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Democracy and Human Rights in the Management of Small-Scale Fisheries in England

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Abstract: Small-scale fisheries (SSF) in England face several challenges to their viability. We argue that the source of these challenges can be traced to the more dominant large-scale fisheries (LSF) sector which has more influence than SSF over government policies. A recent attempt to mitigate the impact of these challenges has been made by the Future of Inshore Fisheries initiative whose main prescription is co-management, i.e., giving SSF a participatory role with the government and LSF in the decision-making in English fisheries management. Co-management is a form of democracy and it may help the SSF to deal with their problems. However, in our view, the English SSF also require an acknowledgement of their human rights to a fair quota and protected access to productive inshore waters. In making this case, we draw on normative arguments to assert that human rights are prior to democratic processes. Our conclusion is that both democratic decision-making and human rights principles are needed to secure the English SSF from the real threat of extinction.

Keywords: small-scale fisheries; democracy; human rights; future of inshore fisheries; too big to ignore; England

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1. Introduction

There is a conflict which deserves attention between the notions of democracy and human rights over the issue of sustainable management of small-scale fisheries (SSF). This conflict is exemplified in England where a long-running controversy has focused on the alleged unfair treatment of SSF by the government, who have been accused of favouring the interests of the large-scale fisheries (LSF) sector [1] (Gray et al., 2011). Several bodies have tried to address this issue, including the Future of Inshore Fisheries initiative organised by the Seafish Industry Authority (known as Seafish, a non-departmental public body in the United Kingdom sponsored by the Department for Environment, Food, and Rural Affairs) in which both the government and the fishing industry have endorsed the democratic idea of co-management as a means of securing the future of SSF. However, a leader of the New Under Ten Fishermen's Association said SSF cannot rely on co-management alone to protect them from challenges to their long-term viability because co-management may not adequately balance the interests of the SSF with the interests of the LSF (pers. comm.). In addition to co-management, therefore, there is a need to recognise SSF's human rights by enshrining them in law. This issue echoes the debate in political philosophy over the relationship between democracy and human rights [2] (Besson 2011).

In Section 2 of this paper, the methods and materials used in the research are set out. In Section 3, two alternative interpretations of the relationship between democracy and human rights are explained: (1) that democracy is prior to human rights, and (2) that human rights are prior to democracy. In our view, the second interpretation is more convincing than the first and gives rise to the so-called human rights-based approach (HRBA). In Section 4, the HRBA is applied to the management of SSF in general and to the English SSF in particular. We argue that this application entails that governments should enact into law the human

rights of SSF to a share of the total allowable quota of relevant fish stocks sufficient to guarantee their economic viability, as well as protected access to coastal zones, which would exclude high-impact vessels from activity within and on the boundaries of this zone. Eight criticisms of this argument are identified, discussed, and challenged. In Section 5, the paper concludes by showing how co-management, with its potentially strong democratic credentials, can play a supporting role in implementing the human rights of SSF.

However, first, we must establish the link between co-management and democracy. In [3] Gray and Catchpole (2021), the concept of co-management is shown to have many different interpretations in the literature, including partnership, power-sharing, empowerment, user participation, decentralisation, accountability, legitimacy, transparency, and co-governance (see also [4] Wilson et al., 2003). These interpretations each exemplify aspects of democracy. This implicit link between co-management and democracy is made explicit by [5] Hoefnagel et al. (2006: 92), who state "Co-management requires a new paradigm: *the democracy paradigm* . . . it is a democratisation process" (italics in the original); furthermore, [6] Jentoft et al. (1998: 423–424) say co-management "calls for a system of interactive governance and cooperative democracy"; [7] Expectato et al. (2012: 28) say "Co-management is consistent with the aims of democratization"; [8] Napier et al. (2005: 165) say "co-management involves power-sharing and decision-making between partners and provides a participatory and consultative democracy"; [9] Symes (2006: 114) says "co-management is held to embody several attributes of 'good governance' . . . [including] democracy"; [10] Nielsen et al. (2004: 154) say "Co-management is considered to represent a more democratic governance system"; [11] Pinkerton (2003: 73) says "Co-management is often seen in its broadest sense as a reform promoting greater participatory democracy".

