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Building resilience to climate change and disaster risks for small-scale fisheries communities

A human-rights-based approach to the implementation of Chapter 9
of the Voluntary Guidelines for Securing Sustainable Small-Scale
Fisheries in the Context of Food Security and Poverty Eradication

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Abbreviations and acronyms

AAP	Accountability to Affected Populations
ACHPR	African Commission on Human and Peoples' Rights
BAS	best available science
CEDAW	Convention on the Elimination of Discrimination against Women
Common Understanding	UN Common Understanding on the Human Rights-Based Approach to Development Coordination
COP21	Twenty-first Conference of the Parties
COP22	Twenty-second Conference of the Parties
CRC	Committee on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSO	civil society organization
DRR	disaster risk reduction
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
ETO	extra-territorial obligations
EWS	early warning system
FPIC	free, prior and informed consent
HRBA	human rights-based approach
HRC	Human Rights Council
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICM	integrated coastal zone management
ILC	International Land Coalition
IPCC	Intergovernmental Panel on Climate Change
IVR	Interactive voice response
LAC-P10	Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters
LDC	least developed countries
MPA	marine protected area
NAP	National Adaptation Plan
NAPA	National Adaptation Programme of Action
NDC	Nationally Determined Contribution
OHCHR	Office of the United Nations High Commissioner for Human Rights
Sendai Framework	Sendai Framework for Disaster Risk Reduction
SIDS	small island developing states
SSF	small-scale fisheries

SSF Guidelines	Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication
UDHR	Universal Declaration on Human Rights
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNC	United Nations Charter
UNDG	United Nations Development Group
UNFCCC	United Nations Framework Convention on Climate Change
UNHCR	Office of the United Nations High Commissioner for Refugees
UNGA	United Nations General Assembly
UNGP	United Nations Guiding Principles on Business and Human Rights
UNISDR	United Nations International Strategy for Disaster Reduction
USAID	United States Agency for International Development
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests
WHO	World Health Organization
WIM	Warsaw International Mechanism for Loss and Damage

Introduction

This guide presents a perspective on implementing the climate change and disaster risk elements of the Voluntary Guidelines for Securing Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines), with special attention to protecting human rights. The guide will help policymakers, government agencies, development partners, and civil society organizations to design and implement fisheries-related policies and programmes addressing disaster risks and climate change.

Small-scale and artisanal fisheries (SSFs) are important. They contribute about half of global fish catches. They also employ more than 90 percent of the world's capture fishers and fish workers, about half of whom are women.

SSFs are vulnerable. "Pollution, environmental degradation, climate change impacts and natural and human-induced disasters add to the threats facing small-scale fishing communities" (USAID, 2017, p. xi).

SSFs are overlooked. Development efforts often ignore these communities (USAID, 2017), missing chances to improve food security, eradicate poverty and promote sustainable development.

The SSF Guidelines (see Box 1) aim to promote the development of SSFs, and within the Guidelines, Chapter 9 aims to address climate change and disaster risk. This guide focusses on Chapter 9, but it also considers other parts of the SSF Guidelines and other international instruments that tie into the Chapter's implementation.

Combatting climate change in the context of SSFs:

...requires urgent and ambitious action, in accordance with the objectives, principles and provisions of the United Nations Framework Convention on Climate Change (UNFCCC) taking into account the United Nations Conference on Sustainable Development (Rio+20) outcome document 'The future we want'. (FAO, 2015, p. 12)

Combatting climate change also requires consideration of human rights. Paragraph 1.2 of the SSF Guidelines calls for a human rights-based approach (HRBA) to achieving the Guidelines' objectives. (See Box 3 in Part I for a discussion of HRBAs.)

Other instruments reinforce this call. In 2015, the Parties to the United Nations Framework Convention on Climate Change (UNFCCC 1992) adopted the Paris Agreement, which strengthens the global response to climate change (Article 2(1) in the PA). States implementing climate change measures in accordance with the Paris Agreement must:

respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity. (UNFCCC, 2015, p. 21)

In 2015, states also adopted the Sendai Framework for Disaster Risk Reduction 2015–2030 (the Sendai Framework),¹ which recognizes that climate change and variability increase disaster risk (Preamble, 4 & 13). The Sendai Framework encompasses a broad range of hazards –small and large, frequent and infrequent, sudden and slow-onset, natural and human-caused –related to environmental, technological and biological risks (FAO, 2016, p. 155). Parties to the Sendai Framework have agreed that protection of human rights, including the right to development, forms part of the management of disasters (UNISDR, 2015b).

The mutually supportive references in the Paris Agreement, the Sendai Framework and the SSF Guidelines underscore the relevance of human rights to climate change and disaster risks. States need laws and policies to reduce the risks posed by climate change and disasters, to protect those imminently at risk, and to protect the rights of marginal groups (including women and children). Adopting an HRBA will enable both states and non-state actors, including civil society organizations (CSO), to support SSF communities while honouring human rights.

Part I of this guide explores the links between climate change, disaster risk and human rights. It highlights the importance of human rights in international frameworks and the need for governments and organizations to anticipate and reduce risks and impacts. Part II discusses practical issues in applying a human rights approach while implementing the climate change and disaster risk provisions of the SSF Guidelines. Part III offers a closer look at human rights instruments that apply to fisheries policies and problems. Through case examples, Part IV shows how governments and SSF stakeholders can respond effectively to climate change and disaster challenges.

¹ The Sendai Framework for Disaster Risk Reduction 2015–2030 was adopted at the Third UN World Conference in Sendai, Japan, on March 18, 2015. The outcome of negotiations was supported by the United Nations Office for Disaster Risk Reduction. The Sendai Framework is the successor instrument to the Hyogo Framework for Action (HFA) 2005–2015: Building the Resilience of Nations and Communities to Disasters.

Box 1. The SSF Guidelines, disaster risk and climate change

The Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines or simply “the Guidelines”) are the first international instrument dedicated to the SSF sector. Their lengthy title offers an accurate summary of their nature and intent. They are voluntary, and they aim to promote stability and development of the sector.

The FAO Committee on Fisheries endorsed the Guidelines in 2014 after a long process of public involvement and comment. The Guidelines reflect that spirit of transparency and stakeholder participation.

FAO developed the SSF Guidelines to complement the 1995 FAO Code of Conduct for Responsible Fisheries. The Guidelines support of the overall principles and provisions of that Code. Although global in scope, applying to both the developed and the developing world, the Guidelines give particular attention to the needs of developing countries.

The SSF Guidelines have three parts containing in all thirteen chapters. Relevant to this note, Part I introduces the Guidelines and declares that countries should implement them using a human-rights-based approach, empowering local communities.

Part II is about responsible and sustainable resource use. Chapter 9 in Part II addresses disaster risks and climate change. In summary, Chapter 9 states:

- All states should urgently and ambitiously address climate change.
- In consultation with fishing communities, including indigenous peoples, men and women, states should adopt policies that address climate change and fisheries.
- To address threats such as pollution, erosion and habitat loss, that undermine the ability to adapt to climate change, responses will have to cut across sector lines.
- Communities may need state support to mitigate and adapt to climate change or natural and human-induced disasters.
- When humans cause disasters, the responsible parties should be held accountable.
- Climate change and disasters may affect the markets for fish, and states will need to help communities adjust.
- Disaster relief needs to have a long vision, building back a better, more resilient community than before the disaster.
- Small-scale fisheries need to be part of the larger response to climate change, particularly with regard to energy efficiency in harvest, marketing and distribution.
- States should help communities access funds, facilities and culturally appropriate technologies for adaptation.

Part III is about implementation. Chapter 10 in Part III deals with policies and institutions. Portions of it stress:

- Coherence with international law, including those instruments dealing with human rights laws, disaster relief management and climate change.
- Attention to local livelihoods.
- Eradication of hunger and poverty, especially for vulnerable and marginalized people.

Part 1



Links between climate change,
disaster risks and human rights



Part I. Links between climate change, disaster risks and human rights

Climate change and disasters may affect people's right to food, drinking water, health and housing, with disproportionate impacts on individuals, groups and people which are in vulnerable situations such as women, children, older persons, indigenous peoples, minorities, migrants and the poor. The SSF Guidelines, the international climate change agreements, and the international disaster framework all recognise the importance of respecting human rights in both planning (through public participation) and outcomes (through protection of life, livelihoods and food security). In addition, the international frameworks lay out processes for planning and reporting on actions to combat the effects of climate change and to reduce disaster risks.

Climate change, disasters and small-scale fisheries

Climate change brings pressure and uncertainty to small scale fisheries and the livelihoods of SSF communities living in marine, brackish and freshwater environments.² Warming waters result in changes to fish composition and distribution and alter fish production and efficiency of different fishing gear. Stronger or more frequent storms and floods expose fishers at sea and fishing communities and operations on land. Melting ice and warming oceans cause the sea level to rise as well as potentially restricting access to fisheries or the transport of catches. These and other consequences may lead to food insecurity, lost income and environmental degradation for SSF communities, which in turn may increase their vulnerability to further climate change and disasters. (For more specifics on climate change impacts, see Table 1).

² The Intergovernmental Panel on Climate Change (IPCC) defines climate change as a change in the state of the climate that can be identified (e.g. by using statistical tests) by changes in the mean and/or the variability of its properties and that persists for an extended period, typically decades or longer (IPCC, 2014a).

Table 1. Example of direct climate change impacts on capture fisheries

Climate variability	Effects/Impacts on
Temperature Rainfall Extreme events Wind patterns Evaporation River flows Lake levels Sea level rise Salinity, saline intrusion	Production ecology and biodiversity Production & yield Species composition & distribution Diseases Coral bleaching
	Fishing operations Safety & efficiency Infrastructure Processing & transport
	Community & livelihoods Loss/damage to livelihood assets Livelihood strategies Risk to health & life Displacement & conflict
	Wider society & economy Adaptation and mitigation costs Market impacts Water allocation Floodplain and coastal defence

Source: adapted from Badjeck *et al.* (2010) and Harrod *et al.* (2018).

Large-scale disasters are overwhelming processes causing losses and impacts that require assistance from outside the affected community (UNDRR, 2021). Fishing communities and infrastructures (e.g. ports, markets) commonly sit where water meets land, precisely where various hydrological and meteorological disasters strike (FAO, 2018). For SSF communities, disasters may include storms, floods, drought and tsunamis as well as environmental pollution and conflicts.

Reducing the impact of climate change or disasters requires planning and early action to manage or withstand the disturbance caused by the hazard (e.g. the damage to or loss of fishing boats/gear or the lack of knowledge). People often discuss climate change and disasters in terms of:

- Risk: what is the potential size and likelihood of a loss?
- Exposure: what people and assets are in harm's way?
- Vulnerability: what factors affect the susceptibility of the community to harm?
- Capacity: how well can the community and greater society manage and reduce risks?
- Resilience: considering the above, how well can a community resist, absorb, accommodate, adapt to, transform and recover from the effects of harm? (UNDRR, 2021).

Planning should consider all these aspects. The case of Odisha is a good illustration of the importance of planning. With a good disaster management system in place, the number of deaths due to Cyclone Phailin, which hit the State of Odisha, India, in October 2013, was reduced to 47 people, compared to 9 848, 14 years earlier after the cyclone hit the same area with the same intensity (FAO, 2016).

Planning must also consider human rights. Human rights include civil rights like the right to life and principles including non-discrimination, economic and social rights like the rights to food, work or health, and collective rights like the rights to self-determination or development (OHCHR, 2021). Failure to adopt preventive measures, prepare adequate emergency response measures or adopt policies that reduce vulnerability may well deprive people of rights like these. As discussed below, nations and international bodies now recognize the need to integrate human rights considerations with national law and policy on climate change and disaster risk reduction.

Furthermore, justice requires giving affected communities, including SSF communities, an active role in planning for climate change and disasters. Climate change may cause the most harm to those who have contributed the least to climate change, like small scale fishing communities living on small islands or indigenous peoples. They are entitled to a voice in discussions about their future.

The international climate change regime

The foundation of the international climate change regime is the 1992 UN Framework Convention on Climate Change (UNFCCC). The parties to the UNFCCC have met many times in Conferences of the Parties (COPs), reviewing reports and proposing further action to address climate change. Notable developments under the UNFCCC have been the adoption in 1997 of the Kyoto Protocol, which committed developed countries to reduce greenhouse gas emissions, and the adoption in 2015 of the Paris Agreement, which represents a strengthened response to the threat of climate change and is now the focus of the international effort to address climate change.

At the heart of that strengthened response is the long-term temperature goal laid down in Article 2(1)(a) of the PA

Holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change. (UNFCCC, 2015, p. 22)

This goal is based on the evolving science as to what constitutes dangerous climate change, including the impacts of such levels of temperature rise on the most vulnerable countries. The urgency and ambition reflected in the new long-term temperature goal is directly relevant to the SSF sector, which is particularly at risk from sea level rise, storm surges and other extreme events that pose a direct risk to life and health, as well as from the migration of, and other changes to, fish stocks, with consequences for livelihoods and nutrition. The progress of the international community in adhering to the increased long-term ambition of the PA, therefore, has direct implications for SSF communities around the world.

The Intergovernmental Panel on Climate Change (IPCC), established in 1988, publishes regular scientific reports on climate change addressing a wide range of issues including its impacts and the emissions pathways required if international climate goals aimed at preventing dangerous climate change are to be met. State parties to the Paris Agreement have agreed to base action on the best available science,³ and the IPCC reports are of central importance in this regard.

So far, the international community has given limited consideration to oceans and the marine sector under the international climate change regime. This is set to increase with the inclusion of specific language in the Preamble to the Paris Agreement referring to “the importance of ensuring the

³ See the Preamble, Article 4(1), Article 7(5) and 14(1) of the Paris Agreement.

integrity of all ecosystems, including oceans, and the protection of biodiversity” (UNFCCC, 2015, p. 21). In 2016 at the Twenty-second Conference of the Parties (COP22), Parties considered *The Strategic Action Roadmap on Oceans and Climate: 2016 to 2021* (Global Ocean Forum, 2016) presenting a five-year plan for action on oceans and climate within and outside the UNFCCC, including action on climate change mitigation and adaptation.⁴

The IPCC has addressed climate change impacts on marine and inland systems in its Assessment Reports. In its most recent assessment report, the IPCC noted that:

Climatic and non-climatic drivers affecting coral reefs will erode habitats, increase coastline exposure to waves and storms and degrade environmental features important to fisheries and tourism (high confidence). (IPCC, 2014a, p. 67)

...the livelihoods and lifestyles of indigenous peoples, pastoralists and fisherfolk, often dependent on natural resources, are highly sensitive to climate change policies, especially those that marginalize their knowledge, values and activities. (IPCC, 2014b, p. 8)

The IPCC’s 2018 Special Report on Global Warming of 1.5 Degrees (SR 1.5) addresses the impacts of a rise in global average temperature of 1.5 C above pre-industrial levels, and compares these with the impacts of a 2 C rise. The IPCC Summary for Policymakers (SPM) noted (IPCC, 2018a):

Populations at disproportionately higher risk of adverse consequences with global warming of 1.5°C and beyond include disadvantaged and vulnerable populations, some indigenous peoples, and local communities dependent on agricultural or coastal livelihoods (high confidence). Regions at disproportionately higher risk include Arctic ecosystems, dryland regions, small island developing states, and Least Developed Countries (high confidence). (SPM B.5.1)

In 2019 the IPCC also published the Special Report on the Ocean and Cryosphere in a Changing Climate. In that report the IPCC highlighted climate change impacts on fisheries and fishing communities (IPCC, 2019):

Warming-induced changes in the spatial distribution and abundance of some fish and shellfish stocks have had positive and negative impacts on catches, economic benefits, livelihoods, and local culture (high confidence). There are negative consequences for Indigenous peoples and local communities that are dependent on fisheries (high confidence)... (SPM A 8.1)

Global warming compromises seafood safety (medium confidence) through human exposure to elevated bioaccumulation of persistent organic pollutants and mercury in marine plants and animals (medium confidence), increasing prevalence of waterborne *Vibrio* pathogens (medium confidence), and heightened likelihood of harmful algal blooms (medium confidence). These risks are projected to be particularly large for human communities with high consumption of seafood, including coastal Indigenous communities (medium confidence), and for economic sectors such as fisheries, aquaculture, and tourism (high confidence) (SPM B.8.3)

Restoration of vegetated coastal ecosystems, such as mangroves, tidal marshes and seagrass meadows ...could provide climate change mitigation through increased carbon uptake and storage of around 0.5% of current global emissions annually (medium confidence). Improved protection and management can reduce carbon emissions from these ecosystems. Together, these actions also have multiple other benefits, such as providing storm protection, improving water quality, and benefiting biodiversity and fisheries (high confidence). (C.2.4)

⁴ See also “OCEANS: From the facilitators to the Champions”, a report presented at COP22 in 2016.

The international response to climate change following the adoption of the Paris Agreement has emphasized three areas: *mitigation*, *adaptation* and *finance*. Besides these, the international community is considering how to deal with *loss and damage from climate change*. *The regime has also set out planning and reporting requirements*. This guide discusses each of these topics below. The Paris Agreement also requires that the eradication of poverty, the reduction of vulnerability and the strengthening of resilience be addressed in an integrated way across these areas.⁵

Mitigation

The IPCC defines mitigation as “An anthropogenic intervention to reduce the sources or enhance the sinks of greenhouse gases ...” (IPCC, 2001, p. 379.).

The long-term temperature goal is based on the evolving science as to what constitutes dangerous climate change,⁶ including the impacts of temperature rise on the most vulnerable countries. Missing or overshooting the goal would gravely affect SSF communities around the world as confirmed in the Special Reports of the IPCC (see above).

