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Josephine Boye Yisa

A Human Rights-Based Approach to Overfishing in West Africa

Comparative Study of Guinea-Bissau and The
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HRDA, Master's Programme in Human Rights
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Foreword

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- Yisa, Josephine Boye, *A Human Rights-Based Approach to Overfishing in West Africa: Comparative Study of Guinea-Bissau and The Gambia*. Supervisors: Magnus Killander, University of Pretoria and Emmanuel Kasimbazi, Makerere University (Uganda). Master's Programme in Human Rights and Democratisation in Africa, coordinated by Centre for Human Rights, University of Pretoria.

Biography

Josephine Boye Yisa is a Nigerian legal specialist in human rights. She obtained her LLB from the University of Ibadan, Nigeria and holds a Master's In Human Rights and Democratisation in Africa from the Centre for Human Rights, University of Pretoria. Previously, she interned with the ACHPR under the mandate of the Working Group on ESCRs in Africa. She speaks English, French, Portuguese.

Abstract

This research focuses on the impacts of overfishing on human rights in Guinea-Bissau and The Gambia. The core finding is that despite extensive national and international legal frameworks, weak enforcement, detrimental international fishing agreements and a prioritisation of perceived economic gains over human welfare have led to overfishing, which in turn causes significant violations of the economic, social and cultural rights of local populations. The fisheries sectors in both nations are critical, employing over 250,000 people in Guinea-Bissau and 300,000 in The Gambia and forming a cornerstone of national food security, livelihoods and cultural identity. However, these resources are threatened by the unsustainable practices of foreign industrial fleets and a failure of state regulatory bodies to protect them. This situation is analysed through a neo-colonial framework, highlighting power imbalances where West African nations often act as ‘policy takers’ in agreements with stronger economic powers like the European Union and China.

A comparative legal analysis reveals that while The Gambia’s current fisheries laws demonstrate a higher normative compliance rate with the United Nations (UN) Food and Agriculture Organisation’s Code of Conduct for Responsible Fisheries (100% for the Fisheries Act 2007) than Guinea-Bissau’s (92% for the Decree-Law no 10/2011), both states suffer from significant implementation and enforcement gaps. Overfishing directly infringes upon the rights to work, health, food, education, culture and a satisfactory environment. Local artisanal fishers are unable to compete with industrial trawlers, fish stocks are dwindling, food insecurity and malnutrition are rising, and unique cultural practices tied to marine life are being eroded. The primary recommendations call for both states to adopt a human rights-centred approach in their fisheries management. This includes revising and rigorously

enforcing national laws, ratifying key international agreements like the UN Fish Stocks Agreement, strengthening regional co-operation and investing in nation-building to reduce dependency on inequitable foreign fishing agreements.

To El Roi,

*The One who sees me, the all-knowing and ever sufficient One.
This one is for you.*

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Table of Abbreviations

African Charter	African Charter on Human and Peoples' Rights
African Children's Charter	African Charter on the Rights and Welfare of the Child
African Commission	African Commission on Human and Peoples' Rights
ATLAFCO/COMHAFAT	Ministerial Conference on Fisheries Co-operation among African States bordering the Atlantic Ocean
APRIFAAS	African Platform for Regional Institutions in Fisheries, Aquaculture, and Aquatic Systems
AU	African Union
AU-IBAR	African Union Inter-African Bureau for Animal Resources
CAOPA	Confederation of Professional Organisations of Artisanal Fisheries
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
Code of Conduct	FAO Code of Conduct for Responsible Fisheries 1995

Compliance Agreement	FAO Compliance Agreement 1993
ECOWAS	Economic Community of West African States
EEZ	Exclusive Economic Zone
EIMS	ECOWAS Integrated Maritime Strategy
EU	European Union
FAO	Food and Agriculture Organisation of the United Nations
GDP	Gross Domestic Product
IUU fishing	Illegal, unreported and unregulated fishing
PSMA	Agreement on Port State Measures
RAAF	Regional Agency for Agriculture and Food
RFMO	Regional Fisheries Management Organisation
SRFC	Sub-Regional Fisheries Commission
UNCLOS	United Nations Convention on the Law of the Sea
UNFSA	The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks
VMS	Vessel Monitoring System
WOAH	World Organisation for Animal Health

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1. Introduction



1.1 Background

West Africa's fisheries resources are crucial for the livelihoods, food security and cultural identity of millions especially small-scale fishers who often live in remote areas with limited alternative employment and state services. Overfishing, including illegal, unreported and unregulated (IUU) fishing by industrial fleets, has led to depleted fish stocks, threatening these communities' right to food, adequate living standards and economic security.¹

¹ D Belhabib, UR Sumaila and PL Billon, 'The Fisheries of Africa: Exploitation, Policy, And Maritime Security Trends' (2019) 101 Elsevier Marine Policy 80, 80–84.

Prior to the settlement of colonial powers in Africa, there was a traditional method of fishing which adequately provided for the needs of the population and future generations. One such method was the ancestral fishing technique of Imraguen fishing.² This ancestral technique made use of a single net made from wood fibre, wrapped around a wooden stick to trap the fish.³ They then used a tool made of an iron barbed spear to hunt the fish driven towards the net.⁴ The Imraguen men also used dolphins to help in their fishing operations. This ancestral fishing was done close to the shore, where the men would walk or swim and surround a shoal of fish with their nets and beat the water to chase the fish into the nets.⁵ This method began to die down with the introduction of lanches⁶ which originated from the Canary Islands.⁷ Colonial masters introduced fishing projects which expanded the market for fish trade and increased the demand for fish, thus increasing the rate of fishing.⁸

Africa was plagued by colonialism for over a century.⁹ The effect of colonial exploitation can still be felt today. Policies, laws, means of education and even languages spoken in African countries reflect colonialism. However, Africa appears to be more of a policy taker rather than a policy maker.¹⁰ Although Africa is rich in resources, rather than leading the discourse and setting the terms and conditions of international agreements, most agreements are set in line with the dictates of the foreign parties. This could be an effect of power dynamics, which although are not explicit like they were during the colonial era, are implicit. Another reason for this could be the failure of African states to fully depend on their resources without any foreign intervention or aid. The effects of these agreements have far-reaching and long-lasting impacts on the lives of Africans. They lead to overfishing by both foreign and national fleets creating a ripple effect on the marine ecosystem

² SYC Lemrabott and others 'The Chronology of Overfishing in a Remote West-African Coastal Ecosystem' (2024) 29 Ecology and Society 1.

³ *ibid.*

⁴ Lemrabott and others (n 2) 3.

⁵ *ibid.*

⁶ Wooden sailing boats.

⁷ Lemrabott and others (n 2) 3.

⁸ *ibid.*

⁹ World Atlas, 'Colonialism in Africa' (*World Atlas*) <www.worldatlas.com/articles/colonialism-in-africa.html> accessed 2 September 2025.

¹⁰ AD Kabagambe, 'Rationale for Africa's 'Legitimate' Ownership of Her Natural Resources' in CC Ngang and SD Kamga, *Natural Resource Sovereignty and the Right to Development in Africa* (Routledge 2022).

and the people. These effects are cross-cutting and can also be seen in the enjoyment of human rights. This research focuses on the effects of overfishing on the realisation and enjoyment of human rights in Guinea-Bissau and The Gambia.

Guinea-Bissau has a total land area of 36,130 km² and a total coastline of 350 km.¹¹ It has about 100 islands and only 45% of its population live within cities.¹² Water bodies occupy about 8,005 km².¹³ The total population is 2.2 million.¹⁴ More than 250,000 people work in the fisheries sector and it contributes 6% of the country's gross domestic product (GDP).¹⁵ On the other hand, The Gambia has a total land area of 11,300 km² and a total coastline of 80 km.¹⁶ It has five islands and 64% of its population live within cities.¹⁷ Water bodies occupy about 1,295 km².¹⁸ The total population is 2.8 million.¹⁹ Since 2019, the fishing sector has been contributing more than 10% of the country's GDP and in 2022, over 300,000 people were employed in the fishing industry.²⁰ Both countries have a high level of dependence on fishing as a source of livelihood and for consumption.

¹¹ WorldData.info, 'Guinea-Bissau' (*WorldData.info*) <www.worlddata.info/africa/guinea-bissau/index.php> accessed 2 June 2025.

¹² *ibid.*

¹³ Web Conversion Online, 'Size of Guinea-Bissau' (*Web Conversion Online*) <www.webconversiononline.com/size-of-country.aspx?of=guinea-bissau#:~:text=Size%20or%20Area%20of%20Guinea-Bissau%20is%2036%2C125%20square,kilometers%20which%20is%20about%2022.00%25%20of%20total%20area> accessed 2 September 2025.

¹⁴ World Population Review, 'Guinea-Bissau' (*World Population Review*) <<https://worldpopulationreview.com/countries/guinea-bissau>> accessed 3 June 2025.

¹⁵ The Macao News, 'Chinese state-owned fishing company CNFC marks 40 years in Guinea-Bissau' (*The Macao News*, 18 March 2025) <<https://macaonews.org/news/lu-so-fonia/china-fishing-guinea-bissau-cnfc/#:~:text=More%20than%20250%2C000%20Bissau%20Guineans%20work%20in%20the,annually%20and%20accounts%20for%206%20percent%20of%20GDP>> accessed 3 June 2025.

¹⁶ WorldData.info, 'Gambia' (*WorldData.info*) <www.worlddata.info/africa/gambia/index.php> accessed 2 June 2025.

¹⁷ *ibid.*

¹⁸ Web Conversion Online, 'Size of Gambia' (*Web Conversion Online*) <www.webconversiononline.com/size-of-country.aspx?of=gambia> accessed 2 September 2025.

¹⁹ World Population Review, 'Gambia' (*World Population Review*) <<https://worldpopulationreview.com/countries/gambia>> accessed 3 June 2025.

²⁰ E Pietrzak, 'The Gambia: A Small Nation with a Big Fish Problem' (*Change The Chamber*, 21 November 2025) <www.changethechamber.org/news-research/the-gambia-fishing> accessed 4 June 2026.

1.2 Problem statement

Fisheries and aquaculture contribute immensely to the revenue of West African states.²¹ Royalties and financial compensations derived from various fishing agreements play a vital role in national revenues.²² The fisheries sector also plays a vital role in meeting the nutritional needs of the populations at affordable costs and employs over nine million full time workers.²³ These workers are mostly found in the artisanal fishing subsector and women make up more than half of this segment.²⁴ The state has a duty to respect, promote, protect and fulfil human rights.²⁵ In fulfilling these duties, the state must enact and enforce laws, policies and regulations for the benefit of the people. Ideal fishing laws and policies ensure regulated and reported fishing to assist the government in monitoring and evaluating fishing activities. They must also ensure that international environmental and human rights standards are complied with. This, however, is not the case in Guinea-Bissau and The Gambia. IUU fishing, largely perpetuated by foreign fleets, without any form of repercussion, is a testament to this.²⁶

The current legal frameworks in Guinea-Bissau and The Gambia, although quite extensive, have failed to adequately protect the human rights such as the rights to food and livelihood, of local fishers and the general populace under the African Charter on Human and Peoples' Rights (the African Charter).²⁷ The power

²¹ Economic Community of West African States Regional Agency for Agriculture and Food, 'Facing the Challenges in the Fisheries and Aquaculture Sector in West Africa' (2021) <www.araa.org/en/actualite/facing-challenges-fisheries-and-aquaculture-sector-west-africa> accessed 3 September 2025.

²² *ibid.*, para 1.

²³ *ibid.*

²⁴ *ibid.*

²⁵ International Federation for Human Rights, 'Obligations of states under the main UN human rights instruments' (*Fédération internationale pour les droits humains*) <<https://corporateaccountability.fidh.org/the-guide/intergovernmental-mechanisms/the-united-nations-system-for-the-promotion-and-protection-of-human-rights/unit-ed-nations-treaty-based-mechanisms/obligations-of-states-under-the-main-un-human-rights-instruments/>> accessed 17 September 2025.

²⁶ C Santos, M Djaló and JJ Mendes, 'Scales of Injustice: The Guinea-Bissau Communities Confronting Illegal, Unreported and Unregulated Fishing' (*The Sociological Review*, 8 October 2024) <<https://thesociologicalreview.org/magazine/october-2024/the-sea/scales-of-injustice/#:~:text=The%20fishing%20agreements%20have%20provided%20little%20benefit%20to,so%20often%20expressed%20by%20Bissau-Guineans%20towards%20the%20state>> accessed 17 September 2025.

²⁷ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58.

dynamics between these states and foreign nations which they have fishing agreements with also have a negative impact on the enjoyment of human rights within the states. This research seeks to highlight the human rights effects of overfishing in Guinea-Bissau and The Gambia. It analyses fishing regulations and international agreements from both countries to identify key missing elements which have an impact on human rights.

1.3 Objectives

The main objective of this research is to examine how a human rights-based approach can improve the regulation of fisheries in West Africa, with a focus on sustainability.

The specific objectives are:

- 01 — To analyse the current fishing laws and policies in Guinea-Bissau and The Gambia;
- 02 — To examine the economic, social and cultural rights that are being violated due to overfishing; and
- 03 — To propose legal and policy interventions to address the human rights violations.

1.4 Research question

The main research question is: How do regulatory frameworks contribute to overfishing and related human rights violations in Guinea-Bissau and The Gambia?

To assist in answering this question, the research will also consider the following questions:

- A — How do the current fishing regulations in Guinea-Bissau and The Gambia contribute to overfishing?
- B — What economic, social and cultural rights are being violated due to overfishing in Guinea-Bissau and The Gambia?
- C — What can be done to mitigate these human rights violations?

1.5 Literature review

1.5.1 International influence

Overexploitation and unsustainable fishing practices are factors which contribute to overfishing in West Africa. Foreign influence has played a major role in overfishing in the region. Diop and Scheren discuss the impact of overexploitation and unsustainable fishing practices.²⁸ They note the drastic increase in the exploitation of Africa's fish resources between the 1960s and 1990s by the European Union (EU), Russia and East Asian fleets. Citing the United Nations (UN) Environmental Programme, they also note that compensation for access agreements with foreign fleets is often 'low, compared to the actual value of the landed fish'.²⁹ Belhabib and others compare the fishing access agreements operating between West African states and EU with those of West African states and China.³⁰ The authors express concern about the effects of these fishing agreements on local development and livelihood. He analyses China's involvement and innovations in fisheries in Africa.³¹ A critical review of China's policies is made and an emphasis is laid on flag state responsibilities. The research also mentions the coastal states rights and responsibilities over their exclusive economic zones (EEZs). Geall and others also focus on the Chinese influence and impact on fishing in West Africa.³² The report looks at China's foreign and domestic policy. It also looks at regional agreements in Africa and multilateral access agreements. The report states the need for capacity building in West Africa.

²⁸ S Diop and PA Scheren, 'Sustainable Oceans and Coasts: Lessons Learnt From Eastern and Western Africa' (2016) 183 Elsevier Estuarine, Coastal and Shelf Science 327.

²⁹ *ibid.*

³⁰ D Belhabib and others, 'Euros vs Yuan: Comparing European and Chinese Fishing Access in West Africa' (2015) 10 Public Library of Science One 1.

³¹ J He, 'From Distant-Water Fisher to Investor: Enhancing China's State Responsibility for Legal and Sustainable Fisheries in Coastal Africa' [2025] Coastal Management 1.

³² S Geall and others, 'Charting a Blue Future for Co-operation between West Africa and China on Sustainable Fisheries' (The Stimson Centre July 2023).

1.5.2 Artisanal fisheries

Another contributing factor to overfishing is artisanal fishing. Belhabib and others discuss factors that lead to overexploitation of fish stocks, including overfishing and climate change.³³ They analyse the effects of artisanal fishing in Senegal, the role of small-scale fisheries in local consumption and income generation including women empowerment. The authors also mention the multiplier effect of small scale fisheries which also contribute to overfishing in Senegal. N'Souvi and others focus on the situation in Togo in a comparative view with Ghana, Mali, Niger and Senegal.³⁴ They mention the overexploitation caused by local fishermen due to their increased fishing efforts which results in a reduction of the number of fishes reaching sexual maturity. They also mention agreements which Togo has become a party to, such as the Agreement on Port State Measures (PSMA), to combat IUU fishing.³⁵ The authors highlight the socio-economic importance of fishing to Togo. They also discuss other threats impacting fisheries such as environmental degradation and pollution.

