

*‘Human right vs. property rights’
– which of these truly promote sustainable SSF?*

February 1st, 2017

Web debate summary

Through tireless effort, long-term engagement and advocacy by fishers and Civil Society Organizations (CSOs), small-scale fisheries (SSF) received the highest recognition in 2014 with the adoption of the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (the SSF Guidelines) by the FAO member states. The impact of the SSF Guidelines on the sustainability of SSF around the world cannot be underestimated. Especially as they draw heavily on the human rights principles, which makes them unique and powerful in many ways. Yet there are other narratives that compete for policy attention and sometimes create confusion among stakeholders. Are we talking about the same thing when we talk about human based rights approach (HRBA)? What is the difference between these and other rights-based schemes? Which of these are truly promoting SSF sustainability?

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Human based rights as an approach to manage SSF

HRBA should be understood as an approach that’s being used to manage SSF. Small-scale fishers and SSF organizations support the HRBA since it takes into account the community where fishery represents part of peoples livelihoods, their culture, social environment and part of their broader connection with life, society and economy. HRBA speaks to the indivisibility of human rights: society, life and people all come together. HRBA starts before fishers even go to sea and ends after their catch has been placed in the social and public domain for market or consumption.

Private or individual property rights have created havoc in communities since they have turned access to fishery into a commodity that can be transferred, given, taken and owned by an individual or company. Private property right is not an approach that is applicable to fishing community because fishing in these communities is part of peoples livelihoods, and not an individually owned right. This approach does not work for a fishing community; instead it divides and oppresses.

We also don't accept the division of rights into first or second-generation rights. The right approach for managing SSF takes into account that fishing communities are entirely dependent on the access to the sea, that harvesting should be done in a manner that is sensitive to the environmental and ecological needs, and that the post-harvesting activities must also be sensitive to the societal needs.

Mads Barbesgaard

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The erroneous win-win-win rhetoric in rights based fishery

The 'Human Rights vs. Property Rights: Implementation and Interpretation of the SSF Guidelines' report builds on a history of work that refutes the tragedy of the commons argument that underpins fishery economic and rights based fishery perspective. The report is important since rights based fishery is increasingly being rebranded as some kind of guarantee of sustainability connected to the win-win-win rhetoric and the multi-stakeholder approach where supposedly everyone can get around the same table, from multinational NGOs to small-scale fishers and arrive at the win-win win solution.

However, not everyone can win and that's why the question of this debate is appropriate because it stresses that we need to make the decision as to which of these two approaches we are going to follow. We need to think about "*Who should have what rights, to which natural resources, for how long, for what purposes, and who gets to decide in all this?*" Depending on how you answer those questions, different groups in society will win or lose. HRBA has one set of answers; it can suggest a process of how to address these questions underpinned by the notion of food sovereignty, social justice, gender equity, and environment.

Rights based approach (RBA) has different notions and comes down to economic efficiency. Which set of answers comes to the top is the result of the political struggle between these two worldviews. RBA contributes to further marginalization of SSF, but small-scale fisher can then be compensated or nudged towards alternative livelihoods. HRBA supports a worldview where small-scale fishers and small-scale food producers are crucial actors in a move towards constructing a more socially and environmentally just world.

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When human rights and property rights work hand in hand

Property rights and human rights can be applied simultaneously, especially in cases of collective or community based rights. An example of such scenario is a group of fisherwomen from Galicia, Spain who collect shellfish and are the main harvesters of this stock. The Galician government gave these women property rights to manage the resource with an aim to prevent the overexploitation of the stock. Before

that, Spanish government unsuccessfully tried to regulate this stock for many years. This illustrates that if we don't have the right rules, even collective management of resources can be difficult.

At the beginning, other organizations that were run by men didn't want the women to be part of the official fishing organizations. Eventually, women were able to manage the resource and they received a social recognition. We often forget that women are part of the fishery industry and that access to social rights is part of human rights. This case is a good example of gender equality; it is one of the best examples in which women are the main actor in property rights and resource management. Unfortunately, with the economic crisis in Spain, it seems that women have lost the power as now men are entering the shellfish-gathering sector as well. Even in success stories like this one, there are external factors that can reshape this situation.