To achieve the long-term temperature goal, the Paris Agreement requires all parties “to undertake and communicate ambitious efforts” to reduce or offset emissions, which will happen as “a progression over time, while recognizing the need to support developing country Parties for the effective implementation of this Agreement.” (UNFCCC, 2015). Parties must aim to reach a global peak of greenhouse gas emissions “as soon as possible, recognizing that peaking will take longer for developing country Parties”, and to undertake “rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty ...” (UNFCCC, 2015, p. 22).

Efforts to reduce emissions or increase sinks can involve SSF communities. For example, one way to achieve mitigation is to become more energy efficient. Chapter 9.8 of the SSF Guidelines calls on states to: “...encourage and support energy efficiency in the subsector, including the whole value chain – fishing, postharvest, marketing and distribution” (FAO, 2015, p. 13). Compared to large scale fisheries, SSFs are already a step ahead, using less fossil fuel per tonne of catch (Thompson, D., 1980; Pauly, D., 2006; Pomeroy, R.S and Andrew, N.L, 2011). Assuring the stability of SSF communities against competition from large scale fisheries and helping improve energy efficiency in the handling of their catch will advance mitigation.

Investing in “blue carbon” projects, which sequester carbon in marine environments, is one way to create sinks. Examples include protection or restoration of salt marsh, mangrove, or sea grass habitats. Another example is creation of marine parks. Such efforts can help SSF communities, for example, by boosting fish stocks, or hurt them, for example, by limiting access to traditional fishing grounds.

In balancing these kinds of impacts, policy makers must engage and empower SSF communities in mitigation planning. Part II of this guide, in its discussion of human rights, explores the right of SSF communities to be consulted in decision-making. Where affected SSF communities fall within the scope of the international laws protecting the rights of indigenous peoples, the principle of Free, Prior and Informed Consent (FPIC) will also apply. It may also apply to other communities, as

⁵ See Paris Agreement including the Preamble, Articles 2, Article 4(1), 6(8), 7(9) and 8(4).

⁶ See also Decision 1/CP.16 (The Cancun Agreements) at paragraph 4.

discussed in Part II, including fishers and other people living in rural areas under the United Nations Declaration on the Rights of Peasants and other People Working in Rural Areas (Article 2(3)).

Adaptation

The IPCC defines climate change adaptation as “adjustments in natural or human systems in response to actual or expected climatic stimuli or their effects, which moderates harm or exploits beneficial opportunities (IPCC, 2008). Article 7(5) of the Paris Agreement calls for a strong adaptation effort, sensitive to the needs of people:

adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems...; (UNFCCC, 2015, p. 26)

Parties to the Paris Agreement must undertake adaptation planning processes and actions, which could include the following:

The assessment of climate change impacts and vulnerability, with a view to formulating nationally determined prioritized actions, taking into account vulnerable people, places and ecosystems ...

Building the resilience of socioeconomic and ecological systems, including through economic diversification and sustainable management of natural resources (UNFCCC, 2015, p. 27).⁷

The IPCC has defined resilience as:

The ability of a social or ecological system to absorb disturbances while retaining the same basic structure and ways of functioning, the capacity for self-organization and the capacity to adapt to stress and change. (IPCC, 2007, p. 86)

Parties have launched a technical examination process on adaptation, to be conducted by the Adaptation Committee, to identify concrete opportunities for strengthening resilience, reducing vulnerabilities and increasing the understanding and implementation of adaptation actions (UNFCCC, 2015, pp. 18–19).

Adaptation for SSF communities could focus on a number of points. For example, to deal with sea level rise, communities may need enhanced coastal protection or relocation (retreat). To deal with stronger or more frequent weather events, communities may need to harden their ports. To deal with shifting ocean conditions and changing fish stocks, communities may need enhanced capacities, provided through education or financial assistance.

Adaptation planners should pay attention to the SSF Guidelines. Chapter 9 (on climate change and disaster risk) is directly relevant to the substance of adaptation plans, and Chapter 10 (on policy coherence, institutional coordination and collaboration) is directly relevant to the scope and process of planning. Those two chapters are only the beginning, however. Efforts to build socioeconomic and ecological resilience will touch on SSF Guidelines Chapter 5 (governance and tenure), Chapter 6 (social development) and Chapter 7 (value chains and trade).

Planners will also want to honour human rights standards in both planning (through public participation) and outcomes (through protection of life, livelihoods and food security). Adherence to

⁷ For examples of national adaptation actions currently supporting fisheries, see p. 34 of the Report of Adaptation Fund FCCC/KP/CMP/2020/2-FCCC/PA/CMA/2020/2 of 31 December 2020.

human rights standards should reinforce good governance, secure more effective action to address climate change and disasters and provide a basis for more informed and inclusive decision-making.

Loss and damage

UNFCCC Parties have acknowledged that “loss and damage associated with the adverse effects of climate change includes, and in some cases involves more than, that which can be reduced by adaptation” (UNFCCC 2013, p. 6). The IPCC has stated with very high confidence that “some risks from residual damages are unavoidable, even with mitigation and adaptation” (IPCC 2014, Section 3.2. p. 78).

Parties to the Paris Agreement recognize in Article 8(1):

... the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage ... (UNFCCC, 2015, p. 27)⁸

The Warsaw International Mechanism for Loss and Damage (WIM) identifies some areas of common concern between adaptation and addressing loss and damage.⁹ For example, both require comprehensive risk assessment and managing and building the resilience of communities’ livelihoods and ecosystems (UNFCCC, 2015). However, by definition, loss and damage covers matters not resolved through adaptation.

Loss and damage are particularly relevant to the SSF sector. Sea level rise may cause permanent loss of habitation and mooring. Extreme weather events will pose risks to vessels, gear and lives. Long-term impacts on the distribution and productivity of fish stocks may harm livelihoods and food security. All these will contribute to losses of processing and marketing infrastructure. As with adaptation, Parties addressing loss and damage will want to consider a broad range of social and ecological concerns. These concerns may require looking beyond Chapter 9 of the SSF Guidelines to the guidelines in earlier chapters.

Planning and reporting

Besides setting goals for mitigation and adaptation, the international climate change framework lays out processes for planning and reporting on actions to combat the effects of climate change. Parties must submit national communications (UNFCCC, 1992), National Adaptation Plans (NAPs) and, under the Paris Agreement, Nationally Determined Contributions (NDCs) (UNFCCC, 2015, p. 27).¹⁰ Least-developed nations must submit National Adaptation Programmes of Actions (NAPAs).

- In national communications, countries periodically present an inventory of their greenhouse gas sources and sinks, the steps they have taken or planned to meet UNFCCC commitments, and any other information relevant to meeting the goals of the UNFCCC.
- In NAPs, countries identify their medium- and long-term adaptation needs and strategies.
- In NDCs, countries present their planned actions to meet the overall goals of the Paris Agreement. Most notably, the NDCs should include a country’s mitigation goals.
- In NAPAs, countries identify their most pressing adaptation needs.

⁸ Paragraph 51 of Decision 1/CP.21 states that Article 8 does not involve or provide a basis for any liability or compensation (UNFCCC, 2015, p. 8).

⁹ The WIM was established in 2013 by COP Decision 2/ CP19 (UNFCCC, 2013) to address loss and damage associated with impacts of climate change and is now subject to the authority and guidance of the CMA, Article 8(2) of the Paris Agreement (UNFCCC, 2015).

¹⁰ NAPAs were established under the Cancun Adaptation Framework and developed under COP Decision 5/CP.17. The NAPA process was designed to identify priority areas for urgent and immediate needs in Least Developed Countries (LDCs) and predates NAPs. NAPAs were introduced in 2001 pursuant to Article 4.9 of the UNFCCC 1992.

Countries will renew their NDCs every five years. To assess collective progress towards mitigation, there will be both individual technical reviews of country submissions (Article 13(11) & (12) of the Paris Agreement) and a periodic “global stocktake” (Article 7(14) and Article 14). The 2023 global stocktake will also review adaptation efforts as well as finance commitments.

The Paris Agreement’s basic standards for preparing NDCs, NAPs and NAPAs are consistent with the letter and spirit of the SSF Guidelines. Countries should be transparent (Article 13 of the Paris Agreement), use the best available science (BAS) (Article 7(5)), encourage public participation (Article 12) and integrate national climate action with human rights standards (Preamble to the Paris Agreement).

Article 13 of the Paris Agreement sets up a transparency mechanism to “build mutual trust and confidence” at the international level and promote effective implementation. However, this mechanism will only be effective if there is also transparency at the national level.¹¹ In recognition of the need for coherence between the international and national levels, Parties to the Paris Agreement have established a Capacity-building Initiative for Transparency, supported by the Global Environment Facility.

Ideally, countries will not only be open about the information that they have, they will ensure that they have accurate and complete information. That could mean collecting data on the specific vulnerabilities of SSF communities and their residents. Figure 1 shows an example of a process to compile such data.

Figure 1. Workshop process



Source: Rapid vulnerability assessment in Raemaekers, S. and Sowman, M. (2015).

¹¹ FAO has highlighted the need for greater transparency in fisheries, as per the *Technical Guidelines for Responsible Fisheries* (FAO, 2003, p. 8).

Similarly, the “best available science” (BAS) does not only mean the best existing science. Countries may need to fill gaps in availability by researching the local impacts of climate change, the national or local risks of extreme events affecting SSF communities and the risks associated with migration and other impacts on fish stocks. Countries can signal the need for support for such research in their NAPs or NDCs, and they can seek financial and technical support under the Paris Agreement. Proceeding without trying to fill gaps in knowledge can even be a violation of human rights (see Box 2).

Box 2. Science, knowledge, and human rights

The Office of the United Nations High Commissioner for Human Rights (OHCHR) has noted that:

The [International Covenant on Economic, Social and Cultural Rights (ICESCR)] states that everyone has the right to enjoy the benefits of science and its applications. All States should actively support the development and dissemination of new climate mitigation and adaptation technologies including technologies for sustainable production and consumption ... (OHCHR, 2015, p. 4).

Often there is little peer-reviewed scientific research to shed light on local risks that SSF communities face, such as moving fish stocks, changing weather patterns or coastal erosion. To set research priorities, states will have to consider their human rights obligations (including the right to protect life), their Paris Agreement requirements to act based on BAS, and their desire to follow the SSF Guidelines. This issue is discussed further in Part II of this guide, below. States will also want to consider a broad spectrum of scientific thinking, building inclusiveness in scientific forums and ensuring coordination of any relevant scientific work undertaken by regional fisheries management organizations.

States should consider the importance of traditional knowledge of SSF communities in addressing local risks (SSF Guideline 3.2; see also Convention on Biodiversity, art. 8(j)). As pointed out by the Expert Mechanism on Indigenous Peoples, in the context of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP):

Traditional knowledge has a valuable role to play in disaster risk reduction and it should be recognized and protected accordingly. All too often, mainstream disaster management institutions have ignored indigenous knowledge, and many successful local practices have disappeared as a consequence of non-indigenous influence. At other times, indigenous peoples' practices have adapted to changing environments. (HRC, 2014, p5)

The international disaster framework

The Sendai Framework for Disaster Risk Reduction (UNISDR, 2015b) is the leading international instrument on disaster planning and response. Like the SSF Guidelines, the Sendai Framework is non-binding but aims to encourage good practices. A second instrument described below, on Protection of Persons in the Event of Disasters, is still in draft form, but its content may influence current thinking and actions.

The overall aim of the Sendai Framework is set out in the Preamble:

The substantial reduction of disaster risk and losses in lives, livelihoods and health and in the economic, physical, social, cultural and environmental assets of persons, businesses, communities and countries. (UNISDR, 2015b, p. 12)

The Sendai Framework’s scope covers the full range of risks faced by SSF communities. The Framework applies:

...to the risk of small-scale and large-scale, frequent and infrequent, sudden and slow-onset disasters caused by natural or man-made hazards, as well as related environmental, technological and biological hazards and risks. It aims to guide the multi-hazard management of disaster risk in development at all levels as well as within and across all sectors. (UNISDR, 2015b, p. 11)

Compared to past approaches, the Sendai Framework puts greater emphasis on disaster risk reduction (DRR). It seeks to prevent new, and reduce existing, disaster risk:

through the implementation of integrated and inclusive economic, structural, legal, social, health, cultural, educational, environmental, technological, political and institutional measures that prevent and reduce hazard exposure and vulnerability to disaster, increase preparedness for response and recovery, and thus strengthen resilience. (UNISDR, 2015b, p11)

The Sendai Framework aims to integrate both DRR and the building of resilience into policies, plans, programmes and budgets at all levels. It sets four priorities, shown in Figure 2.

Figure 2. Four priorities for action



These priorities overlap with implementation of the Paris Agreement and Chapter 9 of the SSF Guidelines. Assessments of risks, vulnerability and resilience are directly relevant to all three instruments.¹² The preamble to the Sendai Framework highlights the links between climate change adaptation and mitigation and disaster risk reduction (DRR):

The intergovernmental negotiations on the post 2015 development agenda, financing for development, climate change and disaster risk reduction provide the international community with a unique opportunity to enhance coherence across policies, institutions, goals, indicators and measurement systems for implementation, while respecting the respective mandates. Ensuring credible links, as appropriate, between these processes will contribute to building resilience and achieving the global goal of eradicating poverty. (UNISDR, 2015b, p. 11)

The International Law Commission (ILC) has prepared a second instrument relevant to disasters, draft articles on “Protection of persons in the event of disasters” (Draft Articles) (ILC 2016). The ILC has submitted them to the UN General Assembly, and they may ultimately become the basis of an international agreement. In the meantime, they provide useful, although informal, guidance.

The stated purpose of the Draft Articles is to “facilitate an adequate and effective response to disasters that meets the essential needs of the persons concerned, with full respect for their rights ...” (ILC 2016, Draft Article 2, p. 14). Draft Article 9 addresses DRR:

1. Each State shall reduce the risk of disasters by taking the necessary and appropriate measures, including through legislation and regulations, to prevent the creation of new risk and reduce existing risk and to mitigate and prepare for disasters.
2. Disaster risk reduction measures include the conduct of risk assessments, the collection and dissemination of risk and past loss information and the installation and operation of early warning systems. (ILC 2016, p 15)

The nexus with human rights obligations

The SSF Guidelines, the international climate change agreements, and the international disaster framework all recognise the importance of respecting human rights. To begin, paragraph 1.2 of the SSF Guidelines (FAO, 2015, p. 1) promotes a human rights-based approach (HRBA) to achieve the Guidelines’ objectives. See Box 3 for a discussion of HBRA.

Box 3. Human rights-based approach

There is no single international definition of a human rights-based approach (HRBA) but there are many international statements that clarify the scope of an HRBA in the context of development cooperation.

The United Nations Development Group (UNDG) adopted the 2003 UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming (the Common Understanding, <https://hrbaportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies>).

¹² In adopting the Paris Agreement, Parties welcomed the adoption of the Sendai Framework (see Preamble to Decision 1/CP.21; UNFCCC, 2015, p. 2).

The statement presents four elements as “necessary, specific, and unique to a human rights-based approach”:

- Identifying **the human rights claims of rights-holders** and the **corresponding human rights obligations of duty-bearers** as well as the reasons that rights haven’t been honoured.
- Assessing the capacity of rights-holders to **claim their rights**, and of duty-bearers to **fulfill their obligations**, and developing strategies to build these capacities.
- **Monitoring and evaluating outcomes and processes** guided by human rights standards.
- Paying attention to **the recommendations of international human rights bodies and mechanisms**. (UNDG, 2003, Section 3)

Other essential elements identified in the Common Understanding include:

- Recognizing people as “key actors in their own development, rather than passive recipients of commodities and services”,
- Valuing participation as both a means and a goal and
- Focusing on marginalized, disadvantaged and excluded groups. (UNDG, 2003, Section 3)

The Office of the United Nations High Commissioner for Human Rights (OHCHR) has issued Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation (FAQs) (<http://www.ohchr.org/Documents/Publications/FAQen.pdf>) that address the elements of an HRBA. The FAQ document confirms that:

A human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyse inequalities that lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress. (OHCHR, 2006, p. 15)

Under a human rights-based approach, the plans, policies and processes of development are anchored in a system of rights and corresponding obligations established by international law. (OHCHR, 2006, p. 15)

Principles and standards derived from international human rights treaties should guide all development cooperation and programming in all sectors and in all phases of the programming process. (OHCHR, 2006, p. 16)

The preamble to the Paris Agreement provides:

Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity; ... (UNFCCC, 2015, p. 21)

Paragraph 19(c) (UNISDR, 2015, p. 13) of the Sendai Framework makes the promotion and protection of all human rights a guiding principle. It states:

Managing the risk of disasters is aimed at protecting persons and their property, health, livelihoods and productive assets, as well as cultural and environmental assets, while promoting and protecting all human rights, including the right to development. (UNISDR, 2015b, p. 13)

The United Nations Office for Disaster Risk Reduction (UNISDR), which is the UN agency supporting implementation of the Sendai Framework, has emphasized the link between governance, human rights and the ability of states to manage disaster risk:

the capacity of countries to manage their disaster risks will depend on the overall quality and strength of governance. This implies that it is highly unlikely that countries where corruption is rife, where there is no freedom of the press, where there is civil or military conflict, or where there is little respect for human rights in general will be able to manage their disaster risks effectively (UNISDR, 2015a, p. 254)

This underlines the need for an HRBA to promote effective governance in the SSF sector to address effectively the risks posed by climate change and disasters.