1.5.3 Human rights implications

IUU fishing is a major contributor to overfishing. It leads to adverse socio-economic impacts. Belhabib and others discuss various aspects of sustainable fishing with a focus on IUU fishing.³⁶ They also mention the socio-economic impact of unsustainable fishing and delve into the various policy and governance initiatives and challenges. Merem and others also discusses the increase in IUU activities.³⁷ The authors discuss the high fish production potential in the West African region and how that has attracted illegal fishing activities. This has led to the violation of the rights of the people of West Africa. Petrossian and Clarke discuss the significant economic and protein losses which have an impact on food

³³ D Belhabib, VWY Lam and WWL Cheung, 'Overview of West African Fisheries Under Climate Change: Impacts, Vulnerabilities and Adaptive Responses of the Artisanal and Industrial Sectors' (2016) 71 Elsevier Marine Policy 15.

³⁴ K N'Souvi and others, 'Fisheries and Aquaculture in Togo: Overview, performance, Fisheries Policy, Challenges And Comparative Study with Ghana, Mali, Niger and Senegal Fisheries And Aquaculture' (2021) 132 Elsevier Marine Policy 1.

³⁵ Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA) (adopted 22 November 2009, entered into force 5 June 2016).

³⁶ Belhabib, Sumaila and Billon (n 1) 80–92.

³⁷ EC Merem and others, 'Analyzing the Tragedy of Illegal Fishing on the West African Coastal Region' (2019) 9 International Journal of Food Science and Nutrition Engineering 1.

security and economic development due to IUU fishing in West Africa.³⁸ Carolin also discusses the pervasiveness and impact of IUU fishing in West Africa.³⁹ The author mentions the harm caused to artisanal fisheries and IUU's link to maritime insecurity.

Another adverse effect of overfishing is damage to the ecosystem. Lemrabott and others elaborate on the vulnerability of West African waters to overfishing.⁴⁰ They allude to the fishing down of marine food webs which alters the dynamics of the ecosystem. This has a negative impact on environmental rights in West Africa. Meissa and Gascuel report on a study of fisheries in Mauritania.⁴¹ They discuss various ecological impacts of fishing on the ecosystem.

1.5.4 Policy responses

One of the ways of combating overfishing is through the use of technology such as Vessel Monitoring Systems (VMS) and other forms of monitoring, control and surveillance. Daniels and others look at the role of flags of convenience, transshipment at sea and regional fisheries management organisations in IUU fishing.⁴² The authors also look at the state of ratification of the PSMA and note that some key states such as China, Russia and several West African states are yet to ratify the agreement. The need for the use of technologies such as VMS and Automatic Identification Systems is also mentioned. Likewise, Zoppi discusses the relevance of the use of technologies in detecting potential IUU fishing.⁴³ The paper mentions the relevance of Sustainable Fisheries Partnership Agreements between the EU and countries in the global south.

³⁸ GA Petrossian and RV Clarke, 'Disaggregating Illegal Fishing Losses for the 22 Countries of the West African Coast' (2020) 19 *Maritime Studies* 445.

³⁹ C Carolin, 'The Dragon as a Fisherman: China's Distant Water Fishing Fleet and the Export of Environmental Insecurity' (2015) 35 *SAIS Review of International Affairs* 133.

⁴⁰ Lemrabott and others (n 2) 1.

⁴¹ B Meissa and D Gascuel, 'Overfishing of Marine Resources: Some Lessons From the Assessment of Demersal Stocks off Mauritania' (2015) 72 *International Council for the Exploitation of the Sea Journal of Marine Science* 414.

⁴² A Daniels and others, 'Western Africa's Missing Fish: The Impacts of Illegal, Unreported and Unregulated Fishing and Under-Reporting Catches by Foreign Fleets' (Overseas Development Institute June 2016).

⁴³ M Zoppi, 'Global Illegal, Unreported and Unregulated (IUU) Fishing in West Africa: Recent Trends and Historical Legacies' (2019) 1 *East African Journal of Social and Applied Sciences* 1.

Another means of combating overfishing is through regional co-operation. Bourmaud mentions policies and regional co-operation efforts in a bid to combat IUU fishing.⁴⁴ The author reflects on the undermining of local fisheries and fisheries-related industries when IUU fishing is not properly controlled and monitored. The lack of monitoring, control and surveillance capacity of West African states is also discussed. If West African states work together, they can win the battle over overfishing in the region. Analysing fisheries at a continental level, Bi and others differentiate the more sustainable practices in North and Central Africa from the practices which have led to overfishing in East, West and Southern Africa.⁴⁵ The authors emphasise the importance of real-time monitoring in managing and conserving fish stocks.

1.5.5 Summary

Based on the reviewed literature, it is evident that a lot of research has been done on overfishing in Africa. Much of this research has included an analysis of the policies and agreements made by African states. However, there is little focus on the human rights violations which occur as a result of these policies. This research is on the human rights violations that occur due to overfishing rather than the science or politics behind it. Also, while there have been some comparative studies on different states, this research compares the legal systems in Guinea-Bissau and The Gambia, exploring differences between the civil and common law systems on fisheries regulations.

1.6 Methodology

The research will adopt a qualitative and desk research approach. Treaties, national laws and policies on fishing of Guinea-Bissau and The Gambia will be analysed in a comparative manner. The effects of these policies will be reviewed based on inference, statistics and reports found. A report by the African Confederation of Professional Organisations of Artisanal Fisheries (CAOPA), a European Commission report on value chain analysis

⁴⁴ S Bourmaud, 'Who is Really Pirating the Seas? – A Study on European Overfishing in the Gulf of Guinea' (Master's thesis, University of Akureyri 2020) 45.

⁴⁵ M Bi and others 'Evaluation of Sustainable Utilization of African Marine Fishery Resources' (2023) 8 Multidisciplinary Digital Publishing Institute (MDPI) 1.

for development, Food and Agriculture Organisation (FAO) legal reports and other sources serve as sources of secondary data. National laws and policies are reviewed based on a qualitative content analysis. Since no primary data was obtained, all data used are from secondary sources. The research focuses on human rights violations due to the content and/or implementation of laws and policies. Recommendations on how to mitigate these violations are made.

The West African region was chosen as a region of study because it highly depends on the fisheries sector as a primary protein source and for the livelihoods of about seven million people.⁴⁶ Overfishing in West Africa poses a direct threat to the economies of the states within the region and the fish stocks for generations.⁴⁷ Guinea-Bissau and The Gambia were chosen as case studies because of the lived experiences of the researcher and the dependence of both states on the fisheries sector. Also, the difference in their legal systems, Guinea-Bissau being under the civil law system while The Gambia is under the common law system, broadens the basis for comparison. Comparing the two states allows for an analysis of how similar challenges manifest under different legal and political contexts. It also allows for an analysis of how the different legal and political contexts affect the realisation of human rights.

1.7 Theoretical framework

This research uses a meta-colonial and neo-colonial theoretical framework to show colonial dynamics and power relations. Meta-colonialism is the concept of colonising minds rather than territories,⁴⁸ while neo-colonialism is ‘the economic and political policies by which a great power indirectly maintains or extends its influence over other areas or people’.⁴⁹ While neo-colonialism has

⁴⁶ J Long, ‘Addressing the issue of overfishing in West Africa’ (*The Borgen Project*, 5 July 2021) <<https://borgenproject.org/overfishing-in-west-africa/#:~:text=West%20African%20people%20rely%20on%20fish%20as%20a,African%20population%20risks%20food%20insecurity%20and%20increased%20poverty>> accessed 18 September 2025.

⁴⁷ *ibid.*

⁴⁸ MA Al-Aghberi, ‘Metacolonialism: A Metamorphosis in Power Relations and Discourse’ (2023) 5 *Albaydha University Journal* 325.

⁴⁹ Merriam-Webster, ‘Neocolonialism’, (Online edn, Merriam-Webster 2026) <www.merriam-webster.com/dictionary/neocolonialism> accessed 4 June 2026.

to do with political and governmental control, meta-colonialism is of the mind and can impact the mindset of entire populations. This research examines how power imbalances between stronger economic powers such as the EU and China and economically weaker states such as Guinea-Bissau and The Gambia affect fisheries policies and international agreements. It also explores the relevance of community based management of common resources as opposed to the tragedy of the commons. The research also engages a historical framework in comparing and analysing national laws and policies.

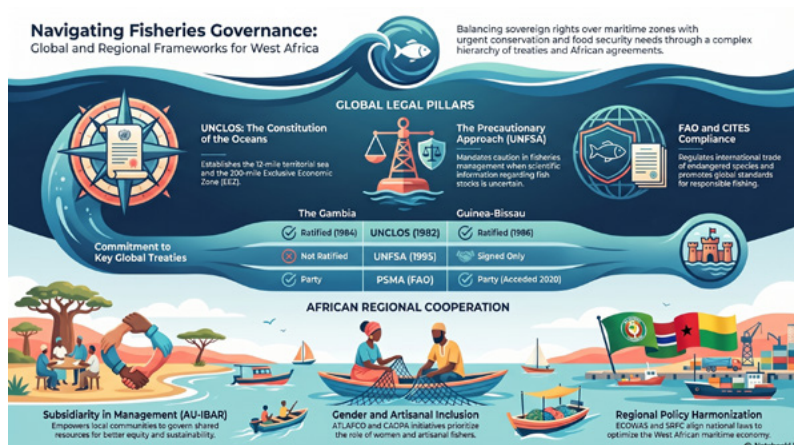
1.8 Structure

This dissertation is divided into five chapters. Chapter 1 is the introduction. Chapter 2 examines the international framework on fishing which either one or both states are parties to while Chapter 3 is on national laws and policies on fishing in Guinea-Bissau and The Gambia. Chapter 4 is on the human rights violations due to overfishing in Guinea-Bissau and The Gambia and Chapter 5 provides a summary of the findings, conclusion and recommendations.

1.9 Limitation of study

The research is limited to the happenings in Guinea-Bissau and The Gambia. It is also limited to a desk research as no field work was carried out. This might limit access to current enforcement practices, on the ground realities and lived experiences of fishers, however, reports by leading organisations and news articles entailing interviews with fishers will be reviewed to mitigate the limitations. Also, statistics and facts used will be based on secondary data.

2. International instruments and mechanisms on fisheries



2.1 Introduction

There is a robust legal framework on fishing at various levels. This chapter will discuss legal instruments and mechanisms on fishing at the global and regional levels. Both soft international law and treaties ratified by Guinea-Bissau and/or The Gambia will be discussed, highlighting their roles and legal status in international relations.

2.2 Global level

2.2.1 United Nations Convention on the Law of the Sea, 1982 (UNCLOS)

The most widely ratified treaty on the law of the sea is the United Nations Convention on the Law of the Sea (UNCLOS), adopted in Montego Bay on 10 December 1982.⁵⁰ UNCLOS is a foundational treaty on fishing, it entered into force on 16 November 1994 and has 170 parties to it.⁵¹ The Gambia ratified the treaty on 22 May 1984 while Guinea-Bissau ratified it on 25 August 1986.⁵² UNCLOS stipulates the boundaries of territorial sea, the EEZ and the high seas. It also lays out the types of activities which can be carried out in those areas and how states are to relate with one another. Article 2 of UNCLOS describes the territorial sea as the area which the coastal state has sovereignty beyond its land territory and internal waters. In the case of archipelagic states, the area extends beyond the archipelagic waters. The breadth of the territorial sea must not exceed 12 nautical miles⁵³ and its outer limit is the line at which every point is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.⁵⁴ Internal waters are described as waters on the landward side of the baseline of the territorial sea, except otherwise provided by UNCLOS.⁵⁵ EEZ is an area beyond and adjacent to the territorial sea.⁵⁶ The breadth of EEZ does not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial

⁵⁰ UN Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS); United Nations Treaty Collection, 'Multilateral treaties deposited with the Secretary-General: Chapter XXI: Law of the Sea' <<https://treaties.un.org/Pages/Treaties.aspx?id=21&subid=A&clang=en>> accessed 18 August 2025.

⁵¹ United Nations Treaty Collection, 'Chapter XXI, Law of the Sea' <https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=en> accessed 18 August 2025.

⁵² *ibid.*

⁵³ UNCLOS, art 3.

⁵⁴ *ibid* art 4.

⁵⁵ *ibid* art 8.

⁵⁶ *ibid* art 55.

sea is measured.⁵⁷ Both the coastal state and other states have rights and freedoms in EEZ.⁵⁸ International waters, also known as the high seas, are the area of the sea that does not include the territorial sea or EEZ.⁵⁹

UNCLOS also regulates the conservation of living resources within the aquatic ecosystem.⁶⁰ Coastal states have the responsibility of determining allowable catch of living resources within its EEZ.⁶¹ They must also take into account best scientific evidence available to them,⁶² maintain and/or restore aquatic species,⁶³ consider species which are associated or dependent on harvested species⁶⁴ and ensure international co-operation.⁶⁵ The treaty also regulates the utilisation of the aquatic resources,⁶⁶ stocks occurring within the EEZ of neighbouring states,⁶⁷ highly migratory species⁶⁸ and other aquatic species.⁶⁹ These measures ensure the sustainable conservation and management of aquatic resources. This is essential because UNCLOS is a widely ratified treaty, as such, many states are bound by its provisions.

2.2.2 United Nations Fish Stocks Agreement 1995 (UNFSA)

The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA) is a multilateral agreement that ensures the conservation and management of migratory and straddling fish stocks due to their trans-boundary nature.⁷⁰ The agreement establishes that the

⁵⁷ UNCLOS, art 57.

⁵⁸ *ibid* art 55.

⁵⁹ Seaplify, 'Where are International Waters?' (*Seaplify*, 19 February 2024) <<https://blog.seaplify.com/where-are-international-waters/>> accessed 6 June 2025.

⁶⁰ UNCLOS, art 61.

⁶¹ *ibid* art 61(1).

⁶² *ibid* art 61(2).

⁶³ *ibid* art 61(3).

⁶⁴ *ibid* art 61(4).

⁶⁵ *ibid* art 61(5).

⁶⁶ *ibid* art 62.

⁶⁷ *ibid* art 63.

⁶⁸ *ibid* art 64.

⁶⁹ *ibid* arts 65–67.

⁷⁰ Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (adopted 4 August 1995, entered into force 11 December 2001) 2167 UNTS 3 (UNFSA); United Nations Division for Ocean Affairs and the Law of the Sea, 'UNFSA Overview' (*United Nations*) <www.un.org/oceancapacity/UNFSA> accessed 22 August 2025.

management of those fish stocks must be based on the precautionary approach and the best available scientific information.⁷¹ The agreement also recognises special requirements of developing states and advocates for assistance and equitable participation.⁷² When fully implemented, these attributes help to prevent overfishing.

UNFSA consists of six main themes and objectives. The main objective is to 'ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention'.⁷³ The sustainability of resources is crucial and one of the ways of achieving this is by optimally utilising resources.⁷⁴ Another objective of the agreement is to address prevailing high seas fisheries challenges. The agreement recognises the problems identified in chapter 7, programme area C of Agenda 21 adopted by the UN Conference on Environment and Development.⁷⁵ These problems include the management of high seas fisheries, over-utilisation of resources, unregulated fishing, over-capitalisation, excessive fleet size, vessel reflagging, insufficient selective gear, unreliable databases and lack of sufficient co-operation between states.⁷⁶

A dominant theme is the use of the precautionary approach which mandates caution in fishing and fisheries management, especially when scientific information is uncertain.⁷⁷ Another theme is international co-operation through Regional Fisheries Management Organisations (RFMOs).⁷⁸ This was in a bid to foster co-operation between coastal states and states fishing on the high seas.⁷⁹ The agreement also includes an ecosystem approach and biodiversity protection by calling for measures to avoid adverse impacts on the marine environment, preservation of biodiversity, maintenance of the integrity of marine ecosystems and the minimisation of the risk of long-term or irreversible effects of fishing

⁷¹ Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

⁷² UNFSA, preamble.

⁷³ *ibid* art 2.

⁷⁴ *ibid* art 5(a).

⁷⁵ *ibid* preamble.

⁷⁶ *ibid*.

⁷⁷ *ibid* art 6.

⁷⁸ *ibid* art 8.