2. Methods and Materials

This paper is a normative analysis of the issue of human rights for the English SSF. Normative analysis is different from empirical analysis in that is engaged with ethical values rather than with positive facts. More accurately, normative analysis examines the ethical values that lie behind the positive facts. Normative theorists point out that the meaning and significance of a 'fact' depend on the values that the observer of that 'fact' brings to the table ([12] Frost 1994: [13] Brown 1992) and they criticise some positivists for failing to recognize the values that lie behind their own empirical analyses ([14] Cochran 1999; [15] Neethling 2004). During the last 20 years, there has been a move towards normative analysis in fisheries research. For example, [16] Allison et al. (2012), [17] Charles (2011), [18] Davis and Ruddle (2012), [19] Davis and Wagner (2006), [20] Isaacs and Wibooi (2019), [21] Ratner et al. (2014), [22] Ruddle and Davis (2013), [23] Sharma (2011), [24] Singleton et al. (2017), [25] Song (2015), [26] Song and Soliman (2019), and [27] Willmann et al. (2017) discuss the claims of fishers in terms of human rights, property rights, community rights, and territorial use rights. The present paper goes further than many of these writers in not only using normative terms but also analysing the moral strength of the arguments employing those terms.

With regard to the materials used in this paper, there are three main sources of information: the peer-reviewed literature; the grey literature; and interviews carried out for the authors' book, Resilience in the English Small-Scale Fishery: Small Fry but Big Issue [28] (Korda et al., 2021). Section 2.3 of that book describes in detail how the interviewees were selected and what themes were chosen for the interview questions. Suffice it to say here that a total of 112 key informant interviews were conducted and a total of 14 focus group discussions were organized. The respondents came from all ten Inshore Fisheries Conservation Authorities (IFCAs) in England and included 88 inshore skippers and all ten IFCA Chief Fisheries Officers. The questions focused on five major themes: challenges facing SSF; their coping strategies; community culture; relations between stakeholders; and managerial efficiency.

3. Two Interpretations of the Relationship between Democracy and Human Rights

In this section, two alternative interpretations of the relationship between democracy and human rights are examined: (1) the democracy-first interpretation; and (2) the human-rights-first interpretation.

3.1. The Democracy-First Interpretation

Some writers claim that democracy is prior to human rights because it incorporates human rights within it. In other words, democracy necessarily entails human rights. For example, [29] Beetham (1997: 352–353; 355) says "Human rights constitute an intrinsic, rather than extrinsic, component of democracy . . . democracy and human rights have a fundamental connection". Likewise, [30] Goodhart (2008) argues that human rights are built into democracy in that they constitute its rationale, so if a democratic government violates human rights, it contradicts itself by undermining its own essence. On this view, in a democracy, there is no need to enshrine SSF human rights in law because they are already taken care of by the democratic process [31] (De Mesquita et al., 2005).

Other advocates of the democracy-first interpretation put forward the assertion that democracy determines which so-called human rights are genuine human rights. For example, [32] Langlois (2003: 1005–1006, 1019) says that until and unless rights are selected by majority decision for protection, they remain mere aspirations or ideals or subjective claims rather than human rights properly so-called, they state "human rights amount to little more than charity if they are not functioning in a democratic framework: they may be standards or norms for human behaviour but they are not rights . . . Democratization is a necessity for the true realization of human rights as rights . . . Without democracy, human rights are at the discretion of the sovereign, and thus not rights at all".

Similarly, [33] McGinnis and Solmin (2009) argue that democracy is necessary to determine the validity of human rights claims: human rights are contested and indeterminate and need democratic decision-making to clarify their content and scope. In this view, democracy gives legitimacy to human rights, so democracy is prior to human rights. International bodies, which by definition have no democratic credentials, proclaim human rights have a 'democracy deficit'. A modified version of this argument is that the UN and the Council of Europe acknowledge that because of the differing circumstances of societies, governments must have some flexibility in the way they interpret the requirements of human rights. Likewise, the European Court of Human Rights has adopted a 'margin of appreciation' to accommodate the discretion it gives to governments to interpret human rights in the light of circumstances that surround particular cases. So, if a government is accused of breaching a person's human rights but the European Court of Human Rights judges that the government's actions lay within the margin of appreciation, it will rule in favour of the government. However, this does not mean democracy gives legitimacy to human rights, only that there must be an authoritative interpreter of them, and this is likely to be a democratic government agency.