Thomas V. Grasso

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Empowering communities, securing access to fishing grounds and applying science based limits

EDF strongly believes in the notion that people have the right to a healthy environment, and that they should not be threatened by the actors that will impose environment hazards on their existence and livelihoods. EDF Ocean program is committed to enabling a healthy and thriving oceans and communities that rely on them for their livelihood, wellbeing and cultural and social underpinnings. Healthy oceans are important to everyone since 3 billion people around the world rely on seafood as a primary source of protein and millions of people who face marginalization rely on fishery as a source of employment.

Sustainable fisheries management is essential. Human rights to safe and sufficient food, adequate living standards and non-exploitive employment are being undermined by the destruction of critical ocean habitats, including unsustainable harvesting and overfishing. The key to fostering these rights for men and women facing these threats is to secure access to the catch or specifying fishing grounds through a transparent and fair process. This can be achieved by: 1) empowering SSF in the community to steward these resources; 2) defending these rights against free-riders and those who would encroach upon them; and 3) applying science based limits to ensure sustainability of the resources.

EDF approach to fisheries management supports human rights and fishing rights in the effort to employ them to secure our shared ocean resources as well to ensure social and economic welfare of community. These environmental economic and social goals are interrelated: there cannot be prosperous and equitable fishing communities without fish to harvest.

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HBRA as an approach and property rights as a tool

Firstly, it's important to make a distinction between human rights as an approach and human rights as constitutional protected right, such as the constitutional protected right to fish, for example as an aboriginal right. When we talk about human rights as an approach we talk about approach to fairness and equity, rather than a constitutional protected right to fish. But mostly when we talk about the human rights we talk about the approach that we take to manage the resources. Secondly, when we talk about the property rights from a legal perspective, we understand property rights as simply a tool.

When we refer to private rights we sometimes add the word individual when, in truth, we are really talking about privatization or ownership (e.g. individual transferable quotas or ITQs). Ownership is simply a bundle of private rights: when you add individual to it, then it becomes ownership. When we talk about communal rights, usually it is full of property rights and individual property rights. But it is a hybrid format. For example, a community can own the access right to resource, but when you perform the fishing activity, you utilize individual rights: the right to access the resource or the right to sell the fish. Most examples of communal property rights are a hybrid between communal and individual rights.

The issues that face communities today with the so-called rights based or ownership-based privatization are the extreme form of individual property rights. Here, one of the main issues we face is transferability. But since transferability is a right and just one right in a bundle of rights, it can be modified.

Discussion highlights

- *HRBA and property rights can't go together as HRBA supports communities and property rights support individual rights holders.* Also, whose rights is it and who takes the decision? Multiple stakeholders or rights holders – people whose lives (e.g. livelihood, income, culture, spirituality and social relations) depend on it?
- *For SSF, there has to be a different approach in the way we allocate rights and the way we manage those rights.* It's important to stress that we're not talking about rights as something that can be given or taken. Right is your culture, spirituality, your sense of belief, of society. You cannot take that away or transfer – your culture is you, who you are, it will always be who you are. We need to understand that when we speak about fishing community we're not speaking about just right to go fishing but other issues such as gender, women's recognition, harvesting, post-harvest etc.
- *Property right is a tool.* Catch shares and ITQs are an example of property rights but they do not embody what property rights are. Property rights could be communal property rights and they don't have to even be private. Several communities can all be entitled to access the resource and

if you can't have a win-win solution on the basis of property rights, on what basis do you make decisions? If we want to apply HRBA we need to be clear about the reasoning behind it. In addition, when you come down to performance, eventually you have to give rights to that community to the exclusion of the other. So that is a property right. And then when you manage that resource you get to many different aspects of property rights: right to access/allocation rights, the right to sell, catch, transport. Overall, property rights are embodied in any management scheme that you have.