⁷⁹ *ibid*.

operations.⁸⁰ This includes impact assessment on species which are not the target stocks, but which belong to the same ecosystem or are associated with or dependent on the target stocks.⁸¹ Lastly, the agreement has a theme of compatibility of measures.⁸² This implies that national measures established for the high seas must be compatible with the principles laid out in the agreement.

The UNFSA lays out essential principles in fisheries management and conservation. If such principles are adhered to by states, fish stocks would be better managed and the challenge of overfishing would be minimised. Like many international agreements, the normative framework is great, however, it is difficult to monitor and enforce compliance. This is especially difficult in developing states with limited resources, equipment and infrastructure. Although Guinea-Bissau has signed, but not ratified UNFSA, The Gambia has neither signed nor ratified this agreement. Not ratifying this agreement could lead to the failure to manage fish stocks sustainably, overfishing and increased conflict between fishing nations. This could ultimately harm the health of marine ecosystems, reduce long-term fishing opportunities and threaten food security and the livelihoods of communities dependent on fish. States that do not ratify the UNFSA heighten the danger of the tragedy of the commons. There is little reason not to ratify the agreement as it reflects a state's commitment to sustainable aquatic resource management. While implementation may be challenging, it can be done progressively.

2.2.3 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) entered into force on 1 July 1975. CITES has a large membership of 185 parties.⁸³ The Gambia and Guinea-Bissau are both parties to the convention having acceded on 26 August 1977 and 16 May 1990, respectively.⁸⁴

⁸⁰ UNFSA, preamble.

⁸¹ *ibid* art 5(d-g).

⁸² *ibid* art 7(2).

⁸³ International Union for Conservation of Nature, 'Convention on International Trade in Endangered Species of Wild Fauna and Flora' (CITES) <<https://iucn.org/our-work/informing-policy/international-policy/convention-international-trade-endangered-species>> accessed 19 August 2025.

⁸⁴ Convention on International Trade in Endangered Species of Wild Fauna and Flora, 'List of Contracting Parties' <<https://cites.org/eng/disc/parties/chronolo.php>> accessed 19 August 2025.

CITES was established in order to foster collaboration in safeguarding nature and natural resources that support human well-being and livelihoods.⁸⁵ One of its goals is to establish parties' commitment to sustainable resource use and informed decision making.⁸⁶ CITES guides the trade of species in three categories; those threatened with extinction which are or may be affected by trade, those which although not necessarily now threatened with extinction may become so unless traded under strict regulation and species which any party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation.⁸⁷

Although CITES does not exclusively deal with fishing, it is relevant as the fishing of certain species is regulated. For instance, tuna, which is a highly consumed species, is regulated by five RFMOs.⁸⁸ These RFMOs oversee the management of tuna in their respective ocean regions by establishing and implementing legal frameworks among member states.⁸⁹ Trade is a key factor in overfishing because of the laws of demand and supply. The high demand for fish and fish products for both human and animal consumption is a key factor in the overexploitation of aquatic resources. States and individuals seeking revenue from fishing may fail to consider adverse effects of overexploitation in a bid to make as much profit as possible. The rules and regulations laid down by CITES helps in fisheries management. Adherence to legal framework such as CITES is essential to maintaining sustainable exploitation of fish.

⁸⁵ Convention on International Trade in Endangered Species of Wild Fauna and Flora, 'List of Contracting Parties'.

⁸⁶ *ibid.*

⁸⁷ CITES, art II.

⁸⁸ Oregon State University, 'Unit 6 – Introduction to International Fisheries Management' (Oregon State University) <<https://open.oregonstate.edu/mlpsm/chapter/unit-6-introduction-to-international-fisheries-management/#:~:text=International%20fisheries%20are%20regulated%20by%2017%20Regional%20Fisheries,species%20but%20sometimes%20on%20ecosystem%20or%20habitat%20also>> accessed 19 August 2025.

⁸⁹ International Seafood Sustainability Foundation (ISSF), 'Regional Fisheries Management Organisations (RFMOs)' (ISSF) <www.issf-foundation.org/tuna-stocks-and-management/fisheries-management/regional-fisheries-management-organizations-rfmos/> accessed 22 September 2025.

Guinea-Bissau and The Gambia have implemented provisions of CITES at the national level through the normative protection of specific fish species and international co-operation. The Gambia criminalises the fining of sharks, skates or rays or the dumping of their carcasses in the fisheries waters of The Gambia⁹⁰ while in Guinea-Bissau, the capturing of endangered species is prohibited.⁹¹

2.2.4 The Food and Agriculture Organisation of the United Nations (FAO)

The FAO is a specialised agency of the UN with the aim of defeating hunger.⁹² The Gambia became a member state on 22 November 1965 while Guinea-Bissau became a member state on 26 November 1973.⁹³ Although FAO is open to the membership of regional economic integration organisations, no African organisation is a member. The only member organisation is the EU.⁹⁴

The goal of the agency is to achieve food security and to ensure that people have regular access to enough high quality food to lead active, healthy lives.⁹⁵ The organisation works to achieve its goal through various offices and divisions.⁹⁶ FAO has also drafted treaties and agreements which have come into force such as FAO Compliance Agreement 1993 (Compliance Agreement), FAO Code of Conduct for Responsible Fisheries 1995 (Code of Conduct) and the PSMA.⁹⁷ The agency also adopted FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing⁹⁸ which subsequently gave rise to the International Plan of Action for Reducing Incidental Catch of Seabirds in

⁹⁰ Fisheries Regulations 2008, reg 73.

⁹¹ Decree-Law no 10/2011 of Guinea-Bissau, art 27.

⁹² Food and Agriculture Organization of the United Nations, 'About FAO' (FAO) <www.fao.org/about/about-fao/en/> accessed 25 August 2025.

⁹³ Food and Agriculture Organization of the United Nations, 'Membership of FAO' (FAO) <www.fao.org/legal/home/Membership-of-FAO/en> accessed 25 August 2025.

⁹⁴ *ibid.*

⁹⁵ *ibid.*

⁹⁶ Food and Agriculture Organization of the United Nations, 'FAO Organizational chart' <www.fao.org/about/org-chart/en/> accessed 25 August 2025.

⁹⁷ Food and Agriculture Organization of the United Nations, 'FAO Treaties Database' <www.fao.org/treaties/results/en/?search=adv&subj_coll=ArticleXIV> accessed 4 June 2026.

⁹⁸ Food and Agriculture Organization of the United Nations, 'Illegal, Unreported and Unregulated (IUU) fishing' <www.fao.org/iuu-fishing/international-framework/ip-ua-iuu/en/> accessed 4 June 2026.

Longline Fisheries,⁹⁹ International Plan of Action for the Conservation and Management of Sharks¹⁰⁰ and FAO International Plan of Action for the Management of Fishing Capacity.¹⁰¹ The organisation has also established other agencies such as FAO Coastal Fisheries Initiative, Fisheries Committee for the Eastern Central Atlantic and the African Association of Fish Importers and Exporters which all play a role in fisheries governance.

Neither Guinea-Bissau nor The Gambia is a party to the Compliance Agreement,¹⁰² however, The Gambia is a party to both the Code of Conduct and PSMA.¹⁰³ On the other hand, Guinea-Bissau is not a party to the Code of Conduct, but acceded to PSMA in 2020.¹⁰⁴ FAO policies and initiatives are focused on food security which is a fulfilment of the right to food. Many initiatives are community centred, educating and empowering those in the local fisheries industry. This enhances sustainable national fisheries management and reduces overfishing. For instance, the Code of Conduct lays down 19 general principles for fisheries management.¹⁰⁵ These principles are integrated from binding international law, making it a 'one stop shop' for internationally recognised best management practices in fisheries.¹⁰⁶ States that comply with these principles have a greater chance of ensuring sustainable management of aquatic resources. In Chapter 3, some of the principles are merged to form 13 requirements on the basis of which national fishing laws and policies are analysed.

⁹⁹ Food and Agriculture Organization of the United Nations, 'International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries' <www.fao.org/ipoa-seabirds/en> accessed 4 June 2026.

¹⁰⁰ Food and Agriculture Organization of the United Nations, 'International Plan of Action for Conservation and Management of Sharks' <www.fao.org/ipoa-sharks/en/> accessed 4 June 2026.

¹⁰¹ Food and Agriculture Organization of the United Nations, 'International Plan of Action for the Management of Fishing Capacity' <www.fao.org/4/x3170e/x3170e04.htm> accessed 4 June 2026.

¹⁰² Food and Agriculture Organization of the United Nations, 'FAO Treaties Database' (FAO) <www.fao.org/treaties/results/details/en/c/TRE-000023/> accessed 23 September 2025.

¹⁰³ Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA) (adopted 22 November 2009, entered into force 5 June 2016) <www.fao.org/treaties/results/details/en/c/TRE-000003/> accessed 22 September 2025.

¹⁰⁴ *ibid.*

¹⁰⁵ FAO Code of Conduct, art 6.

¹⁰⁶ G Hosch, 'Analysis of the implementation and impact of the FAO Code of Conduct for Responsible Fisheries since 1999' (Food and Agriculture Organisation of the United Nations 2009) 75.

2.2.5 World Organisation for Animal Health (WOAH)

The World Organisation for Animal Health (WOAH) is an intergovernmental organisation that focuses on the dissemination of information on animal diseases, improving animal health and building a safer, healthier and more sustainable world.¹⁰⁷ Both Guinea-Bissau and The Gambia are member states of the organisation.¹⁰⁸ The organisation participates in fisheries management by developing and updating scientifically sound standards, organising capacity-building programmes and improving global response to emerging diseases.¹⁰⁹ WOAH plays a critical role by providing technical and expert information on the management of aquatic resources.

2.3 Regional level

2.3.1 African Union Inter-African Bureau for Animal Resources (AU-IBAR)

The African Union Inter-African Bureau for Animal Resources (AU-IBAR) operates as a technical office within the Department of Agriculture, Rural Development, Blue Economy and Sustainable Environment of the African Union (AU) Commission.¹¹⁰ AU-IBAR's mission is the coordination and support of member states in harnessing the potential of animals, including fisheries and aquaculture, as valuable resources for human wellbeing and economic development.¹¹¹ The Gambia became a member state of the AU on 9 March 1965 while Guinea-Bissau became a member state on 19 November 1973.¹¹²

¹⁰⁷ G Hosch, 'Analysis of the implementation and impact of the FAO Code of Conduct for Responsible Fisheries since 1999' (Food and Agriculture Organisation of the United Nations 2009) 75.

¹⁰⁸ World Organisation for Animal Health (WOAH), 'Members' (WOAH) <www.woah.org/en/who-we-are/members/> accessed 22 September.

¹⁰⁹ World Organisation for Animal Health, 'Placing aquatic animal health in the global agenda' (World Organisation for Animal Health, 19 July 2024) <www.woah.org/en/article/placing-aquatic-animal-health-in-the-global-agenda/#:~:text=WOAH's%20Aquatic%20Animal%20Health%20Strategy%20was%20designed%20to,trade%20and%20improve%20aquatic%20animal%20health%20and%20welfare> accessed 22 September 2025.

¹¹⁰ African Union Interafrican Bureau for Animal Resources, 'Who we are' (African Union Interafrican Bureau for Animal Resources) <www.au-ibar.org/about-us/overview> accessed 21 August 2025.

¹¹¹ *ibid.*

¹¹² African Union, 'Member States' (African Union) <https://au.int/en/member_states/countryprofiles2> accessed 21 August 2025.

AU-IBAR operates within various AU frameworks and is guided by strategies such as Animal Health Strategy for Africa; Animal Welfare Strategy for Africa; Africa Blue Economy Strategy; and Policy Framework and Reform Strategy for Fisheries and Aquaculture.¹¹³ The technical office is guided by the principles of subsidiarity and complementarity. They believe that ‘activities related to animal resources should occur at the most local level feasible’ and only assume responsibility for areas where national or sub-regional bodies are limited.¹¹⁴ They also assume responsibility in areas where they possess a ‘distinct comparative and strategic advantage’.¹¹⁵

AU-IBAR has shown great insight into the importance of resource control at local levels. This aligns with Ostrom’s view on community governance of shared resources.¹¹⁶ This view is crucial, not only because it empowers those at the grassroots, but also because when applied correctly, it ensures equity and sustainability. The technical office has influenced fisheries management through policy support¹¹⁷ and various initiatives such as global positioning system tracking of canoes,¹¹⁸ the Fisheries Transparency Initiative¹¹⁹ and regional workshops.¹²⁰ These initiatives strengthen regional co-operation and national fisheries management. One of the ways Guinea-Bissau and The Gambia fulfil the mission of

¹¹³ African Union Interafrican Bureau for Animal Resources, ‘Operating Frameworks’ (*African Union Interafrican Bureau for Animal Resources*) <www.au-ibar.org/about-us/overview> accessed 21 August 2025.

¹¹⁴ African Union Interafrican Bureau for Animal Resources, ‘Guiding Principle: Subsidiarity’ (*African Union Interafrican Bureau for Animal Resources*) <www.au-ibar.org/about-us/overview> accessed 21 August 2025.

¹¹⁵ *ibid.*

¹¹⁶ E Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge University Press 1990).

¹¹⁷ African Union Interafrican Bureau for Animal Resources, ‘Strengthening institutional capacity to enhance governance of the fisheries sector in Africa’ (*African Union Interafrican Bureau for Animal Resources*) <www.au-ibar.org/projects/strengthening-institutional-capacity-enhance-governance-fisheries-sector-africa> accessed 23 September 2025.

¹¹⁸ Food and Agriculture Organisation of the United Nations, ‘Report of the Improved Regional Fisheries Governance in Western Africa (PESCAO) Component 3 Regional Meeting’ (United Nations 2023).

¹¹⁹ S Biermann, ‘AU-IBAR and FITI sign collaboration agreement to advance fisheries transparency in African Union Member States’ (*Fisheries Transparency Initiative*, 21 January 2025) <<https://fiti.global/au-ibar-and-fiti-sign-collaboration-agreement-to-advance-fisheries-transparency-in-african-union-member-states>> accessed 23 September 2025.

¹²⁰ R Asmah, ‘Regional Framework on Environmental Management for Sustainable Aquaculture Development in Africa West Africa Region’ (African Union Interafrican Bureau for Animal Resources 2016).

the technical office is by being a part of initiatives such as the West Africa Regional Fisheries Program which aims to sustainably increase the wealth from fisheries by reducing IUU fishing and improving national fisheries management.¹²¹

2.3.2 The African Platform for Regional Institutions in Fisheries, Aquaculture, and Aquatic Systems (APRIFAAS)

The African Platform for Regional Institutions in Fisheries, Aquaculture, and Aquatic Systems (APRIFAAS) is a network of regional organisations dedicated to advancing fisheries and aquaculture governance in Africa.¹²² It was established under the African Fisheries Reform Mechanism and its Secretariat is hosted by AU-IBAR. APRIFAAS's mission is to support the execution of key policy frameworks and reform strategies for fisheries and aquaculture in Africa.¹²³ Their efforts are aligned with the Malabo Declaration on Accelerated Agricultural Growth and transformation for Shared Prosperity and Improved Livelihoods, AU Agenda 2063 and the Sustainable Development Goals.¹²⁴ The Network has 28 members and ten observers/development partners/projects.¹²⁵ Among the members are the Economic Community of West African States (ECOWAS), the Ministerial Conference on Fisheries Co-operation among African States bordering the Atlantic Ocean (ATLAFCO) and the Sub-Regional Fisheries Commission (SRFC). The Gambia and Guinea-Bissau are both members of these organisations.

¹²¹ World Bank Group, 'West Africa – Regional Fisheries Program Project: environmental assessment: Environmental and social management framework for Guinea-Bissau' (World Bank Group) <<https://share.google/At22yqzpmjgwsosA>> accessed 22 September 2025; Government of The Gambia, Ministry of Fisheries, Water Resources and National Assembly Matters, Department of Fisheries, 'Fisheries and Aquaculture Policy of The Gambia' (January 2018).

¹²² African Union Interafrican Bureau for Animal Resources, 'The African Platform for Regional Institutions in Fisheries, Aquaculture, and Aquatic Systems' (*African Union Interafrican Bureau for Animal Resources*) <www.au-ibar.org/platforms/the-afr*ican-platform-for-regional-institutions-in-fisheries-aquaculture-and-aquatic-systems> accessed 21 August 2025.