Many democracy-first advocates also make the empirical claim that as a matter of fact, across the world, human rights are better protected by democratic governments than by authoritarian governments [31,34] (De Mesquita et al., 2005; Davenport and Armstrong 2004). Note this is only a relative claim—that democratic states perform better on human rights than authoritarian states do—not an absolute claim—that democratic states perform perfectly on human rights. A modified version of this empirical democracy-first argument is that although 'low-level' democracies cannot be relied upon to protect human rights, 'high-level' democracies can. For example, [31] De Mesquita et al. (2005: 439) claim that "states with the highest levels of democracy . . . are correlated with better human rights practices". However, this empirical assertion cannot demonstrate that there is anything about democracy that guarantees the protection of human rights.

3.2. The Human-Rights-First Interpretation

Many political and legal theorists refute the above claims that democracy is a necessary condition of, or even a reliable guardian of, human rights. On Langlois' claim that citizens have human rights only if they are legitimised through the exercise of democratic sovereignty, critics say this is not taking human rights seriously. Human rights advocates argue that the two concepts are distinct in principle: democracy is about *how* decisions should be made, whereas human rights are (mostly) about *what* decisions should be made. It is true that human rights have some connection with how decisions should be made (for example, in asserting the equal right of political participation) but the essential point is that human rights limit the use that may be made of democratic political power. Human rights are possessed by people independently of whatever political system they are in, and they constrain the powers of that system [33] (McGinnis and Somin 2009). [35] Teraya (2007: 301) says the two terms are not only separate rather than conjoined but in "intrinsic conflict". Indeed, [35] Teraya (2007: 303) claims that conflict between democracy and human rights is "structurally unavoidable". Human rights advocates point out that democratic decisions may violate human rights. For example, the majority of voters in a democratic state may belong to a particular ethnic group and vote to expel or ethnically cleanse the minority who belong to a different ethnic group. Such a vote would be entirely democratic but it would violate the human rights of members of the minority group. Moreover, human rights advocates claim that human rights can exist without democracy. As [32] Langlois (2003) notes, many non-democratic states have signed up to human rights declarations, and some of them do honour some human rights. In this view, human rights are prior to democracy, indeed, democracy is not an end in itself but a means to the end of protecting human rights [35] (Teraya 2007).

Underlying these arguments in favour of the human-rights-first interpretation is an assumption that human rights exist. We do not propose to assess the philosophical or ethical foundation of this assumption because such analysis lies well beyond the scope of this paper. Instead, we accept the concept of human rights as it is endorsed in international law. In 1948, the General Assembly of the UN adopted the Universal Declaration of Human Rights, listing civil rights, including the right to life, liberty, property, the right not to be tortured, not to be discriminated against, and not to be presumed guilty until proven so; political rights, including the right to vote; and socio-economic rights, including the rights to work, social security, education, health care, and a minimum standard of living. In 1950, the European Convention on Human Rights and in 1966, the International Covenant of Economic, Social and Cultural Rights also declared lists of human rights. Many of these authoritative declarations have been endorsed by the UK and by most other countries in the world—for example, the 192 member states of the UN have all signed up to the Universal Declaration of Human Rights—which indicates a global consensus on the existence of human rights.

Nevertheless, there remains considerable controversy over what human rights are and what they entail. So, when the human-rights-first interpretation (more commonly known as the human rights-based approach, HRBA) is applied to the English SSF in the next section, eight criticisms of it are considered.

4. Analysis

In this section, we analyse the application of the human rights-based approach (HRBA) to the English SSF. The argument for the recognition of the human rights of SSF world-wide has been incorporated into a global movement ('Too Big to Ignore'). This movement has adopted the human rights-based approach, and as [24] Singleton et al. (2017: 22, 23) report, HRBA to SSF was endorsed in 2014 by the Food and Agriculture Organization (FAO) as the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries (the 'SSF-Guidelines') (see also [36] Morgera and Nakamura 2021). The FAO website states that in June 2014, 143 Member States of its Committee on Fisheries (which is the highest authority on fisheries in the FAO) adopted the SSF Guidelines. [37] Chuenpagdee et al. (2017: 513) affirmed

that the SSF Guidelines apply to developed countries as well as developing countries. [38] Jentoft (2021) stated that although the guidelines are not legally binding on states that ratify them, they impose a strong moral obligation on them. The World Forum of Fisher People (2016) claimed that all states who have signed up to the UN Declaration of Human Rights (which includes the UK) have accepted a legal obligation to protect the human rights of SSF. [19] Davis and Wagner (2006) distinguish between rights and privileges, arguing that it is not enough for SSF to be granted quota or privileged access to spatial areas by the state as a matter of grace because graceful privileges can be withdrawn. They must be recognised in law as rights, human rights, that cannot be withdrawn at will by governments.

