proposed solution is to subsidize private investors to encourage them to direct capital towards conservation projects that set aside large tracts of land or water for protection from human activity. This is different from, for example, loss and damage, which frames financing as a matter of reparations and equity.

89. One common instrument is the debt-for-nature swaps, also known as nature swaps or debt swaps. Some of the largest deals are ocean swaps.<sup>98</sup> The basic idea of debt swap is that

<sup>94</sup> A/75/219, para. 40.

<sup>95</sup> Submission from the Sustainable Development Foundation (Thailand).

<sup>96</sup> Submission from the Taxawu Cayar Collective and 14 others.

<sup>97</sup> Voluntary Guidelines, para. 7.7.

<sup>98</sup> See, for example, Marc Jones and Rodrigo Campos, “Ecuador seals record debt-for-nature swap with Galapagos bond”, Reuters, 9 May 2023.

a creditor, usually a developed country, forgoes debt repayments for a developing country's promise to spend all or part of the money on conservation. Another form is when a party – usually a non-governmental organization (NGO) from a developed country – purchases a developing country's debt at a discount in return for a conservation commitment from the debtor country.

90. However, the swaps do not create clear financial or ecological benefits. Transaction costs are high and, despite their public policy goals, debt swap transactions lack transparency and accountability. In some cases, proceeds from debt relief may be funnelled through offshore accounts or tax havens, especially when the transaction is settled through intermediaries, such as foreign firms, special purpose vehicles and insurance companies. These tax havens are known for their secrecy and may facilitate the concealment of assets from domestic taxes and enable illicit financial flows.<sup>99</sup> In fact, there is a high risk of these deals being used by financial institutions to increase their “environmental, social and governance” portfolio profile and pocket high fees in greenwashing schemes.<sup>100</sup> According to researchers at Barclays: “At first glance, [a nature swap] is a win-win solution – heavily indebted countries can reduce debt and interest burdens, while resources can be directed towards conservation projects that support overarching nature-related goals ... However, tackling debt burdens and climate goals together is not always ideal.”<sup>101</sup>

91. With the current debt crisis, developing countries have even less leverage in these deals. Moreover, these complex and costly schemes do not address long-term financial stability. When brokered through a foreign NGO, the latter gains significant national policymaking power and revenue at the expense of the debtor country. Ultimately, these are financial transactions and so they are designed, and limited by their ability, to generate profits or discounts for investors and creditors.

92. This issue has become more acute following the adoption of the 30x30 target of the Kunming-Montreal Global Biodiversity Framework. As mentioned above, financing this target is a contentious issue. On the basis of colonial and racist experiences in the past and present, Indigenous Peoples raised the alarm that the 30x30 conservation target risked dispossessing their communities from their territories and creating “colonial conservation” schemes,<sup>102</sup> also known as fortress conservation. Fisher organizations and other civil society organizations have called for a rejection of debt-for-nature swaps in the context of oceans.<sup>103</sup> Ultimately, it is impossible to separate aquatic conservation from human rights.

## V. Conclusions and recommendations

93. **The ocean is our Mother and the rivers are her kin. States and businesses must stop exploiting oceans and rivers and treating them like a commodity, and instead recognize that oceans and rivers are a source of life.**

94. **Policies need to be refocused on addressing the needs and challenges of small-scale fisheries, which are integral to most countries' recovery from the pandemic and to food system transformation, to counteract the fact that large industrial fleets dominate fisheries management efforts and political interests.<sup>104</sup> States should therefore:**

(a) **Recognize the vital contribution to aquatic life and health made by small-scale fishers, Indigenous Peoples and fish workers;**

<sup>99</sup> See <https://www.afronomicslaw.org/category/analysis/debt-climate-swaps-and-illicit-financial-flows-call-caution-designing-climate>.

<sup>100</sup> Ibid.

<sup>101</sup> Natasha White, “Barclays sees real greenwashing risk in ESG debt-swap market”, Bloomberg, 23 January 2023.

<sup>102</sup> Joseph Lee, “How the world's favorite conservation model was built on colonial violence”, Grist, 13 April 2023.

<sup>103</sup> See <https://www.cffacape.org/publications-blog/joint-statement-financing-the-30x-30-agenda-for-the-oceans-debt-for-nature-swaps-should-be-rejected>.

<sup>104</sup> See <https://www.fao.org/policy-support/policy-themes/sustainable-small-scale-fisheries/en/>

(b) Ensure that small-scale fishers, Indigenous Peoples and fish workers – especially women – are consulted in good faith and are empowered to actively, freely and meaningfully participate in all decision-making processes that may affect their lives, land and livelihoods; this must include an emphasis on gender justice and recognize the unique rights of Indigenous Peoples, including their right to free, prior and informed consent;

(c) Develop a national, comprehensive context-specific definition of small-scale fishers that captures all aspects of the value chain, including processing, marketing and sales, while also identifying vulnerable and marginalized groups through a process that is meaningful, participatory, consultative and gender-sensitive.