¹²³ *ibid.*

¹²⁴ *ibid.*

¹²⁵ *ibid.*

2.3.3 The Ministerial Conference on Fisheries Co-operation among African States bordering the Atlantic Ocean (ATLAFCO/COMHAFAT)

ATLAFCO is an intergovernmental organisation with the main objective of ‘effective and active co-operation between Member States for the preservation of fishery resources and the sustainable development of fisheries in the region’.¹²⁶ ATLAFCO consists of 22 member states from Morocco to Namibia including The Gambia and Guinea-Bissau.¹²⁷

ATLAFCO has several areas of intervention including exchanging information and harmonising the conservation and exploitation of fishery resources, exchanging information and co-ordinating the actions of member states on the assessment and conservation of highly migratory species, monitoring, surveillance and control of fishing vessels, and the development of fisheries production and production tools.¹²⁸ The organisation has also intervened in the marketing of fishery products, planning and financing of the fisheries sector, social condition of fishermen, strengthening vocational and technical training, development of marine scientific research, protection and preservation of the marine environment, and harmonisation of policies.¹²⁹ ATLAFCO also initiated the African Network of Women in Fisheries (RAFEP) with the aim of establishing co-operation among women in the ATLAFCO region.¹³⁰ This empowers women in the fisheries sector by providing an avenue to amplify their voices.

ATLAFCO is an important organisation as it brings together states bordering the Atlantic Ocean in an African context. The organisation recognises the importance of vocational and technical training as well as gender mainstreaming. In Guinea-Bissau and The Gambia, women play a vital role in the fisheries sector.¹³¹ Women engage in various activities such as the sale and processing of fish and fish products.

¹²⁶ Ministerial Conference on Fisheries Co-operation among African States Bordering the Atlantic Ocean, ‘Introduction’ (ATLAFCO) <<https://atlafo.org/en/presentation.php>> accessed 26 August 2025.

¹²⁷ *ibid.*

¹²⁸ Ministerial Conference on Fisheries Co-operation among African States Bordering the Atlantic Ocean, ‘Areas of Intervention’ (ATLAFCO) <<https://atlafo.org/en/domaines-intervention.php>> accessed 26 August 2025.

¹²⁹ *ibid.*

¹³⁰ Statut du Réseau Africain des Femmes de a Pêche a l’échelle de la COMHAFAT, art 2.

¹³¹ Author’s personal experience.

2.3.4 African Confederation of Professional Organisations of Artisanal Fisheries (CAOPA)

CAOPA consists of women and men in the artisanal maritime and continental fisheries of Africa.¹³² CAOPA has 29 organisations from over 20 African states, including Guinea-Bissau and The Gambia.¹³³ The objective of the organisation is ‘to stimulate an African dynamic for the development of sustainable artisanal fisheries for the well-being of artisanal fishing communities and to contribute to the food security of the populations’.¹³⁴

Similar to ATLAFCO, CAOPA recognises the role women play in the African fisheries sector. It engages in different programmes including promoting the role of women through policies to develop their activities.¹³⁵ The organisation’s focus on artisanal fisheries is also important in protecting the rights of artisanal fishers and preventing overexploitation by the artisanal fisheries sector. Although artisanal fishing is not the main source of overfishing, it also contributes to the overexploitation of fish. In The Gambia for instance, inland waters have been overfished due to the activities of artisanal and subsistence fishers.¹³⁶ Notwithstanding, overfishing by industrial vessels has a direct impact on the artisanal sector.

2.3.5 The Economic Community of West African States (ECOWAS)

ECOWAS was established to:

promote co-operation and integration, leading to the establishment of an economic union in West Africa in order to raise the living standards of its people, and to maintain and enhance economic stability, foster relations among member states and contribute to the progress and development of the African continent.¹³⁷

¹³² African Confederation of Professional Organisations of Artisanal Fisheries, ‘About Us’ (CAOPA) <<https://caopa.org/en/index.php/about-us/>> accessed 26 August 2025.

¹³³ *ibid.*

¹³⁴ *ibid.*

¹³⁵ *ibid.*

¹³⁶ MA Rice and others, ‘Aquaculture in The Gambia’ [2012] World Aquaculture 29.

¹³⁷ ECOWAS, ‘About ECOWAS’ (ECOWAS) <www.ecowas.int/about-ecowas/> accessed 26 August 2025.

ECOWAS operates through its various institutions and special agencies including the Regional Agency for Agriculture and Food (RAAF).¹³⁸ RAAF has the mandate to strengthen the technical capacity of the ECOWAS Commission, contribute to the capacity building of regional and national actors and coordinate the activities of the agricultural sector including the fisheries sector.¹³⁹ ECOWAS has also created a Comprehensive Strategic Framework for Sustainable Fisheries and Aquaculture Development. This was done to partly implement the ECOWAS Agricultural Policy 2025, the 2019 Annual Work Plan of the Directorate of Agriculture and Rural Development of ECOWAS and the Improved Regional Fisheries Governance Programme in West Africa (PESCAO).¹⁴⁰

The Gambia and Guinea-Bissau are both members of ECOWAS. The organisation plays a key role in the governance of activities within the sub-region. An advantage of ECOWAS is the existence of the Community Court of Justice. Actions on fishing can be instituted against the offending party under the ECOWAS Integrated Maritime Strategy (EIMS) and any other subsidiary legal instrument on fishing adopted by the Community.¹⁴¹ EIMS has five objective strategies, one of which is to optimise the ECOWAS maritime economy.¹⁴² This is done by developing and promoting fisheries and aquaculture,¹⁴³ and preventing, deterring and eliminating IUU fishing.¹⁴⁴ In *Ugwuaba v State of Senegal*,¹⁴⁵ the applicant who is an international businessman suffered economic loss on the sale of smoked fish due to the defendant state's closure of the Badiara border. The court found that Senegal had violated the human rights of the applicant to free movement of persons, goods and services.

¹³⁸ ECOWAS, 'Regional Agency for Agriculture and Food (RAAF)' (ECOWAS) <www.ecowas.int/special_agency/regional-agency-for-agriculture-and-food-raaf/> accessed 26 August 2025.

¹³⁹ Regional Agency for Agriculture and Food, 'About ARAA' (ARAA) <www.araa.org/fr/propos-de-laraa> accessed 26 August 2025.

¹⁴⁰ ECOWAS Commission, 'Comprehensive Strategic Framework for Sustainable Fisheries and Aquaculture Development' *Department of Agriculture, Environment and Natural Resources Directorate of Agriculture and Rural Development* (October 2019) 1-56.

¹⁴¹ ECOWAS, 'The Community Court of Justice' (ECOWAS) <www.ecowas.int/institutions/community-court-of-justice/> accessed 26 August 2025.

¹⁴² EIMS, strategic objective 4.

¹⁴³ *ibid* action 4.1.

¹⁴⁴ *ibid* action 4.2.

¹⁴⁵ ECW/CJ/JUD/25/19.

2.3.6 Sub-Regional Fisheries Commission (SRFC)

SRFC consists of West African states. Its objectives are to ‘harmonise the long term policies of member states in the preservation, conservation and exploitation of the fisheries resources for the benefit of the respective populations’.¹⁴⁶ The organisation plays a significant role in regulating fisheries management within the region. It also influences provisions of laws and policies. For example, one of the objectives of Decree-Law no 10/2011 of Guinea-Bissau is to harmonise Guinean fishing laws with those of other states in the SRFC.¹⁴⁷ The organisation also plays a key role in interacting with the global community. For instance, SRFC requested an advisory opinion from the International Tribunal for the Law of the Sea on its jurisdiction to render advisory opinions.¹⁴⁸

2.4 Conclusion

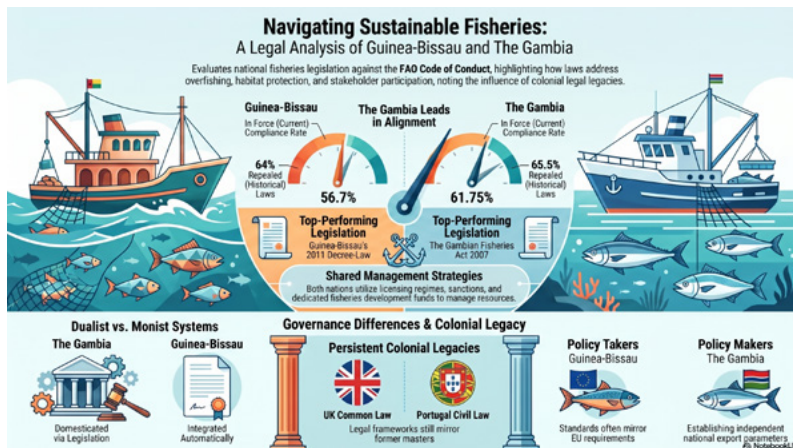
While Guinea-Bissau and The Gambia are parties and members of key international instruments and institutions, there must be adherence to and implementation of these instruments. Guinea-Bissau should ratify and implement PSMA and the Code of Conduct, while The Gambia should ensure compliance and implementation of these instruments. FAO has a great influence in Africa especially because Africa is one of the regions most affected by hunger. African regional economic integration organisations should become members of FAO to ensure that the African context is well represented and FAO initiatives are truly beneficial to Africa. Also, regional and sub-regional institutions and collaborations should be strengthened to empower African states individually and the region collectively.

¹⁴⁶ IW:Learn, ‘Sub-Regional Fisheries Commission’ (*IW:Learn*) <<https://iwlearn.net/iw-projects/organizations/394>> accessed 23 September 2025.

¹⁴⁷ Decree-Law no 10/2011, preamble.

¹⁴⁸ Letter from the Permanent Secretary of the Sub-Regional Fisheries Commission to the Registrar of the International Tribunal for the Law of the Sea (9 April 2013) <https://itlos.org/fileadmin/itlos/documents/cases/case_no.21/C21_Additional_Documents_SRFC.pdf#:~:text=The%20Sub-Regional%20Fisheries%20Commission%20%28SRFC%29%20is%20an%20intergovernmental,Gambia%2C%20Guinea%2C%20Guinea-Bissau%2C%20Mauritania%2C%20Senegal%20and%20Sierra%20Leone> accessed 23 September 2025.

3. An analysis of national laws and policies



3.1 Introduction

This chapter analyses the fishing laws and policies in Guinea-Bissau and The Gambia, assessing their alignment with the key principles of responsible fisheries outlined in article 6 of the FAO Code of Conduct. The principles include sustainable management of aquatic ecosystems, prevention of overfishing, protection of habitats and fish populations, science-based and traditional knowledge informed decision making, international co-operation, use of precautionary and environmentally safe practices, effective monitoring, control and enforcement, transparent governance with stakeholder involvement, promotion of responsible aquaculture and the protection of human rights. The chapter aims to evaluate the extent to which national legal frameworks support long term sustainability, ecological conservation and socio-economic responsibility in the fisheries sector.

3.2 Fishing laws and policies of Guinea-Bissau

Six laws will be analysed based on the aforementioned principles. Although some of the laws discussed have been repealed, it is important to have a historical context of the laws in the country. This enables a comparison between the old regime of laws and the regime to see which one is more compliant with the standards of article 6 of the Code of Conduct. Annexes 1 and 2 show the compliance rates of each analysed law.

3.2.1 Decree-Law no 2/86 of 29 March

The first law to be analysed is the Decree-Law no 2/86.¹⁴⁹ It is one of the oldest fishing laws of Guinea-Bissau. It ushered in a new era by replacing outdated colonial legislation.¹⁵⁰ The law was drafted in line with UNCLOS and aimed at fostering international co-operation¹⁵¹ and inter-departmental co-operation between the different relevant national institutions.¹⁵² The law also aimed at ensuring the sustainable exploitation of marine resources for the benefit of the Guinean people.¹⁵³ It empowers the Secretary of State for Fisheries to develop and periodically update fisheries management and exploitation plans.¹⁵⁴ The law also enables the establishment of a fisheries development fund.¹⁵⁵ This fund is to be financed by up to 20% of fishing fees from foreign licences, 20% of fines and proceeds from the sale of confiscated goods and voluntary contributions from international or foreign development assistance institutions.¹⁵⁶ The management and exploitation plans as well as the development fund serve as means to ensuring effective conservation and management of the aquatic ecosystems of Guinea-Bissau. The law mandates the Secretary of State for Fisheries to consult with national fishermen or their representatives and other stakeholders during the preparation of the management and exploitation plans.¹⁵⁷ This fulfils the criterion of transparent decision making and stakeholder participation.

¹⁴⁹ Decreto-Lei n.º 2/86 de 29 Março (Decree-Law no 2/86).

¹⁵⁰ *ibid* preamble.

¹⁵¹ *ibid* art 17.

¹⁵² *ibid* preamble.

¹⁵³ *ibid*.

¹⁵⁴ *ibid* art 16.

¹⁵⁵ *ibid* art 19.

¹⁵⁶ *ibid*.

¹⁵⁷ *ibid* art 16(4).

Similar provisions of the law fulfil the criteria of sustainability and prevention of overfishing and excess fishing capacity. The law prohibits industrial fishing vessels from operating within the territorial sea,¹⁵⁸ however, there can be special restrictive exceptions for periods not exceeding one year.¹⁵⁹ This is a way to prevent overfishing in the territorial sea, which in turn ensures sustainability. The law also dictates that unauthorised foreign vessels in Guinean waters must have their fishing gear stowed.¹⁶⁰ This is a means of preventing IUU fishing and ensuring sustainability for future generations. The law also establishes reporting requirements of foreign industrial and semi-industrial vessels.¹⁶¹ Similarly, all foreign vessels must provide catch data, while industrial and semi-industrial vessels must maintain up-to-date fishing log-books.¹⁶² This not only monitors and controls the activities of vessels in Guinean waters, but also deters overfishing and ensures sustainability. The strict licensing regime set out by the law also monitors, controls and prevents overfishing.¹⁶³ The law sets sanctions for infractions.¹⁶⁴ These sanctions are means of enforcing compliance with the law, preventing overfishing, protecting fish populations and ensuring sustainability. There are also sanctions for use of illegal fishing gear and fishing practices.¹⁶⁵ The law also protects human rights by creating a more favourable legal regime for national fishing vessels and artisanal fishing activities.¹⁶⁶ The recognition of the right to participation also protects human rights.¹⁶⁷

This law was repealed by the 2011 legislation. Although it contains great provisions on responsible fisheries, there was a need to have more up to date legislation to meet contemporary needs and tackle current challenges.

¹⁵⁸ Decreto-Lei n.o 2/86 de 29 Março (Decree-Law no 2/86), art 10.

¹⁵⁹ *ibid.*

¹⁶⁰ *ibid* art 11.

¹⁶¹ *ibid* art 13.

¹⁶² *ibid* art 15.

¹⁶³ *ibid* ch II, s I.

¹⁶⁴ *ibid* title V (arts 40–48).

¹⁶⁵ *ibid* art 42.

¹⁶⁶ *ibid* preamble.

¹⁶⁷ *ibid* art 16(4).

3.2.2 Decree no 4/96 of 2 September

The second law examined is Decree no 4/96.¹⁶⁸ The decree's main theme is sustainable management and valorisation of the state's marine resources.¹⁶⁹ It focuses on artisanal and industrial fishing¹⁷⁰ but also discusses scientific and recreational fishing.¹⁷¹ The decree complements the 1986 decree-law, which was the main fishing law at the time.¹⁷² The decree lays out an extensive licensing regime for industrial¹⁷³ and artisanal fishing.¹⁷⁴ This facilitates effective monitoring, control and enforcement. A chapter of the decree is dedicated to conservation and management of fisheries and fish habitats.¹⁷⁵ The decree dictates the minimum mesh size, arrangement of fishing gear and other requirements of fishing gear and practices.¹⁷⁶ It also dictates the minimum size of catch of species,¹⁷⁷ protects endangered species¹⁷⁸ and has restrictions on fishing zones.¹⁷⁹ These measures ensure effective conservation, management and sustainability. They also prevent overfishing and excess fishing capacity while protecting fish populations and fisheries habitats. The reporting requirements,¹⁸⁰ inspection and surveillance system¹⁸¹ and penalties¹⁸² laid down by the decree also enable monitoring and control of vessels. This law has also been repealed.