The Draft Articles also reflect the need to honour human rights. Parties discussed the scope of engagement between human rights law and disaster relief during the negotiations on the Draft Articles. FAO emphasized that recognition of the human rights of persons affected by disasters is of the utmost importance and sought stronger language in this regard.¹³ Following deliberation, Draft Article 5 currently provides that: ‘Persons affected by disasters are entitled to the respect, protection and fulfilment of their human rights (ILC, 2016, p. 15).

Just as climate change and disaster instruments refer to human rights, human rights instruments also highlight links between human rights on the one hand and climate change and disasters on the other. In 2008, the United Nations Human Rights Council (HRC) expressed concern that climate change “poses an immediate and far-reaching threat to people and communities around the world” (HRC, 2008, p. 1). This was followed by a series of further resolutions, including the HRC Resolution 32/33 of 18 July 2016 that welcomed adopting the Paris Agreement and the Sendai Framework and expressed the concern that:

climate change has contributed to the increase of both sudden-onset natural disasters and slow-onset events, and that these events have adverse effects on the full enjoyment of all human rights” (HRC, 2016a, p. 4).

The HRC emphasized that:

the urgent importance of continuing to address, as they relate to States’ human rights obligations, the adverse consequences of climate change for all, particularly in developing countries and the people whose situation is most vulnerable to climate change. (HRC, 2016a, p. 4)

These sentiments are echoed in the 2007 Malé Declaration on the Human Dimension of Global Climate Change, adopted by Small Island Developing States, which also recognized that climate change has “clear and immediate implications for the full enjoyment of human rights” (Malé, 2007, p.2).

Box 4 describes further coverage of climate change and disasters in the human rights context.

The next Part of this guide presents key relevant human rights in greater detail.

¹³ See comments and observations by FAO on the draft articles, adopted on first reading by the ILC at its 66th session, available at legal.un.org/ilc/guide/6_3.shtml.

Box 4. Links between climate change disasters and human rights

The Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment has concluded that human rights norms clarify how states should respond to climate change (HRC 2016(b)) and has highlighted the human rights dimension of the need to close the emissions gap (HRC(b)).

A study submitted to the Human Rights Council (HRC) in 2014 set out the types of impacts that disasters might have on human rights:

The impact of disasters on human rights can be of a direct nature, such as the threat that extreme weather events may pose to the right to life. But often they will have an indirect and gradual effect on human rights, such as increasing stress on health systems and increasing vulnerabilities related to climate change-induced migration... The same holds true for virtually all types of natural hazards. Disaster risk reduction contributes to the protection of human rights by reducing the likelihood of natural hazards having a negative impact on housing, health, land rights and access to food, to give a few examples. (HRC(c), p.4)

The Office of the United Nations High Commissioner for Human Rights (OHCHR) has also addressed the adverse effects of climate change on specific rights, including the right to adequate food (OHCHR 2009). Drawing on its earlier work, OHCHR addressed the application of human rights to climate change at the United Nations Framework Convention on Climate Change 21st Conference of the Parties in 2015:

...States (duty-bearers) have an affirmative obligation to take effective measures to prevent and redress ...climate impacts, and therefore, to mitigate climate change, and to ensure that all human beings (rights-holders) have the necessary capacity to adapt to the climate crisis ...States have an obligation to respect, protect, fulfil and promote all human rights for all persons without discrimination. Failure to take affirmative measures to prevent human rights harms caused by climate change, including foreseeable long-term harms, breaches this obligation. (OHCHR 2015) p.2)

The Committee on the Rights of the Child has stated that under Article 24(2)(c) CRC:

States should ...put children's health concerns at the centre of their climate change adaptation and mitigation strategies" (CRC 2013) p.12)

The Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights were issued on 28 September 2011 by 40 international law experts (Maastricht Principles) (see www.etoconsortium.org) and constitute an international expert opinion, restating human rights law on extra-territorial obligations (ETO). They aim to clarify the content of state ETOs to realize economic, social and cultural rights with a view to advancing and giving full effect to the object of the Charter of the United Nations and international human rights. A number of the principles are potentially relevant to climate change and disasters including Principle 23 (General Obligation to protect) and Principle 33 (Obligation to provide international assistance).

Part



Practical issues in applying
a human rights approach



Part II. Practical issues in applying a human rights approach

This Part offers general advice on taking a human rights approach in dealing with SSF climate change and disaster issues. The basic steps involve becoming aware of what human rights issues are and when they may arise, and then applying good practices to protect those rights.

Who must be aware of human rights issues?

For rights recognized in international standards or agreements, usually nations bear the duty of compliance and all people are the holders of the rights. That does not mean that only governments need to be aware of the duties. Governments may enact laws that pass the duties on to others. Development partners may make respect of rights part of the conditions of participating in development projects. Society may judge people by how well they respect their fellow human beings. Courts are able to hold states and private actors accountable for breaches of human rights law.

The list of people who need to be aware of human rights issues is therefore long. It includes—

People who oversee or work for government agencies. Through treaties and laws, governments have committed to honour human rights. As part of participation in the international community, governments also embrace international voluntary standards like the SSF Guidelines. When governments conduct activities with international support, the sponsors may spell out human rights expectations in assistance agreements, safeguard rules, and other documents, and any doubts about a government's commitment to human rights may influence the design and execution of future partnership activities. Finally, from an ethical viewpoint, governments exist to serve people. People in government should do all in their power to avoid causing injuries through rights violations.

Parliamentarians. National laws should embody human rights obligations and aspirations as well as addressing parliamentary oversight and budget allocation systems.

Judges. The courts are the ultimate protectors of these rights.

Stakeholders, including leaders of SSF communities. People need to be aware of their rights or they risk losing them.

People who work for development partners. Multilateral development agencies, NGOs, and donors will have their own internal standards and safeguards, and these almost always include honouring human rights. Any support to activities infringing on those rights could lead to harm to vulnerable people, internal or external investigations, lingering resentments, and worse.

Businesspersons. The United Nations Guiding Principles on Business and Human Rights (UNGP, 2011) set out the corporate responsibility to respect human rights as well as the duty of states to protect human right holders from the actions of businesses. The SSF Guidelines state that:

All non-state actors, including business enterprises related to or affecting small-scale fisheries have a responsibility to respect human rights. States should regulate the scope of activities in relation to small-scale fisheries of non-state actors to ensure their compliance with international human rights standards (para. 3.1.1) (FAO, 2015, p. 2)

Businesses that value both their financial performance and their reputations will want to honour those principles. Involvement in projects that contribute to overfishing, pollution or danger at sea can cost money and bring reputational damage. For more on business obligations, see Box 5.

States must take adequate measures to protect SSF communities and individuals from human rights harms caused by non-state actors including businesses, as the latter are also duty-bearers. The United Nations Guiding Principles on Business and Human Rights (UNGP 2011) set out the corporate responsibility to respect human rights as well as the duty of states to protect human rights in this context. This aspect of human rights protection could be relevant to issues such as overfishing and illegal fishing, particularly where this impacts on the livelihood and food security of fisher communities and is exacerbated by climate change impacts on the productivity or distribution of fish stocks.

Box 5. Businesses and human rights

Both states and businesses have human rights obligations. States must protect those within their territory from human rights abuses by third parties, including businesses, and businesses must respect human rights, do no harm and, where harms occur, ensure effective remedies. (UNGP 2011, p.1. See also *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, UN Doc. A/HRC/8/5, 7 Apr. 2008. *General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities August 2017* (ICESCR 2017).) The ECtHR, in *Fadeyeva v. Russia*, 45 EHRR (2007), has ruled that the state's responsibility in environmental cases "may arise from a failure to regulate private industry". The Maastricht Principles underline the extra-territorial dimension to this responsibility.

General Principle 3.2 of the VGGT provides that: "Non-state actors including business enterprises have a responsibility to respect human rights and legitimate tenure rights. Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others". (FAO 2012, p.4) The VGGT then provide that:

Where transnational corporations are involved, their home States have roles to play in assisting both those corporations and host States to ensure that businesses are not involved in abuse of human rights and legitimate tenure rights. States should take additional steps to protect against abuses of human rights and legitimate tenure rights by business enterprises that are owned or controlled by the State, or that receive substantial support and service from State agencies. (FAO 2012, p4)

This could be relevant where the resilience of SSF communities is undermined by illegal, unreported and unregulated (IUU) fishing that jeopardizes food security or safety at sea. This could also be relevant where industrial fleets damage nets and gear, endangering livelihoods or safety already strained by pressures from climate change or disasters. Any enterprises that coerce fishers into ignoring early warnings or continuing to fish in dangerous conditions should face sanctions and authorities should work with SSF communities to ensure that such actions are reported and investigated.

The Principles for Responsible Investment in Agriculture and Food Systems adopted by the Committee on World Food Security in 2014 (CFS-RAI) (CFS 2014) also confirm the responsibilities of businesses in this area, in particular Principle 5 relating to respect for tenure including in fisheries and Principle 10 relating to assessing and addressing impacts of investment. Paragraph 50 states that: "...Business enterprises have a responsibility to comply with national laws and regulations and any applicable international law, and act with due diligence to avoid infringing on human rights." (CFS, 2014, p. 25)

What kinds of rights are we talking about?

Part III of this guide discusses the rights and their sources in some detail, but as an overview, people should be aware of two broad classes of human rights: process rights and outcome rights.

Respecting process rights requires consideration of how the government operates. Process rights include:

- **Transparency and the right to information.** For example, fishing communities should have access to information about the likelihood of disasters and warnings about imminent dangerous events. They should have access to information used or produced during planning, emergency response, and reconstruction.
- **Participation.** People should have an opportunity to participate in government decisions that affect their lives. Participation can take many forms. The government may give the affected people very little power, only informing them of the likely decision and allowing them to make comments. The government may give the people great power, allowing them to make the decision. Between these two ends of the spectrum are consultation, joint fact-finding, joint decision making, and other possibilities. The level of participation may depend on law, culture, and circumstance. For example, if a country has agreed to give indigenous people the power to consent to actions that affect their rights (free, prior, and informed consent or FPIC), the government might use joint decision making or completely delegate a decision affecting indigenous fishing rights to that community. If the government is reacting in an emergency to save human life after a coastal cyclone, it may have no time for any sort of public participation; however, it may want to review the decision with affected people after the danger has passed, to help it make better decisions next time. Box 6 offers some further observations on consultation in the SSF climate change and disaster context.

- **Access to justice.** People should have fair, timely and effective ways to protect their rights on the basis of equality before the law. The Guiding Principle of Accountability laid down in SSF Guideline 3.1.9 calls for “holding individuals, public agencies and non-state actors responsible for their actions and decisions according to the principles of the rule of law” (FAO, 2015, p. 3). Chapter 9.5 of the SSF Guidelines states, “In case of disasters caused by humans, impacting small-scale fisheries, the responsible party should be held accountable” (FAO, 2015, p. 13). The recourse might be highly formal, involving going to court, or may take other forms but in all cases there are minimum international standards of independence and accessibility that must be met. but such formal processes are often beyond the capacity of poor or uneducated people. Box 7 offers further insights into accountability of agencies and access to justice. Besides dispute with agencies, fishing communities may have rights-based disputes within the community, with nearby communities or with fishing-related businesses. The communities should have access to processes appropriate to the dispute, the community’s culture, and the party’s abilities, and should be able to address the rights of present and future generations.¹⁴
- **Non-discrimination.** Where the law provides rights, freedoms, or guarantees to all people, people applying the law should not show favouritism or impose barriers based on race, colour, sex, language, religion, birth status, or political opinion (ICCPR 1989, Para 7, p. 2). For example, governments should provide humanitarian assistance impartially to those in need. Similarly, everyone entitled to the rights listed above (transparency, participation, and access to justice) should have the rights on equal terms. Equal treatment in relation to gender is a particular concern. In fishing communities, “[w]omen and girls are more likely to be negatively affected [by disasters] than are men and face greater barriers to reducing their vulnerabilities” (FAO, 2017, p. 81). Other groups whose rights are protected under international law are youths, the elderly, the disabled, and the landless.

Box 6. Public participation and consultation

When governments develop climate change and disaster plans, all agencies with responsibilities for the SSF sector, together with SSF communities themselves and the CSOs that work with them, should be involved. The SSF Guidelines call for “active, free, effective, meaningful and informed participation” (Guiding Principle 3.1.6) (FAO, 2015, p. 3). Governments need to consider how to secure effective and informed participation of SSF communities.

Ideally, the government should work with SSF communities to identify risks and vulnerabilities and discuss measures to address them. Such participation could extend over a wide range of issues from coping with severe weather events, to protecting or relocating existing communities, to addressing threats to livelihoods from changes in fish stock distribution or productivity. Governments might wish to establish a special platform for SSF communities to enable them to express views on national policy and share traditional knowledge with the national and local authorities.

¹⁴ The Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment has highlighted the significance of national procedural rules in this regard, pointing to good practices adopted by some states including the Philippines and Costa Rica (HRC, 2015, p12).

To obtain meaningful participation of SSF communities, governments should consider:

- time of consultation (e.g. fishing or closed/spawning season, weekday or weekend, Sunday market, mid-day, evenings, etc.).
- place of consultation (e.g. near or within communities).
- identity of the convenor (e.g. local leaders, fisheries department, etc.).
- advance notice and the means of communicating it, such as community radio, leaflet flyers, etc.
- capacity and time to self-organize and consolidate voices prior to consultation and
- means of ensuring the participation of women and minorities.

Governments might wish to conduct an “SSF audit” of all national climate change processes to ensure that they fully include the SSF sector. The audit should be sure to cover communications under the Paris Agreement, including the NDC, NAP, NAPA and input into the Global Stocktake due to take place in 2023.

Box 7. Accountability, access to justice and remedies

As part of an HRBA, governments must consider how to hold relevant actors responsible for their actions affecting the risks posed by climate change and natural disasters. Governments need to consider whether SSF communities can directly challenge decisions relating to disasters and climate change that affect their safety or welfare. This entails both a right to bring such a challenge and the capacity to do so effectively. This could entail consideration of national constitutional or human rights laws on which such claims might be based, on the rules on the standing to bring such claims, the costs of bringing claims and the liabilities for costs of those bringing such claims unsuccessfully.

Governments might wish to establish specific bodies to address these challenges; otherwise they must ensure that existing national bodies, such as public prosecutors, courts, ombudsmen or marine/inland safety organizations are accessible and responsive to concerns raised by SSF communities or individuals. If the state establishes a special body to address conflicts related climate change, including enforcing national legal requirements and standards, the body’s mandate and resources should explicitly cover SSF issues.

In the case of SSF communities, governments will wish to ensure that national procedures do not restrict access to justice. Communities might have limited financial resources and limited access to professional legal advice. Governments might wish to review the extent to which communities have had recourse to the courts in the past and use this information to identify specific obstacles today.

Communities will particularly need is access to pre-emptive remedies in situations where agencies are not acting appropriately. Governments should ensure that SSF communities can seek provisional measures, urgent procedures and injunctive relief in cases where there is a risk to life or health from disasters.

Integrating human rights standards and laws into DRR and climate action, including through securing access to justice for potential breaches, enhances the accountability of national action, which in turn promotes more effective governance and responsive decision-making.

Rights related to outcome apply to the effect of actions, decision makers should be proactive in assessing the impact of their actions and policies on the rights of SSF communities as part of their duty to respect, protect and fulfil human rights and should not intentionally or carelessly deprive people of their rights, either by acting or failing to act.

The foundation of outcome rights, and all human rights, is **the right to life**. Important recent guidance on the protection of the right to life in the context of climate change and natural disasters has been provided by the Human Rights Committee.¹⁵ From the right to life follow rights to things necessary for survival, such as food, clean water, housing and safe working conditions. Protecting life for fishing communities may require, for example, constructing storm shelters or taking steps to increase safety at sea (ICCPR, 1982). Communities affected by disasters may have a right to humanitarian assistance.

The quality and quantity of food, water, housing, and working conditions all affect the resilience of a community in the face of climate change and disasters. This is one reason that the SSF Guidelines Chapter 9 and human rights are so closely bound together.

Another factor closely tied to both resilience and the right to life is secure property tenure.¹⁶ Guidance on governance of tenure rights is provided in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), Rome (FAO 2012). The VGGT highlight the relationship between tenure rights and human rights by calling on states to strive to ensure responsible governance of tenure because land, fisheries and forests are central for the realization of human rights (para. 4.1). The VGGT also state: “Given that all human rights are universal, indivisible, interdependent and interrelated, the governance of tenure of land, fisheries and forests should not only take into account rights that are directly linked to access and use of land, fisheries and forests, but also all civil, political, economic, social and cultural rights ...” (FAO, 2012, p. 7)

The survival and resilience of fishing communities depends on access to fish stocks, vessel ownership, access to port facilities, availability of land for facilities to process the catch, and so forth. Any of these could be lost if underlying tenure rights are insecure.

USAID (2017) states that:

Responsible governance of tenure involves respecting the rights of small-scale fishers and fishing communities to the resources that form the basis of their social and cultural well-being, their livelihoods, and their sustainable development... (USAID, 2017, p. vii)

The elements that contribute to responsible governance of tenure include good legal and policy frameworks, strengthened institutional capacity, local participation and empowerment, and functioning dispute resolution mechanisms. Secure tenure is central to building the resilience of SSF individuals and communities and to protecting their human rights.

What kinds of SSF-related actions might trigger human rights duties?

Officials will want to think about three stages of action: prevention, emergency response, and reconstruction. Prevention activities include things like the establishment of early warning systems, planning, construction of storm shelters, improvement of at-sea rescue capabilities, and hardening of coastal infrastructure. In these efforts, officials will want to respect process rights, such as

¹⁵ See General Comment No 36 discussed below in box 13.

¹⁶ In this respect Article 7(5) of the Paris Agreement is directly relevant.

transparency and public participation. They will also need to take care to prevent future breaches of outcome rights. Protecting the right to life includes protection of ecosystems that provide life-giving services.

