

# CAPE

*Coalition pour des Accords de Pêche Équitables*

# CFFA

*Coalition for Fair Fisheries Arrangements*



## The International Fight Against IUU fishing: Moving from criminal to social justice?

*By Andre Standing: June, 2018*

June the 5th has been declared by the United Nations as International Day for the fight against IUU fishing. The FAO's homepage for the International IUU day reminds us that IUU fishing is one of the largest threats to sustainable fisheries and unfairly impacts on the law-abiding sector. The FAO uses widely publicised statistics that IUU accounts for nearly a quarter of all fish taken from the oceans. In Africa, it is claimed that 1 in 4 fish is 'stolen' by IUU fishing. For nearly two decades the international fight against IUU fishing has therefore received an increasing amount of resources and attention, and is now arguably the number one theme that is cited as the

obstacle to improving fisheries in developing countries, particularly in Africa.

The concern about IUU fishing has led to a concerted international effort to strengthen law enforcement. For many organisations, the priority is to enable governments to improve control and surveillance and impose stricter sanctions so that the threat of IUU fishing is substantially reduced and the criminal part of the sector is dismantled. Because IUU fishing is seen primarily as a transnational threat, the international fight is itself moving to a transnational level. Several initiatives have been launched by inter-governmental and non-

governmental organisations to assist governments in sharing intelligence on the operations of fishing vessels, and to compile evidence that can be used to prosecute offenders. At the same time, developing countries are receiving increased aid and foreign investments for improving fisheries surveillance - African countries have received technical and financial support to fight IUU fishing from the EU and several European donors, the World Bank, China, Korea, Japan, India and Russia.

The international day for the fight against IUU fishing is probably a time to reflect on the progress, and to forge greater resolve to escalate the fight. Yet the occasion should also be used to raise some doubts - ones that have also challenged other global wars on various security threats, such as the drugs trade, transnational organised crime and terrorism.

As it is, the focus on fighting IUU fishing has generated little reflection on the full range of consequences, including for coastal communities and fishers and fish workers, and the accountability of various law enforcement initiatives. These are relevant concerns, given that the fisheries sector is defined in many places by rivalry between fishing nations, coastal states and fishing companies, and because many of the countries where the fight is taking place have dreadful records on human rights and the rule of the law. Indeed, there are fundamental questions regarding how the threat of IUU fishing has been described and communicated as an object of international concern, which leads us to question whether popular images of the problem are reliable? Are we clear on who or what we are fighting?

## IUU fishers as pirates and organised crime?

At its simplest, IUU fishing has been depicted as a problem caused by a minority of bad actors. The OECD was the first to consider them as 'fish pirates'.<sup>1</sup> This was understandable given that early work on IUU fishing was concentrated on a specific problem of vessels flouting newly formed regional fisheries management organisations, and the so-called fish pirates were vessels that seemed to deliberately avoid the authority of RFMOs by switching flags to non-participating states.

However, the image of pirates has become a more generalised description of IUU fishing. The notion that there are a minority of deviant criminals that perpetrate the most serious crimes is well entrenched. In doing so, the international fight against IUU fishing has tended to depict illegal fishing as an *external threat*, carried out by distinct criminally minded people and groups, who are predatory and parasitic on the majority of law abiding companies and fishing communities.

More recently, fisheries experts working with organisations including UNODC, Interpol and the Norwegian government have gone a step further and emphasised that the most serious forms of IUU fishing operate as transnational organised crime, integrated into a clandestine network of smuggling, human trafficking, drug trade and a global 'black economy'. Because of this, the concept of IUU fishing is being expanded to capture other dimensions of the problems in the fishing sector, including smuggling, human trafficking, money laundering and tax evasion. This transnational organised crime is routinely depicted as plundering marine resources at the expense of governments, the law-abiding sector and the most vulnerable coastal communities.

---

<sup>1</sup> See, OECD, 2005, 'Fish Piracy: Combating Illegal, Unreported and Unregulated Fishing', available at: <http://www.oecd.org/tad/fisheries/fishpiracycombatingillegalunreportedandunregulatedfishing.htm>

This is a shocking story. However, the language of pirates and transnational organised crime are vague. Many crimes in the fisheries sector do meet the UN's definition of a 'transnational crime group', which is described as a group of three or more people working together over a period of time, who commit a serious crime. Yet there is little proof that a minority of bad actors or crime groups are responsible for the majority of crimes, and that these deviant actors are part of an underworld conspiracy, working closely with other mafia-like groups and illicit trade networks. Unfortunately, this is the image some working on IUU conjure.