3.2.3 Decree-Law no 6-A/2000 of 22 August

The Decree-Law no 6-A/2000¹⁸³ was enacted due to the urgent need to rationalise fishing activities, enhance vigilance and strict control over maritime waters and significantly increase penalties for infringements, particularly for unlicensed fishing vessels.¹⁸⁴ The law recognises the importance of the fishing sector to the

¹⁶⁸ Decreto no 4/96 de 2 de Setembro (Decree no 4/96).

¹⁶⁹ *ibid* pt I.

¹⁷⁰ *ibid* art 3.

¹⁷¹ *ibid* art 5.

¹⁷² *ibid* art 65.

¹⁷³ *ibid* ch IV.

¹⁷⁴ *ibid* ch V.

¹⁷⁵ *ibid* ch VII.

¹⁷⁶ *ibid* arts 57–60 and annex V.

¹⁷⁷ *ibid* art 61 and annex V.

¹⁷⁸ *ibid* art 62.

¹⁷⁹ *ibid* art 63.

¹⁸⁰ *ibid* art 43.

¹⁸¹ *ibid* arts 32, 47–52.

¹⁸² *ibid* arts 64–66.

¹⁸³ Decreto-Lei n.o 6-A/2000 de 22 de Agosto (Decree-Law no 6-A/2000).

¹⁸⁴ *ibid* preamble.

Guinean community by declaring fishery resources as a national heritage.¹⁸⁵ The state's primary objective of managing and regulating these resources is rational exploitation in the interest of the national community.¹⁸⁶ The law also emphasises state ownership of fishing rights and establishes ways in which the state can exercise this authority.¹⁸⁷ The law categorises fishing based on its purpose. It defines subsistence fishing,¹⁸⁸ commercial fishing,¹⁸⁹ scientific fishing¹⁹⁰ and sport or recreational fishing.¹⁹¹ Artisanal and industrial fishing are distinguished by vessel characteristics and fishing gear aligned with sub-regional standards.¹⁹²

The law establishes that the responsible department would implement fisheries management plans based on scientific and economic information.¹⁹³ It also promotes international co-operation and enables the department to implement regulations.¹⁹⁴ These regulations include prohibition or restriction of fishing in certain habitats, of certain species and the use of certain vessels and gears.¹⁹⁵ The law also establishes a regime on fishing licences,¹⁹⁶ enforcement and penalties,¹⁹⁷ data collection¹⁹⁸ and inspection.¹⁹⁹ The law establishes strict regulations on quality control of exported fish and fish products.²⁰⁰ It also regulates the establishment of marine aquaculture.²⁰¹ The law specifically prohibits industrial vessels from fishing in certain areas except in rare and authorised circumstances.²⁰² These measures fulfil the requirements of sustainable and effective conservation and management of aquatic ecosystems, prevention of overfishing and excess fishing capacity, protection of fish populations and fisheries habitat, international co-operation, selective and environmentally

¹⁸⁵ Decreto-Lei n.o 6-A/2000 de 22 de Agosto (Decree-Law no 6-A/2000), art 1(2).

¹⁸⁶ *ibid.*

¹⁸⁷ *ibid.*

¹⁸⁸ *ibid* art 4(2).

¹⁸⁹ *ibid* art 4(3).

¹⁹⁰ *ibid* art 4(4).

¹⁹¹ *ibid* art 4(5).

¹⁹² *ibid* art 5.

¹⁹³ *ibid* art 8.

¹⁹⁴ *ibid* art 11.

¹⁹⁵ *ibid* arts 12, 26 and 27.

¹⁹⁶ *ibid* arts 13–22.

¹⁹⁷ *ibid* arts 39–65.

¹⁹⁸ *ibid* art 29.

¹⁹⁹ *ibid* art 38.

²⁰⁰ *ibid* arts 33–36.

²⁰¹ *ibid* art 32.

²⁰² *ibid* art 25.

safe fishing gear and practices, monitoring, control and enforcement, maintenance of nutritional value, quality and safety of fish and fish products, and responsible aquaculture. The requirement that the fisheries management plans should be based on available scientific information²⁰³ makes this the first law to fulfil the requirement of science-based decisions. Although the law is silent on traditional knowledge, the recognition of science-based decisions shows the progressive nature of the law. This law was also repealed by the 2011 Decree-Law.

3.2.4 Decree-Law no 10/2011 of 7 June

This Decree-Law²⁰⁴ establishes a new regime of fishing laws in Guinea-Bissau. It revises the law to conform to some of the principles of the Code of Conduct and obligations under the Convention on Biological Diversity.²⁰⁵ It also harmonises fisheries policies and legislation with other member states of the SRFC and repeals Decree-Law no 6-A/2000 and previous laws which are incompatible with the new law such as Decree-Law no 2/86 and Decree-Law no 4/94.²⁰⁶ The law is based on four general principles. The first is the principle of sustainable development²⁰⁷ and the second is the principle of protecting the interest of fishing communities.²⁰⁸ The third principle is that of prevention and precaution,²⁰⁹ and the fourth principle is that of co-operation in the management of shared resources.²¹⁰

One of the ways in which the Decree-Law is innovative is that it defines by catch and total allowable catch.²¹¹ This not only prevents overfishing, but also prevents excess fishing capacity. Similar to the 2000 law, this Decree-Law declares aquatic biological resources within Guinea-Bissau's jurisdiction as national heritage.²¹² These resources can only be exploited with the permission of the state.²¹³ This indicates monitoring, control and enforcement

²⁰³ Decreto-Lei n.o 6-A/2000 de 22 de Agosto (Decree-Law no 6-A/2000), art 8.

²⁰⁴ Decreto-Lei n.o 10/2011 de 7 de Junho (Decree-Law no 10/2011).

²⁰⁵ *ibid* preamble.

²⁰⁶ *ibid* preamble and art 83.

²⁰⁷ *ibid* art 3(a).

²⁰⁸ *ibid* art 3(b).

²⁰⁹ *ibid* art 3(c).

²¹⁰ *ibid* art 3(d).

²¹¹ *ibid* art 4.

²¹² *ibid* art 5(1).

²¹³ *ibid* art 5(2).

of fisheries regulations. The licensing system,²¹⁴ surveillance and control system,²¹⁵ and sanctions regime²¹⁶ also indicate the fulfilment of monitoring, control and enforcement. The law also enables the department responsible for fisheries to make annual or multi-annual halieutic resource management plans.²¹⁷ In drafting these plans, stakeholders must be consulted²¹⁸ ensuring transparent decision making processes and stakeholder participation. The required content of the plans²¹⁹ indicate sustainable and effective conservation and management of the Guinean aquatic ecosystem.

The law also prohibits industrial fishing in specific areas²²⁰ as well as prohibits the discharge or spillage of polluting substances.²²¹ Certain species of marine creatures are protected by the law²²² and the minister responsible for fisheries is mandated to set minimum sizes or weights of fish, crustaceans and molluscs that can be caught.²²³ These measures enable the protection of fish populations and fisheries habitats. The law also mandates the storage of unauthorised gear²²⁴ and prohibit the use of certain methods such as explosives and toxic substances.²²⁵ These measures ensure the use of selective and environmentally safe fishing gear and practices. The law also lays out guidelines for the establishment and inspection of aquaculture and processing of fish and fish products.²²⁶ This fulfils the requirements of responsible aquaculture and maintenance of the nutritional value, quality and safety of fish and fish products.

²¹⁴ Decreto-Lei n.o 10/2011 de 7 de Junho (Decree-Law no 10/2011), ch III.

²¹⁵ *ibid* ch VII.

²¹⁶ *ibid* arts 61–76.

²¹⁷ *ibid* art 9.

²¹⁸ *ibid* art 9(3).

²¹⁹ *ibid* art 10.

²²⁰ *ibid* art 24.

²²¹ *ibid* art 26.

²²² *ibid* art 27.

²²³ *ibid* art 28.

²²⁴ *ibid* art 31.

²²⁵ *ibid* art 25.

²²⁶ *ibid*, chs V and VI.

3.2.5 Decree no 21/2016 Regulating Ancillary Fishing Operations

This law²²⁷ establishes regulations on fishing related operations by industrial vessels within Guinean waters.²²⁸ It aims to strengthen control and combat IUU fishing activities by introducing new regulations for ancillary fishing operations.²²⁹ The law assigns designated zones for operations such as transshipment, provisioning of necessary materials including petroleum products and crew exchange or transfer.²³⁰ This to prevent oil spillage and other forms of pollution, protecting fish populations and fisheries habitats in turn ensuring effective conservation and management, prevention of overfishing and sustainability. In order to perform any ancillary operation, fishing vessels must obtain permits from the National Service for Fisheries Activities Surveillance and Control.²³¹ Prior to the granting of permission, an inspection team conducts checks on various parameters of the vessels and its fishing activities.²³² These actions facilitate better monitoring and control of the fisheries sector. The imposition of sanctions under the General Fisheries Law²³³ ensures the enforcement of the law.

The decree also ensures the maintenance of nutritional value, quality and safety of fish and fish products.²³⁴ It is interesting to note that Annex IV is specifically about the fish products caught and processed in Guinea-Bissau to be exported to EU member states. There is no other laid out requirements for fish products exported to other states. This could be because the EU has specific regulations on imported fish products. However, this highlights Guinea-Bissau as a policy taker rather than a policy maker. As owners of such great natural resources, Guinea-Bissau should set the parameters on the standard of goods to be exported. Specific considerations can be given based on the requirements of

²²⁷ Decreto no 21/2016 – Regulamento de Operações Conexas de Pesca (Decree no 21/2016).

²²⁸ *ibid* preamble.

²²⁹ *ibid*.

²³⁰ *ibid* art 4.

²³¹ *ibid* arts 5 and 6.

²³² *ibid* art 7.

²³³ *ibid* art 16.

²³⁴ *ibid* art 2 and annex IV.

the importing state, however, there should be a general standard laid down for all exported fish products. The fact that the only laid down standards are specifically for EU raises questions about true independence and the power dynamics in play.

3.2.6 Decree no 22/2016 Regulating VMS

Decree no 22/2016²³⁵ aims at combating IUU fishing by industrial vessels by mandating the use of VMS.²³⁶ VMS has many advantages including enhanced monitoring and surveillance of vessels.²³⁷ It also helps improve fisheries management by providing critical information for assessing fishing effort. These measures ensure effective conservation and management, sustainability, prevention of overfishing and monitoring and control of the fisheries sector. The law makes it mandatory for all industrial vessels seeking a fishing licence in Guinean waters to be equipped with VMS.²³⁸ It is also mandatory for national vessels operating in international waters.²³⁹ This decree complements the 2011 law. The emphasis on monitoring and control shows a shift to more intentional methods of ensuring effective conservation and management of aquatic ecosystems. This is laudable. The decree also aligns the state with international commitments. The preamble notes that VMS is already mandatory in all other member states of the SRFC. This highlights the importance of international institutions in influencing states to meet necessary standards for the good of the people.

3.2.7 Summary

It is interesting to note that the first three laws, which have been repealed, have a higher compliance rate than the last two laws. This could be because the last two laws are on specific rather than general issues. These laws were enacted to supplement the 2011 law, which has the highest compliance rate. The only criterion which the 2011 law does not meet is that of making science-based decisions and using traditional knowledge. Interestingly, the only law which meets that criterion is the 2000 law. Normatively, Guinea-Bissau can be said to have a high compliance

²³⁵ Decreto n.o 22/2016 – Regulamento do VMS (Decree no 22/2016).

²³⁶ *ibid.*

²³⁷ *ibid.*

²³⁸ *ibid* art 2.

²³⁹ *ibid.*

rate with the principles laid out in the Code of Conduct, however, since this study is limited to desk research, the rate of compliance and reality on the ground remain unknown. This makes it difficult to analyse the enforcement deficiencies, administrative challenges and government shortcomings in applying the aforementioned laws. It is recommended that a quantitative study is carried out to discover on the ground realities.

3.3 Fishing laws and policies of The Gambia

Five laws and one policy will be analysed based on the principles laid out in article 6 of the Code of Conduct. Similar to the analysis of the laws of Guinea-Bissau, some of the laws discussed have been repealed, however, it is important to have a historical context of the laws in the country. Annexes 3 and 4 show the compliance rates of the laws with the principles in article 6 of the Code of Conduct.

3.3.1 Fisheries Act 1991

The Fisheries Act 1991 began a new regime of fisheries regulation in The Gambia. It replaced the 1977 Fisheries Act²⁴⁰ and was enacted to remove the deficiencies of the previous Act.²⁴¹ The reason behind the reform was the significant growth in the industry and the rise of poaching incidents in Gambian waters.²⁴² The Fisheries Act redefined fisheries waters to include inland and internal waters and imposed a more stringent sanctions system.²⁴³

The law mandates the director of fisheries to prepare and review fisheries management and development plans.²⁴⁴ The management and development plan must be based on the best scientific information available among other considerations.²⁴⁵ These measures enable the effective conservation and management of the Gambian aquatic ecosystem and satisfy the requirement of making science based decisions. The Act also recognises traditional knowledge by promoting the development of traditional

²⁴⁰ Fisheries Act 1991, s 62(1).

²⁴¹ *ibid* objects and reasons.

²⁴² *ibid*.

²⁴³ *ibid*.

²⁴⁴ *ibid* s 4(1).

²⁴⁵ *ibid* s 4(3).

fisheries and related industries in The Gambia.²⁴⁶ Likewise, it promotes international co-operation by encouraging the establishment of reciprocal fishing rights with neighbouring states and the establishment of joint venture agreements with other states.²⁴⁷ The Fisheries Act lays out an extensive licensing regime and differentiates between local licensing²⁴⁸ and foreign licensing.²⁴⁹ The Fisheries Act also empowers authorised officers to stop, board, inspect, enter, seize and arrest vessels and their officials suspected to be in violation of the law.²⁵⁰ These measures as well as the penalties regime ensure monitoring, control and enforcement of the fisheries law in The Gambia.²⁵¹

The Fisheries Act extensively promotes aquaculture in The Gambia. This is in contrast with the provisions of the Guinean law which recognises aquaculture, but does not extensively regulate the sub-sector. The Gambian Act mandates the director of fisheries to promote the development of aquaculture in The Gambia.²⁵² The Fisheries Act permits the lease of public lands to be used for aquaculture²⁵³ and lays out extensive requirements to obtain an aquaculture permit.²⁵⁴ The Fisheries Act also criminalises the operation of an aquaculture establishment outside the provisions of the law.²⁵⁵ This meets the criterion of responsible aquaculture. The Fisheries Act also meets the criterion of maintenance of nutritional value, quality and safety of fish and fish products by providing requirements for establishments that process fish for exportation.²⁵⁶ The Fisheries Act exempts establishments where fish is preserved solely by means of smoking or drying by traditional means.²⁵⁷ This not only encourages small scale business owners, but also preserves the traditional means of processing which is usually more sustainable and environmentally friendly than many industrial means of processing.

²⁴⁶ Fisheries Act 1991, s 8.

²⁴⁷ *ibid* s 8(g) and (h).

²⁴⁸ *ibid* pt IV.

²⁴⁹ *ibid* pt V.

²⁵⁰ *ibid* pt IX.

²⁵¹ *ibid* pt X.

²⁵² *ibid* s 32.

²⁵³ *ibid* s 33.

²⁵⁴ *ibid* s 34.

²⁵⁵ *ibid* s 35.

²⁵⁶ *ibid* s 37.

²⁵⁷ *ibid* s 37(3).

The Fisheries Act prohibits and criminalises certain methods of fishing such as the use of explosives, poison or other noxious substances.²⁵⁸ The carriage of such substances on a person,²⁵⁹ in a vessel²⁶⁰ and the landing, sale, reception or possession of any fish known or reasonably suspected to have been taken in contravention to the law are also prohibited.²⁶¹ These provisions fulfil the criterion of ensuring the use of selective and environmentally safe fishing gear and practices. The establishment of the Fisheries Advisory Committee by the Act²⁶² enhances transparent decision-making processes and stakeholder participation. The Committee includes two representatives from the fishing community²⁶³ and can invite any person or institution to attend and participate in its proceedings.²⁶⁴ A criticism of this provision is that the representatives are to be nominated by the minister²⁶⁵ and persons or institutions are invited based on the opinions of the members of the Committee.²⁶⁶ These factors politicise the process of public participation and interventions made may not reflect the general desires of the stakeholders.