Prevention, like all policy-driven activities, typically progresses through several phases. The government will identify potential problems, on the basis of the best available science and responding to and taking full account of local and community concerns, consider and consult on what solutions are available, analyse in conjunction with local communities the various options, select a path forward respecting public participation standards and other human rights standards and principles including non-discrimination, implement the path, and then monitor and evaluate the results. Each of these phases is subject to human rights standards. A government should be careful not to exclude or limit consideration of rights in a later phase just because it considered rights in an earlier phase. For example, a government might set out to protect a fishing port against storm damage. As an early step, it might prepare an environmental and social impact analysis of options. That step will create transparency about planning and give local communities opportunity to comment. That openness and participation needs to continue as the project moves forward. After the government selects an option and begins to implement it, the government needs to involve the community on the smaller decisions that arise.

Emergency response typically helps protect outcome rights, but officials must not forget process rights. For example, responses should be non-discriminatory. This is more complicated than it seems, because responders may have to exert extra effort for vulnerable groups such as the disabled or the elderly. The overall result of response efforts should be equitable.

As with prevention, governments must take care to honour process rights in planning and implementing reconstruction. Affected people should always have access to justice, both to assure compliance with the law in reconstruction efforts and to address loss or damage that they have suffered. Projects should respect outcome as well as process rights.

What are good practices to comply with human rights obligations?

Management-level practices

The following discussion looks at compliance from the point of view of an organization, particularly a government agency. Other stakeholders looking to protect rights may find it useful as well, particularly when they participate in agency decision making.

For an organization, assuring compliance with human rights obligations is a management task. In many ways, the task is like assuring compliance with other policies and laws.

The first step is to identify the obligations under international law and domestic laws and policies. A legal expert is likely to be important at this stage and can ensure that international and national law is respected from the outset. Part III of this guide goes over the standards found in international law. Domestic laws will vary from country to country. In reviewing domestic laws, the reviewers will want to consider both whether the laws are adequate to implement international obligations and whether they add new obligations and processes, such as environmental and social impact assessment. Box 8 presents some questions to ask about domestic laws and policies to judge their adequacy.

Box 8. Review of domestic laws

A review of domestic laws and policies can look into their overall adequacy to address climate change and disasters for the SSF sector:

- Do national climate change laws, policies and plans, including the NDC, the NAP and any long-term strategy adopted under the Paris Agreement, address the needs of the SSF sector?
- Do national and sub-national climate budgets address the needs of SSF communities fairly?
- Do the mandates, resources and expertise of national agencies reflect the concerns and needs of SSF communities?
- Does the government have effective ways to assure that its agencies cooperate and coordinate on these issues? Does the government need to name a lead agency or focal point for disaster response?
- Does the law require collection of useful data on the impacts of disasters and climate change on the SSF sector? (For examples of data to be collected, see FAO (2018).) This information should be transparent and regularly updated, with particular focus on groups most vulnerable to disasters (for example, children, women, fishers at sea, the disabled and indigenous peoples).
- Does the law provide meaningful ways for consultation and participation of SSF communities in decisions that affect them on the basis of transparency? These decisions include plans for climate change adaptation, mitigation and proposals for addressing loss and damage. Does the law need to add new mechanisms or forums to assure good participation of SSF communities and accountability of public authorities?

If the norms in domestic laws and policies do not reflect the international norms, the agency will want to work with government leadership to bring the domestic norms into harmony with its obligations. After the review, governments may want to adopt:

- General guidance on respecting human rights, particularly the right to life and health and the principles of equality and non-discrimination.
- Specific guidance on indicators for SSF resilience based on human rights standards, including the right to life, health, housing and food as well as tenure and property rights. These indicators could track mortality and injuries due to drownings at sea or flooding on land; mental and physical health; food security; catch figures; access to resilient livelihoods; and access to resilient infrastructure and public services, including health services, in the face of climate change and natural disasters.
- Specific guidance on integrating planning for resilience into policies and plans. The guidance could include topics like improving safety of moorings and harbours or drafting of evacuation plans for SSF communities.
- Funding or other resources to SSF communities to allow them to pursue adoption and resilience projects. (See SSF Guidelines, para. 9.9.)

Besides general laws and policies, the agency should take a hard look at its own policies and processes. If the agency does not already have its own policy on protection of human rights, the agency should adopt one, under the signature of the head of the agency, minister, or even head of

government if possible. The policy should call for full compliance with human rights standards. It should make compliance the responsibility of every arm of the organisation and every employee of the agency. It should also require compliance by those receiving agency funds through grants or contracts to carry out the agency's work.

If the agency has many branches, especially if the "agency" is the national government, it should begin to assign compliance obligations to its individual departments and ministries. It should ensure that no rights are left out; together, all parts of the agency, perhaps working closely with other agencies, should cover the whole range of human rights. If parts of the agency each work independently on different tasks, the agency may want to delegate the remaining compliance steps to the leaders of each relevant department or branch.

An essential first step is to identify holders of rights who may be affected by agency actions or inactions, and people or organizations who may influence or help protect rights. Senior agency personnel are often surprised by the interests that turn up in these kinds of stakeholder mapping exercises. For example, the agency may find that religious leaders in a fishing community have deep concerns about the community's rights and strong influence among community members, even though the agency has never before consulted with those leaders for advice or support. Similarly, local teachers and healers may be influential. The list of rights holders may include transporters and traders far from the fishing community.

As confirmed in the UNGP 2011, states are required to protect those within their territory from human rights abuses by third parties, including businesses, and businesses have a responsibility to respect human rights and do no harm and where such harms occur, to ensure effective remedies. The ECtHR has ruled that the state's responsibility in environmental cases "may arise from a failure to regulate private industry". This should be addressed when conducting human rights mapping and reviews.

Agencies will want to make sure that the mapping includes enough detail to identify vulnerable subgroups. Those may include women, youths, the elderly, the disabled, people of low social standing, or other minorities. Traditional community leaders might represent these subgroups poorly. Finding effective ways for these subgroups to participate in decision making will be an ongoing task.

The next step is to review the agency's mandate and spot potential areas of agency work where human rights issues may arise. Is the agency involved in preparing the country's National Adaptation Plan for climate change? Does it have a role in coastal zone or general land use planning? In promoting coastal economic and industrial development? In marine biodiversity protection? In development or regulation of aquaculture? In port operations and management? In emergency response?

When reviewing areas of work, agencies should think both about processes and outcomes. In other words, while looking to improve transparency and participation in decision making, officials must also be thinking about the substance of those decisions. Will a decision affect livelihoods, lives and property in fishing communities?

Some activities could protect a range of human rights. For example, providing early warning systems for extreme events such as hurricanes and typhoons could serve to protect not only the right to life but also the rights to health, food, housing and livelihoods. Early warning systems can also address oceanographic conditions such as anoxia, toxic algal blooms, and temperature anomalies associated with El Niño and La Niña. Other measures include constructing suitable storm and cyclone shelters.¹⁷

¹⁷ The OHCHR has called for early-warning information regarding climate effects and natural disasters to be available to all sectors of society and for adaptation and mitigation plans to be "publicly available, transparently financed and developed in consultation with affected groups" (OHCHR, 2015, p. 4).

Adaptation action may also promote human rights protections. For example, protecting barrier reefs, barrier islands and mangroves can help mitigate impacts from major storms that threaten the rights to food, housing and health.

Regulatory and humanitarian activities also can have human rights implications.¹⁸

An agency will need to understand vulnerabilities before it can truly assess what it needs to do to protect human rights. To identify vulnerabilities, the agency may want to create insecurity maps. For example, regarding the right to food:

States should establish Food Insecurity and Vulnerability Information and Mapping Systems (FIVIMS), in order to identify groups and households particularly vulnerable to food insecurity along with the reasons for their food insecurity. States should develop and identify corrective measures to be implemented both immediately and progressively to provide access to adequate food. (Guideline 13.1) (FAO, 2004, p. 25)

These maps can be useful across many programmes and projects. Agencies should check with others working on climate change, disaster preparedness, fisheries, agriculture or rural development to see if the maps already exist, or may need updating.

Human rights concerns may arise both from actions and from omissions. Failing to plan for climate change adaptation or for disaster response, failing to build capacity for action, or failing to give every community equitable protection could all raise serious concerns. Lack of information, whether wilful or inadvertent, is no excuse. As noted above, agencies should proactively determine who is vulnerable to climate change and disasters. They are likely to need to gather up-to-date baseline data and to monitor ocean conditions, fish stocks, local fishery economies, community demographics, and so forth. If an agency spots key gaps in action or information, it should begin acting to fill those gaps.

The next step is to set overall goals for compliance. Although general statements of policy are good (for example, “This agency is committed to honouring the human rights of all our citizens.”), such broad statements are not enough. Agency managers will need goals that are SMART:

- Specific, naming clear achievements, outputs, or outcomes.
- Measurable, so the agency and others can monitor and evaluate progress (See SSF Guideline 13).
- Achievable, within the agency’s foreseeable capacity and control.
- Relevant, tied to human rights, and
- Time-Bound, for the agency to accomplished within a set time.

Some examples of SMART goals might be:

- The agency will work with the national environmental agency to ensure that the next version of the National Adaptation Plan fully reflects the needs of SSF communities.
- The agency will improve transparency and participation and work towards better protection of life and property by holding workshops on disaster planning in at least five SSF communities every year for the next five years.

¹⁸ The International Federation of Red Cross and Red Crescent Societies (IFRC) provides guidelines on strengthening domestic regulations to aid international disaster response (IFRC, 2021). Sphere (www.sphereproject.org/) is a voluntary initiative that brings a wide range of humanitarian agencies together around a common aim - to improve the quality of humanitarian assistance and the accountability of humanitarian actors to their constituents, donors and affected populations.

- By the end of 2022, the agency will establish an advisory council of SSF stakeholders to help the agency incorporate SSF concerns into its work.
- The agency will create a training course for its staff on human rights concerns and offer it in the coming two years to at least 25 percent of its staff.
- To increase transparency, participation and access to justice, this year the agency will designate an officer as SSF ombudsman, responsible for helping SSF communities and community members resolve grievances and interact productively with the agency.
- Beginning in 2022, besides applying the precautionary principle, using best available science, taking an ecosystem approach and seeking sustainable yields, fishery management plans will weigh the likely impacts of climate change and risks from hazards/disasters. They will include vulnerability assessments for SSF communities, considering food security, housing, health, livelihoods and the fulfilment of other human rights.
- Beginning a year from now, the agency's annual report of activities will include a section on steps the agency has taken to respect human rights.

Box 9 presents several general topics for goals. To be SMART, an agency would have to add details, like those in the bullets above, to make the goals specific, measurable, achievable and time-bound.

As a practical matter, full compliance with norms may take an agency time to achieve. Compliance can be phased in provided core international human rights protections are respected.¹⁹ Different threats will demand different levels of urgency in response. Agencies should identify both the types of threats and their immediacy.

Responses should honour the human rights principle of progressive realization. States must act quickly to respond to imminent and life-threatening conditions and deploy resources to respond to other threats as available.

Steps with the potential to save lives should be the highest priorities. These include:

- Providing early warning and alert systems. The Sendai Framework sets a global target to “Substantially increase the availability of and access to multi-hazard early warning systems and disaster risk information and assessments to people by 2030”. (UNISDR, 2015b, para. 18(g); UNFCCC, 2015, Articles 7 and 8).
- Providing search and rescue capability.
- Assessing hazards. Because climate change will affect the kinds and severity of hazards, assessment should be an ongoing task. It should use the best available science as well as local knowledge. Governments should use the results from assessments to justify budget requests to the parliament or funding requests to outside donors. Remember that Article 9 of the Paris Agreement requires developed countries to provide financial resources to assist developing countries respond to climate change.

No matter what the priorities or how long it will take to achieve them, an agency should always aim for continuous improvement.

¹⁹ The Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment has indicated: “States may be expected to take measures more quickly with respect to threats that are imminent or life-threatening, such as typhoons and floods, than with respect to longer-term effects.”(HRC, 2016(b), p. 17) The principle of progressive realization of rights, enshrined under the ICESCR in Article 2(1), requires states to take steps: ...individually and through international assistance and co-operation ... to the maximum of [their] available resources, with a view to achieving progressively the full realization of rights recognized in the present Covenant. (ICESCR, 1966, p. 5)

Box 9. Examples of relevant topics for SMART goals

- Establishing liaison bodies. These should ensure that government agencies at the national and local level coordinate and consult with SSF communities and CSOs on a regular basis (Guideline 9.3). These bodies must operate transparently and include representatives from SSF communities.
- Identifying **hazards** faced by SSF communities. This exercise should use BAS and local knowledge. Secure international support for developing BAS where not already available. Ensure that such information is available to the communities concerned and is reviewed regularly in light of the evolving science and local knowledge. Adopt a multi-hazard approach to this analysis.
- Identifying risks and vulnerabilities. Specifically, identifying existing and potential social, economic and ecological risks and vulnerabilities of SSF communities in the face of natural disasters and climate.
- Comparing SSF data to national averages for socio-economic indicators. Have regard to specific vulnerabilities faced by disadvantaged or marginalized groups or individuals including women, children, the disabled, ethnic minorities and migrants.
- Creating, publishing and periodically updating a human rights audit of existing vulnerabilities. This should include specific duties placed on duty bearers at all levels of governance as well as the specific rights of right holders within SSF communities. It should also include an equality audit to monitor the impact of policies on women and on vulnerable groups and individuals. It must include a specific evaluation of the extent of increased resilience and availability of remedies where vulnerabilities have not been addressed.
- Consulting SSF communities. Consulting them on proposals to address risks and vulnerabilities and increase resilience including by addressing gaps in capacity. Consult them on proposed revisions to relevant frameworks and agreements at the national level including proposed NAPs; NAPAs and NDCs. Consult them on short and longer-term needs and plan appropriate provisions. Consult them on all disaster plans including DRR and management plans and emergency response.
- Reviewing the impact of relevant policies of all relevant national and local agencies on a regular basis. The liaison body already established (see above) should coordinate and conduct these reviews in consultation with SSF communities.
- Having the liaison body collate the views of SSF communities and CSOs and feed them back to the relevant agencies. The agencies should respond in writing within a reasonable timeframe.
- Having lead national authorities on climate change and DRR announce the outcome of the reviews relevant to their mandates in the form of 'Lessons Learned'.
- Publishing information on the nature and scale of both hazards and vulnerabilities in a form accessible to SSF communities.
- Monitoring and evaluating available emergency support by reference to the 'build back better' approach (Guideline 9.7).

With policies and goals in place, the next step is to identify constraints that might prevent the agency from meeting those goals. Agencies should consider whether they have the budget, human resources, and physical resources to accomplish their goals. If the agency lacks the budget or capacity

to address these concerns, explaining the shortfalls in terms of human rights can be a powerful way to approach budget makers and donors for extra support.²⁰

Then the agency needs to communicate its policies and goals to its staff. The agency should train its staff about human rights obligations. Staff should know that everyone working for the agency bears some responsibility for compliance. Further, the agency should evaluate respect for human rights in employee performance reviews and make it a factor to weigh in giving out performance rewards and promotions.

Finally, the agency needs to incorporate respect for human rights in its monitoring and evaluation (M&E) programme. The SMART goals may serve as a starting point for that, because every goal will be measurable. The M&E staff may want to go beyond those goals, however, and find other indicators of human rights performance. Human rights standards can provide useful indicators for reducing vulnerability and increasing resilience as well as indicating both the processes and the outcomes that will secure these aims.

Programme and Project-Level Practices

The agency will probably have existing programmes and projects that ought to be aligned with human rights goals. For example, as part of its work on climate change and disaster preparedness, a coastal planning agency may already have identified the specific risks to SSF communities and designed programmes and implement projects to remove or manage those risks. The agency will want to review the resulting plans to ensure they address rights to life, food, housing, and livelihoods. The agency will also want to ensure that the plan follows the non-discrimination principle, both in respect to how it treats SSF communities as compared to other similarly placed communities and in respect to the treatment of vulnerable or marginalized individuals within those communities.

For ongoing planning, a human rights impact assessment, either by itself or as part of a larger environmental and social impact assessment, can be a key mechanism for improving transparency, securing participation and protecting relevant outcome rights. Countries should consider requiring such assessments in relation to climate change mitigation and adaptation measures taken in the SSF sector (UNFCCC, 2010, p. 4). In her 2015 Report, the Special Rapporteur on the Right to Food called for: "A human rights impact assessment to be carried out before mitigation and adaptation projects are authorized and public participation therein facilitated ..." (UNGA, 2015, p. 25).

²⁰ The framework for financial support established under the Paris Agreement, together with the provisions on adaptation and loss and damage and the call for Parties to respect, promote and consider their existing human rights obligations, are all relevant to the implementation of Chapter 9 of the SSF Guidelines. This integrated framework could form the basis of specific requests by vulnerable states for support in securing the essential infrastructure necessary to protect life and health such as coastal defences, early warning systems, cyclone and storm shelters, flood resistant housing, adapted water and health infrastructure.