From the limited empirical studies of crime in the fishing sector, it appears that non-compliance is quite widespread. The most common and harmful abuses are done by otherwise licensed and registered vessels and corporations. These crimes are committed in the process of supplying a licit good to an otherwise licit market. Images of transnational organised crime are distracting from this, suggesting that IUU fishing is an anathema to the legal sector—and that the criminal elements somehow exist as independent to the industry.

There are several other reasons to question this widely publicised image of IUU fishing.

### **The role of the state in facilitating corporate abuses**

The international description of IUU fishing as an 'external threat' also distracts from the considerable harms caused to coastal communities that stem from the collusion of government and commercial fishing interests. Often, the role of governments in the illegal exploitation of marine resources is treated superficially—we are encouraged

to believe that the offenders are allowed to get away with crime largely because states lack resources to catch them. The problem is therefore a 'policing deficit'.

However, it is abundantly clear that coastal communities in many parts of the world are threatened by the corrupt relations between companies and governments. These relationships are complex, but states play a critical role in the unsustainable exploitation of marine ecosystems. This happens in several inter-related ways and at multiple levels:

- ➔ Where state actors derive direct benefit from deviant corporate behaviours, which involve various forms of corruption, including bribery, kick-backs or collusion through conflicts of interests.
- ➔ Where public authorities chose not to act against infractions due to political expediency and shared goals.
- ➔ Where the institutional environment that generates IUU fishing (or fails to stop it) is an outcome of government policies, often lobbied for by fishing interests.

There are many examples that illustrate these problems. In several African states, small-scale fishers have protested against scandalous access agreements and investment contracts, and it is well known that these deals have been sanctioned by public authorities who derive direct financial rewards. A well-documented case,<sup>2</sup> beginning in 2011, involves the decision by Senegalese authorities to issue licenses to 'super trawlers' to target already overfished small-pelagic fish stocks. It is the main fishery for small-scale fishers, and it is an irreplaceable source of food for millions of people in Senegal and West Africa. Substantial evidence has surfaced showing that this decision—initially hidden from

---

<sup>2</sup> For more on this, and other examples, see Standing, A. 2015, 'The mirage of Pirates: State-corporate crime in the fisheries sector', *Journal of State Crime*, Vol. 4, No. 2., [http://www.jstor.org/stable/10.13169/statecrime.4.2.0175?seq=1#page\\_scan\\_tab\\_contents](http://www.jstor.org/stable/10.13169/statecrime.4.2.0175?seq=1#page_scan_tab_contents)

public scrutiny—was motivated by personal gain by several government elites and fishing agents. The income earned from these authorisations has been unaccounted for. Many of the super trawlers have Russian beneficial owners, and the Russian government played a key role in encouraging and then defending this controversial decision by Senegal's government.

Another example of the collusion of state and corporate interests causing enormous harms to coastal people comes from Mozambique. As is described in detail elsewhere,<sup>3</sup> a network of individuals including Mozambique political elites, European and Russian bankers, and business leaders from the shipbuilding and maritime security sector, colluded in a massive financial scam—ostensibly designed to launch the country's first national tuna fishing company, as well as develop two further companies that would provide protection for the country's EEZ, including for companies prospecting for offshore gas. Ironically, the scandal was justified as a move to protect Mozambique's water from pirates and IUU fishing. The case involved raising over 2 billion US dollars through the Eurobond market for financing these companies, yet the fishing company is bankrupt and the country has been plunged into an unprecedented debt crisis. Inflation is threatening food insecurity, and vital social services.

Some may argue these examples of corruption are extraordinary and exceptional. Yet allegations of bribes and embezzlement of revenues from the commercial exploitation of marine resources have been fairly widespread. Very few countries in Africa have robust

systems in place that ensure these incomes are transparently identified in national budget documents and reports. There is also a view that in some sectors, the routine payment of bribes may exist as more institutionalised arrangements, established through government policies. Indeed, according to some accounts, the embezzlement of fishing rents has become normal, bound up in the role of third party agents; whose services to gain licenses and authorisations are often mandated in law.<sup>4</sup> World Bank experts and industry sources describe that in several countries it is openly acknowledged that a proportion of the fees paid to fishing agents by companies are used as kick-backs to government authorities, and without this the authorities will not provide licenses or authorisations. Moreover, to be a successful agent requires high level political connections, and at times senior government authorities, or their relatives, are the agents themselves. A former head of the Indian Ocean Tuna Commission was forced to resign when evidence surfaced that he was simultaneously working as the fishing agent for tuna fishing vessels.