Before we apply the HRBA to English SSF, it is necessary to explain the context in which the English SSF operate. The SSF fleet in England is currently identified through length measurement of vessels that are 10 m or under. Of the approximately 2500 fishing vessels in England, 79% are under-tens [39] (UK Sea Fisheries Statistics 2020); however, 20% of these under-tens are called 'super under-tens' because they are technically advanced with a catching capacity like that of much larger vessels. These high-impact vessels take about 75% of the quota allocated to the under-ten sector and do not suffer from many of the difficulties experienced by the ordinary under-tens. For example, they are not so geographically restricted; they can fish in weather which would restrict smaller vessels; and they can carry more gear. Accordingly, although they do face some challenges, they are not in need of special protection by legislation; the argument for the HRBA, therefore, applies only to the low-impact under-ten vessels. The value of the low-impact English SSF lies in their economic [40] (Percy 2021) and cultural [41] (Reed et al., 2013; [42] CCRI 2011) importance for coastal communities, which are among the most deprived areas of the country [43] (Corfe 2017). SSF are also ecologically important because they have a lighter environmental footprint than high-impact vessels, use more locally sensitive gear, and are responsible for a lower carbon cost per kilo of fish landed [44] (Kolding et al., 2014; [45] Percy 2014).

The English SSF faces four challenges: diminished fish stocks; inadequate quota; marginalisation from decision-making; and reduced access to their fishing grounds. Diminished fish stocks are regarded by SSF as mainly due to the authorities licensing large-scale vessels which fish too close to the six-mile limit [46] (McVeigh 2021; [47] Percy 2019). Inadequate quota is held to be the result of an unjust distribution whereby the large-scale sector obtained 97% of the national quota and the SSF obtained only 3% [48] (Anbleyth-Evans and Williams 2018; [49] NEF 2018; [1] Gray et al., 2011). Several fishers view the refusal by the Department for Environment, Food, and Rural Affairs to allocate more quota to the inshore sector as evidence that it wants to close the SSF down (quoted in [28] Korda et al., 2021: 73).

Marginalisation from decision-making is alleged because the English SSF feel they have no official voice in the corridors of power. Some small-scale fishers criticise the consultation process established by the Inshore Fisheries Conservation Authorities as a façade (quoted in [28] Korda et al., 2021: 78). Fishers say their small size makes them politically weak. It is true there are fishermen's organisations that lobby the government on behalf of the English fishing industry, most notably the National Federation of Fishermen's Organisations and the National Under-Ten Fishermen's Association; however, according to a fishers' association lead, the National Federation of Fishermen's Organisations mainly focuses on the concerns of the offshore fleet, which provides most of its funding (quoted in [28] Korda et al., 2021: 85). As for the National Under-Ten Fishermen's Association, it lacks the resources and clout necessary to make any impression on the government. Reduced access to fishing grounds is attributed to competing sea users such as aggregate dredgers and renewable energy installers together with the recently completed marine protected area network and soon-to-be-introduced highly protected marine areas. The Department for Environment, Food, and Rural Affairs is accused of prioritising industrial interests over SSF interests (quoted in [28] Korda et al., 2021: 70).

In a bid to deal with marginalisation from decision-making (the third challenge), an initiative from the Future of Our Inshore Fisheries project in 2019 recommended co-

management for the English SSF. However, co-management alone will not protect the SSF from the other challenges because it risks being dominated by the large-scale sector [18] (Davis and Ruddle 2012), as in South Africa [50] (Béné 2009). An alternative or complementary way to protect the English SSF is to recognise it has human rights to quota and protected access to inshore fishing grounds, i.e., to apply the HRBA to it.

However, applying the HRBA to the English SSF is vulnerable to eight criticisms. The first criticism is about the indeterminacy of the wide range of human rights that writers have claimed for SSF. The most important human right claimed by the English SSF is redress for past injustice [21] (Ratner et al., 2014). According to the English SSF, one of the prime injustices was how in 1989 they were denied a fair share of the total allowable catch when the government introduced the forerunner of the system of fixed quota allocations by which LSF were awarded 97% and SSF were awarded 3% of the total allowable catch [1] (Gray et al., 2011). This claim is contested by LSF who argue that the 1989 distribution was fair because it was based on the available data of catch records. However, SSF catch data and landing records were extremely limited since SSF were not obliged to keep logbooks of their catches, so they had no records to prove their historical catches. The records used by the authorities were based on 'random sampling' of landings documented by fisheries officers, which SSF argue was unfair because it was not based on what they could and did land. By contrast, LSF were invited to submit their comprehensive landings records. [51] Smith et al. (2019: 53) argue that historical catch records are generally unfair to SSF.