States may have a duty to seek needed assistance. In the context of disasters, this duty is indicated in the ILC's draft Guidelines on the Protection of Persons in the Event of Disasters. Draft article 11 provides that: "To the extent that a disaster manifestly exceeds its national response capacity, the affected State has the duty to seek assistance from, as appropriate, other States, the United Nations, and other potential assisting actors." (ILC, 2016, p. 15) See also CESCR General Comment No 3 in which the Committee states that "to the maximum of its available resources", as the measure to consider the extent of the obligation of states parties under article 2(1) of the Covenant, must be read as including also international assistance, see para. 13. (CESCR, 1990, p. 4)

Article 2 of the Paris Agreement provides a legal framework for climate finance with the aim of making finance flows "consistent with a pathway towards low greenhouse gas emissions and climate-resilient development ..." (UNFCCC, 2015, p. 22)). Article 9(4) of the Paris Agreement provides that the provision of scaled-up financial resources should, inter alia, take into account:

the priorities and needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change and have significant capacity constraints, such as the least developed countries and small island developing States... (UNFCCC, 2015, p. 28)

Take, for example, a proposed project for coastal defence against sea level rise that would require community displacement and restrictions on fishing, thereby adversely affecting livelihoods. Project managers should advertise such proposals to the relevant SSF communities (in appropriate languages), allow time for an informed response and pay due regard to the comments and suggestions of such communities, including proposed modifications. Modifications are imperative where SSF communities identify problems that may jeopardize life, health, food or housing. An impact assessment also provides a basis for avoiding climate change maladaptation.²¹

²¹ Actions that may lead to increased risk of adverse climate-related outcomes, increased vulnerability to climate change, or diminished welfare, now or in the future (IPCC, 2014c).

Part

3



International human rights relevant
to climate change and disasters



Part III. International human rights relevant to climate change and disasters

As noted in Part II, an early step in ensuring compliance with standards is to identify the standards that apply. Looking closely at international human rights instruments is a good place to begin. This Part offers that look. People trying to understand the legal basis of a country's obligations should find this discussion useful.

Although this chapter focuses on human rights, the context is compliance with the standards and processes in the Paris Agreement, the Sendai Framework, the SSF Guidelines Chapter 9, and other climate change and DRR instruments. The challenge to governments is to coherently follow all these different standards and processes while respecting human rights.

Nearly all human rights instruments predate both the international climate change regime and the international framework for disasters. (Box 10 lists some major human rights instruments.) Nevertheless, they set legal standards directly relevant to the protection of SSF communities from the threats like extreme weather events, slow onset events, ocean acidification and shifts in the productivity and distribution of fish stocks, as outlined by Burns (2007) and the IPCC (2014a).

Determining the precise scope of all a state's international human rights obligations and goals is not always simple, although in other cases the relevance of particular rights is very clear. Obligations may depend on which binding international and regional instruments the state is party to and whether it has entered any permissible reservations. Further, because many international human rights are universally recognized, obligations may also depend on customary international law, as discussed by D'Amato (1996). Human rights goals may also reflect "soft law" agreements that are non-binding but still carry great weight in the international community. They may also include voluntary standards, like the SSF Guidelines that most states aspire to meet.

This Part is not exhaustive. It addresses certain specific human rights, but a wide range of human rights, civil and political, as well as social, economic and cultural, are potentially relevant to the situations faced by SSF communities in the context of Chapter 9, including the right to self-determination:

...climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights including, inter alia, the right to life, the right to adequate food, the right to the highest attainable standard of health, the right to adequate housing, the right to self-determination and human rights obligations related to access to safe drinking water and sanitation...in no case may a people be deprived of its own means of subsistence. (HRC, 2009, p. 1)

Box 10. Human rights treaty sources

Sources for international human rights standards relevant to the implementation of Chapter 9 of the SSF Guidelines include:

- The United Nations Charter (UNC).
- The Universal Declaration on Human Rights (UDHR).
- The International Covenant on Civil and Political Rights (ICCPR).
- The International Covenant on Economic, Social and Cultural Rights (ICESCR).
- The International Convention on the Elimination of All Forms of Racial Discrimination (CERD).
- The Convention on the Elimination of Discrimination against Women (CEDAW).
- The Convention on the Rights of the Child (CRC).
- The Convention on the Rights of Persons with Disabilities (CRPD).
- The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
- The Declaration on the Right to Development.

Also relevant are principles/guidelines aimed at protecting the human rights of those affected by disaster:

- InterAgency Standing Committee Guidelines for the protection of persons in situations of natural disaster.
- The International Law Commission's (ILC) draft articles on the protection of persons in the event of disasters.
- The Sphere Project (soft law).

Process rights

The right to receive information

The recognition of the right to receive information about risks and hazards in human rights law converges with principles of transparency in international environmental law, including the emphasis on transparency in the Paris Agreement (Article 13) and access to information under the Sendai Framework (Guiding Principle (g), together with paragraphs 19(g) and 24(a) and (c)).

The right to receive information about environmental risks has been confirmed by human rights bodies and courts and is reflected in international and regional instruments (see Box 11). It is also reflected in the standards and provisions of the Paris Agreement and Sendai Framework, as well as the conclusions of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, (HRC, 2016b, p. 13–14). Where a state has information, for example as to the likelihood or imminent risk of extreme events that pose a risk to life, health or security to SSF communities or fishers, the state should provide that information to potentially affected communities. When implementing Chapter 9 of the SSF Guidelines, states typically will have to provide information on the specific, as well as general risks, faced by SSF communities.

Box 11. The right to information

In *Social and Economic Rights Action Centre and another v Nigeria* (the *Ogoniland* case) the African Commission on Human and Peoples rights (ACHPR) stated:

Government compliance with the spirit of articles 16 and 24 of the African Charter must also include ordering or at least permitting independent scientific monitoring of threatened environments, requiring and publicising environmental and social impact studies prior to any major industrial development, undertaking appropriate monitoring and providing information to those communities exposed to hazardous materials and activities and providing meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities. (ACHPR, 2001, p. 10*)

The European Court of Human Rights (ECtHR) has also confirmed a right to receive information in a series of cases relating to environmental and industrial hazards:

In *Guerra v Italy*, the Court held that the state had breached the applicants' rights to peaceful enjoyment of their home and family life under Article 8 of the European Convention on Human Rights by not providing essential information that would have enabled them to assess the risks of continuing to live in their town. (ECtHR, 1998)

In *Oneryildiz v Turkey*, the Court held that in determining what positive preventive measures a state was required to take as part of its duty to protect the right to life "particular emphasis was to be placed on the public's right to information, as established in the case-law of the Convention institutions. (ECtHR, 2004)

In *Budayeva v Russia*, the Court held that the obligation to safeguard the lives of those within the state's jurisdiction included a positive obligation to take regulatory measures and to adequately inform the public about any life-threatening emergency (ECtHR, 2008)

Participation

The right to information works in concert with the right to participation. Rights relating to public participation, together with rights of access to information and access to justice, have emerged as an increasing focus in international environmental law²², mirrored by developments in international human rights law.²³ As pointed out by the Special Rapporteur on extreme poverty and human rights: "Participation is a basic human right in itself, [and] a precondition or catalyst for the realization and enjoyment of other human rights." (HRC, 2013, p. 1)

²² Principle 10 of the 1992 Rio Declaration (UNCED 1992), reconfirmed in *The Future We Want* in 2012. See also UNFCCC A6(a) (UNFCCC, 1992, p. 10) and the UN/ECE Aarhus Convention 1998 (UN/ECE, 1998) and the recently adopted LAC-P10 Agreement (LAC, 2018).

²³ The European Court of Human Rights has recognized the right of communities to be alerted to risk posing a hazard to their private and family life under Article 8 of ECHR, *Guerra v. Italy*, 26 EHRR (1998) 357. The rights to participate in environmental decision-making are underpinned by long established rights including those of freedom of expression and assembly which are guaranteed under the ICCPR. See also *African Commission v. Application No 006/2012*, judgment 27 May 2017 at para. 131 (forced expulsion from land without consultation a breach of the Charter).

Principle 10 of the 1992 Rio Declaration, (UNCED, 1992) highlighted the importance of participation in securing effective decision-making:

At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. (UNCED 1992 P2-3)

States developed the UN/ECE Aarhus Convention in response to Principle 10. It establishes rights to information and access to justice as well as rights to participate in environmental decision-making. Latin American and Caribbean countries have adopted the Escazu Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters²⁴, the first binding agreement for the region on access to environmental information and public participation in environmental decision-making. These regional developments indicate the growing convergence between international environmental law and policy and human rights law in this area.

Climate change and DDR agreements and guidance repeatedly call for public participation in decision making. The IPCC highlighted the need for effective participation of those at risk of disasters in its 2012 report on Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation (SREX):

Good governance and participation of people at risk in the decision-making process may overcome conflicting governmental priorities. Disaster risk management is most effectively pursued by understanding the diverse ways in which social processes contribute to the creation, management, and reduction of disaster risk with the involvement of people at risk. (IPCC, 2012, Chapter 9 Case Studies 9.2.5.4, p. 505)

In relation to climate change, the emphasis on transparency²⁵ and human rights in the Paris Agreement, as well as specific references to public awareness and public participation in Articles 11 and 12 of the Paris Agreement, underline the need to review the application of public participation principles at the national level, in particular in relation to adopting and implementing NDCs and NAPs. In relation to NAPs, Article 7(5) of the Paris Agreement calls for a “participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems”. (UNFCCC, 2015, p. 26)

In 2015, the UN Special Procedures highlighted the implications of integrating human rights to access to information and participation in the context of climate:

Respecting human rights in the formulation and implementation of climate policy requires, among other things, that the State Parties meet their duties to provide access to information in accessible formats and technologies appropriate to all, and facilitate informed public participation in decision making, especially the participation of those most affected by climate change and by the actions taken to address it. (UN Special Procedures, 2015, p. 1)

²⁴ Ten Latin American and Caribbean countries signed the 2012 Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean (“LAC-P10”) at Rio+20 in June 2012. On 4 March 2018 LAC-P10 was adopted by representatives of 24 countries meeting at San Jose in Costa Rica. The Agreement entered into force on 21 April 2021 (the ninetieth day after the date of deposit of the eleventh instrument of ratification, acceptance, approval or accession, Article 22(1)).

²⁵ The OHCHR Submission calls for early-warning information regarding climate effects and natural disasters to be available to all sectors of society and for adaptation and mitigation plans to be “publicly available, transparently financed and developed in consultation with affected groups” (OHCHR, 2015, p. 4).

The legal and policy framework on which Chapter 9 of the SSF Guidelines is based supports such an approach. Consultation and participation, together with transparency are guiding principles of the SSF Guidelines (Paras 3.1.6 and 3.1.8) (FAO, 2015, p. 3). The Guidelines call for “ensuring active, free, effective, meaningful and informed participation of [SSF] communities, including indigenous peoples, taking into account the [UNDRIP]”. (FAO, 2015, p. 3) In Chapter 9, Guideline 9.2 calls for full and effective consultation of affected communities.

The Sendai Framework places emphasis on stakeholders and their participation as part of a “broader and a more people-centred preventive approach” to disaster risk:

While recognizing their leading, regulatory and coordination role, Governments should engage with relevant stakeholders...in the design and implementation of policies, plans and standards. This includes identifying specific human rights obligations in relation to each class of stakeholder... (UNISDR, 2015b, p. 10)

The Sendai Framework also notes that participation informs both the community and the decision maker, who gains access to traditional knowledge. It calls on states to:

ensure the use of traditional, indigenous and local knowledge and practices, as appropriate, to complement scientific knowledge in disaster risk assessment and the development and implementation of policies, strategies, plans and programmes of specific sectors, with a cross-sectoral approach, which should be tailored to localities and to the context. (UNISDR, 2015b, para. 24(i), p. 15).

The need to make participation meaningful

Several human rights cases have highlighted specific aspects of the right to be consulted and to participate in decision-making. Many of these cases and guidelines place emphasis on the need for consultation and participation to be “meaningful”. For example, the African Commission emphasized in the *Enderois* case that participation should be meaningful and effective to comply with human rights standards, referring to Article 2(3) of the UN Declaration on Development, which provides that the right to development includes “active, free and meaningful participation in development” (ACHPR, 2010, p. 75). This comes out of states’ duty of good faith in implementing human rights treaties. The SSF Guidelines call for “active, free, effective, meaningful, and informed participation” (SSF Guiding Principle 3.1.6, FAO, 2015, p. 3).

Meaningful participation includes participation conducted in an appropriate and accessible way, including by reference to language and traditional forms of decision-making in relevant communities. CSOs can often help governments make consultations more meaningful by increasing the communities’ knowledge and capacity to participate or by serving as representatives of their interests. The timeframe of meaningful consultation should allow for timely input and proper deliberation. The approach of meaningful consultation should allow for change and modification of proposals in the light of comments from the communities concerned. Governments should not simply present communities with a *fait accompli*. (ACHPR, 2010, p. 74). SSF Guideline 9.2 highlights the need for effective consultation.

Planners should consult stakeholders about plans related to DRR and climate change that affect SSF communities. Bearing in mind SSF Guideline 5 addressing tenure and sustainable use of natural resources, planners should be sensitive to actions that might affect people’s rights to enjoy communal property and their rights to use fish stocks, mangroves and other coastal resources. Consultation should be timely, conducted in an appropriate way and include ongoing monitoring.

Participation of indigenous peoples

States should give special attention to participation of indigenous peoples. SSF Guiding Principle 3.1.6 requires states to ensure:

participation of small-scale fishing communities, including indigenous peoples, taking into account the UN Declaration on the Rights of Indigenous Peoples (UN DRIP) in the whole decision-making process related to fishery resources and areas where small scale fisheries operate as well as adjacent land areas, and taking existing power imbalances between different parties into consideration[.] (FAO, 2015, p. 3)

The Sendai Framework also encourages participation of indigenous stakeholders:

Indigenous peoples, through their experience and traditional knowledge, provide an important contribution to the development and implementation of plans and mechanisms, including for early warning[.] (UNISDR, 2015b, p. 23)

In general, indigenous people should have the right to determine and develop priorities and strategies for the use of their land and resources. In particular, the principle of Free Prior Informed Consent (FPIC), as explained in Box 12 below, may apply.

The protection afforded to indigenous people may also be extended to “tribal people” in some jurisdictions. In *Saramaka v Suriname*, the Inter-American Court of Human Rights (IACtHR) considered the status of the Saramaka, who were one of the six distinct Maroon groups in Suriname whose ancestors were African slaves forcibly taken to Suriname during the European colonization in the seventeenth century. The Court held that they were a “tribal people” entitled to the same protection of the right to property as peoples indigenous to the area in question:

the members of the Saramaka people are to be considered a tribal community, and ...the Court's jurisprudence regarding indigenous peoples' right to property is also applicable to tribal peoples because both share distinct social, cultural, and economic characteristics, including a special relationship with their ancestral territories, that require special measures under international human rights law in order to guarantee their physical and cultural survival. (IACtHR, 2007, para. 86)

There has been considerable discussion and reflection as to whether the term “indigenous peoples” should be defined in the international arena, as discussed in FAO (2014b, p. 9). Indigenous peoples have argued against adopting a formal definition at the international level, stressing the need for flexibility and for respecting the desire and the right of each indigenous people to define themselves. Reflecting this position, the former Chairperson of the Working Group on Indigenous Populations, Erica Daes, noted that “indigenous peoples have suffered from definitions imposed on them by others.” (OHCHR, 2013, p. 6)

Preventing reprisals

States must protect people exercising their participation rights from reprisals. Article 12 of the United Nations General Assembly (UNGA) 1998 Declaration provides:

The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration. (UNGA, 1998, p. 6)

The Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment concurs:

The Special Rapporteur on the situation of human rights defenders has stated that States must implement mechanisms that allow defenders to communicate their grievances, claim responsibilities, and obtain effective redress for violations, without fear of intimidation. (HRC(d), p. 11)

The Escazu Agreement address these concerns in Article 9:

1. Each Party shall guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters, so they are able to act free from threat, restriction and insecurity.
2. Each Party shall take adequate and effective measures to recognize, protect and promote all the rights of human rights defenders in environmental matters, including their right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement, as well as their ability to exercise their access rights.
3. Each Party shall also take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidations that human rights defenders in environmental matters may suffer while exercising the rights set out in the present Agreement. (LACP10, 2018, p. 13)

States should consider any particular risks faced by SSF communities in exercising their right to participate in decision-making implementing the SSF Guidelines, including Chapter 9. Any concerns about possible reprisals or intimidation should be addressed promptly and effectively and states should ensure that SSF communities have access to justice in this regard.

Box 12. Indigenous people and free and prior informed consent

Efforts to address climate change and disaster risk should not exacerbate inequalities within or between states. For example, the rights of indigenous people should be fully reflected, and actions likely to impact their rights should not be taken without their free prior informed consent (FPIC) in line with the ILO Convention No. 169 on indigenous and tribal rights and the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Article 32 of UNDRIP provides:

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent [FPIC] prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact. (UNGA, 2008, p. 9)

The principle of FPIC adds a distinct and important dimension to the participation rights of indigenous people. The Expert Mechanism on the Rights of Indigenous People (A/HRC/27/66) has noted that, in the context of DRR:

it becomes clear that indigenous peoples are entitled to participate in disaster risk reduction processes and that States have the obligation to consult with them and to seek to obtain their free, prior and informed consent concerning risk reduction measures that may affect them ... (HRC(c), p. 5)

The study goes on to state that:

[FPIC] is of fundamental importance for indigenous peoples' participation in decision-making and establishes the framework for all consultations relating to projects affecting indigenous peoples, including in the area of [DRR]. The duty of States to obtain indigenous peoples' free, prior and informed consent entitles indigenous peoples to effectively determine the outcome of any decision-making that affects them, not merely to a right to be involved in such processes. It should be obtained through genuine consultation and participation (HRC(c) p. 15)

In *Saramaka People v Suriname* (Judgment of 28 November 2007) the Inter-American Court of Human Rights (IACtHR) held that:

...in order to guarantee that restrictions to the property rights of the members of the Saramaka people by the issuance of concessions within their territory does not amount to a denial of their survival as a tribal people, the State must ...ensure the effective participation of the members of the Saramaka people, in conformity with their customs and traditions, regarding any development, investment, exploration or extraction plan ... (para. 129) (IACtHR, 2007) p. 38)

The Court noted (para. 130 and following) that those safeguards were consistent with the observations of the Human Rights Committee, the text of several international instruments, and the practice in several states parties to the Convention. The Court then went on to specify that:

These consultations must be in good faith, through culturally appropriate procedures and with the objective of reaching an agreement... Early notice provides time for internal discussion within communities and for proper feedback to the State...Finally, consultation should take account of the Saramaka people's traditional methods of decision-making ... (para. 133) (IACtHR, 2007, p. 40)

In the case of *Sarayaku v Ecuador*, (judgment of 27 June 2012) the IACtHR looked at cases decided in the Americas and elsewhere and concluded that the obligation to consult "in addition to being a treaty-based provision, is also a general principle of international law" (para. 164). The Court also observed that:

...nowadays the obligation of States to carry out special and differentiated consultation processes when certain interests of indigenous peoples and communities are about to be affected is an obligation that has been clearly recognized. Such processes must respect the particular consultation system of each people or community, so that it can be understood as an appropriate and effective interaction with State authorities, political and social actors and interested third parties ... (para. 165) (IACtHR, 2012) p. 44–45)

Equality and non-discrimination

Most international and regional human rights treaties explicitly reflect the non-discrimination principle.²⁶ The HRC has interpreted the term discrimination as it appears in the International Covenant on Civil and Political Rights (ICCPR, 1966) as follows:

the term “discrimination” as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms. (ICCPR, 1989, para. 7 p. 2.)

