

## **Unpacking legal and policy frameworks: A step ahead for implementing the Small-Scale Fisheries Guidelines**

### **1. Introduction**

A ground-breaking outcome of the 31<sup>st</sup> session of the Committee on Fisheries (COFI) of the United Nations (UN) Food and Agriculture Organization (FAO), in June 2014, was the endorsement of the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines) [1, 2]. That point in time represented the creation of a new ‘space’ in the international fora, dedicated specifically to the vulnerable and marginalized small-scale fisheries (SSF) and fishing communities around the world [3–6]. It is a space where the protection of rights of SSF people is promoted, and where indifference, unfairness and injustice within and against SSF are placed under the world’s purview. Such outcome has brought some positive changes to the SSF community, including the increased recognition of the importance of SSF, public awareness about the SSF Guidelines [7, 8], further legislative guidance on SSF from FAO [9], related legal studies [10] and case-studies that have assessed the alignment of national legislation and policies with the SSF Guidelines [e.g. 11–14].

Given that the SSF Guidelines are applicable to SSF ‘in all contexts’ [2] (Subsection 2(2.1)), there is a wide scope to explore the legal and policy frameworks in broad geographical settings (‘both marine and inland waters’), irrespective of gender (‘men and women’), age (including ‘children’), professional status (‘formal and informal’), and at various stages of operations (‘full range of activities along the value chain, and pre- and post-harvest activities’) [2] (Subsection 2(2.2)). The SSF Guidelines focus on capture fisheries, but they recognize the important linkages between SSF and aquaculture [2] (Subsection 2(2.2)). Hence, SSF is considered part of small-scale aquaculture, and the UN General Assembly has in fact declared 2022 as the ‘International Year of Artisanal Fisheries and Aquaculture’ [15]. While voluntary and formally non-binding, the SSF Guidelines arguably hold legal weight and potential for creating legal effects, fostering a mutually supportive application of international instruments to the SSF context [16]. Scholars have also ascertained a moral obligation arising from the SSF Guidelines, which influence nations to implement this instrument and report their progress to FAO, with a view to maintain their international reputation [17, 18]. Because of its comprehensiveness, the implementation of the SSF Guidelines requires unremitting work by researchers from across disciplines, in collaboration with government authorities, civil society organizations and fishers [19]. Such work will help bring more recognition, empowerment and visibility to the sector [20], whilst fostering political will and action by states when dealing with SSF issues [18, 21].

It is argued here that the involvement of all relevant expertise, with a focus on legal practitioners and policy-makers, in an engaged and collaborative process, can effectively put the implementation of the SSF Guidelines another step ahead. Integrating the legal aspects to the analysis is not frequently done because of the complexity and varied features (e.g. institutional, administrative) of each country's legal system and the lack of existing collaboration between fisheries and legal experts. The task can be daunting unless approached methodologically and systematically, by unpacking the existing legal and policy frameworks that are used to regulate and govern fisheries. This knowledge, along with gaps found in these laws and policies, or weaknesses in the governing institutions, can help governments identify and prioritize areas for improvement in meeting the SSF Guidelines' requirements [9].

This paper presents a rapid appraisal approach as a 'step zero' in the transdisciplinary effort to evaluate the extent to which existing national legal and policy frameworks align with principles and objectives of the SSF Guidelines. The appraisal was conducted for 25 countries to illustrate the extent to which certain issues outlined in the SSF Guidelines are considered by national laws and policies in different contexts. Following this introduction, the paper summarizes the legal and policy baseline of the past decades based on international law instruments. It then describes the rapid appraisal methodology used in the study. The third part presents the key findings from the assessed laws and policies, followed by a cross-comparison analysis between these countries. The paper concludes with discussion and recommendations.