Other human rights claimed by SSF include protected access to inshore fishing zones [35] (Morgera and Nakamura 2021). [20] Isaacs and Wibooi (2019: 165) explain that in the 1996 South African Constitution, three human rights are attributed to SSF, "three core rights: the right to equality, the right to a livelihood and the right of access to food". [17] Charles (2011: 60) notes that five 'fishing rights' are ascribed to SSF by Kearney: "the right to fish for food; the right to fish for livelihood; the right to healthy households, communities and cultures; the right to live and work in a healthy ecosystem that will support future generations of fishers; and the right to participate in the decisions affecting fishing". The World Forum of Fisher People and the International Collective in Support of Fishworkers list six human rights that apply to SSF:

> "(a) to their cultural identities, dignity and traditional rights, and to recognition of their traditional and indigenous knowledge systems; (b) to access territories, lands and waters on which they have traditionally depended for their life and livelihoods; (c) to use, restore, protect and manage local aquatic and coastal ecosystems; (d) to participate in fisheries and coastal management decision-making; (e) to basic services such as safe drinking water, education, sanitation, health and HIV/AIDS prevention and treatment services; and (f) of all fish workers to social security and safe and decent working and living conditions". [17] (quoted in Charles 2011: 61)

This widening of the range of human rights is criticised by opponents for devaluing the concept to the point that it becomes meaningless as every demand for better conditions for SSF is being framed in terms of a human right. To avoid this charge, we limit the human rights claims of the English SSF to two items: the right to be awarded quota to a level that would redress the injustice of the allocation made in 1989; and the right of protected access to productive inshore waters, which includes restrictions on large-scale vessels fishing just outside the 6 nm zone. The reason we have chosen these two rights is that quota and access are particularly crucial to the sustainability of the SSF, and the lack of them exposes the SSF fleet to the most direct form of discrimination in favour of the LSF fleet. In our opinion, these two rights are the basic prerequisites for guaranteeing to the SSF the fundamental respect and dignity due to all human beings and for safeguarding them from unjust discrimination by political authorities.

The second criticism of attributing human rights to the English SSF is over the notion of community fishing rights. [23] Sharma (2011), [27] Willmann et al. (2017) assert the human rights of fishing communities. However, given that human rights are traditionally

conceived as individual rights, the assertion that local fisheries communities (such as SSF) have a human right to be protected seems anomalous or even self-contradictory [25] (Song 2015; [26] Song and Soliman 2019) by putting individual human rights at risk. [23] Sharma (2011: 44) refers to "the inherent tensions between individual rights and collective or community rights". For example, what happens if fishing communities exercise their collective human rights in a way that violates the human rights of some individual fishers within those communities? [25] (Song 2015; [22] Ruddle and Davis 2013).

However, as [27] Willmann et al. (2017) argue, human rights can be collective or group rights. In the United Nations Declaration on the Rights of Indigenous Peoples, 26 of the 37 articles that declare rights refer to group rights. According to [52] Jones (2020), there are two ways of conceptualising a group: as a corporate group or as a collective group. A corporate group is one in which the group is a single whole with a single identity and is not compatible with human rights. By contrast, a collective group is a plural whole made up of individual members who jointly possess the collective right, and so is compatible with human rights. This distinction between corporate and collective groups enables us to deal with the common objection that group rights clash with individual rights. It is only corporate group rights that may clash with individual human rights, collective group rights cannot clash with individual human rights [52] (Jones 2020). Provided, therefore, that community fisheries organisations remain collective groups and are prevented by suitable safeguards (such as requiring the community fisheries associations to account for their decisions at annual public meetings) from becoming corporate groups, they will secure the individual human rights of the fishers who live and work in these communities. So, far from undermining individual human rights, collective community human rights would be the guarantors of individual human rights [52] (Jones 2020). For example, the allocation of quota for SSF could be given to coastal community associations to distribute to fishers in their communities according to criteria co-agreed with fishers that fit the values of their local populations and guarantee their individual human rights.