3.3.2 Fisheries Regulations 1995

The Fisheries Regulations of 1995 were issued under the Fisheries Act 1991.²⁶⁷ It revokes the Fisheries Regulations of 1978²⁶⁸ and covers fishing vessel licensing, conservation measures and the export and marketing of fish products. Similar to the 1991 Act, the 1995 Regulations distinguishes between licensing of foreign vessels²⁶⁹ and local vessels.²⁷⁰ The licensing regime is broad and covers the vessel licence,²⁷¹ transshipment,²⁷² flags and identification markings²⁷³ and logbooks,²⁷⁴ among other things. These all

²⁵⁸ Fisheries Act 1991, s 39(1)(a).

²⁵⁹ *ibid* s 39(1)(b).

²⁶⁰ *ibid* s 39(2).

²⁶¹ *ibid* s 39(3).

²⁶² *ibid* s 5.

²⁶³ *ibid* s 5(1)(d).

²⁶⁴ *ibid* s 5(2).

²⁶⁵ *ibid* s 5(1)(d).

²⁶⁶ *ibid* s 5(2).

²⁶⁷ Fisheries Regulations 1995, reg 2.

²⁶⁸ *ibid* reg 26.

²⁶⁹ *ibid* pt ii.

²⁷⁰ *ibid* pt iii.

²⁷¹ *ibid* reg 4.

²⁷² *ibid* reg 6(c).

²⁷³ *ibid* reg 6(f).

²⁷⁴ *ibid* reg 6(g).

form part of monitoring, control and enforcement. Under the foreign vessels licensing requirements, a local representative must be appointed by the master, owner or charterer of the vessel to act on their behalf.²⁷⁵ This local content requirement promotes and protects the right of Gambians to work and other related human rights.

The Fisheries Regulations stipulate restricted areas for different sizes of vessels.²⁷⁶ They also provide gear restrictions²⁷⁷ and prohibit the catch of undersized lobsters or lobsters carrying eggs.²⁷⁸ These measures ensure effective conservation and management of the aquatic ecosystem, sustainability, prevention of overfishing, protection of fish populations and fisheries habitats and the use of selective and environmentally safe fishing gear and practices. The Fisheries Regulations lay down the procedure for the application to operate aquaculture establishments.²⁷⁹ Although these provisions are not as extensive as those in the 1991 Fisheries Act, they enable responsible aquaculture. Also, in contrast with the 1991 Fisheries Act, the 1995 Fisheries Regulations lay down a more rigid regime of control on establishments for processing fish for exportation.²⁸⁰ The Fisheries Regulations also set guidelines for labelling,²⁸¹ application for export permits²⁸² and marketing of fish or fish products.²⁸³ They also prohibit the exportation of some aquatic species in an unprocessed condition except with the written permission of the Director of Fisheries.²⁸⁴ These conditions are to maintain the nutritional value, quality and safety of fish and fish products.

3.3.3 Fisheries Act 2007

The purpose of the Fisheries Act 2007 is to ‘provide for the conservation, management, sustainable utilisation and development of fisheries and aquaculture in the fisheries waters and in the territory of The Gambia, and for matters connected therewith’.²⁸⁵

²⁷⁵ Fisheries Regulations 1995, reg 7.

²⁷⁶ *ibid* reg 14.

²⁷⁷ *ibid* reg 15.

²⁷⁸ *ibid* reg 17.

²⁷⁹ *ibid* reg 19.

²⁸⁰ *ibid* regs 20 and 21.

²⁸¹ *ibid* reg 22.

²⁸² *ibid* reg 23.

²⁸³ *ibid* reg 24.

²⁸⁴ *ibid* reg 25.

²⁸⁵ Fisheries Act 2007, preamble.

This Act repealed the Fisheries Act of 1991.²⁸⁶ Section 9 of the Fisheries Act lays down 14 guiding principles. The first principle is on sustainability and future generations,²⁸⁷ while the second and ninth principles lead to the prevention of overfishing and excess fishing capacity.²⁸⁸ The third principle incorporates effective conservation and management of aquatic ecosystems, responsible aquaculture and the precautionary approach while the fourth and fifth principles align with both effective conservation and the protection and rehabilitation of fish populations and fisheries habitats.²⁸⁹ The sixth principle is on selective and environmentally safe fishing gear and practices,²⁹⁰ the seventh principle is on science-based decisions while the eighth and 14th principles are on international co-operation.²⁹¹ The tenth²⁹² and 13th²⁹³ principles speak to the promotion and protection of human rights, the 11th principle is on monitoring, control and enforcement²⁹⁴ while the 12th principle is on transparent decision making and stakeholder participation.²⁹⁵ From the guiding principles alone, the 2007 Fisheries Act complies with 12 out of the 13 laid down principles from the Code of Conduct. Although named ‘guiding principles’, they are laid out in a substantive section of the law, making them enforceable. This is essential in the implementation of the law. The only criterion not met by the guiding principles is awareness raising and maintenance of nutritional value, quality and safety of fish and fish products.

The Fisheries Act has other provisions which further elaborate measures on implementing various criteria. For instance, there is a provision on the determination of total allowable catch²⁹⁶ which is a measure to prevent overfishing and excess fishing capacity. The provision on the preparation of fisheries management and development plans²⁹⁷ are essential for effective conservation and management of the Gambian aquatic ecosystem.

²⁸⁶ Fisheries Act 2007, s 107.

²⁸⁷ *ibid* s 9(a).

²⁸⁸ *ibid* s 9(b) and (i).

²⁸⁹ *ibid* s 9(c-e).

²⁹⁰ *ibid* s 9(f).

²⁹¹ *ibid* s 9(g), (h) and (n).

²⁹² *ibid* s 9(j).

²⁹³ *ibid* s 9(m).

²⁹⁴ *ibid* s 9(k).

²⁹⁵ *ibid* s 9(l).

²⁹⁶ *ibid* s 10.

²⁹⁷ *ibid* s 12.

Also, the inclusion of one representative each from the industrial,²⁹⁸ artisanal²⁹⁹ and aquaculture sectors³⁰⁰ enhances transparent decision-making processes and stakeholder participation. The Fisheries Act also protects endangered species of fish.³⁰¹ It provides an extensive licensing framework³⁰² and robust aquaculture regulations.³⁰³ It also stipulates prohibitions³⁰⁴ and measures to ensure monitoring, control and enforcement.³⁰⁵ All these measures elaborate on the guiding principles, fulfilling the principles in article 6 of the Code of Conduct.

The Fisheries Act empowers the Secretary of the State to declare any area of fisheries waters as a Special Management Area.³⁰⁶ This could be for the purpose of community-based fisheries management or for conservation and management measures, or for artisanal or subsistence fishing operations.³⁰⁷ It could also be due to the combination of any of the aforementioned purposes.³⁰⁸ These purposes enhance the protection of human rights of the communities, and artisanal and subsistence fishers by recognising the right to participation and protecting the right to work. It also protects connected rights such as the rights to food, health and education of local fishers, their dependents and the communities at large. The community-based fisheries management reflects Ostrom's institutional approach to self-organisation and self-governance.³⁰⁹ Ostrom identifies eight design principles that characterise successful Common Pool Resource institutions. Although this research does not delve into a detailed analysis of community-based fisheries management, it would be interesting to discover what principles govern those communities and how successfully they manage their fisheries resources. It would also be interesting to investigate which measures bring about more compliance, those of the state or of the community and which measures are more sustainable.

²⁹⁸ Fisheries Act 2007, s 5(2)(h).

²⁹⁹ *ibid* s 5(2)(i).

³⁰⁰ *ibid* s 5(2)(j).

³⁰¹ *ibid* s 17.

³⁰² *ibid* pts vi–ix.

³⁰³ *ibid* pt x.

³⁰⁴ *ibid* pt xii.

³⁰⁵ *ibid* pts xiii–xiv.

³⁰⁶ *ibid* s 14(1).

³⁰⁷ *ibid* s 14(1)(a).

³⁰⁸ *ibid* s 14(1)(b).

³⁰⁹ E Ostrom, *Governing the Commons: The Evolution of institutions for Collective Action* (Cambridge University Press 1990).

Although not mentioned in the guiding principles, the Act provides regulations for the operation of fish processing establishments,³¹⁰ import³¹¹ and export³¹² of fish and fishery products. It is interesting that although The Gambia has a large amount of fish resources, it has provisions on the importation of fish and fish products. This regulates on the ground realities as fish and fish products from neighbouring states, especially Senegal, are consumed in The Gambia. This is also the case in Guinea-Bissau, however, Guinean laws do not explicitly and robustly regulate the importation of fish and fisheries products. The Gambian law on exportation recognises the required standards of the importing, but also set in generic measures in place.³¹³ This is in contrast with the Guinean law in which a decree specifically sets standards solely based on EU requirements. The Gambian provisions on fish processing establishments, imports and exports meet the criterion of maintenance of nutritional value, quality and safety of fish and fish products. This law therefore fulfils all the requirements laid down based on article 6 of the Code of Conduct.

3.3.4 Fisheries Regulations 2008

The Fisheries Regulations of 2008 revoked those of 1995.³¹⁴ They introduce the registration of fishing vessels³¹⁵ and commercial fishing canoes.³¹⁶ They also have an extensive framework on licensing which covers foreign fishing vessel licences,³¹⁷ local fishing vessel licences,³¹⁸ sports fishing vessel licences,³¹⁹ research and test fishing licences³²⁰ and high seas fishing licences.³²¹ The Fisheries Regulations also provide guidelines on communication.³²² These provisions all depict an elaborate monitoring, control and enforcement regime.

³¹⁰ Fisheries Act 2007, s 58.

³¹¹ *ibid* s 60.

³¹² *ibid* s 61.

³¹³ *ibid*.

³¹⁴ Fisheries Regulations 2008, reg 75.

³¹⁵ *ibid* pt II.

³¹⁶ *ibid* pt III.

³¹⁷ *ibid* pt IV.

³¹⁸ *ibid* pt V.

³¹⁹ *ibid* pt VI.

³²⁰ *ibid* pt VII.

³²¹ *ibid* pt VIII.

³²² *ibid* pt IX.

The 2008 Fisheries Regulations also extensively provide guidelines for responsible aquaculture in The Gambia.³²³ They cover several grounds including licensing,³²⁴ discharge of waste and feed used in aquaculture establishments.³²⁵ They also identify area restrictions for certain fishing vessels.³²⁶ This prevents overfishing and protects fish populations and fisheries habitats. The gear restrictions ensure elective and environmentally safe fishing gear and practices.³²⁷ The restrictions on lobsters,³²⁸ by-catch,³²⁹ sharks³³⁰ and fish size limitations,³³¹ indicate an effort to prevent overfishing and excess fishing capacity as well as protect fish and other aquatic populations. These all point to effective conservation and management of aquatic resources, sustainability and considerations for future generations. The Fisheries Regulations also ensure international co-operation through the strict measures it prescribes for providing high seas fishing licences. If a vessel was previously authorised by another state to fish on the high seas, the Director of Fisheries will not issue a high seas fishing licence.³³² Likewise, if the vessel's authorisation was suspended by another state or withdrawn within the previous three years, the Director of Fisheries shall not issue a high seas fishing licence.³³³ While making this decision the Director of Fisheries must take into consideration the object and purpose of the Compliance Agreement and the Fish Stocks Agreement.³³⁴

3.3.5 Merchant Shipping Act 2013

Although the Merchant Shipping Act 2013 is not directly related to fishing, its provisions are binding on some fishing vessels. It has several provisions which enable monitoring, control and enforcement. For instance, the provisions on registration and licensing³³⁵ and national character and flag³³⁶ play a crucial role in

³²³ Fisheries Regulations 2008, pt X.

³²⁴ *ibid* regs 54–58.

³²⁵ *ibid* regs 59 and 67.

³²⁶ *ibid* reg 68.

³²⁷ *ibid* reg 69.

³²⁸ *ibid* reg 70.

³²⁹ *ibid* reg 72.

³³⁰ *ibid* reg 73.

³³¹ *ibid* reg 71.

³³² *ibid* reg 49(2).

³³³ *ibid* reg 49(2)(a) and (b).

³³⁴ *ibid* reg 49(4).

³³⁵ Merchant Shipping Act 2013, pt IV.

³³⁶ *ibid* pt V.

monitoring and control. One of the mischiefs used by vessels that are involved in overfishing is a flag of convenience. This involves changing the flag of the vessel to avoid being tracked. It is important for states to have and enforce regulations which make it difficult for ships to successfully fly flags of convenience.

An important criterion that the Merchant Shipping Act extensively covers is the protection of human rights. It extensively lays out guidelines on the employment and welfare of seafarers,³³⁷ protecting seafarers' rights to work,³³⁸ health and safety³³⁹ and food and water.³⁴⁰ The Merchant Shipping Act also takes into account environmental protection, thus fulfilling the criterion of protection of fish populations and fisheries habitats. It establishes regulations on the prevention of collision,³⁴¹ carriage of bulk and dangerous goods³⁴² and unsafe ships.³⁴³ It also recognises the importance of international co-operation by referencing and implementing 13 international maritime conventions.³⁴⁴

³³⁷ Merchant Shipping Act 2013 pt VII.

³³⁸ *ibid* ss 126–61.

³³⁹ *ibid* ss 165, 170–75.

³⁴⁰ *ibid* ss 166–69.

³⁴¹ Merchant Shipping Act 2013, ss 234–46.

³⁴² *ibid* ss 336–43.

³⁴³ *ibid* ss 344–54.

³⁴⁴ International Convention on Tonnage Measurement of Ships (adopted 23 June 1969, entered into force 18 July 1982) 1291 UNTS 3, s 35; International Convention on Standards of Training, Certification and Watchkeeping of Seafarers (adopted 7 July 1978, entered into force 28 April 1984) 1361 UNTS 2 ('STCW') s 113; Maritime Labour Convention (adopted 23 February 2006, entered into force 20 August 2013) 2952 UNTS 441 ('MLC') ss 137, 165, 170, 171 and 222, schs II–V; Convention on the International Regulations for Preventing Collision at Sea (adopted 20 October 1972, entered into force 15 July 1977) 1050 UNTS 16 ('COLREG') s 234; International Convention for Safety of Life at Sea (adopted 1 November 1974, entered into force 25 May 1980) 1184 UNTS 2 ('SOLAS') ss 235, 255, 256, 336, 339 and 527; International Convention on Load Lines (adopted 5 April 1966, entered into force 21 July 1968) 640 UNTS 133, ss 313 and 316; International Maritime Solid Bulk Cargoes Code (adopted 4 December 2008, entered into force 1 January 2011) IMO Resolution MSC.268(85) ('IMBSC Code') ss 336 and 339; International Maritime Dangerous Goods Code (adopted 24 May 2002, entered into force 1 January 2004) IMO Resolution MSC.122(75) ('IMDG Code') ss 336 and 339; International Convention on Salvage (adopted 28 April 1989, entered into force 14 July 1996) 1954 UNTS 165, ss 384 and 423; International Convention on Civil Liability for Oil Pollution Damage (adopted 29 November 1969, entered into force 19 June 1975) 973 UNTS 3 ('CLC') s 423; Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (adopted 16 May 2008, entered into force 1 January 2010) IMO Resolution MSC.225(84) ('Casualty Investigation Code') s 481, sch VI; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (adopted 10 March 1988, entered into force 1 March 1992) 1678 UNTS 221 ('SUA Convention') s 526; International Code for the Security of Ships and of Port Facilities (adopted 12 December 2002, entered into force 1 July 2004) IMO Conference Resolution 2 ('ISPS Code') s 527.

3.3.6 Fisheries and Aquaculture Policy of The Gambia 2018

The Fisheries and Aquaculture Policy of The Gambia 2018 (the Policy) was designed to address historical inadequacies and contemporary challenges within The Gambia's fisheries and aquaculture sector.³⁴⁵ The process of the development of the Policy involved the participation of numerous stakeholders,³⁴⁶ fulfilling the criterion of transparent decision-making processes and stakeholder participation. The Policy is streamlined into 11 policy areas in alignment with the state's National Development Plan (2018–2021) and AU's Policy Framework and Reform Strategy for Fisheries and Aquaculture in Africa.³⁴⁷

Effective conservation and management of aquatic ecosystems and sustainability and future generations are covered by policy areas 1,³⁴⁸ 2,³⁴⁹ 3³⁵⁰ and 5.³⁵¹ International co-operation and compliance in trade is covered by policy areas 4,³⁵² 5³⁵³ and 6.³⁵⁴ Awareness raising and maintenance of nutritional value, quality and safety of fish and fish products is satisfied by policy areas 7³⁵⁵ and 8.³⁵⁶ Responsible aquaculture is satisfied by policy area 3.³⁵⁷ Although the policy is not binding in nature, it shows the state's commitment to right previous wrongs and ensure the best possible outcome from the fishing sector. This is commendable especially if the policy is fully implemented.