## **2. Establishing a legal and policy baseline**

### **2.1. From international standards to national legal and policy frameworks**

The primary international law instrument governing the oceans and the main activities carried out therein is the 1982 United Nations Convention on the Law of the Sea (LOSC) [22]. With respect to fisheries, the LOSC provides general international standards for fisheries management and conservation in the exclusive economic zones (EEZs) of coastal States [22] (Articles 55–75) and for the protection of the marine environment in any maritime zone [22] (Articles 192–196). Some fisheries issues not sufficiently covered by this treaty [e.g. 23–25] were later addressed through one of the LOSC's implementing legally binding instruments, the so-called UN Fish Stocks Agreement related to the conservation and management of straddling fish stocks and highly migratory fish stocks [26], as well as the formally non-binding FAO's Code of Conduct for Responsible Fisheries [27], both adopted in 1995. While attention given to SSF by these instruments was limited [10] (p. 2–3), SSF issues have appeared more frequently in the international debate since then [28–31]. Notably, from the turn of the century onwards, SSF has been mentioned in several UN General Assembly's Resolutions [31–34]. With the endorsement of the SSF Guidelines in 2014, SSF gained an unprecedented attention in the international fora [18,

28, 35]. Additionally, the human rights of small-scale fishers in the context of peasants and people working in rural areas were later affirmed by the UN Declaration on the Rights of Peasants and People Working in Rural Areas adopted in 2018 [35, 36].

Despite these international legal developments, the level of implementation of the SSF Guidelines at national level, from a policy and legal standpoint, remains unclear for most countries. It is thus imperative to first understand how these national legal frameworks generally address fisheries issues. Fisheries legislation usually follows a certain structure, which delineates the legislation's objectives, definitions of relevant terms, fisheries management approaches, principles and planning, fishing access and entitlements, management tools and related processes, monitoring, control and surveillance, offences and enforcement processes [37]. Coastal states and archipelagic states have the discretionary power to legislate on and regulate fisheries issues, including SSF, [38] pursuant to observance of LOSC's general international standards applicable to their maritime zones [22] (Articles 2, 49, 55–75, 192–196). However, due to the marginalization of SSF and the lack of political will and/or capacity to address SSF issues, many national laws currently do not provide specific reference nor special provisions to SSF, its related terms (e.g. artisanal, subsistence, non-commercial), and the diverse groups of people involved in SSF (e.g. indigenous communities and tribes, women, children, migrants, peasants). Where laws and policies generally refer to 'fisheries', 'fisher', 'fishing vessel', and no differentiation is made between large-scale industrial and small-scale artisanal fisheries, it is assumed that these instruments apply to SSF. Yet, it does not necessarily mean that the relevant instruments are 'inclusive' from the lens of a human rights-based approach (HRBA) [39, 40] or an ecosystem approach to fisheries (EAF) [41]. Laws and policies may not recognize or affirm any rights of fishers, nor foster participation of SSF people in fisheries management, conservation and decision-making processes that may affect them. In countries where SSF is fundamental to the livelihoods of coastal and riverside communities [2, 3, 42], fisheries laws and policies should not only address SSF, but also secure the rights of SSF people according to the SSF Guidelines.

## 2.2. Rapid appraisal framework

With a view to clarify how current national laws and policies address the SSF Guidelines' requirements and to better understand their general standards for SSF, a rapid appraisal framework was developed to assess countries' Constitutions, laws and policies. While the framework can be used to assess legal and policy instruments at any level, including local governance and customary practices, where legal pluralism occurs [43], the focus of this assessment was on national laws and policies. The framework was applied to 25 countries based on the information found in widely recognized database websites [44–46] and relevant literature. These countries cover different regions of the world, i.e. ten in Africa (Algeria, Angola, Egypt, Gambia, Ghana, Kenya, Libya, Morocco, Mozambique, Nigeria), nine in Asia and Oceania (Cambodia, Fiji, Indonesia, Malaysia, Philippines, Saudi Arabia,

Singapore, Thailand, Viet Nam), three in Europe (France, Malta, Portugal) and three in Latin America and the Caribbean (Brazil, Costa Rica, Jamaica). Together they represent about 25% of the world's SSF catches and values, according to estimates from the Sea Around Us Project ([www.seaaroundus.org](http://www.seaaroundus.org)). All information collected was organized under topics covered by the SSF Guidelines: 'responsible governance of tenure', 'sustainable resource management', 'social development, employment and decent work', 'value-chains, post-harvest and trade', 'gender equality', 'disasters risks and climate change.' Next, key findings of this assessment were identified in connection to eight key legal issues relevant for the implementation of the SSF Guidelines (see **Table 1**).

**Table 1 here**

### **3. Key findings for SSF in the assessed legislation and policy**

This rapid appraisal framework assessment reveals the subject-areas in national laws and policies where attention to SSF is high and where improvement is needed (see Annexes 1 and 2 for specific provisions and references). It also permits a simple cross-country comparison analysis, which can serve as a useful reference to steer governing institutions and organizations in the direction where an operationalization of the SSF Guidelines through law and policy is possible.