The HRC also pointed out that:

...the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. (ICCPR, 1989, para. 10, p. 3)

Non-discrimination is particularly important to vulnerable, marginalized communities facing the threat of climate change and risk of disasters, including SSF communities. The SSF Guidelines lay down non-discrimination as a guiding principle: “promoting in the [SSF] the elimination of all kinds of discrimination in policies and in practice” (para. 3.1.3). They similarly honour equity and equality, including gender equality (para. 3.1.4 and Chapter 8).²⁷

The Sendai Framework emphasizes non-discriminatory participation:

Disaster risk reduction requires an all-of-society engagement and partnership. It also requires empowerment and inclusive, accessible and non-discriminatory participation, paying special attention to people disproportionately affected by disasters, especially the poorest. (para. 19(d)) (UNISDR, 2015b, p. 13)

States should consider the extent to which SSF communities face discrimination in the context of addressing climate change and other disasters, and they should ensure that national and local policies address the specific disadvantages that could impede the protection afforded to SSF communities, for example lack of access to basic safety equipment such as communications systems and life jackets. They should also address any barriers that prevent SSF communities from benefiting from climate actions on an equitable basis including a lack of political representation at the national level, which results in a failure to address fully their needs in the area of adaptation.

²⁶ In addition to CEDAW, which condemns all forms of discrimination against women, and CERD which seeks the elimination of racial discrimination in all its forms, see also the prohibition of discrimination in other global human rights instruments including: Article 2(1) ICCPR, Article 2(2) ICESCR, Article 2 CRC, Article 1 of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Articles 3 and 5 of the CRPD. See also Article 14 of the ECHR; Article 2 of the African Charter on Human and Peoples’ Rights (the Banjul Charter); Article 1 of the American Convention on Human Rights and General Principles 1, 2 and 3 of the 2012 ASEAN Human Rights Declaration.

²⁷ For detailed analysis of the promotion of gender equity and equality in the context of the implementation of the SSF Guidelines, see Towards gender-equitable small-scale fisheries governance and development: A Handbook, Nilanjana Biswas, FAO 2017.

Non-discrimination and communal rights

In *Saramaka People v Suriname*, the IACtHR rejected the state's argument that it would be discriminatory to pass legislation that recognized communal forms of land ownership:

It is a well-established principle of international law that unequal treatment towards persons in unequal situations does not necessarily amount to impermissible discrimination. Legislation that recognizes said differences is therefore not necessarily discriminatory. In the context of members of indigenous and tribal peoples, this Court has already stated that special measures are necessary in order to ensure their survival in accordance with their traditions and customs... Thus, the State's arguments regarding its inability to create legislation in this area due to the alleged complexity of the issue or the possible discriminatory nature of such legislation are without merit. (IACtHR, 2007, para. 103, p. 31)

This approach suggests that states may wish to consider the extent to which legal recognition of communal fishing rights, for example, could promote the objectives of Chapter 9 of the SSF Guidelines by ensuring equal treatment for such communities in the face of increased pressures on food security and livelihoods because of climate change impacts. It also indicates the importance of assessing the specific impact on such rights of actions to address the impacts of climate change and disasters, such as the creation of marine reserves or the introduction of restrictions on fishing where these impact communal rights, whether these are formally recognized in national law. As the HRC has pointed out:

...not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant. (ICCPR, 1989, para. 13, p. 3)

This means that the recognition of the customary rights of SSF communities for the purposes of effective implementation of Chapter 9 will not necessarily constitute discrimination in relation to other groups, if such differentiation is based on reasonable and objective criteria.

Disability and equality

The HRC has addressed the right to life of disabled persons in the context of special measures of protection:

Persons with disabilities, including psychosocial and intellectual disabilities, are entitled to special measures of protection so as to ensure their effective enjoyment of the right to life on equal basis with others. Such measures of protection shall include reasonable accommodation of public policies which are necessary to ensure the right to life, such as ensuring access of persons with disabilities to essential goods and services... (ICCPR, 2017, para. 28, p. 8)

Article 11 of the Convention on the Rights of Persons with Disabilities (CRPD 2006) provides:

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters. (CRPD, 2006, p. 7)

Gender and equality

The Committee on the Elimination of Discrimination against Women has underlined the importance of integrating a gender perspective and fostering the participation of women in disaster risk reduction initiatives; see for example its concluding observations for Tuvalu (CEDAW, 2015, p. 10). The Preamble to the Paris Agreement highlights the need for gender equality and the empowerment of women in the context of state action to address climate change, and Article 7(5) of the Paris Agreement provides that adaptation action should be gender responsive.

The VGGT, which include the fisheries sector within their scope, make gender equality a principle of implementation and call for gender-sensitive policies and laws on tenure (FAO, 2012, para. 4.4, p. 6) and across all actions relating to tenure and tenure rights. The SSF Guidelines also make gender equality a general principle: “Gender equality and equity is fundamental to any development. Recognizing the vital role of women in small-scale fisheries, equal rights and opportunities should be promoted.” (FAO, 2015, p. 2.)

In the context of SSF, the recent handbook on gender-equitable small-scale fisheries governance and development notes that:

Women and girls are more likely to be negatively affected [by the impacts of disasters] than are men and face greater barriers to reducing their vulnerabilities and coping with the effects of disasters ... (FAO, 2017, p. 81)

The handbook goes on to point out that gender is a powerful source of vulnerability, and women in small-scale fishing communities are highly susceptible to disaster risk (FAO, 2017, p. 84, Box 10). The handbook puts forward a series of gender sensitive indicators for DRR including mapping vulnerabilities and collecting gender disaggregated data on rights and ownership of assets within communities (FAO, 2017, p. 85, Box 11). A recent FAO report highlights the lack of disaggregated data collection in the fisheries sector: “While there are a number of general databases on disaster loss... none of these systematically collect disaggregated data on fisheries and aquaculture”. (FAO, 2021)

It then makes a series of recommendations including that:

DRM policies pay special attention to the specific concerns of women in the small-scale fisheries sector and that disaster rehabilitation, reconstruction and recovery activities aimed at building back better, in terms of livelihoods, housing and other needs, pay special attention to the needs of women and other vulnerable groups. (FAO, 2017, p. 91)

Allocation of humanitarian assistance

There is a traditional emphasis on the impartiality, independence and neutrality of humanitarian assistance (ILC, 2016, Article 6, p. 15). The International Red Cross and Red Crescent Movement holds that “the right to receive humanitarian assistance, and to offer it, is a fundamental humanitarian principle which should be enjoyed by all citizens of all countries” (IFRC, 1995).

The ILC has indicated in its draft articles the duty of the affected state to seek external assistance where a disaster “manifestly exceeds its national response capacity” and not to impede the delivery of international assistance (ILC, 2017, draft articles 11 and 13–16, pp. 4–5) while also confirming the duties of other states to give due consideration to requests expeditiously (draft article 12)²⁸ In this

²⁸ See also the commentary at section E of A/71/10 (Chapter IV) (ILC 2016).

regard, Articles 55 and 56 of the United Nations Charter (UNC) dealing in part with international cooperation and respect for human rights are relevant.

The human rights dimensions of humanitarian assistance have been addressed at the international level by the work on the commitment to accountability to affected populations (AAP), which the InterAgencyStandingCommittee endorsed in 2011. AAP includes the HRBA principles of accountability, transparency and participation. FAO has published a Thematic Study of the International Dimensions of the Right to Adequate Food, which discusses the implications of the AAP in that context (FAO, 2014).²⁹

The right to life

SSF communities face risks to life because of disasters and climate change, making the right to life of central importance. States may not set aside or ignore the human right to life and must take positive measures to protect it (ICCPR, 1982, para. 1 and para. 5, p. 1).³⁰

In the *Budayeva v Russia*, the ECtHR reiterated, referring to earlier judgments, that states have a positive obligation to safeguard the lives of those within their jurisdiction. This entails: “above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life.” (ECHR, 2008, paras 128–129, p. 25) It then held that:

The obligation on the part of the State to safeguard the lives of those within its jurisdiction has been interpreted so as to include both substantive and procedural aspects, notably a positive obligation to take regulatory measures and to adequately inform the public about any life-threatening emergency, and to ensure that any occasion of the deaths caused thereby would be followed by a judicial enquiry... (emphasis added)

As regards the substantive aspect, in the particular context of dangerous activities the Court has found that special emphasis must be placed on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk to human lives.... Among these preventive measures, particular emphasis should be placed on the public’s right to information, as established in the case-law of the Convention institutions ... (ECHR, 2008, paras 131–132, pp. 25–26)

The Court also held that:

In the sphere of emergency relief, where the State is directly involved in the protection of human lives through the mitigation of natural hazards, these considerations should apply in so far as the circumstances of a particular case point to the imminence of a natural hazard that had been clearly identifiable, and especially where it concerned a recurring calamity affecting a distinct area developed for human habitation or use... (emphasis added) (ECHR, 2008, para. 137, p. 27)

This ruling indicates that where a state can clearly see an imminent natural hazard that could cause “a recurring calamity affecting a distinct area developed for human habitation or uses”, the state must take positive measures. For SSF communities, including their living and fishing areas, these imminent hazards may include sea level rise, coastal inundation, storm surges and extreme events.

²⁹ See particularly section 3.3 on a human-rights-based approach in the policy and practice of humanitarian assistance.

³⁰ See also ACHPR (2017, para. 152, p. 45). Some national constitutions, such as those of Ecuador and Ethiopia, also explicitly refer to protection from disasters.

In *Budayeva*, the ECtHR found a violation of the right to life under Article 2 ECHR (2008) in an area prone to mudslides where the authorities and the local population reasonably assumed that a mudslide was likely. The authorities had warnings that should have alerted them to the risks, including a call for establishing an early warning system to allow for prompt evacuations. The authorities were aware of the devastating consequences of a mudslide, but they did not act. The Court held that the state had offered no justification for this inaction, nor for the failure to establish an early warning system. (ECHR, 2008)

In the context of climate change, the IPCC has highlighted the importance of early warning systems and other disaster response measures:

Awareness, early warnings and evacuation, hurricane experience, disaster funds, and specialized bodies reduce the impact of tropical cyclones on socially vulnerable people... A development planning perspective that includes disaster risk management as an integral part of the development framework is the key to a coherent strategy for the reduction of risk associated with extreme weather events. (IPCC, 2012, Chap. 9, Case Studies 9.2.5.4, pp. 504–505)

In the case of *Leghari v Pakistan*, the Lahore High Court adopted a similar approach to the protection of the right to life, involving specific and proactive steps to be taken by the state (LHC, 2015). The case concerned the inadequacy of measures to protect citizens from risks posed by climate change, in particular heavy floods and droughts. The Court held that the state had taken insufficient steps. It ordered the relevant ministries and authorities to appoint a climate change focal person to work with the Ministry of Climate Change to ensure the implementation of the Adaptation Framework and to assist the Court in resolving the petition. The Court also ordered the authorities to present a list of adaptation action points and to establish a Climate Change Commission to monitor progress. (LHC, 2015, p. 3).

These cases and interpretations underscore that states must proactively protect those at risk from climate change and other disasters. The cases show that the courts are increasingly willing to step in and order measures to protect the right to life. State inaction may eventually come under scrutiny in many jurisdictions.

States should make sufficient investments to safeguard the right to life of SSF communities. Governments should bear in mind the framework for support set out under Article 9 of the Paris Agreement and the comments of the Special Rapporteur as to the importance of addressing urgent risks to the right to life, cited above (Knox, 2016). The Sendai Framework Priority No 3 addresses investment in DRR for resilience and emphasizes the importance of allocating the necessary resources:

... including finance and logistics, as appropriate, at all levels of administration for the development and the implementation of disaster risk reduction strategies, policies, plans, laws and regulations in all relevant sectors (para. 30(a)). (UNISDR, 2015b, p. 19)

The Human Rights Committee has recently spoken about the scope of the human right to life. General Comment No 36, which replaces the earlier HRC General Comments 6 and 14, draws on the HRCs longstanding view that the right to life should not be interpreted narrowly (ICCPR, 2018, para. 3, p.1; ICCPR, 1982, p.1). The comment notes that the right to life imposes positive obligations to ensure access to what is necessary to sustain life. As set out in Box 13, General Comment No 36 is relevant to the implementation of Chapter 9 of the SSF Guidelines.

Box 13. General comment no. 36

HRC General Comment No 36 states that:

Deprivation of life involves a deliberate or otherwise foreseeable and preventable life-terminating harm or injury, caused by an act or omission. (ICCPR, 2018, para. 6, p.2)

This interpretation of the scope of the right to life is clearly relevant in the context of the implementation of Chapter 9 of the SSF Guidelines, which covers action by states to address life-terminating harms and injuries caused by disasters and climate change. This would include loss of life from extreme weather events which are “foreseeable and preventable”, taking into account the best available science and the recognition of the likely impacts of dangerous climate change which informed the adoption of the Paris Agreement and the UNFCCC.

The HRC has also, in General Comment No 36, explicitly addressed the issue of the scope of the duty to protect life in the context of disasters and climate change:

States parties should also develop, when necessary, contingency plans and disaster management plans designed to increase preparedness and address natural and man-made disasters, which may adversely affect enjoyment of the right to life, such as hurricanes, tsunamis, earthquakes, radio-active accidents and massive cyberattacks resulting in disruption of essential services (ICCPR, 2018, para. 26, p.7)

Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. [258] Obligations of States parties under international environmental law should thus inform the contents of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental. (ICCPR, 2018, para. 62, emphasis added, p. 14-15)

The issues raised by these provisions are relevant to a consideration of the scope of the right to life in the specific context of the implementation of Chapter 9 of the SSF Guidelines. In addition, the relevance of the Paris Agreement and the Sendai Framework in “informing and reinforcing” the positive obligations laid down in human rights jurisprudence and interpretative statements is evident. States will have the opportunity to address these issues when implementing their obligations under the Paris Agreement, including through adopting NDCs and NAPs. They may also be able to access support for relevant initiatives under the financial framework of the Paris Agreement.

Resilience: Health, food, housing and livelihood and related rights

In addition to the general right to life discussed above, the closely related rights to health, food, water, housing and livelihood play roles in securing resilience and reducing vulnerability — key aims not only of the SSF Guidelines (Guidelines 9.2 and 12.3) (FAO, 2015, pp. 12–13 & 18), but also of the Paris Agreement (UNFCCC, 2015, Article 7(1), pp. 25–26) and the Sendai Framework (UNISDR, 2015(b), Priority No. 3, Paras 17 & 18, p. 12). “It has been noted that the biggest crisis among small-scale fisheries is poverty and livelihood opportunities”. (USAID, 2017, p. 7)

Resilience itself is a broad and evolving concept as outlined in BOX 14, which also examines vulnerability.

Box 14. Resilience and vulnerability

Although resilience is not defined in the Paris Agreement or the UNFCCC, the IPCC has defined resilience as:

The ability of a social or ecological system to absorb disturbances while retaining the same basic structure and ways of functioning, the capacity for self-organization and the capacity to adapt to stress and change (IPCC, 2007, p.86).

Article 7(9)(e) of the Paris Agreement refers to the resilience of socioeconomic and ecological systems, picking up the broad scope of the IPCC definition (UNFCCC, 2015, p.27).

Under the Sendai Framework, vulnerability and resilience are defined by reference to the analysis of the United Nations Office for Disaster Risk Reduction (UNISDR). The UNISDR defines vulnerability as –“... the characteristics and circumstances of a community, system or asset that make it susceptible to the damaging effects of a hazard ...” (UNISDR, 2016)

Resilience is defined by the UNISDR as:

The ability of a system, community or society exposed to hazards to resist, absorb, accommodate to and recover from the effects of a hazard in a timely and efficient manner, including through the preservation and restoration of its essential basic structures and functions ... (UNISDR, 2016, p. 22).

This is similar to the IPCC definition and, in both cases, resilience extends to economic and social as well as to physical capabilities, which are relevant to a range of human rights as addressed below.