3.3.7 Summary

Unlike the Guinean legal framework on fishing, all Gambian laws directly related to fishing have over 50% of the required criteria. The current Fisheries Act fulfils all the requirements and even its supplementary regulations have a high compliance rate. It is noteworthy that the fishing document with the lowest compliance

³⁴⁵ Government of The Gambia, Ministry of Fisheries, Water Resources and National Assembly Matters, Department of Fisheries, 'Fisheries and Aquaculture Policy of The Gambia; (January 2018) 7–11.

³⁴⁶ *ibid* 11.

³⁴⁷ *ibid* 20.

³⁴⁸ Conservation and sustainable resource use.

³⁴⁹ Sustainable marine small-scale fisheries (SSF) management.

³⁵⁰ Sustainable aquaculture and inland fisheries development.

³⁵¹ Sustainable industrial fisheries and fisheries on the high seas.

³⁵² Competitive fish trade and marketing.

³⁵³ Sustainable industrial fisheries and fisheries on the high seas.

³⁵⁴ Sub-regional, regional and international co-operation.

³⁵⁵ Human capital development in fisheries and aquaculture.

³⁵⁶ Food, fish and nutrition security.

³⁵⁷ Sustainable aquaculture and inland fisheries development.

rate is the 2018 Policy. This is concerning because it is the latest document and had a high level of stakeholders in its drafting process. The drafting process would have been a great opportunity to enlighten all stakeholders of international standards and ensure the state's compliance with them. Such a high level of participation can be seen to have elements of self-governance. If such a gathering aligns with Ostrom's eight design principles,³⁵⁸ The Gambia might successfully develop a long-enduring, self-organised common pool fishing resource system.

3.4 Conclusion

Table 1 comparing the compatibility rate of Guinean and Gambian laws/policies

Status of laws/policies	Guinea-Bissau	The Gambia
Repealed	64%	65.5%
In force	56.7%	61.75%

Although Guinea-Bissau and The Gambia have different legal systems, there are some common trends between their laws. Over time, the laws of both states increased the level of their sanctions regime. This could have been with the hopes that greater penalties would deter lawbreakers. Since overfishing still remains a problem, it is doubtful that this method was effective. Another similarity is that both states included a fisheries development fund in most of their laws. This is commendable as the funds are to be obtained from fines and penalties paid by lawbreakers as well as donations. If the money in the fund is put to good use and does not enter the coffers of corrupt officials, it would be beneficial to the development of the fisheries sectors and the states at large. Also, both states include fisheries management plans in

their laws. This is essential to fisheries management and sustainability. It helps evaluate past exploitations with a view of ensuring the establishment of sustainable measures. These similar features may be attributed to regional institutions of which both states are members.

A major difference between the fishing regimes of both states is the compliance rate. The Gambia has a higher compliance rate than Guinea-Bissau. It is also notable that The Gambia references and implements more international treaties in its laws than Guinea-Bissau does. This could be attributed to the different legal systems operating in each state. The Gambia is governed by the common law system and is a dualist state. This implies that even when the state has ratified an international treaty, it must domesticate it before the treaty can be fully enforced. On the other hand, Guinea-Bissau is governed by the civil law system and is a monist state. This implies that once ratified, international treaties automatically become a part of the legal system. Therefore, The Gambia's laws and regulations on fisheries serve as means to domesticate international treaties, whereas ratified treaties are automatically enforceable in Guinea-Bissau. Although the Code of Conduct is not a binding document, it lays down essential principles in the sustainable use of aquatic resources. Guinea-Bissau should ensure that its laws are compliant with these principles and should enforce them. The Gambia has a high compliance rate and must ensure that its laws are enforced.

The nature of the legal systems operating in Guinea-Bissau and The Gambia reflects both neo-colonialism and meta-colonialism. Although Guinea-Bissau gained its independence from Portugal in September 1974,³⁵⁹ its legal framework is that of the civil law system. This is the same legal system as Portugal. Similarly, The Gambia gained its independence from Britain in February 1965,³⁶⁰ yet its legal framework is that of the common law system. The meta-colonial dimension of this is that both states automatically followed the legal systems of their former colonial masters. Despite

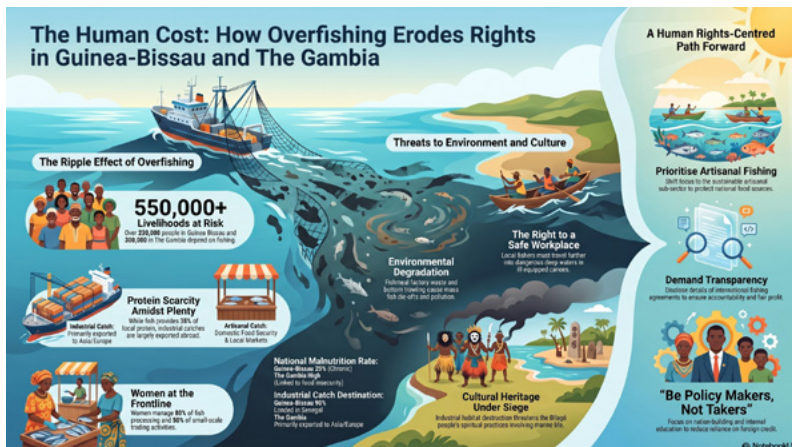
³⁵⁹ World History Edu, 'Independence of Guinea-Bissau: History and Major Facts' (*World History Edu*, 24 September 2024) <<https://worldhistoryedu.com/independence-of-guinea-bissau-history-and-major-facts/>> accessed 9 November 2025.

³⁶⁰ History Central, '1965 Gambia Gains Independence' (*History Central*) <www.history-central.com/Africa/GambiaIndep.html> accessed 9 November 2025.

independence, the legal systems of these states have not been changed to reflect African traditional legal systems. The neo-colonial dimension is the political and economic benefits that former colonial masters benefit from these states.

It is recommended that both states should strengthen their monitoring, control and surveillance systems. It is also essential that the laws and policies are enforced and fully implemented. The responsible government offices should create forums for greater participation of stakeholders. There should also be frameworks which ensure gender inclusivity in the fisheries sector. Both states must ensure that their fisheries regulatory frameworks are based on a human rights-centred approach.

4. Human rights violations due to overfishing in Guinea-Bissau and The Gambia



4.1 Introduction

This chapter explores various human rights violations which occur due to overfishing in Guinea-Bissau and The Gambia, with a focus on social, cultural and economic rights. Although socio-economic rights are second generation rights and are not always accorded the same level of recognition as civil and political rights, these rights directly affect the quality of life and standard of living of the people. Fishing affects economic and cultural aspects of the society, and it is therefore important to analyse the effects of overfishing on socio-economic rights. Provisions of national laws as well as the African Charter, the Protocol to the African Charter on

the Rights of Women in Africa (the Maputo Protocol)³⁶¹ and the African Charter on the Rights and Welfare of the Child (African Children's Charter)³⁶² will be the basis of the discussion. Due to constraints of time and space, only instruments in the African human rights system will be considered.

Guinea-Bissau ratified the African Charter on 4 December 1985 while The Gambia ratified it on 8 June 1983.³⁶³ Guinea-Bissau also ratified the Maputo Protocol on 19 June 2008 while The Gambia ratified it on 25 May 2005.³⁶⁴ Similarly, Guinea-Bissau ratified the African Children's Charter on 19 June 2008 while The Gambia ratified it on 14 December 2000.³⁶⁵ It is interesting to note that The Gambia ratified the three instruments before Guinea-Bissau. However, earlier ratification does not automatically translate into stronger domestic implementation. The Gambia initially had reservations on articles 5, 6, 7 and 14 of the Maputo Protocol, however, the reservations were lifted in 2006 before the state hosted the AU Summit.³⁶⁶

4.2 Right to work

The Constitution of Guinea-Bissau³⁶⁷ provides that work is a right and a duty of each citizen.³⁶⁸ The enjoyment of the right is guided by the principle of equal pay for equal work.³⁶⁹ The state has the duty to progressively create conditions for the full employment of citizens³⁷⁰ and provide training to enable citizens to

³⁶¹ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005) (Maputo Protocol) 43 ILM 886.

³⁶² African Charter on the Rights and Welfare of the Child (adopted 1 July 1990, entered into force 29 November 1999) (African Children's Charter) 29 ILM 1340.

³⁶³ African Commission on Human and Peoples' Rights, 'African Charter on Human and Peoples' Rights' <<https://achpr.au.int/en/charter/african-charter-human-and-peoples-rights>> accessed 15 September 2025.

³⁶⁴ Centre for Human Rights University of Pretoria, 'Country Status' <www.maputoprotocol.up.ac.za/countries/countries-table> accessed 15 September 2025.

³⁶⁵ African Committee of Experts on the Rights and Welfare of the Child, 'Ratifications Table' (ACERWC) <www.acerwc.africa/en/member-states/ratifications> accessed 15 September 2025.

³⁶⁶ F Viljoen, *International Human Rights Law in Africa* (2012) 256 quoted in B Bah, 'The Impact of the Maputo Protocol in The Gambia' in *Impact of the Maputo Protocol in Selected African States* (PULP 2023).

³⁶⁷ Constitution of the Republic of Guinea-Bissau 1991.

³⁶⁸ *ibid* art 36(1).

³⁶⁹ *ibid* art 36(4).

³⁷⁰ *ibid* art 36(2).

work.³⁷¹ Workers have the right to establish unions.³⁷² They also have the right to strike³⁷³ and the right to protection, safety and hygiene at work.³⁷⁴ The Constitution of The Gambia³⁷⁵ does not explicitly provide for the right to work. However, it provides protection from slavery and forced labour.³⁷⁶ On the rights of women, the Constitution recognises ‘the right to equal treatment with men, including equal opportunities in political, economic and social activities’.³⁷⁷ These provisions indicate that the right to work is implicitly recognised by the Constitution of The Gambia.

At the regional level, the African Charter explicitly provides for the right to work.³⁷⁸ It recognises that work should be ‘under equitable and satisfactory conditions’ as well as the principle of equal pay for equal work.³⁷⁹ The Maputo Protocol extensively provides for the right to work under economic and social welfare rights.³⁸⁰ It focuses on ensuring that state parties guarantee women equal opportunities at work and other economic opportunities.³⁸¹ The African Children’s Charter protects every child from economic exploitation and imposes a duty on state parties to take appropriate measures to ensure its implementation.³⁸² In this discourse, the right to work is imperative because its fulfilment or otherwise has a ripple effect on other rights such as the rights to health, food, housing and education.

³⁷¹ Constitution of the Republic of Guinea-Bissau 1991, art 36(3).

³⁷² *ibid* art 36A.

³⁷³ *ibid* art 37A.

³⁷⁴ *ibid* art 37(1).

³⁷⁵ Constitution of the Republic of The Gambia 1997.

³⁷⁶ *ibid* s 20.

³⁷⁷ *ibid* s 28.

³⁷⁸ African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter), art 15.

³⁷⁹ *ibid*.

³⁸⁰ Maputo Protocol, art XIII.

³⁸¹ *ibid*.

³⁸² African Children’s Charter, art 15.

With over 250,000 people working in the fisheries sector in Guinea-Bissau³⁸³ and over 300,000 people in the same sector in The Gambia,³⁸⁴ it is crucial to examine how overfishing affects the right to work. A source estimates that in 2022, a total of 31,291 individuals engaged in the Gambian fishery sector and 13,868 of these are women³⁸⁵. Another source estimates that women are responsible for 80% of fish processing and 50% of fish trading activities linked to small scale fisheries.³⁸⁶ Women in Gambia also account for 70% of those working in fish packing and processing in the industrial fisheries sector.³⁸⁷ In The Gambia, it was estimated that out of 416 fishers operating along the coast, 60% were foreign nationals.³⁸⁸

In 2017, The Gambia lifted a ban on industrial fishing leading to an influx of Chinese investment in the fisheries sector.³⁸⁹ These investments seemed advantageous for the economy because fish factories initially employed local workers, reducing the rate of unemployment and boosting community development.³⁹⁰ However, the presence of the factories has had a negative impact on the local fishers. They report a drastic decrease in fish

³⁸³ The Macao News, 'Chinese state-owned fishing company CNFC marks 40 years in Guinea-Bissau' (*The Macao News*, 18 March 2025) <<https://macaonews.org/news/lu-sofia/china-fishing-guinea-bissau-cnfc/#:~:text=More%20than%20250%2C000%20Bissau%20Guineans%20work%20in%20the,annually%20and%20accounts%20for%206%20percent%20of%20GDP>> accessed 3 June 2025.

³⁸⁴ E Pietrzak, 'The Gambia: A Small Nation with a Big Fish Problem' (*Change The Chamber*, 21 November 2025) <www.changethechamber.org/news-research/the-gambia-fishing> accessed 4 June 2026.

³⁸⁵ The Illuminating Hidden Harvests Initiative quoted in CCC Wabnitz and others, 'The Republic of The Gambia' (Gender and Fisheries Country Fact Sheet 2023) <https://oceanrisk.earth/wp-content/uploads/2023/05/Gambia_factsheet_fin.pdf#:~:text=This%20fact%20sheet%20provides%20an%20overview%20of%20the,equity%20and%20equality%20in%20the%20sector%20and%20beyond> accessed 15 September 2025.

³⁸⁶ Department of Fisheries, 'Fisheries and Aquaculture Sector Strategy 2017 – 2021' (Ministry of Environment, Climate Change and Natural Resources) <www.fao.org/faolex/results/details/fr/c/LEX-FAOC208695> accessed 15 September 2025 quoted in *ibid.*

³⁸⁷ UNCTAD, 'The fisheries sector in the Gambia: trade, value addition and social inclusiveness, with a focus on women' (UNCTAD 2014) <https://unctad.org/system/files/official_document/ditc2013d4_en.pdf> accessed 15 September 2025 quoted in Wabnitz and others (n 385).

³⁸⁸ *ibid.*

³⁸⁹ The Africa Business Channel, 'The increasing presence of Chinese fishing companies in The Gambia has sparked significant controversy and concern among local fishing communities' (*African Bulletin*, 24 February 2025) <<https://africabulletin.com/the-increasing-presence-of-chinese-fishing-companies-in-the-gambia-has-sparked-significant-controversy-and-concern-among-local-fishing-communities/>> accessed 15 September 2025.

³⁹⁰ *ibid.*

stocks and an increase in the distance travelled to catch fish.³⁹¹ Local fishers are now competing with better-equipped industrial trawlers whose market is not the Gambian population.³⁹² Chinese owned fishmeal factories process most of the catch for export to Asia and Europe.³⁹³ The implication of this is that while the demand for fish remains high and its price is rising, the supply is dwindling.³⁹⁴ Another challenge is that most of the industrial vessels do not land their catches in The Gambia because of the lack of a fisheries port.³⁹⁵ This is alarming for a state that is so dependent on the fisheries sector. The Gambia should invest in a stand-alone fishing port to ensure that more catches from Gambian waters are landed in the state.

In Guinea-Bissau, small scale fisheries play a vital role in the livelihoods of a majority of the population.³⁹⁶ The artisanal fisheries sub-sector employs more people than the industrial fisheries sub-sector.³⁹⁷ In 2018, there were 883 active pirogues and nearly 5,600 fishers in the artisanal sub-sector.³⁹⁸ The industrial fisheries sub-sector accounts for about 200 vessels, however, they do not offer many job opportunities to Guineans.³⁹⁹ These industrial vessels are mostly foreign fleets with European, Chinese, Korean, Japanese and Russian origins.⁴⁰⁰ Some of the vessels are chartered and fly the Guinean flag, however, none of them are considered domestic.⁴⁰¹ Another challenge is that fish caught by industrial vessels are mostly landed elsewhere⁴⁰² and generally not reported

³⁹¹ The Africa Business Channel, 'The increasing presence of Chinese fishing companies in The Gambia has sparked significant controversy and concern among local fishing communities' (African Bulletin, 24 February 2025).