#### 3.1 Legal definition

The assessed countries' fisheries laws define SSF following two main approaches. In a few cases, such as Fiji, Jamaica, Malta, Singapore and Viet Nam, SSF is implicitly covered by the definitions of 'fisheries' and is linked to definitions of 'fisher', 'fishing' and 'fishing vessel'. Following this broad approach, some countries refer to SSF using related terms such as 'fishing boat' (Nigeria), simply 'boat' (Egypt), or 'inland fisheries' and 'riverine fishing' (Malaysia). In Morocco, the Maritime Code of Commerce defines small-scale fishing as 'that which is usually carried out at a distance of less than thirty miles from the coast by vessels of fifty gross tonnage or less'.

Most of the assessed countries' fisheries legislations, however, provide both a general definition of fisheries (e.g. 'fisheries', 'fisher', 'fishing' and/or 'fishing vessel'), and an explicit and specific definition of SSF, using terms such as small-scale, artisanal, subsistence, local, or any of its related terms (e.g. small-scale vessel, artisanal fishing, artisanal fisher). Yet, specific definitions for SSF greatly vary by country, with definitions that characterize SSF under the 'small' or 'small-scale' tag (Indonesia, Portugal and the Philippines), or the 'artisanal' tag (Algeria, Brazil, France, Thailand, Saudi Arabia), or 'subsistence', 'semi-industrial' and/or 'small-scale' tags (Angola, Costa Rica, Ghana, The Gambia, Kenya, and Mozambique). For instance, in Saudi Arabia, a fisheries legislation defines artisanal- fishing boat, fishing and fishers based on the use of non-modern

equipment to catch aquatic resources and artisanal fishing license issued by the competent Ministry. Definition of SSF is also covered in Cambodia by other specific terms such as 'community fishing areas', 'family fishing gear', 'family-scale fishing', while Libya refers to 'coastal fishing boats' as 'small fishing boats' measuring between four and nine meters in length and sailing for no more than one day, and 'medium fishing boats' measuring between ten and 14 meters in length and sailing for no more than three days.

### 3.2 Tenure and/or labor rights

With respect to access and tenure rights to fishery resources, the assessed countries' fisheries laws generally regulate access of SSF people to fishery resources through provisions for a licensing scheme, including schemes of permit, concession or any other form of authorization. In countries such as Ghana, Mozambique and Thailand, the small-scale fishers are required to apply for a fishing license under prescribed requirements and the competent fisheries authority is empowered to grant such right and issue the respective license with attached conditions and requirements. This may include specific licensing scheme for artisanal fishing. Costa Rica, on the other hand, facilitates access of SSF people to fishery resources through provisions that exempt subsistence fishers from obtaining formal authorization to fish, while Angola exempts both subsistence and artisanal fishers from the payment of fees prior to being authorized to fish.

Tenure rights are also related to the rights of all citizens to form 'community fisheries' in their own areas on a voluntary basis. This is the case with Cambodia, about which a study by John Kurién showed community fisheries organizations as examples of the 'modern commons' through the combination of resource, community resource use, and social rules and norms regulating their use, misuse and management [47]. In a different manner, Fiji's Constitution ensures that customary or freehold landowners and registered customary fishing right holders have the right to receive financial resources for the exploitation of minerals in or under the land or seabed area.

In relation to labor rights and related safety at sea requirements, few countries have laws that explicitly grant these rights to SSF people. In the Philippines, fish workers are entitled to privileges under the labor and social security systems, and all fishing vessels must provide adequate medical supplies and life-saving devices. Thailand stipulates that fishing boat crew members must be over 18 years of age, and be granted adequate payment wage, holiday and supply, including hygienic food, drinking water, toilet, medical supplies and medicine. In some cases, like Libya, duties to insure seamen, fishers and captains against labor accidents and associated casualties fall under the owners of fishing vessels, while the fisheries authority's advisory committee assists the establishment and administration of fisheries cooperatives. In Egypt, it is the members of local associations who are responsible for providing fishers with fishing tools and equipment, supporting

their ownership of fishing boats, transportation equipment, assisting and establishing cooperative fish farms, and implementing training programs.