Resilience is also referenced in the SDGs in a context that is social and economic in the face of poverty, climate change and other threats to sustainable development. SDG 1.5 focusses on resilience in the context of climate-related extreme events and disasters and sets the following goal:

By 2030, build the resilience of the poor and those in vulnerable situations and reduce their exposure and vulnerability to climate-related extreme events and other economic, social and environmental shocks and disasters. (UN Sustainable Development Knowledge Platform)

In addition, resilience is a core feature of target 13.1 in its aim to: “Strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries” and underpins the achievement of several other targets including target 11 (disasters). (UN Sustainable Development Knowledge Platform)

Understanding of what actions promote resilience will continue to evolve. The UNFCCC Adaptation Committee is conducting a technical examination process on adaptation, to identify concrete opportunities for strengthening resilience, reducing vulnerabilities and increasing the understanding and implementation of adaptation actions (UNFCCC, 2015, Paras 124–127, pp. 18–19)

The IPCC (IPCC, 2014a) noted the vulnerability of SSF communities is often greater because of their limited capacity to adapt:

Fisheries and some aquaculture industries with high-technology and/or large investments have high capacities for adaptation due to greater development of environmental monitoring, modelling and resource assessments.... For smaller-scale fisheries and nations with limited adaptive capacities, building social resilience, alternative livelihoods and occupational flexibility are important strategies. (IPCC, 2014a, p. 97)

The IPCC also highlighted the vulnerability of coastal communities, particularly in tropical small island states, in its SREX Report:

It is very likely that mean sea level rise will contribute to upward trends in extreme coastal high-water levels in the future. There is high confidence that locations currently experiencing adverse impacts such as coastal erosion and inundation will continue to do so in the future due to increasing sea levels, all other contributing factors being equal. The very likely contribution of mean sea level rise to increased extreme coastal high-water levels, coupled with the likely increase in tropical cyclone maximum wind speed, is a specific issue for tropical small island states. (IPCC, 2012, p. 13)

As noted in the Sendai Framework, exposure has increased faster than vulnerability has decreased, thus generating new risks and a steady rise in disaster related damage and losses. The economic, social, health, cultural and environmental impacts at the local and community levels (para. 4) are great. Vulnerabilities to natural disasters faced by the fisheries and aquaculture sector include:

...damage to fishing infrastructure and productive assets such as docks, landing and processing facilities, boats and fishing gear. In addition, diseases threaten fish and contribute to food and nutrition insecurity among rural populations dependent on fish farming...New transboundary aquatic animal diseases continue to appear, causing losses in aquaculture and capture fisheries and adversely affecting local economies... (FAO, 2011)

The *Oceans Roadmap*, presented to UNFCCC COP22 (Global Ocean Forum 2016), emphasized the need for an integrated approach:

There is a need to implement integrated adaptation approaches which focus on reducing community and ecosystem vulnerabilities and enhancing their resilience to the multiple pressures they face, including those related to development and to climate variability, extremes and change. In practice they usually cannot and should not, be disentangled. (Global Ocean Forum, 2016, p. 40)

The protection of health is also key in ensuring the resilience of SSF communities, particularly those with limited access to good health services. Article 12 of ICESCR (ICESCR, 1966, p4) affirms the right to the enjoyment of the highest attainable standard of physical and mental health. The human right to health includes the right to treatment which in turn includes the creation of a system of urgent medical care in cases of accidents, epidemics and similar health hazards, and the provision of disaster relief and humanitarian assistance in emergency situations (ICESCR, 2000, para. 16, p. 6.). It also addresses the underlying determinants of health such as safe drinking water and safe food. (OHCHR & WHO, 2008, p. 3)

In implementing Chapter 9, states should assess the risk of access to health services for SSF communities being disrupted by disaster. In relation to indigenous SSF communities, the 2014 Study by the Expert Mechanism on the Rights of Indigenous Peoples' has highlighted:

Access to health services, which for many indigenous communities is already challenging, can become even more difficult following a disaster, when increased demand, and often preventable damage to transport infrastructure and health facilities, can compound the challenges. Other disaster-related health risks that may disproportionately affect indigenous peoples include outbreaks of infectious diseases, increases in vector-borne disease, and a lack of safe drinking water and of access to adequate sanitation. (HRC(c), p. 12)

The OHCHR has highlighted the relevance of the right to food in the context of climate change. (OHCHR, 2009, pp. 9–10).

The IPCC highlighted the impacts of climate change on food security in the fisheries sector in its Fifth Assessment report:

Climate change is projected to undermine food security... Due to projected climate change by the mid-21st century and beyond, global marine species redistribution and marine biodiversity reduction in sensitive regions will challenge the sustained provision of fisheries productivity and other ecosystem services (high confidence). (IPCC, 2014a, p. 13)

The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, has also called for an HRBA to disaster prevention (HRC, 2010, para. 71, p. 15). As set out in Box 15, the Special Rapporteur's observations on the situation in the Maldives highlighted the types of vulnerabilities faced by many SSF communities.

Box 15. The right to housing

The Special Rapporteur identified specific risks arising from the impact of climate change on the Maldives:

The Special Rapporteur believes that climate change and its consequences impact significantly on the human rights of Maldivians. With regard to the right to adequate housing, such impact can be broadly divided into the following groups: (a) Threat to life and health of persons and communities: this includes not only physical threats due to increase in temperatures and natural disasters, but also mental effects of insecurity and traumatizing experiences such as the 2004 tsunami; (b) Loss of houses and property: total or partial destruction of houses and properties is happening in Maldives because of a rise in the sea level and natural disasters such as floods, cyclones, etc.; (c) Loss of livelihood: in Maldives, the economy is concentrated in two sectors – tourism and fishing – both of which are affected by extreme weather and sea events.... As many economic activities depend on the coastal ecosystem, climate change would affect communities' livelihoods, including through loss of land, environmental changes affecting fisheries and agriculture and other livelihood activities; ... (d) Loss or contamination of freshwater sources; (e) Threat to security of persons and communities linked to their housing location; (f) Threat to the very social fabric of Maldives due to displacement; and (g) Impact on infrastructure and services. (HRC, 2010, p.6)

Cultural rights are also relevant to both vulnerability and resilience. Under Article 27 of the ICCPR, in those States in which ethnic, religious or linguistic minorities exist, persons belonging to these minorities: “shall not be denied the right, in community with the other members of their group, to enjoy their own culture...” (ICCPR, 1966). In General Comment No 23, the HRC confirmed that culture could include traditional activities such as fishing:

With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting ... The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them. (para. 7) (ICCPR, 1994, p. 3)

The HRC reaffirmed this position in its Opinion in *Apirana Mahuika v New Zealand*. In *Apirana Mahuika*, the Claimants were members of a minority within the meaning of Article 27 of the ICCPR and fishing was an essential element of their culture. The HRC held that economic activities such as fishing could come within the ambit of Article 27 of the ICCPR, if they were an essential element of the culture of a community. (ICCPR, 2000, para. 9.3, p. 14)

The Committee emphasized that the acceptability of measures that affect culturally significant economic activities of a minority depends on whether the members of the minority have had the opportunity to participate in the decision-making process and whether they will continue to benefit from their traditional economy (ICCPR, 2000, para. 9.5, p. 15). States should consider whether Article 27 of the ICCPR protects fishing by their SSF communities. States should carefully weigh proposed adaptation measures that could impact fishing and allow affected communities to participate in decisions about the use of those resources.

For indigenous communities, states should apply the FPIC principle, but waiting to get consent before acting is not enough. Failure to act can cause harm. As the Expert Mechanism on the Rights of Indigenous People has noted:

Natural hazards are not disasters, in and of themselves. Whether or not they become disasters depends on the exposure of a community, and its vulnerability and resilience – all factors that can be addressed by human (including State) action... A failure (by national and local governments, disaster risk reduction agencies, indigenous peoples and other actors) to take reasonable preventive action to reduce exposure and vulnerability and to enhance resilience, as well as to provide effective mitigation, is therefore a human rights issue. (HRC(c), para. 10, p. 4)

The same report observes that: “In the same way that indigenous peoples have the right to be involved in developing and determining health, housing and other economic and social programmes, they must also be actively involved in designing and conducting vulnerability studies and strategies that aim to reduce their risk. (HRC(c), p. 5) Drawing on these observations, this could include making proposals and weighing options and alternatives, as well as ongoing involvement through implementation and monitoring to increase institutionalization and ownership.

Rights to the protection of private property and the protection of tenure rights are also likely to be relevant, including in the reconstruction and prevention phases of addressing disasters. Protection of property under human rights law, for example under Article 1 of Protocol One to the ECHR (ECHR, 1950), is generally subject to the need to balance the public interest and that of the property owner, for example where property such as land is expropriated for a public purpose.

SPECIAL ISSUES

Climate displacement / climate refugees

The scale of forcible displacement of people due to weather-related sudden onset hazards is significant, as indicated by the UN High Commission for Refugees (UNHCR):

An annual average of 21.5 million people have been forcibly displaced by weather-related sudden onset hazards – such as floods, storms, wildfires, extreme temperature – each year since 2008. Thousands of others flee their homes in the context of slow-onset hazards, such as droughts or coastal erosion linked to sea level rise. There is high agreement among scientists that climate change, in combination with other drivers, is projected to increase displacement of people in the future. (UNHCR, 2016, Q1)

The extent to which international law protects those displaced by climate-related impacts remains unresolved. Several commentators – notably McAdam (2012) – have highlighted the gaps and limitations of existing legal frameworks, including the regime governing refugees under the Geneva Convention or under international human rights law. UNHCR has described the term “climate refugee” as misleading on the basis that:

...in international law the word “refugee” describes people fleeing war or persecution and who have crossed an international border. Climate change affects people inside their own countries, and typically creates internal displacement before it reaches a level where it pushes people across borders. It is therefore preferable to refer to “persons displaced in the context of climate change”. (UNHCR, 2016, Q3)

The international climate change regime has taken up the displacement issue. The dedicated Task Force on Displacement met for the first time in 2017 (UNFCCC, 2017). The Task Force developed recommendations for integrated approaches to avert, minimize and address displacement which were adopted by the UNFCCC COP, at its 24th session (UNFCCC, 2019). Under the Recommendations Parties are invited to:

...strengthen preparedness, including early warning systems, contingency planning, evacuation planning and resilience-building strategies and plans, and develop innovative approaches, such as forecast-based financing to avert, minimize and address displacement related to the adverse impacts of climate change

The mandate of the Task Force has been extended in a new plan of action for the period 2019-2021.

States should address the human rights of internally displaced people, including members of SSF communities, by reference to the rights outlined in this part of the guide.

Self-Determination and sea-level rise

The right to self-determination in the face of rising sea levels is also relevant. Sea level rise is an increasing concern to vulnerable states and an existential threat to small island developing states (SIDS), as argued by Torres Camprubi (2016).³¹ Article 1 of the UN Charter refers to the principle of self-determination. Common Article 1 of the ICCPR and ICESCR also addresses self-determination:

³¹ See for example Torres Camprubi, Alejandra. 2016. Statehood under water: challenges of sea-level rise to the continuity of Pacific island states. *Legal Aspects of Sustainable Development*. Vol 22. Leiden. Boston.

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development ... (ICCPR, 1966 and ICESCR, 1966, p. 1)

The extent to which SIDS and vulnerable states can rely upon this right to claim a duty on the part of major emitting states lies beyond the scope of this guide. However, sea-level rise by any measure presents a threat to human rights. States where coastal human habitation and subsistence are severely compromised by the impacts of climate change will require international assistance to protect the human rights of their citizens. Sea level rise will directly impact SSF communities, particularly those who are already poor and marginalized. The history of the principle and right to self-determination indicates that its application evolves to respond to the major concerns of the time.³² Its impact in the era of accelerating climate change remains to be fully determined.³³

In Summary

Effective implementation of Chapter 9 of the SSF Guidelines requires attention to international human rights laws. States should assess vulnerabilities and act in line with human rights standards. Key process principles include transparency, participation, access to justice and non-discrimination. Key outcome principles include the right to life and the supporting rights to food, housing, water and livelihoods. States must be proactive, preparing for future events, whether extreme or slow onset, ensuring the maintenance of infrastructure and protecting essential services. Some SSF communities may also fall under the international framework protecting the rights of indigenous people and other minorities, including FPIC requirements and the right to pursue traditional fishing.

Two special problems resulting from climate change are likely to raise human rights issues in novel ways. One is the rights of internally displaced people. The other is the rights of people and states affected by sea-level rise. Displaced people deserve humanitarian assistance to protect their lives and well-being. Vulnerable states may have claims for international assistance under the right to self-determination.

³² For an example during the period of decolonization see UNGA (1960). Resolution 1514(XV)

³³ See the discussion as to the impact of climate change on the rights of indigenous peoples in OHCHR (2009) and RECIEL (2017), including the right to self-determination as well as on other vulnerable states and peoples.

Part 4



Examples of responses
to scenarios faced by small-scale
fisheries communities



Part IV. Examples of responses to scenarios faced by small-scale fisheries communities

A. EXTREME EVENTS AFFECTING SSF COMMUNITIES

In Country A, the severity of hurricanes/typhoons has increased in the past five years with a resultant loss of life among coastal communities, including SSF fishers while at sea.³⁴ Country A is an archipelagic state and some SSF communities are remote from communications with national authorities. In most cases, the small vessels used by SSF fishers are unable to withstand these events. SSF fishers do not have access to satellite communications while at sea and rely on weather forecasts before they depart. They are dependent on national forecasting, which does not always reach small communities in a timely or easily understood way or make clear the potential for local impacts.³⁵

Low-lying SSF villages are also vulnerable to storm damage and flooding caused by tidal surges. Again, forecasting is not always accurate at the local level. Local mangroves have been destroyed by recent coastal development for tourism, which has exacerbated the vulnerability of nearby SSF villages.³⁶ Concerns raised by local people have not been responded to by the authorities. The national development plan for this area focusses on coastal development for tourism and the increase in employment that this will provide.

Some of the SSF communities, though not all, are indigenous peoples who have traditionally fished in the area.

Government response to case A:

The head of the fisheries agency orders the agency's chief planner to draw up a plan for responding to climate change and disaster issues facing SSF communities. Mindful of SSF Guidelines 6.17 and 6.18, the head instructs the planner to pay special attention to safety at sea issues. The chief planner begins by drawing up a preliminary list of issues:

- Related to climate change
 - Mitigation: protection of carbon-capturing coastal mangroves.
 - Adaptation: preparation for sea-level rise and more frequent and more powerful storms (tied also to disaster preparedness).
- Related to disaster preparedness and relief, and safety at sea
 - Hardening of coastal infrastructure.

³⁴ Although this case is hypothetical, loss of life from cyclones has become a serious issue. A recent example was cyclone Ockhi in India. The disaster went unnoticed because it hit fishermen at sea and land was unaffected. (FAO and ICSF, 2019)

³⁵ In the 1999 Odisha cyclone, one of the issues was that communication didn't reach local communities because the warnings were not communicated in their local language.

³⁶ Loss of mangroves exacerbated coastal damage from cyclone Idai in Mozambique.

- Improving land-based disaster response capabilities.
- Improving rescue-at-sea capabilities.
- Improving weather forecasts and dissemination.
- Improving communications capabilities.
- Potential human rights issues
 - Protecting the right to life of coastal fishers at sea and of coastal village residents on land, including rights to livelihoods, food and housing.
 - Assuring meaningful participation in decisions, including FPIC for indigenous peoples.
 - Assuring equitable treatment of coastal communities.
 - Assuring equitable treatment across age, gender, and group affiliation lines.

Next, the planner draws up a tentative list of stakeholders:

- In government:
 - The fisheries agency.
 - The national planning ministry, and others concerned with coastal planning.
 - The meteorological agency.
 - The navy, coastal patrol, or others involved in sea rescue.
 - The agencies concerned with port development.
 - The agency concerned with indigenous peoples.
 - The agency concerned with public health.
 - The agency concerned with food security.
 - The agency concerned with rural development.
 - The agency concerned with ecotourism development.
 - The agency concerned with protection of coastal biodiversity.
 - The agency concerned with communications infrastructure.
 - The lead agency on climate change.
 - The foreign relations ministry.
 - Members of parliament representing SSF communities.
 - Local governments also the coasts.
- Outside of government:
 - Leaders of SSF communities.
 - Representatives of key subgroups within SSF communities, such as women and youths.
 - NGOs supporting SSF communities.
 - NGOs working on climate change.
 - Businesses providing goods and services to fishers and fishing communities.
 - Businesses buying, processing, and transporting seafood.
 - Hospitals and non-governmental emergency responders.
 - Ecotourism interests.
 - The media.
 - Academics and educators at all levels.

The planner begins to contact people and organizations on the stakeholder list. With each contact, the planner discusses both the list of issues and the list of stakeholders, with an eye to expanding and refining the lists.

The planner then drafts a tentative list of actions to deal with the issues:

- Review existing international commitments of the country regarding human rights, climate change, and DRR.
- Review existing policies and legislation on climate change and DRR as they affect SSF, including but not limited to the policies and legislation governing the fisheries agency.
- Where the fisheries agency is probably the lead or co-lead agency:
 - Develop or revise a national strategy for fisher safety at sea.