The third criticism of attributing human rights to SSF is that it is in direct conflict with an alternative conception of rights based on property rights. Opponents of the HRBA argue that the concept of human rights that is enunciated on behalf of the SSF is an abstract, theoretical, and subjective interpretation of rights that has no basis in concrete reality. By contrast, property rights are based on legal foundations that secure them in practical and objective reality. These opponents of the HRBA characterize their own conception of rights in terms of the property-based rights approach (PRBA). [53] Newman (2015) claims the PRBA improves the profitability of fisheries and increases compliance with regulations, and she points out that PRBA-based systems of fisheries management exist to some extent in most EU Member States (for example, where there are elements of individual transferable quotas (ITQs)). [54] WFFP (2016) characterises this contrast as being between economic efficiency (PRBA) and social justice (HRBA).

Advocates of the HRBA criticise the PRBA's conception of rights as rationalising illegitimate power grabs. For example, [55] Pedersen et al. (2014: 11, 12), who assert that the PRBA is now the "dominant global framework for fisheries management", characterise it as the "enclosure and privatisation of the common resources of the ocean", with an "all-out focus on unleashing private property rights and market mechanisms as the only acceptable means of distributing the fish resource". [53] Newman (2015: 10) warns that unless strictly controlled, the PRBA can lead to a "concentration of property rights … barriers to new entrants into the sector … income disparities … and … big players becoming bigger mainly because they have more effective lobbying machinery, rather than because they are more economically efficient than small-scale operators". [54] WFFP (2016: 8) describe the PRBA as "a tool for dispossessing small-scale fisher people" and "a key driver of … dispossession across the globe". [24] Singleton et al. (2017: 26) criticise the PRBA's use of the term 'rights' for hijacking the notion of human rights to harness it to its own property rights agenda, a form of "'human rights-washing' of language", which completely undermines the radical agenda of the HRBA, saying that this "dilution

and misappropriation of human rights language is dangerous. It risks losing sight of the political nature of human rights, which aim to challenge existing power structures". Likewise, [25] Song (2015: 165) says the PRBA turns the HRBA 'on its head', "the use of human rights 'talk' by the proponents of private property rights turns on its head the logic of human rights advocates who have advanced human rights discourse precisely to highlight the limitations of neoliberal property rights approaches". For [22] Ruddle and Davis (2013), however, the essence of the HRBA is the same as the essence of the PRBA, i.e., the concept of human rights is inherently embedded within the neo-liberal conception of property rights.

It is true that the HRBA agenda may be hijacked by advocates of PRBA but [22] Ruddle and Davis are unconvincing in asserting that the HRBA itself is founded on neo-liberal principles of property rights. Although human rights include the right to property, the HRBA agenda contains a robust rejection of the use of property rights to undermine other human rights, such as the right to a fair allocation of quota or access to inshore areas. The human rights of SSF to quota and access are not property rights, they do not entail ownership but only usage. For example, the PRBA endorses individual transferable quotas (ITQs) which confers ownership of quotas that entitles owners to buy and sell quotas in the marketplace. No such right of ownership would be conferred on SSF via their human rights to quota and access, they would not be permitted to buy or sell quota or access opportunities.

However, there may be room for some complementarity or parallel existence between HRBA and PRBA, they are not necessarily mutually exclusive. For example, HRBA could be used to safeguard SSF while PRBA (e.g., in the form of ITQs) could be used to manage LSF.

The fourth criticism of attributing human rights, such as the rights to sufficient fish quota and protected access to English coastal fishing grounds, is the objection that such rights are particular and exclusionary, applying to a special group of people, whereas human rights are by definition universal, applying to everyone [52] (Jones 2020). [26] Song and Soliman (2019: 22) say the only kind of fishing rights that meets this test of universality is open access, where everyone is entitled to fish. However, if HRBA entails open-access fisheries, this is the opposite of what the English SSF need with protected access to a productive coastal fishery, along with a guaranteed proportion of quota. The advocates of HRBA could reply to this objection by saying that such special rights are justified for SSF to redress their historically unfair treatment.