Many SSF have benefited from laws that were recently adopted during the COVID-19 pandemic and have contributed to minimize the negative effects of economic losses. A notable example is Brazil where an emergency plan was established by law to combat COVID-19 in indigenous territories while ensuring food and nutritional security of indigenous peoples, *Quilombolas* communities, artisanal fishers and other traditional peoples and communities. This is done mainly through the provision of medication, individual protection tools and hygiene materials, and a simplified process for obtaining the benefits of public food security policies. In Portugal, a decree-law established an extraordinary and temporary support by means of wage compensation to small-scale fishers, subject to prescribed requirements. Another example is Angola, where a presidential decree approved an integrated plan for accelerating family agriculture and fisheries, which benefits artisanal fishing associations and cooperatives, communal aquaculture cooperatives, and centers of support to artisanal fishing.

### 3.3 Participation in fisheries management and conservation

Decentralized fisheries management approaches were found either as a principle in the legislation or as an operative provision within the legislation's parts concerning fisheries management and conservation. In Fiji, the main principles include ensuring the ability of competent authorities to perform their functions, while taking into account the interests of artisanal, subsistence fishers and local communities through their participation in fisheries management. The principles in Cambodia focus on ensuring participation of stakeholders in the development and adoption of fishery management plans (FMPs), increasing and expanding knowledge on fisheries with the participation from local communities to manage, use and protect fishery resources.

SSF are often considered in the process for developing and adopting FMPs. This is the case with Fiji where the legislation protects fishing interests of artisanal, subsistence and small-scale fishers within the context of FMPs, as well as in Ghana and Kenya where participatory rights are ensured through consultation of persons potentially affected by the FMP. Thailand makes a strong case for this by stating that a fisheries authority has the duty to support participation of local fishing communities in developing fisheries policies, arrange for the registration of local fishing community organizations, and provide counsel to local fishing communities on the management, conservation and restoration of aquatic animal resources. Similarly, Morocco's administration has the duty to consult maritime fisheries chambers in respect of marine fisheries regulations, preparation and application of fisheries development and FMPs, and on all measures aimed at improving working conditions in the marine fisheries sector.

SSF people may also be in charge of a fisheries managerial scheme such as in Kenya, where beach management units (BMUs), which enable authorized fisheries officers, following a consultative process, to designate a co-management area to be jointly managed by the unit (an organization of fishers, fish traders and other stakeholders traditionally dependent on fisheries for livelihoods) and the fisheries director. Another model of participatory fisheries management is implemented in Mozambique by a fisheries co-management committee, which serves as an advisory forum for the establishment of closed seasons, fishing gears control, protection of species, fisheries legislative proposals, fishing licensing and others. In Gambia, a state authority is required to establish and regulate, in consultation with local authorities, the community fisheries centers for community-based fisheries management, taking into account concerns of relevant communities and the current community organizational, geographical and institutional system. Here, a fisheries director is also required to conduct multi-stakeholder consultation, including with those centers, fisherfolks cooperatives, associations and any other persons or groups of persons affected by the plan, in the preparation and review of FMPs. Finally, a co-management scheme is established in Viet Nam, with the People's Committee of each province assigning certain areas located in at least two districts or a given area under its management to communities, upon meeting certain requirements.

### 3.4 Partial, exclusive zones and/or preferential access

The area where SSF operates is a recurrent issue that scholars have often explored in the context of conflicts between fishers and environmental conservation [e.g. 48, 49]. Differently from conservation measures, however, certain fisheries laws have set out fisheries management rules through the delineation of a marine area exclusively used by SSF. Many countries have provisions to protect SSF against other competing activities by prohibiting large-scale industrial fisheries to fish in the SSF zones, thereby facilitating SSF access to fishery resources. Algeria, Costa Rica, Mozambique, and Thailand, for instance, have established these special zones for SSF extending up to three nautical miles. Ghana's SSF zone is extended to six nautical miles. Inland waters in Mozambique are reserved for SSF as well as for scientific research and recreational and sport fisheries.