95. Relatedly, regional fisheries management organizations and associations should incorporate human rights-based approaches into their operations, which includes ensuring that small-scale fishers, fish workers and Indigenous Peoples can meaningfully participate.

96. States should respect, protect and fulfil:

(a) Small-scale fishers' and Indigenous Peoples' customary tenure rights. This includes fully implementing the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication;

(b) Indigenous rights, including the right to self-determination and free, prior and informed consent. This includes fully implementing the United Nations Declaration on the Rights of Indigenous Peoples;

(c) Fish workers' right to dignified work. This includes ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and all relevant ILO and International Maritime Organization conventions and ensuring their effective implementation.

97. States shall protect water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes, from overuse and contamination by harmful substances, and should restore them, recognizing the inherent co-existence of fisherfolk and nature.<sup>105</sup> To do so, States should:

(a) Integrate and privilege local, traditional and Indigenous knowledge of fish and aquatic habitats held by fishers;

(b) Ensure that at the local, national and international levels, small-scale fishers, fish workers and Indigenous Peoples – especially women – are supported and able to participate meaningfully in every decision-making aspect of policies and programmes affecting their human rights and livelihood;

(c) Grant small-scale fishers and fish workers priority in the allocation of public lands and fisheries;

(d) Restore and redistribute traditional, customary and Indigenous tenure rights of fishing communities where small-scale fisher communities and Indigenous Peoples have been dispossessed from land and water territories without appropriate consultation and consent;

(e) Create exclusive fishing zones for small-scale fishers and clamp down on incursions by industrial fleets;

(f) Implement co-management systems for 100 per cent of all coastal areas, by putting in place specific legal frameworks that clearly define the roles and responsibilities of the authorities and fishers and by providing the appropriate support for fishers to engage, taking into consideration their legitimate tenure rights and systems;

<sup>105</sup> United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, arts. 21 (4) and (5); and Voluntary Guidelines, sect. 5.

(g) **Reject the advancement of and suspend any offshore oil and gas projects that deprive affected small-scale fishers and fish workers of their enjoyment of fundamental human rights;**

(h) **Carefully assess and disclose – through impact statements, good faith public consultations and Indigenous free, prior and informed consent – the impacts of proposed offshore oil and gas activity on local fisheries and fisherfolk rights. This includes addressing the proposed project’s climate and biodiversity impacts and requires the mitigation of such effects before approving or financing any such projects;**

(i) **Conduct periodic independent audits of oil loading operations locally and compensate coastal communities for any environmental damage.**

98. **To ensure that markets are fair and stable, States should:**

(a) **Implement and augment social protection schemes to include all small-scale fishers and fish workers, regardless of whether they are in the formal or informal sector or self-employed;**

(b) **Provide small-scale fishers with enhanced access to financing, market information, appropriate inputs and technology, and infrastructure;**

(c) **Set a minimum wage corresponding to a living wage for all workers, regardless of the work sector, in accordance with international human rights standards;**

(d) **Create and support territorial markets to enable small-scale fisheries to connect more directly to local and regional consumers, thereby empowering coastal communities and promoting fair trade practices;**

(e) **Protect and support the ability of fish workers and small-scale fishers to bargain collectively with, respectively, employers and purchasers;**

(f) **Negotiate, interpret and apply the Agreement on Fisheries Subsidies in a way that protects and supports the livelihoods of small-scale fishers and workers in accordance with human rights law and instruments such as the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication and ILO treaties;**

(g) **Adopt and enforce legislation that would effectively eliminate contemporary forms of slavery and child labour, including by responding to the respective root causes;**

(h) **Guarantee the right, including for migrant fish workers, to establish and join trade unions;**

(i) **Provide safe channels for undocumented migrant fish workers so that they can anonymously report violations without fear of retribution, respecting the principle of non-refoulement and ensuring that migrants have access to the regular labour market in the host country.**

99. **With the support of FAO, other international organizations and national human rights institutions, States should develop national plans of action for small-scale fisheries and ensure that small-scale fisheries are integral to national right-to-food strategies. This should include gathering non-binary gender-disaggregated data.**

100. **Relatedly, FAO should prioritize, and devote more resources towards, protecting and supporting small-scale fishers, fish workers and Indigenous Peoples, including through support for full implementation of the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication at all levels of government.**

101. **States must revisit the blue economy agenda and should:**

(a) **Protect small-scale fishers, fish workers and Indigenous Peoples from competing “blue economy” sectors;**

(b) **Govern fisheries through human rights-based approaches and not through private property rights regimes;**

- (c) **Avoid using “blue” financial instruments to achieve conservation goals;**
  - (d) **Exercise great caution around aquaculture; recognize that the toxic and biological threat aquaculture poses to human and environmental health may outweigh the benefits; and not support the expansion of the aquaculture sector until the risks are better understood and robustly regulated, making a distinction between small-scale and large-scale operations;**
  - (e) **Strictly restrict the imports of fish-based feed from regions where people are food insecure and where fish stocks are proven to be overexploited;**
  - (f) **Ensure that corporations operate transparently and are held accountable for human rights violations through laws and regulations.**
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