Thus, alongside bribery the criminal threats to coastal communities is also caused by conflicts of interests—whereby those in positions of political influence and authority simultaneously have direct commercial interests in industries exploiting marine resources. There are many documented cases in Africa. Again, opportunities for conflicts of interests have at times been facilitated by government policy. For example, political elites have acquired interests in companies where state-run enterprises have been privatised and national policy

---

<sup>3</sup> CFFA have provided a longer case study in the report: 'Meet Bond, Blue Bond: Saving Your Fish or Bankrupting your ocean?', available at: <https://cape-cffa.squarespace.com/new-blog/2018/4/14/blue-bondsaving-your-fish-or-bankrupting-the-oceans>

<sup>4</sup> For further information on the role of fishing agents, see CFFA's article, 'One of the greatest barriers to sustainable fisheries? The role of fishing agents in Africa', available at: <https://cape-cffa.squarespace.com/new-blog/2017/9/14/one-of-the-greatest-barriers-to-sustainable-fisheries-the-role-of-fishing-agents-in-africa>

encourages (through tax incentives) or mandates (through national fisheries law) the establishment of joint ventures between foreign companies and local businesses, as is the case in the fisheries sector for example in Senegal, Namibia, Mauritania, Mozambique and Angola. The ability of political elites to benefit from these policies is facilitated by the lack of competitive and open tendering for joint ventures, or the quotas that are needed to set them up, and the advantage of insider knowledge by those working in government.

The problems of bribery and conflicts of interests merge into wider problems of political expediency. That is, government authorities act in ways that is advantageous to themselves or particular interest groups, rather than respect what is right or just for their citizens. In the case of negotiating access agreements or investment contracts, we know that at times certain fishing nations cynically exploited aid disbursements to leverage favourable terms for these agreements and contracts, and that the establishment of fisheries agreements have been linked to investments in other sectors, such as the military or mining, as well as infrastructure.

### **Harms beyond the law**

It is important to acknowledge that one of the consequences of corruption between governments and companies is that the rule of law, supposed to protect coastal communities from the social and environmental harms derived from commercial exploitation, is deliberately not enforced, even when the state has the capacity to do so. This is to be expected where companies routinely pay bribes, or are owned by political elites, or have the services of an influential agent. This is a critical aspect in understanding

why justice is so illusive for coastal communities. What is more, it can be extremely risky to try and confront these crimes, particularly for local civil society and independent journalists.

Equally, there is a strong motivation from coastal states to avoid strict enforcement against companies from certain countries, given the diplomatic and economic consequences. A reason why criminal law is not enforced by governments against corporations is that they share common goals. This problem may be acute in countries that are highly dependent on aid and investments from foreign nations, and those that are beholden to debt repayments—for which business friendly policies are vital to keep foreign exchange coming in.<sup>5</sup>

Corrupt relations between governments and companies also has the perverse effect of allowing certain dubious behaviours to be 'legalised'. This is evident in the way that government authorities in some African countries adapt the law and regulations, providing particular companies with special compensations and derogations. A complaint by small-scale fishing organisations in Mauritania, for example, is that the authorities have authorised foreign vessels to fish in zones that are otherwise designated for small-scale or semi-industrial fishers. Likewise, in Liberia, in 2017, a Presidential decree proposed to shrink the zone set aside for small-scale fisheries from 6 nautical miles from the coast to 3, allowing foreign industrial fishing vessels to exploit in-shore zones previously reserved for the local small-scale fisheries; a move that was prompted by lobbying by fishing agents. In other countries, such as Cameroon, derogations have been given to vessels to use otherwise banned fishing gears - such as pair trawling - and in

---

<sup>5</sup> The role of sovereign debt and its links to state-corporate crime in Africa was elaborated by Penny Green and Tony Ward in their book 'State Crime: Governments, Violence and Corruption',—see chapter 11: <https://www.jstor.org/stable/j.ctt18fs3bm>

Guinea-Bissau, authorities have given permission to some vessels to transship catches at sea, where the national laws prohibit this.<sup>6</sup>