The SSF zones may be less explicit in some cases or with certain conditions. In Malta, local commercial fishing vessels are not allowed in a country's internal waters and marine territorial waters, thereby reserving such areas to local subsistence fishing vessels. Viet Nam designates certain marine areas to organizations and individuals for marine resource exploitation upon payment of levy for the use of the area and meeting other prescribed requirements. Another way to protect the areas where SSF take place is by ensuring the development of proper infrastructure for their work. This is an approach taken in Indonesia with the implementation of a national marine layout plan for fishing and the zoning plan for coastal areas and isles for fishing and fish farming, which provides

livelihood space, access for small-scale fishers, traditional fishers, small-scale fish farmers and small salt farmers.

### 3.5 Public financial mechanisms

Financial mechanisms are pivotal to enable public competent authorities to allocate budget to the implementation of activities, projects and plans aimed at capacity building, technology transfer and ultimately strengthening and promoting sustainable SSF [50]. Legislation could ensure that financial resources are made available for such efforts. One way of doing so is by the establishment of a 'fisheries fund', which generally supports the fisheries sector and gives special attention to SSF. In Ghana, the Fisheries Development Fund's objectives include providing assistance to SSF cooperatives enterprises, while in Gambia, a competent fisheries authority is empowered to allocate resources from the competent fund to finance conservation, management and development projects for training, research and promotion of artisanal fisheries.

In the Philippines, the fund's budget is allocated to, *inter alia*, by livelihood programs towards production and poverty alleviation, with part of such fund allocated to post-harvest and marketing projects, which enhance small-scale commercial fisherfolk's competitiveness and reduce post-harvest losses. The authority is also required to develop and undertake capacity-building program for targeted species to foster improved bankability, credit worthiness of municipal and small-scale commercial fishers through technology-transfer and skills training. Morocco's fund is used to support the fishing fleet's modernization, strengthen measures to combat illegal, unreported and unregulated (IUU) fishing, and support associations and cooperatives formed by women working in marine fisheries, among others.

Financial resources to SSF can also be granted through loans or financial support application systems. Saudi Arabia encourages fishers to apply for a loan provided that they meet the application requirements, which include proof of the fishing license or approval of ownership of the fishing boat and proof of registration as fisher. A financial mechanism for SSF is provided in Portugal by a fisheries regulation detailing the procedures for owners of small-scale coastal fishing vessels to apply for a financial support to be invested in the modernization of the fishing fleet. A fund is also made available for the improvement of management and conservation of resources, the optimization of the organization of the sector and the professional capacities of the fishers.

### 3.6 Gender laws and policies

Gender considerations cut across various laws and policies, also in the fisheries context, and it is an utmost need in SSF where women remain marginalized [9, 51, 52]. Except for

Saudi Arabia, all the assessed countries have in their Constitutions' provisions that address gender equality, which is the foundation for the protection of women, including small-scale fisherwomen. In Brazil, for instance, artisanal fisherwomen are entitled to earlier retirement pension, while subsistence fisherwomen are exempted from registration with the environmental registry (Brazil) [11]. In fisheries instruments, gender-sensitive approaches can generally be reflected in policy and legal texts' references to either a gender-neutral term of fishers (as opposed to only fishermen) or in the references to both fishermen and fisherwomen. Where women are explicitly mentioned in law and policy, it is a step-forward for their recognition and for providing them special attention that the SSF Guidelines call for.

Women may receive a special treatment in fisheries legislation. For instance, in Kenya, each BMU executive committee is required to have at least three women among its members. Support to women in the fishery sector is provided in the Philippines through appropriate technology and research, adequate financial aid, infra-structure, marketing assistance, and other services, while planning and implementation of special training projects for women to ensure their basic needs and involvement in rural industrialization programs.

Gender issues were also found in political commitments and policies. Morocco is committed to integrate women in the artisanal fisheries sector and integrates a gender approach in development policies and programs. Both gender-specific policies and fisheries-specific policies foster women's participation in the fisheries sector and the blue economy in Kenya, whilst promoting enhanced contribution of the fisheries sector to employment for women and increased participation of women in aquaculture, investments and trade in fisheries. A national FMP in Mozambique calls upon the involvement of women through savings accounts and rotating credits groups, associations and community commissions, while a gender strategy and action plan includes activities for creating community committees for fisheries management with women's participation. Finally, Gambia's fisheries-specific policy is explicit about fostering gender-mainstreaming, non-discriminatory gender-sensitive interventions, safe and more conducive environment for women in the fisheries sector. It also has a gender-specific policy that aims at encouraging participation of indigenous men and women in fish farming, processing and marketing through encouraging mobilization of communities, particularly women to fish, and promoting the training of more men and women in fishing techniques, processing and business management.