An implication of the fourth criticism is that it constitutes a denial of human rights to LSF. The argument here is that LSF have the same human rights as SSF because human rights are universal. Therefore, to award special protection to the human rights of SSF but not to the human rights of LSF is to discriminate against LSF, which is to violate their human rights. However, advocates of SSF human rights have three replies to this objection: First, failure to protect SSF is to allow the current unjust discrimination against SSF and in favour of LSF to continue. Second, the protection of SSF human rights does not violate LSF human rights but only requires from them a small transfer of quota and a withdrawal from some inshore and near-inshore waters. Third, SSF constitute a marginalised group and therefore deserve special attention, LSF are not a marginalised group and therefore do not deserve special attention. According to [54] WFFP (2016: 10–11), "To ensure that everyone's basic rights are respected universally, special attention must be paid to the communities, especially women and children, that are most marginalized. In other words, equal treatment does not always mean justice . . . A HRBA therefore prioritizes the rights and participation of vulnerable and marginalized communities over and above other groups . . . they are not equal 'stakeholders' among other corporate or private sector actors". [26] Song and Soliman (2019: 24) say that "affirmative action in prioritizing the needs of the most marginalized and the vulnerable is . . . a basic tenet of the HRBA".

The fifth criticism of attributing human rights to English SSF is that it is alleged that human rights may clash with each other. Such clashes may be over the same human right or over different human rights. An example of a clash over the same human right is that the

human right to fish enjoyed by the current generation may conflict with the human right to fish enjoyed by subsequent generations [56] (Charles 2013). How can this conflict be resolved? One way would be to introduce a rule of intergenerational justice whereby each generation has a duty to leave stocks for the next generation in as good a condition as it received them from its preceding generation. Although given the fluctuation in fish stocks, such a condition might be hard to implement in practice, it indicates there is no intrinsic conflict between the human rights of different generations but that it is a practical issue of how to deal with competing formulations of those rights. On clashes over different current rights, the same conclusion can be reached, that the clashes do not constitute conflicts between human rights as such but conflicts between the way human rights are formulated or applied in practice. For example, one fisher's right to fish with lobster pots may conflict with another fisher's right to fish with trawling gear but that is not a clash between human rights, only a competition for space that can be resolved by practical rules such as spatial allocation.

The sixth criticism of attributing human rights to English SSF is that some conservationists may object to a human right to fish because that could lead to overfishing [24] (Singleton et al., 2017). HRBA advocates could meet this objection by saying the English SSF's human right to quota is only to a fair proportion of the total allocation that is calculated by fisheries scientists as sustainable for the stocks. In addition, the evidence from SSF fishing records in England does not support the claim that it is guilty of overfishing [28] (Korda et al., 2021). Moreover, globally, according to [57] Béné (2006), the SSF's impact on global stocks is no worse than the impact of industrial fisheries, while their environmental impact is far lighter ([58] Lloret et al., 2018; [44] Kolding et al., 2014; [59] Chuenpagdee and Jentoft 2015) as they use less harmful gear and emit less carbon per kilo of fish landed [45] (Percy 2014).

The seventh criticism of attributing human rights to the English SSF is the difficulty of getting them enacted into law. The UK signed up to the European Convention on Human Rights (ECHR) at its inception in 1950 and became subject to it when it came into force in 1953. The UK Human Rights Act of 1998 incorporated the ECHR into domestic UK law so that UK citizens could seek redress for breaches of their human rights in UK courts rather than having to go to the European Court for Human Rights in Strasburg (though that is still the highest appeal court). The list of 16 human rights in the ECHR includes: the right to life; the right not to be tortured; the right not to be enslaved; the right to liberty; the right to a fair trial; the right not to be punished without law; the right to private and family life; the right to freedom of thought; the right to freedom of expression; the right to freedom of assembly; the right to marry; the right not be discriminated against; the right to private property; the right to education; the right to vote; and the right not to suffer the death penalty.

However, there is no mention in the ECHR of the right to earn a living, the right to work, or the right to obtain an adequate standard of living from that work, less still the right of access to natural resources such as fish. There is little likelihood of the ECHR adding such rights to its list of human rights, so the only chance of international pressure being exerted on the UK to recognise SSF quotas and access claims as human rights is if the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries [60] (FAO 2015) were to become a UN Convention that the UK would sign up to. If that happened, the UK government would be duty-bound under international law to respect and enforce SSF human rights, and to report periodically to a UN body on its compliance with the Convention. Although the body would have no judicial teeth, this could be provided if the UK parliament agreed to the inclusion of SSF human rights in the 1998 Human Rights Act because that would allow SSF to sue the government in the English courts for breaches of their human rights if their rights to quota or access were denied [61] (Perry 2003). If parliament were persuaded to add the human rights of the SSF to the list of human rights in the Human Rights Act, the English SSF's rights to a fair quota and protected access would be effectively secured.