- *Rights based fishery equals ITQs.* Unfortunately, even though on a theoretical level, ownership and property rights can be many different things, in temporary political debates rights based fishery usually means ITQs. In the current policy discussions around property rights fishery economists are claiming, as they have been for many years, that the optimal form of property rights in fishery are ITQ based on their logic of economic efficiency.
- *Collective property rights.* In Galicia, fishers' organizations have had the responsibility to manage the sea resources in front of their communities. This is not an individual property right but a collective property right. When it comes to ITQs, we gave the rights to fishers' organization to manage the resource at a local level but is this sufficient to avoid overexploitation of the stock and ensure prosperity in the community? Probably not. Even in a collective, community based management we should have other measures in place; otherwise it's difficult to manage. And sometimes, we end up with ITQs where everything is regulated.
- *Managing the systems in a way that benefits everyone.* These are complex systems that we try to manage where there are both environmental and fishing rights that should be understood and applied. One community right to fish can impact another community right to eat fish. Our goal is to not to decide who wins and loses but find a way in which both communities can continue to fish and eat fish. The fishing communities must have a fundamental role in the way the resource is exploited, especially given the fact that they have often been marginalized. The solution is not to have less discussion and exclude stakeholders from the table, but to have more discussion and learn from each other. Our goal as the community of interested persons and organizations is that everybody ultimately benefits from the type of management we would like to see.
- *How do we apply HBRA to fishery management?* We should examine the cases where it has been applied effectively and learn from them. We have a lot to learn from the cases that were built from the ground up. Chile tried to do it from the bottom up and there were some successes but clearly there were challenges as well, and we can learn from them.
- *Major support for HBRA.* The promoters of the extreme neoliberal tools are in the minority. Unfortunately, we have many cases where neoliberal scheme was implemented but majority is moving towards HRBA. We will see more change around the world and we need to have more discussions around that. Maybe this is a call to move away from property rights and even propose a move towards human rights.

- *It is crucial to put communities at the center as we move forward with the HBRA.* Yes, we need more discussion but the question is discussion among whom and in that discussion we need to differentiate between various actors. Afrika Kontakt and EDF should not have the same say in the matter as WFFP because the latter represents actual fishing communities. They should be at the center of the process and at the core of the HBRA. In addition of who should be at the discussion, it is also important how we have the discussion: it should be a discussion not a debate.
- *HRBA can be one of the best tools for the survival of SSF.* But we also need (in EU in particular) to recognize SSF as part the fishery industry. Right now, it's difficult for SSF to have their own interests represented in all EU states.
- *An exciting moment for both the social movement and researchers.* The SSF Guidelines have been adopted and now we need to implement them. We are at the floor zero and the SSF Guidelines are about HRBA. But we don't yet know specifically what shape or dimension or form it will take. We need to debate on how communities that are directly affected want to apply the SSF Guidelines; communities are the rights holders, not the stakeholders.

Question and Answer period

How do Territorial Use Rights in Fishing (TURFs) fit into this discussion?

- Chile is a good example of where TURFs have been used with different levels of success, depending on community cohesion and leadership, as well as on support from the government and the clarity of rules.
- The issue with TURFs is that these are territorial users rights; there could be people who fish for cultural, personal, spiritual, and livelihoods rights but they could also be industrial fishers. This can lead to a mess as too many things can happen in the same territory. TURFs speak about all who use an area, whereas we should be speaking about those who use a particular zone in the EEZ, including how they use it and for what purpose.
- There is no set definition that says that TURFs apply to only those that catch the fish. It would be interesting to explore examples where a broader definition of users is applied. Maybe TURFs can be a tool that can help us think on how to apply those broader approaches such as HBRA.
- There are different ways of TURFs. In Spain and France TURFS have been present for 600 years and the territory is given to the community, which then manages not the resources but the fishing people. We need to support those TURFs that are established through a bottom up approach. In Chile, TURFs have not been successful mostly because of the top-down approach.