Certain gender aspects were also found in labor or labor-related instruments. In Cambodia, an action plan for gender equality promotion and child labor elimination in the fisheries sector fosters the application of gender-sensitive practices to meet their needs within fishing families, fish farmers, processors and traders as well as members of community fisheries, with a view to improve family livelihoods and income and,

consequently, promote gender equality. Similarly, an Employment Act in Jamaica requires the employer pays equal for equal work without discriminating between male and female employees, defined by such act as an individual who has entered into or works, or normally works, under a contract of service or of apprenticeship.

### 3.7 Climate change law and policies

Climate change laws and policies do not often explicitly mention fisheries and rarely SSF. SSF are normally referred to along with coastal and/or vulnerable and/or local and/or traditional communities related to adaptation measures. The application of a Climate Change Act in Kenya, for instance, aims at building resilience and enhancing adaptive capacity of humans and of ecological systems to climate change impacts, and at facilitating capacity development for public participation in climate change responses through awareness raising, consultation, representation and access to information. A national plan against global warming in Morocco includes measures on vulnerability and adaptation to climate change carried out by the national fisheries research institute, including assessments of climate change impacts on the distribution and abundance of marine species as well as on the functioning of ecosystems.

National plans on adaptation to climate change sometimes call for partnership between the competent Ministry and other sectors, bodies and associations to ensure resilience of the fisheries and aquaculture against climate change impacts in line with the preservation of the environment and ecosystems, as in France. In Brazil, the focus is on implementing measures and strategies to protect populations most vulnerable to climate change – including *Quilombolas* communities, indigenous peoples, fishers, riparian, family farmers – and provision of guidelines on territorial vulnerability assessment tools and ecosystem-based adaptation. Nigeria sets out strategies for freshwater resources, coastal water resources and fisheries with a view to *inter alia* enhance artisanal fisheries and encourage sustainable aquaculture as adaptation options for fishing communities. Finally, Jamaica's climate change policy supports observation and research on the impacts of climate change at the sector and community levels, along with engaging communities in vulnerability assessments and adaptation planning programs that are self-oriented and self-sustaining.

In very few cases, like Gambia, a fisheries-specific policy was found to address climate change issues. It calls for strengthening resilience and reducing vulnerabilities to disaster risk and climate change through capacity- and resilience-building, awareness-raising about climate change adaptation and disaster risk management, participatory process for assessing those vulnerabilities, and developing a strategy and action plan to integrate these issues with respect to fisheries and aquaculture.

### 3.8 Representation of SSF people in institutional arrangements

Securing the representation of SSF people, by laws and policies, can increase the participation of SSF people in decision-making processes and may lead to the creation of an agency that is specifically devoted to SSF. Some relevant examples were found in the assessed legislation such as in Costa Rica, where the Ministries and public authorities with specific competence for the SSF Guidelines' application and development are required to incorporate this instrument in the operating institutional plans and dedicate the required financial resources towards that end. In Indonesia, both central and regional governments have the duty to encourage and facilitate the establishment of an institution of fishers, fish raisers and salt farmers, taking into account culture, norms, values, and local wisdom.

Another interesting example is Angola, where an institute for the development of artisanal fishing and communal aquaculture was created to promote, support and develop marine and continental artisanal fisheries, scientific studies, and to promote communal aquaculture. Similarly, Ghana's fisheries commission is mandated for protecting and promoting artisanal and semi-industrial fishing, promoting and developing fishing, processing and marketing cooperative societies, and establishing reserved areas for artisanal and semi-industrial fishing. In Gambia and Mozambique, a fisheries advisory committee and a fisheries co-management committee respectively, need to include representatives of the artisanal fishing sector, while in Morocco, a representation of SSF is considered within maritime fisheries chambers, with competence to provide advice, information and present proposals to regional, national and local public authorities on matters concerning artisanal fishing, aquaculture and activities for the exploitation of coastal fishery resources.