The eighth criticism of attributing human rights to English SSF is that while it has been an effective strategy in several developing countries, it has not been successful in many developed countries. [16] Allison et al. (2012: 17) say there is evidence that invoking human rights has already improved the condition of indigenous SSF. Writers claim human rights of SSF have been recognised in Mexico [62] (Méndez-Medina et al., 2015); Angola [63] (Sowman and Cardoso 2010); Chile and Peru [64] (Leis et al., 2019; [65] Benitez and Flores-Nava 2019); Belize [66] (Fujita et al., 2019); Colombia [67] (Ramirez-Luna and Chuenpagdee 2019); Hawaii [68] (Vaughan et al 2013); Nigeria [69] (Akintola et al., 2017); South Africa [70] (Ratner and Allison 2012; [71] Isaacs 2015) and Ecuador and Mexico ([72] Salas et al., 2007). However, evidence of a human rights approach bearing fruit in fisheries policy in developed countries is confined to Canada [73] (Jones et al., 2017) and Iceland [27] (Willmann et al., 2017). The reason for this disparity is not because there is something inherently alien or unnecessary about arguing for human rights for SSF in developed countries but because fewer policy-makers in developed countries take the existential threat to SSF seriously.

Nevertheless, although there is little evidence at present that the government in England is sympathetic to SSF human rights, it is worth pointing out that the South Western Fisheries Producers' Organisation has signed up to a human rights audit under the Human Rights at Sea independent platform which entails a commitment to a "Human rights policy [and] Transparency in supply chains statement, in line with the UK Modern Slavery Act 2015 and in the spirit of the 2011 UN Guiding Principles on Business and Human Rights" [74] (Portus 2020). So human rights discourse is already present in the English fishing industry.

5. Conclusions

From the above analysis of eight criticisms surrounding the application of the human-rights-based-approach (HRBA) to the English SSF, our finding is that the HRBA, serving as a bridge between the generalities of human rights and the specificities of SSFs, can be recommended as a stronger form of protection than would be provided by democracy (co-management) alone. The main weakness of a democratic or co-management system is that it could become dominated by large-scale industry groups (LSF) at the expense of the SSF. To prevent this, SSF need human rights protection. This finding indicates that the link between co-management and human rights is contingent on circumstances. In some circumstances co-management may promote or protect human rights; in other circumstances, co-management may be used (deliberately or unintentionally) to ignore human rights. [75] D'Armengol et al. (2018: 213) reviewed 70 papers which investigated the effect of co-management on SSF and found a mixed picture: "we show that co-management results in positive social and ecological outcomes overall, while its ability to resolve pre-existing conflicts, address power asymmetries or distribute benefits more equitably is less certain". So, co-management cannot be relied upon alone for the protection of the English SSF. As [76] Evans (2001) warns, democracy is not symbiotically related to human rights.

Several other writers voice similar concerns about the weakness of the protection afforded by co-management to SSF. For example, [77] Finkbeiner and Basurto (2015: 433, 434) say that "not any type of co-management will be effective for the suite of challenges facing small-scale fisheries today . . . co-management can result in unintended consequences—often the usurpation of political power by private or special interests". [78] Kosamu (2015: 365) claims that in African countries, reliance on co-management to protect SSF is misconceived, "co-management in Africa appears to be more of an illusion than an empowerment of local fishing communities".

However, co-management may have a role to play in situations where political will is lacking to implement human rights legislation. [79] Sunde (2017) explains how in South Africa, the government effectively allowed the LSF to override SSF despite the legal protection of SSF's human rights to fishing. In such circumstances, co-management could be important to ensure that laws granting protection are enforced. [20] Isaacs and Wibooi (2019) report that human rights advocates in South Africa have called for co-management

arrangements to put pressure on the South African government to honour its legal obligations to protect SSF. According to [80] Mestres and Lloret (2017: 404), with regard to SSF in Catalonia, a "co-management plan is seen to be the way to implement the SSF Guidelines".

In conclusion, co-management is not in itself a sufficient solution to the problems facing English SSF or SSF elsewhere in the world but if the human rights of SSF are given protection in law, co-management could be part of the solution by serving as a monitor to ensure that the relevant actors honour that legal obligation.

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