- Identify and clarify tenure rights of fishers and their communities. This may entail legal reform, conflict resolution, and other steps.
- Create an early warning system for coastal fishers and their communities, appropriate to local media, languages, and cultures.
- Educate coastal residents on disaster preparedness and hold occasional drills.
- Look into equipping fishers with radios or other location and communication devices for emergencies.
- Review the availability of insurance for fishers and coastal residents.
- Where another agency probably takes the lead:
 - Improve the provision of weather forecasts for coastal communities.
 - Improve the provision of post-disaster economic support for local communities and their members.
 - Make sure that the country's National Adaptation Plan, prepared in compliance with the Paris Agreement, includes SSF issues.
 - Create a plan for sea defences, including voluntary relocation and a “build back better” approach.
 - Study the need to protect coastal groundwater supplies from sea water intrusion.
 - Seek international financial and technical assistance, particularly for measures involving climate change.
- To improve fishery agency management:
 - Adopt or update the agency's policy on SSFs.
 - Educate staff on the SSF policy and the need to protect human rights.
 - Integrate human rights and support to SSFs into agency monitoring and evaluation programmes, including into individual performance reviews.
 - Develop mechanisms (like advisory boards, fact-finding panels, or town meetings) and guidelines to allow meaningful participation of non-governmental stakeholders in agency decisions.
 - Develop a communications and transparency strategy to inform the public generally and stakeholders specifically about the agency's activities and plans for SSFs.

The planner vets the lists of tasks with senior managers within the agency and then with stakeholders outside the agency, asking for feedback and revising the task list as needed.

Recognizing that the Government cannot do all these tasks at once, the planner reviews available budgets and capacity and proposes a plan for phasing in implementation of the task list. The plan includes a set of specific (SMART) goals for government action and indicators to track success in meeting those goals.

With the aid of agency leadership, the planner seeks approval of the plan at high levels and seeks memorandums of agreement with cooperating agencies. The draft plan has been revised in the light of public consultations to address concerns about those whose land is affected by the construction of sea defences and those who may be involved in voluntary relocation and to establish a liaison officer to discuss ongoing concerns with the local SSF community.

B. IMPACTS OF SHIFTING FISHERIES ON SSF FISHERIES

In Country B, which is a tropical coastal state, it appears that certain fish stocks are moving further offshore and some are becoming less productive. The access agreement between the Government and a third country with a significant distant water fleet is being renegotiated to take account of this. Access to certain stocks previously fished by SSF fishers may be reassigned as “surplus stocks” under

the United Nations Convention on the Law of the Sea as they have moved further offshore into the Exclusive Economic Zone (EEZ). Quotas for these stocks are being offered to commercial fleets.

Local SSF communities are deeply concerned at the potential loss of livelihood if they lose access to the stocks that have moved. They sell some catch for much needed cash, and the amount of fish available for local consumption appears to be diminishing, with adverse impacts on local food security and nutrition. There are already occasions when SSF communities suffer from food insecurity and low protein consumption, resulting in localized malnutrition, particularly affecting children. To reassure the local population and concerned CSOs that there is no malnutrition or hunger in that state, the state relies on national statistics dating back 15 years.

Civil Society Organization (CSO) response to case B:

The leader of a national CSO instructs a program head in the organization to begin addressing the concerns of SSF communities.

The program head makes a list of broad issues that the CSO might try to influence:

- Assuring food security and livelihoods.
- Adapting to climate change.
- Reaching a suitable agreement with the third country over fishing rights.
- Bringing national statistics up to date.

The head then makes a list of people and groups to talk with, to get a better understanding of the problems. The list includes:

- Leaders in SSF communities, including elected officials.
- Other CSOs supporting SSF communities.
- Officials in the fisheries agency.
- Officials in the agencies concerned with food security.
- Officials taking the lead on climate change adaptation.
- Officials in the foreign affairs ministry working on fishery issues.
- Officials in the national statistical agency.
- Officials in the agencies concerned with coastal development.
- Journalists who have been covering the issue.
- CSOs operating in the “third country” with a distant water fleet that is seeking access to more fish stocks.
- Academics who have studied the problem.
- International development partners who may be interested in the problem.

Recognizing that the CSO is not able to control all the many actors who will influence the issues in this matter, the program head decides to take a “Theory of Change” approach.³⁷ The head first states an ideal end result: that SSF communities achieve food security and become resilient to the effects of climate change.

The head then lists some outcomes that are beyond the control of the CSO but that might help achieve the result:

³⁷ For more on planning using the Theory of Change, see www.theoryofchange.org/.

- The country makes an official statement acknowledging its responsibility to protect the livelihoods of SSFs.
- The country obtains up-to-date and complete statistics on food security issues for SSF communities.
- The country adopts a system of participatory community management of fish stocks used by SSFs.
- The country monitors fish stocks and is ready to act if shifting stocks threaten food security.
- The country concludes a treaty that will preserve SSF access to shifting fish stocks.
- The country creates an area within its exclusive economic zone reserved for SSFs.
- Because women often have direct knowledge of food security concerns, the country makes a special effort to hear the concerns of women.

The head then considers what CSO activities and outputs could influence the government to achieve these good outcomes. These might include actions to educate government officials and elected leaders about the problems, technical studies to increase knowledge of the problems, public information campaigns to spread knowledge, efforts to help people use existing public participation channels, and so forth. The program head draws up a proposed program and budget, which includes internal program monitoring and evaluation based on completion of proposed actions and evidence of their influence on desired outcomes. The head presents the proposal to the CSO leadership for consideration.

C. IMPACTS OF SLOW ONSET EFFECTS AND AVOIDING MALADAPTATION

Maladaptations, as defined by the IPCC (2018, p. 553), are: “actions that may lead to increased risk of adverse climate-related outcomes, including via increased GHG emissions, increased vulnerability to climate change, or diminished welfare, now or in the future.”

Country C is experiencing slow onset impacts of climate change including bleached coral reefs where SSF communities have traditionally fished. Considering the threat to this fragile ecosystem, the Government has implemented a fishing exclusion zone around the entire area fished by a large SSF community and established a marine protection area with highly restricted access, which also impedes access to fishing grounds beyond the reef by SSF. The Government has included this measure in its NAP.

There have been many incidents where SSF fishers have had their vessels and gear confiscated on the spot by conservation officials as a penalty for violating the no fishing zone and marine protection area (MPA) exclusion area. The SSF fishers affected say this prevents them from earning a livelihood and feeding their families. Local state authorities have advised those villages affected to relocate elsewhere.

There have been clashes between the SSF fishers and other communities in the area as some individuals seek to develop alternative activities including rice cultivation on land nearby. Recent cyclones have caused long-term residual impacts on the island, including salinized soil and water sources. The resulting pressures on these resources and the decline in agricultural productivity have heightened social tension.

The SSF local council has argued for a modification to the MPA to permit the resumption of a traditional access route to the further fishing grounds, which they say will not adversely impact on the reef.

Consultant's response to case C

The Government responds to the increased tensions by announcing that it has hired a respected professor of fisheries management at the national university to make recommendations to solve the problem.

The consultant starts with a listening tour. She talks with the local council and SSF community representatives. She talks with the people in the adjoining agricultural communities. She talks with local elected officials and with the local offices of the various government agencies involved. She talks with the people who write the country's climate change plans. In each meeting, she asks people to explain their view of the problem and suggest solutions. She also asks who else they think she should talk to.

The consultant reviews the country's laws on fisheries and marine protection areas. She tries to understand what lawful options are open to the Government. She considers the commitments the country has made regarding human rights and climate change adaptation.

Based on these steps, the consultant proposes a preliminary set of recommendations:

- The country should adopt an integrated coastal zone management plan (ICM) that includes local participation and long-term climate change adaptation (SSF Guidelines 3.11, 6.1, 9.2, 9.3 and 10.2), and that takes into account human rights obligations.
- The country should ensure that policies taken in response to one impact (bleaching of the reef) do not result in maladaptation in another sector (through an increase in vulnerability of the SSF community) (SSF Guidelines 3.11, 5.5, 9.3 and 10.2).
- The country should base all future proposals on BAS.
- The country should make a list of SSF vessels used for subsistence fishing and employ it to manage limited access to the marine protected area (SSF Guidelines 5.4 and 5.7).
- The country should work with CSOs to improve the local SSF community's ability to participate in future planning and decision making.
- The country should use appropriate dispute resolution methods to address tensions with neighbouring agricultural communities and should assure fair trials to fishers accused of illegal access to the reserve.

The consultant shares these draft recommendations with the Government and concerned stakeholders and revises them based on the feedback.

D. AQUACULTURE EXPANSION AS ADAPTATION STRATEGY

Country D has an important coastal aquaculture sector and is keen to extend it, in part to address concerns about the impacts of climate change on the declining capture fisheries sector for SSF communities.

Some local farmers are concerned about the implications of expanded aquaculture on their use of coastal land. In turn, SSF communities are concerned about the potential impacts of aquaculture on marine fisheries and on local environmental quality, fearing the impacts of escapement, discharges of chemical inputs and the waste discharged from new fish farms. At present, information on such impacts is not publicly available and there is concern that increasing outbreaks of illness locally are

linked to such events. The communities wish to be consulted about any proposals. Even those in favour of the development are concerned whether new farms will withstand an expected increase in coastal flooding and tidal surges in the region.

A CSO that has been working with local SSF communities has raised the issue of selecting appropriate species for fish farming – namely, species with high tolerance for reduced water quality and efficiency of feed use. Independent scientific advice indicates that these are two areas where climate change will have a pronounced medium-term impact.

Government response to case D:

The Government has an existing SSF policy that recognizes the need to respect human rights. Bearing in mind its commitment to an HRBA and building resilience in its national climate policy (Paris Agreement Preamble and SSF Guidelines 3.1 and 9.2), the Government decides to consult all local communities, both SSF and farming communities, on proposed local and regional aquaculture plans, including on adopting risk-based zoning proposals for aquaculture (SSF Guidelines 9.3 and 10.1). The Government assures the local communities that it will adhere to the environmental and public health standards in Article 9 of the 1995 FAO Code of Conduct for Responsible Fisheries including those relating to the advance evaluation of the effects of aquaculture development.

Finding that the communities are willing to work together in good faith, the national Government sets up a board made of agency officials and community representatives to recommend next steps. After joint fact-finding and discussion in meetings open to the press and public to observe, the board members unanimously agree that the Government should establish a licensing system for aquaculture to protect the rights of those likely to be affected as the sector expands. Further, the Government should conduct environmental impact assessments at any sensitive sites and a strategic environmental impact assessment of the overall licensing programme (SSF Guidelines 3.10, 5.10 and 6.18). This will involve the participation of all local communities. Once farms are operating, the ministry for the environment should regularly monitor both the farms and coastal waters to address any health or environmental issues that might arise, publishing and communicating the results to local communities.

After these recommendations come out, the local authority commits to releasing data about any environmental impacts of aquaculture promptly, and, if necessary, to activate an early warning mechanism if there are concerns about bathing or drinking water quality or other impacts (SSF Guidelines 3.8 and 11.1).

The Government also seeks to promote diversification of livelihoods by conducting pilot research programmes on agricultural and aquaculture species that are more resistant to reduced water quality and are more efficient in taking up feed (SSF Guideline 6.8). The local authority's extension service will inform farmers about the results of the pilot work.

The Government establishes a national coordinating body to ensure coherence between economic, environmental and social policies in this sector. The relevant ministries including the ministry for fisheries and the agriculture ministry as well as the health and environment ministries all participate (SSF Guideline 10.1).

E. INLAND FISHERY: CONCERNS ABOUT CLIMATE CHANGE AS AN ADDITIONAL STRESS

Over-extraction of water, introduction of non-native species, pollution and expanding catches are adversely affecting the freshwater fisheries in Country E.

Scientists are particularly concerned about the likely impact of rising temperatures on inland fisheries because of climate change. New aquatic animal diseases are appearing in several locations, potentially affecting both food security and livelihoods. Incidents of anoxia and ammonia intoxication have caused massive fish deaths.

Many inland fishers belong to a forest-dwelling indigenous community that suffers from poverty and lack of adaptive capacity. They speak a minority language and are not currently represented in the national fisheries advisory council. There is limited data on the current scale of inland fishing or the contribution of inland fisheries towards food security among this community although anecdotal evidence suggests that it is important.

The Government is considering several major infrastructure projects that might further impact on inland fisheries, including a dam. The Government has not discussed the dam with the fishing community.

Government response to case study E:

Best practice requires both an environmental impact assessment and social impact assessment for major infrastructure projects. When vulnerable groups are involved, a vulnerability assessment and HRBA analysis can identify issues. Clearly, the Government will do this before deciding on whether to build a dam.

First, however, to safeguard the food security of the fishing community, the Government decides to undertake an immediate food insecurity and vulnerability mapping exercise in accordance with the VGRTF (Guideline 13) (FAO 2004). The Government then integrates the findings of this mapping exercise with the broader based vulnerability assessment conducted as part of its implementation of the Paris Agreement.

The Government also conducts an HRBA analysis of its Paris Agreement commitments to reduce vulnerability and increase resilience in the face of the growing threat from climate change (SSF Guidelines 3.1, 9.2, and 9.7). The HRBA analysis identifies the specific rights of indigenous peoples and the more general human rights that apply. It particularly highlights the rights to food and to health. It also points out the commitment in the SSF Guidelines to promote “the elimination of all kinds of discrimination in policies and in practice” (SSF Guidelines 3.13). (FAO, 2015, p. 2)

The Government uses the data obtained from its assessments to put forward proposals for addressing the impacts of climate change on the inland fisheries. Mindful of the fact that some of the relevant communities are indigenous people, the Government commissions a consultation exercise conducted locally in the indigenous language. The Government assures the community that the various options for consideration are subject to consultation and that it will take into account its international adherence to the principle of FPIC under UNDRIP (SSF Guidelines 3.6, 9.2, 10.1 and 11.6).

Further, the Government investigates the causes of water pollution affecting the fishery. Invoking authority under its environmental laws, it presses polluters to minimize discharges and redress the impacts. As part of its implementation of the Sendai Framework and the SSF Guidelines (Guidelines

9.2, 9.3 and 9.4), the Government promises rapid response to incidents of anoxia and poisoning in the river. It will set up a monitoring system to detect any sudden drops in water quality.

In a separate consultation on the proposed dam, the community expresses opposition. The Government agrees to ensure that any future dam will not interfere with the community's traditional fishing-based livelihoods.

F. RISKS FROM NUCLEAR ACCIDENT

An accident at a coastal nuclear installation in Country F has released radioactive material into the sea. There are concerns about radioactive contamination of coastal waters fished by SSF fishing communities.

The Government's response to case F

This is a disaster. The Government invokes its general response and recovery plan. It will establish a consultation body under the ministry of fisheries to work with local SSF communities on the response measures as time allows, but it does not wait to act. It evacuates some SSF communities from the most affected area, imposes immediate restrictions on fishing, and restricts consumption or sale of fish designated as potentially unsafe. It provides iodine tablets to exposed people to reduce the likelihood of damage to their thyroid glands. When time allows, it releases initial monitoring information and provides the SSF community the opportunity to discuss the measures taken in the light of the best available science.

After the initial emergency response, the Government begins to implement longer-term actions. It establishes an emergency fund to compensate SSF communities for any loss of earnings. It helps members of SSF communities seek alternative sources of income pending a lifting of the emergency restrictions.

The Government provides physical and mental health monitoring, including thyroid screening, for communities exposed to the radiation. It makes complete information on potential health impacts available. The Government recognizes that access to information is an essential component of the human right to health, as it enables individuals to make informed decisions.

As noted by the UN Special Rapporteur on the Right to Health:

The right to health requires the State to pay special attention to the needs of vulnerable groups. The State is also under an immediate obligation to prevent discrimination, especially against vulnerable groups in its policies or practice, even during times of resource constraint. (HRC, 2013(a), para. 70, p. 21)

Accordingly, the Government takes special care to deliver services effectively to vulnerable SSF communities.



Concluding observations

For small-scale fishers, fishing and its associated activities provide food, livelihood and identity. Take away the ability to earn a living through fishing, and individuals, families and whole communities suffer.

No wonder, then, that fishery policies often touch on human rights. You cannot sustain fishers' lives and communities without sustaining their connections to rivers, lakes, and seas.

Living and working where water joins the land, these communities are particularly vulnerable to climate change and disasters. Taking into account obligations under human rights laws, the climate change regime, the Sendai Framework, and the SSF Guidelines, governments must build the resilience of SSF fishers and communities urgently, on the basis of best available science, aiming for equity.

These duties fall not just on individual states, but on the whole international community. The UNFCCC and the Paris Agreement recognize that climate change may be catastrophic on SIDS, LDCs and other vulnerable states where SSF communities are located. Developed countries should support these states in addressing climate change and other disasters.

In adopting an HRBA in implementing Chapter 9 of the SSF Guidelines, it is important to consider how relevant actors will be held responsible for their actions and decisions in addressing the risks posed by climate change and natural disasters. Integrating human rights standards and laws into DRR and climate action, including through securing access to justice for potential breaches, enhances the accountability of national action, which in turn promotes more effective governance and responsive decision-making

The Paris Agreement enshrines a progressive approach to mitigation, provision of financial support and adaptation. The Parties have agreed to increase efforts and ambition over time. Governments acting to help those exposed to critical risks should establish rights-based indicators and document baselines. With these tools, the governments can make a case for international support and then demonstrate progress towards reducing the vulnerability and increasing the resilience of SSF communities.

This guide has aimed to increase understanding of those duties to act. The world has reached a broad consensus, reflected in the SSF Guidelines, to respect and protect small-scale fisheries. With goodwill, capacity and understanding, countries and stakeholders can do much to advance that goal.

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Small scale fishing communities are vulnerable. Pollution, environmental degradation, climate change impacts and natural and human-induced disasters add to the threats facing small-scale fishing communities. Small scale fishing communities are overlooked. Development efforts often ignore these communities, missing chances to improve food security, eradicate poverty and promote sustainable development. This guide presents a perspective on implementing the climate change and disaster risk elements of the Voluntary Guidelines for Securing Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines), with special attention to protecting human rights. The guide will help policymakers, government agencies, development partners, and civil society organizations to design and implement fisheries-related policies and programmes addressing disaster risks and climate change.

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