#### **4. Country comparison**

The assessed countries were organized by regions (Africa, Asia & Oceania, Latin America and the Caribbean, and Europe) and into three groups (A, B and C) for a simple comparison. A rapid assessment was performed to evaluate the alignment of the eight SSF key issues with the countries' Constitutions, laws and policies (**Table 2**). This table shows that the fundamental rights and principles (e.g. SSF tenure rights, labor rights and gender equality) are anchored in many countries' Constitutions. While not in-depth, this analysis is a starting point that can trigger discussion and intervention to foster the implementation of the SSF Guidelines on the basis of legal and policy frameworks. What makes certain countries align better with the SSF Guidelines than others is an intriguing question. The data used in this paper needs to be validated through a transdisciplinary process, carried out by government officials, legal scholars and fisheries experts, along with fishers' representatives and members of fishers' organizations familiar with the laws and the policies.

Group A refers to the countries in which all eight key issues were found to be addressed by at least one of their assessed national laws and policies; Group B to the countries in

which seven to six key issues were found; and Group C to the countries where five or less key issues were found. As expected, countries 'score' differently in terms of these key issues due to their diverse political and legal systems, own governments' interests and priorities. Positive takes on this overview are that only six countries are in Group C and that the laws and policies of all the 25 countries addressed a minimum of three key issues. Almost every region had at least one or more countries in each group, except Europe, where the three assessed countries addressed at least seven key issues. This does not mean that Europe is doing better as the number of countries assessed in Europe is much lower than that of Africa. The years of enactment of laws and adoption of policies in and after 2014, when the SSF Guidelines were endorsed, are highlighted in bold. It would be expected that countries with more recent laws would have a better position in the groups, but this was not necessarily the case. Some countries with older laws demonstrated to address SSF key issues, often more than countries with more recent laws. This shows a positive scenario where governments do not necessarily need to go through the cumbersome and long legislative process of drafting, approving and enacting new laws, because the existing laws may already be sufficient.

### **Table 2 here**

Table 2 also reveals that all countries provide a legal definition of SSF, pursuant to the considerations set forth above i.e. general or specific definition. This implies, in the first instance, a formal recognition of SSF in the assessed countries. It is critical, however, to further understand whether the substantive content of the assessed laws and policies are appropriate in operationalizing the SSF Guidelines' requirements and in ensuring, in particular, that the HRBA is adequately enshrined therein. Even where a general legal definition of SSF may appear to be adequate, certain vulnerable groups, i.e. women, indigenous people, children, migrants, and peasants within SSF, would still need special protection by the laws. Such a broad approach to the legal definition of SSF can be useful in identifying the relevant laws that can support the implementation of the SSF Guidelines. It is also not an impediment for the inclusive interpretation of SSF issues in key laws, as shown by Soares [53], when referring to the Jamaica's Charter of Fundamental Rights and Freedoms, which is centered on people and fosters universal respect for human rights and freedoms [39]. Laws providing for human rights are important for SSF, potentially being the fundamental legal basis for SSF people to claim for their rights. The key point is to clarify which laws and policies countries have in place that can secure SSF rights and ensure responsible and sustainable fisheries.

Based on the findings highlighted above, most countries in Group A have comprehensive laws relevant for SSF. It is no surprise to see Costa Rica in this group, as Sabau has already showcased this country's good performance in implementing the SSF Guidelines and in strengthening participatory approaches in fisheries management [54]. Some countries in this group have legislation with 'softer' provisions in that they only address SSF in

principles while others have granted rights to SSF people (subsections 3.2–3.4). Certain laws create institutions, whose composition must include a representative from the SSF sector, while others create institutions with mandates/power assigned to address and support SSF issues. As such, these laws may impose a duty on competent authorities to address SSF matters in particular (subsections 3.5 and 3.8). While cross-sectoral issues such as gender and climate change were mainly found in policies (subsections 3.6–3.7), gender is anchored in most countries' Constitutions, which can provide a strong fundamental basis for claiming gender equality and equity for SSF.

Group B includes countries that have addressed between six and seven SSF key issues (Table 2), but which still lack at least one of the eight key SSF issues. Gaps in Group B are identified in two SSF key issues, namely on SSF partial and/or exclusive fishing zones and in provision of public financial mechanisms that ensure adequate allocation of resources to capacity building, technology transfer and sustainable development of SSF. In this respect, Said noted the importance of regenerating SSF in Malta through the SSF Guidelines' implementation, ensuring tenure rights and formation of fisheries local action groups [53]. These issues are also not tackled in Thailand, even though some positive improvements to the legal framework governing SSF have been realized in recent years, as examined by Chuenpagdee et al [56]. If considered the alignment of specific provisions of the fisheries policy and legislation of those countries, as done for Brazil by Nakamura and Hazin, the gaps can be much greater but still be addressed through other sectoral laws and policies [11].