What does a "human rights approach" mean, in practical terms, for reforming and improving a failing SSF? This seems more like an ethic than a method.

- It's a fishery ethics discussion but it is also a tool. It can be viewed as an argument or basis to be made. For instance, do we use intergeneration argument to advocate for allocating rights in a

community and is that consistent with HRBA? Do we use a different type of argument, gender equality argument? All of these issues need to be addressed.

- This is part of a very interesting and dynamic discussion that is currently happening at the FAO level. We need to clarify what we understand by HBRA, and how do we apply it in practice? Fishers have a clear view on what HBRA means within the context of SSF but how do we apply that when private rights have prevailed? We will need to develop strategies to protect the spirit of human rights.

If the tragedy of the commons does not occur, why do so many fisheries become overcapitalized and overfished even when there are enforceable catch limits in place?

- The Human Rights vs. Property Rights: Implementation and Interpretation of the SSF Guidelines' report makes the point that this is not adequately explained by the tragedy of the commons framework. We're drawing on a broader political economy and political ecology of fisheries by looking at broader social dynamics to understand what is actually driving these types of fishery systems. We argue that profit accumulation is at its core. And once that is the driving force, then a whole number of processes and dynamic are offset. Unleashing ITQs won't solve this problem, and if anything, may exacerbate that tendency in the fisheries. For more information, see article, Liam Campling & Elizabeth Havice: 'The problem of property in industrial fisheries' in Journal of Peasant Studies, 2014.

What are some of the things that we can do at the group level – researchers, community groups, to clarify some of these perspectives?

- There is a lot to be discussed as the concept is so broad and it means different things to different people. Some people look at it as the right thing to do but we need to move beyond vagueness towards definitions and discussions. From the legal perspective, HBRA can be understood as an argument to be made to support a position; as an arguments being made in court, in parliament against other schemes. These arguments are not fleshed out yet to form the legal research component, and we need to do a lot of work to develop these arguments (e.g. intra-generational arguments, efficiency arguments, equitable distribution to favour the groups to be supported under a human rights umbrella etc.).

Additional comments and questions from the audience

- Talking about property rights as a tool leads us to look at them only from an instrumental perspective, that of the manager. This is not necessary the perspective of the individual and the community. This is something they have or have not. Whether they belong to the haves or the have-nots will determine their ability to sustain their livelihoods and community. Isn't there a risk that the tool talk is missing the latter point and concern? Do we risk the same if we talk about human rights as an approach, I wonder.
- What would be a good example of a fishery where the human rights approach has been used?

- We also found limited tools available to address human right violation through seafood supply chain.
- By talking about human rights as an approach, we reduce them to a means, whereas human rights have value in themselves.
- Do you think that for SSF, human rights and property rights are both currently in place?
- In Canada, we have a little experience, based on our Constitution Act 1982 amendments concerning Indigenous People and their rights. This is especially true regarding renewable resources generally, and with regard to fisheries in particular. But perhaps this may be considered too specialized as a set of cases.
- What if human rights and property rights confront in a shared territory? Mostly if the subsistence of a community depends on the decision of another community.
- I think there is a need to clarify the difference between property rights and rights based management.
- I think we need to build up the body of evidence on SSF and human rights - with examples that illustrate how it can be practically applied.
- There are inherent rights in Naseegh's sense, and there are state-based norms (including international norms). This is an important interface, and requires more effort to articulate.
- I see it in all discussions, debates and meetings surrounding SSFs. I also see it in the literature where most publications are supporting HRBA and not neo liberal approach.
- How many governments are engaged with HRBA? Most economic departments don't bother with publishing academic papers.
- There is a historical legacy of colonialism and capitalism that permeates all of the institutional structures that 'govern' and 'manage'. We cannot separate our understanding of what we are treating in this discussion from that reality. What's more is that this continues to this day in the form of globalization and development.
- If one wonders what the HRBA means in the context of small-scale fisheries, a place to start is by reading the SSF Guidelines, where human rights and dignity is a guiding principle, which is stated initially and then "operationalized" throughout the document.