Developing coastal states also regularly provide derogations on taxes and levies to foreign investors, justified as necessary to convince companies to invest. The benefits of these arrangements are dubious for local communities, who receive no share of the profits and face growing competition for resources. Consider, for example, the case of a Chinese company in Mauritania, Poly HonDon. It is another example of a secretive investment agreement. In this case the company was given a 25 years contract to establish a fishing venture, and was authorised to fish 100,000 tonnes per year using over 80 fishing vessels. Protests have focused on the negative impact for local small-scale fisheries, particularly as the company has targeted already overfished in-shore demersal species, such as octopus. But the sense of injustice experienced by local communities also stems from the fact the company received a remarkably generous tax holiday, it is exempt from import duties, and it is allowed to export fish directly on its own vessels, and therefore by-pass the government's regulatory body that establishes export prices and monitors trade with overseas buyers. All of this was based on promises that the company would spend generously on local fisheries development and employ over 2,500 locals—but these corporate social responsibility commitments have been a farce. Remarkably, despite these problems, the Chinese company is set to expand its operations to other African states, including in Zanzibar where the

local government wishes to replicate a 'fishing hub'.<sup>7</sup>

More research is needed to explore how common these derogations are. Fishing industry sources describe that it is not unusual for agents to openly market these derogations to attract new clients. The abuse of derogations is promoted by the lack of transparency surrounding investments, meaning actual licenses and contracts are very often kept confidential.

But beyond derogations there is a more profound challenge; whereby progress in strengthening laws and regulations are deliberately avoided, and therefore activities that should be prohibited are not. This includes problems such as governments issuing a number of fishing licenses in excess of what is desirable according to scientific advice; authorising investments by foreign companies that clearly threaten local small-scale fisheries; failing to ban fishing methods despite evidence that these cause high levels of ecosystem destruction, and failing to impose limits to catch or provide rest periods when stocks can recover.

Greenpeace have made this argument in their research on the history and operations of 20 of the largest fishing European vessels, all built with European subsidies. Members of these companies are prominent in EU delegations to discuss fisheries management reforms and quota allocations in foreign waters. While at times some of these vessels have been caught breaking rules, they operate legally most of the time, despite the fact that their sheer size makes it almost impossible for them to operate profitably while respecting limits to catches. Greenpeace argues that "fishing

---

<sup>6</sup> See, for example, Environmental Justice Foundation, 2014. 'Transshipment at Sea: The Need for a Ban in West Africa', available at: [https://issuu.com/joshstride/docs/ejf\\_-\\_transshipment\\_at\\_sea](https://issuu.com/joshstride/docs/ejf_-_transshipment_at_sea)

<sup>7</sup> Godfrey, M, May 24th, 2018, Zanzibar fisheries minister visits China fishing hub, new industry park, *Seafood Source*, available at: <https://www.seafoodsource.com/news/supply-trade/zanzibar-fisheries-minister-visits-china-fishing-hub-new-industry-park>

communities and taxpayers in the country to which the vessels are flagged and/or where they are fishing gain little advantage - a few local jobs and a limited amount of tax revenue. Low-impact fishermen in coastal communities are often the first to lose out, with the waters they fish being depleted and their pockets emptied".<sup>8</sup>

### What are the implications for the fight against IUU fishing?

The international fight against IUU fishing has created an image of the problem—one based on the idea that crime is perpetrated by a minority of deviant people, and they get away with it because governments lack the resources to stop them. Over the years the way in which IUU fishing has been imagined has evolved, with the language of pirates being replaced by the image of well organised transnational crime. These simplified and sensational images are vital for waging an international 'fight'

However, in many sectors involved in the exploitation of marine resources, we need to consider the extent to which unethical and harmful behaviours are in fact more normal and widespread. This is partly explained by the nature of these business sectors and the high degree of competition and risk taking. Yet it is also a situation that has been facilitated by governments, including where state

authorities and political elites have direct commercial interests, or where they are reluctant to act against abuses due to political expediency.

It is vital that we extend this critical perspective to other business sectors of the blue economy, such as the development of off-shore mining, coastal tourism, marine reserves and aquaculture, accounted for in global estimates of IUU fishing.

The dominant view of IUU fishing encourages a law enforcement strategy that requires greater effort by state authorities to improve monitoring, control and surveillance, and the efficiency of investigations and prosecutions. This is understandable if the enemy are roaming pirates. Yet if the more serious threat to coastal communities and marine ecosystems derives from the collusion of state and corporate interests, then the effectiveness of this response is open to doubt. It is not only doomed to failure, but it is highly likely to be abused by state and fishing interests for other agendas.

There can be no doubt that solutions to these problems are extraordinarily difficult, as they must exist at the political level and in contexts where the rule of law and human rights are feebly protected. Yet if we are to think of this as a 'fight', then the fight must focus on strengthening institutions of *social* justice, not *criminal* justice.

---

<sup>8</sup> Greenpeace, 2014, Monster boats: The scourge of the Ocean', available at: <http://m.greenpeace.nl/Global/nederland/report/2014/oceanen/Monsterboats-The-scourge-of-the-oceans.pdf>