Finally, most countries in Group C seem to have the same gaps of key issues as Group B, in addition to the issues on integration of SSF in conservation and management measures and in institutional arrangements that have not been adequately addressed in these countries. Soares has advised on how to improve policy and legal frameworks in Jamaica [53], but it remains to be seen how other countries in Group C will look at these problems and will conduct an in-depth analysis of their relevant legal and policy frameworks to facilitate the implementation of the SSF Guidelines.

## **5. Concluding thoughts**

Legal and policy frameworks, whether explicitly referring to SSF or not, are fundamental for securing rights of SSF people, clarifying their duties as fishers and their roles in society. The rights of SSF people can only be realized and their duties performed if laws and policies relevant for SSF are well-known. Researchers, experts, governments and SSF people alike need to better understand what such laws and policies mean, what they can provide for SSF and how they can support and facilitate the implementation of the SSF Guidelines, consistent with a HRBA and an EAF, providing for SSF people rights, proportionate duties, participation, integration and coordination among multiple

stakeholders [9, 21]. Without specific provisions to SSF, by which SSF people can be entitled to a differentiated special treatment (such as preferential and/or exclusive rights or any other special protection), there is a risk of disproportionate duties falling on them or the absence of adequate safeguards to SSF people.

SSF people cannot wait for the adoption of new laws, policies and any other type of formally or informally adopted instrument to improve or strengthen a country's legal and policy system in respect of SSF issues and the implementation of the SSF Guidelines. The crucial question is what to do with the existing instruments already in place and how they can be used to realize key issues for SSF in line with international standards. Such an effort should not depend solely on governments, but it has to be mobilized from the bottom, by the society, the organizations working in support of SSF, and SSF people in particular to bring forward the claim for their rights and call for the duties assigned to the relevant authorities. This desk-based rapid appraisal took a step further in integrating the legal and policy aspects in the implementation analysis, highlighting the need for more in-depth legal- and policy-focused research for SSF in connection with the transdisciplinary framework already grounded [19]. The unpacking exercise enables a careful examination of what is out there: the existing and numerous legal and policy instruments that either generally apply to SSF or which treat them in specific terms. The latter can bring special rules and adequate protection to SSF, as noted above.

Unpacking legal and policy instruments for SSF can be a quagmire task if carried out in silos, not to mention the complexity arising from legal pluralism and customary practices not regulated by law nor recognized in policies [43]. But such task can turn into a feasible and powerful engine with the engagement and commitment of the government, policy and legal experts, in coordinated communication and work with fisheries experts and other relevant stakeholders, for the benefit of the entire SSF community. The findings of this desk-based rapid appraisal should be further explored by country, which will give an opportunity for deepening the research, confirming and validating the results vis-à-vis the comprehensive legal and policy material that will most likely be found through transdisciplinary research works in-country. For each SSF key issue, more information can likely be found and analyzed in greater detail. SSF communities should be informed about which laws and policies are relevant for them, why they are relevant, and how they can benefit from them, bringing about the adequate access to justice mechanisms to ensure rights of SSF people are fully realized. This will also depend on a more in-depth work in each country.

Many questions unfold from this desk-study assessment: what else can legislation and policies offer for the benefit of SSF people and for fisheries sustainability? What are the relevant provisions for SSF people to claim for their rights? Which provisions do they need to comply with? What are the duties of governments and their public authorities, as well as other non-State actors e.g. private sector and non-governmental organizations in

respect of SSF? It follows that every country will have their multiple answers and diverse ways to address these issues. Many of them, as demonstrated in this study, already have some relevant provisions in place. In practice, however, these may not be well-known by those for which they matter the most: people working with SSF and in SSF. The interpretation and application of relevant instruments for SSF can increase the opportunities of their recognition and empowerment, while supporting SSF to have access to justice procedures that can bring SSF people closer to the full realization of their rights and fair accomplishment of their duties. In effect, the implementation of the SSF Guidelines is no longer a daunting task once the legal and policy frameworks are unpacked.

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