³⁹² *ibid.*

³⁹³ G Prince, 'To save its fishing industry, Gambia should ask the Chinese fishermen to leave' (Africa Bulletin, 3 May 2025) <<https://africabulletin.com/to-save-its-fishing-industry-gambia-should-ask-the-chinese-fishermen-to-leave/>> accessed 23 September 2025.

³⁹⁴ The Africa Business Channel (n 389).

³⁹⁵ Access Gambia, 'Fisheries sector in Gambia' (Access Gambia) <www.accessgambia.com/information/fisheries-sector.html> accessed 23 September 2025.

³⁹⁶ JF Intchama, D Belhabib and RJT Jumpe, 'Assessing Guinea-Bissau's Legal and Illegal, Unreported and Unregulated Fisheries and the Surveillance Efforts to Tackle Them' (2018) 5 Frontiers in Marine Science 2.

³⁹⁷ *ibid.*

³⁹⁸ *ibid.*

³⁹⁹ *ibid.*

⁴⁰⁰ D Belhabib and D Pauly, 'Fisheries in Troubled Waters: A Catch Reconstruction for Guinea-Bissau, 1950-2010' (Fisheries Centre Working Paper Series, 2015) 20 quoted in Intchama, Belhabib and Jumpe (n 396).

⁴⁰¹ D Belhabib and others, 'Euros vs Yuan: Comparing European and Chinese Fishing Access in West Africa' (2015) 10 Public Library of Science One 1.

⁴⁰² Canary Islands and Senegal.

to Guinea-Bissau.⁴⁰³ This has a negative impact on those working in the fisheries sector. For instance, fishmongers and those who process fish have less fish to sell and process because the catch landed in Guinea-Bissau is decreasing. Natural resources from one state should not be taken to another at the expense of the people who own the natural resources. Other sub-sectors of the fisheries sector also provide employment for people in Guinea-Bissau.⁴⁰⁴ These include subsistence fishing, which is mostly conducted by women⁴⁰⁵ and recreational fishing by expatriates, which occurs in the Bijago Archipelago.⁴⁰⁶

The right to work includes the right to work in a safe and hygienic environment. In The Gambia, Brikama fish market, which is one of the biggest fish markets, is a polluted area which is prone to flooding and other environmental dangers.⁴⁰⁷ These environmental conditions not only raise concerns about the longevity of the fish, which affects how much the fishers and fish sellers earn, but can also cause dangers to the health of those working in such markets. This also affects their right to work.

4.3 Right to health

The Constitution of Guinea-Bissau provides the right to protection of health and the duty to promote and defend it.⁴⁰⁸ It is interesting that citizens have a right to protection of health, rather than a right to health as found in many other instruments. Although the wording is different, it is assumed that the effect is the same as providing for the right to health. Also, in Guinea-Bissau, the citizens have a duty to promote and defend the right to health. This is unique as it is usually the duty of the state to promote and protect human rights. Similar to the right to work, the

⁴⁰³ Intchama, Belhabib and Jumpe (n 396).

⁴⁰⁴ D Belhabib, UR Sumaila and D Pauly 'Feeding the Poor: Contribution of West African Fisheries to Employment and Food Security' (2015) 111 *Ocean Coast Manage* 72-81 quoted in Intchama, Belhabib and Jumpe (n 396).

⁴⁰⁵ Belhabib and Pauly (n 400).

⁴⁰⁶ 'Guinea Bissau Cashew and Beyond Diversification through trade Diagnostic trade integration study for the enhancement framework for trade technical assistance' (Rep Tech República da Guiné-Bissau Bissau: Government of Guinea-Bissau) quoted in Intchama, Belhabib and Jumpe (n 396).

⁴⁰⁷ I Tamba, 'Quality assurance requirement for fish markets in The Gambia' (Undergraduate Final Project, United Nations University 2016).

⁴⁰⁸ Constitution of Guinea-Bissau, art 39.

Constitution of The Gambia does not explicitly provide for the right to health. However, since The Gambia has ratified the African Charter and other relevant international instruments which provide for the right to health, the state is bound to guarantee the right to health.

The African Charter guarantees the right to ‘enjoy the best attainable state of physical and mental health’.⁴⁰⁹ The inclusion of ‘mental health’ is highly commendable because many African societies do not recognise the importance of mental health. The African Charter imposes on state parties the duty to protect the health of their people.⁴¹⁰ The Maputo Protocol provides for health and reproductive rights.⁴¹¹ Although there may not be a direct link between overfishing and reproductive rights, good nutrition is essential for reproductive health. As will be discussed later, the effects of overfishing on food security and nutrition standards are alarming. Fish is a highly demanded source of protein which is essential to food security and nutrition. The African Children’s Charter also provides for the rights to health and health services. Adequate nutrition is essential for the growth of children. Lack of adequate nutrition can have life-long effects on children, thus, it is crucial to ensure good health through proper nutrition.

The right to health is directly linked with food insecurity, malnutrition and environmental degradation. Lack of adequate food and nutrition leads to an infringement of the right to health. Likewise, a degraded environment increases people’s susceptibility to health challenges. According to the World Food Programme, one quarter of the population of Guinea-Bissau is afflicted by chronic malnutrition.⁴¹² Fisheries offer a way to remedy this.⁴¹³ If fish and fish products are available and affordable, it will improve the nutritional value of the food intake of the Guinean population. Also, if those working in the fisheries sector receive equal pay for equal work, it would improve their quality of life and standard of living as well as those of their dependents. This would decrease the rate of malnutrition in the state.

⁴⁰⁹ African Charter, art 16.

⁴¹⁰ *ibid* art 16(2).

⁴¹¹ Maputo Protocol, art XIV.

⁴¹² K Jeffang, ‘Illegal fishing threatens Guinea-Bissau’s blue economy’ (*Dialogue Earth*, 27 July 2023) <<https://dialogue.earth/en/ocean/illegal-fishing-threatens-guinea-bissau-blue-economy/>> accessed 17 September 2025.

⁴¹³ *ibid*.

Due to overfishing near the coast, Gambian artisanal fishers are forced to go further out at sea to catch fish.⁴¹⁴ This is a danger to their health because they are ill-equipped to fish in such zones with their dug-out canoes.⁴¹⁵ They have to stay at sea for longer periods and may encounter storms at sea. Not only could this level of exposure affect their health, but also their lives. Artisanal fishers out at sea are more likely to drown during a storm than those with industrial vessels. Also, the decline in the catch has a ripple effect on the right to health. Those in the fisheries sectors are left with less economic gains which would affect their standard of living and ultimately their right to health. A decrease in wages can imply a decrease in the quality of nutritional intake. This not only affects those working in the fisheries sector, but also affects their dependents. A decline in economic gains can also affect the mental health of those working in the sector. Worry and anxiety can have negative impacts on a person's mental and physical health.

4.4 Right to food

The right to food is directly linked to the right to health. Although neither the Constitution of Guinea-Bissau nor that of The Gambia explicitly provides for the right to food, it is an implicit right. At the regional level, only the Maputo Protocol explicitly recognises the right to food security.⁴¹⁶ In *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria*,⁴¹⁷ the African Commission on Human and Peoples' Rights (the African Commission) recognised the right to food. The African Commission highlighted the right to food as an implicit right derived from provisions such as the right to life, the right to health and the right to economic, social and cultural development.⁴¹⁸ It also highlighted the inseparable link between the right to food and the dignity of human beings.⁴¹⁹ The right to food is essential for 'the enjoyment and fulfilment of such other

⁴¹⁴ Amnesty International, 'The Human Cost of Overfishing: How the Overuse of Fisheries Resources in Sanyang Threatens Human Rights' (Amnesty International 2023).

⁴¹⁵ Access Gambia (n 395).

⁴¹⁶ Maputo Protocol, art XV.

⁴¹⁷ ACHPR/Communication 155/96.

⁴¹⁸ *ibid* para 64.

⁴¹⁹ *ibid* para 65.

rights as health, education, work and political participation'.⁴²⁰ This right has three minimum duties it imposes on the state. They are to protect sources of food, improve existing sources of food and to ensure access to adequate food for all citizens.⁴²¹

Fish is consumed in several forms in The Gambia and form a major component of state policy for food security and the fight against malnutrition.⁴²² It is the main source of protein for the diet of a majority of the Gambian population.⁴²³ The estimated national per capita consumption rate in coastal areas is 25 kilograms per year and 9 kilograms per year in inland areas.⁴²⁴ Despite the presence of rivers, there is a low rate of consumption of fish inland because of overfishing of the rivers.⁴²⁵ In Guinea-Bissau, fish and fish products provide 35% of the animal protein intake of the population.⁴²⁶ Despite this high level of dependence on fish, 99% of industrial catches from Guinea-Bissau are landed in Senegal, contributing to Senegal's GDP and reducing the food security of Guinea-Bissau.⁴²⁷ However, it should be noted that there are agreements between Guinea-Bissau and Senegal on the landing of fish.⁴²⁸ As mentioned in the section above, malnutrition is prevalent in Guinea-Bissau and can be curbed with proper fisheries management.

⁴²⁰ ACHPR/Communication 155/96, para 65.

⁴²¹ *ibid* para 65.

⁴²² EHB Deme and others, 'The Exploitation of Small Pelagics Fish in Gambia: What Valorization Policies?' (2021) 9 *International Journal of Fisheries and Aquatic Studies* 297, 303.

⁴²³ DB Traore, 'Final Report Artisanal Fishing Zone Issues in the Republic of The Gambia' (African Confederation of Professional Organisations of Artisanal Fisheries 2022) 8.

⁴²⁴ *ibid*.

⁴²⁵ MA Rice and others, 'Aquaculture in The Gambia' [2012] *World Aquaculture* 29.

⁴²⁶ Intchama, Belhabib and Jumpe (n 396).

⁴²⁷ C Santos, M Djaló and JJ Mendes, 'Scales of Injustice: The Guinea-Bissau Communities Confronting Illegal, Unreported and Unregulated Fishing' (*The Sociological Review*, 8 October 2024) <<https://thesociologicalreview.org/magazine/october-2024/the-sea/scales-of-injustice/#:-:text=The%20fishing%20agreements%20have%20provided%20little%20benefit%20to,so%20often%20expressed%20by%20Bissau-Guineans%20towards%20the%20statehttps://thesociologicalreview.org/magazine/october-2024/the-sea/scales-of-injustice/#:-:text=The%20fishing%20agreements%20have%20provided%20little%20benefit%20to,so%20often%20expressed%20by%20Bissau-Guineans%20towards%20the%20state>> accessed 17 September 2025.

⁴²⁸ Ministry of Fisheries and Maritime Economy of Senegal, 'Sea fishing: Senegal and Guinea-Bissau renew their agreement' (*Maritim Africa*, 28 February 2024) <<https://maritimafrika.com/en/sea-fishing-senegal-and-guinea-bissau-renew-their-agreement/>> accessed 23 September 2025.

From the discussion so far, it is evident that both The Gambia and Guinea-Bissau have failed all three minimum duties. By prioritising industrial fishing, both states have failed to protect, improve and ensure access to food sources as required by the three minimum obligations identified by the African Commission. The states seem to prioritise mirage economic gains from the industrial fishing sector at the expense of their populations. International agreements granting other states access to fishing rights in Guinean and Gambian waters contain financial and developmental profits to the states.⁴²⁹ However, due to corruption at various levels, the financial gains end up in the pockets of a few individuals at the expense of the nation.⁴³⁰ Also, the developmental gains are not proportionally beneficial in comparison with the losses incurred by the states.⁴³¹ Nationals in the fisheries sector have more to gain from the artisanal fisheries sub-sector than the industrial fisheries sub-sector. The artisanal sub-sector involves more sustainable fishing practices than the industrial sub-sector. Promoting the artisanal sub-sector protects sources of food and ensures access to food. That meets two of the three minimum duties of the state laid out in the *SERAC* case. The states can then implore other methods to improve the existing sources of food. Prioritising the industrial sub-sector is a steep decline to failing all three minimum duties and leads to the violation of the right to food.

4.5 Right to education

A parents' enjoyment of their right to work is directly linked with their children's enjoyment of their right to education. The parents also have a right to education and training. The Constitution of Guinea-Bissau recognises this right and recognises the state's duty to promote education and ensure access to education progressively.⁴³² Guinean citizens also have the duty to be educated.⁴³³ The Constitution of The Gambia explicitly provides for the rights to education.⁴³⁴ These rights include the right to equal ed-

⁴²⁹ Santos, Djaló and Mendes (n 427).

⁴³⁰ Jeffang (n 412).

⁴³¹ Santos, Djaló and Mendes (n 427).

⁴³² Constitution of Guinea-Bissau, art 41.

⁴³³ *ibid* art 41(1).

⁴³⁴ Constitution of The Gambia, s 30.

educational opportunities and facilities.⁴³⁵ The African Charter recognises the right to education.⁴³⁶ The Maputo Protocol also recognises the right to education and includes the right to training.⁴³⁷ The African Children's Charter extensively provides for the right to education.⁴³⁸

There is a chain that connects all these rights with the fish caught.⁴³⁹ The fishers, the fishmongers and the fish processors have dependents to send to school. Without adequate catch, the entire chain suffers. As aforementioned, the states need to prioritise the wellbeing of their citizens above perceived economic gains. The states also need to focus on nation and capacity building. When a state is strong internally, it can stand its ground on its demands in international agreements, getting true value for its natural resources.

The Guinean government claims that it needs to enter into international fisheries agreements in order to pay off national debts.⁴⁴⁰ The latest fishing agreement between EU and Guinea-Bissau is for five years (2024-2029).⁴⁴¹ Guinea-Bissau is to receive €17 million annually and a €19 million support from EU to the fisheries and blue economy sectors.⁴⁴² Guinea-Bissau also has fishing agreements with China, however, the details are undisclosed.⁴⁴³ In the past 15 years, China has built infrastructure for Guinea-Bissau, such as the Hospital Militar, one of the biggest hospitals in the state. There has also been an influx of Chinese residents and Chinese owned businesses. In 2017, 82 Chinese vessels were authorised to operate in Guinean waters.⁴⁴⁴ The lack of transparency of fishing agreements with China raises questions on accountability, transparency and sustainability.

⁴³⁵ Constitution of The Gambia, s 30.

⁴³⁶ African Charter, art 17(1).

⁴³⁷ Maputo Protocol, art XII.

⁴³⁸ African Children's Charter, art 11.

⁴³⁹ Santos, Djaló and Mendes (n 427).

⁴⁴⁰ *ibid.*

⁴⁴¹ *ibid.*

⁴⁴² *ibid.*

⁴⁴³ *ibid.*

⁴⁴⁴ *ibid.*

If African states focus on nation building, they would not have to rely on foreign aid or foreign credit. One of the ways to build the nation is through education. An uneducated generation undermines future resilience of coastal communities, thus, education must be prioritised. To fully enjoy the right to education, all other interconnected rights must be fulfilled.

4.6 Right to culture

The right to culture is not explicitly provided for in the Constitution of Guinea-Bissau, however, it is in the Constitution of The Gambia.⁴⁴⁵ The African Charter recognises the right to take part in the cultural life of the community.⁴⁴⁶ The state has the duty to promote and protect the morals and traditional values recognised by the community.⁴⁴⁷ The Maputo Protocol also recognises the right to positive cultural context.⁴⁴⁸ This is important because as will be discussed later, culturally, women play a vital role in the fisheries sector. Although the African Children's Charter provides for protection against harmful social and cultural practices, it does not explicitly provide for the enjoyment of the right to culture.⁴⁴⁹

The promotion of industrial fishing in Guinea-Bissau and The Gambia undermines traditional fishing, thus infringing on the right to culture. The Bijagó people of Guinea-Bissau have great cultural value for marine life.⁴⁵⁰ Sharks and stingrays hold a significant role in their spiritual practices. They are an essential part of initiation and coming of age ceremonies.⁴⁵¹ In recent years, the islanders have experienced an alarming decline in fish stocks due to the destruction of habitats caused by foreign fishers and the activities of foreign industrial fleet.⁴⁵² An islander lamented that 'they fish with a small mesh. In our culture, we use large meshes and

⁴⁴⁵ Constitution of The Gambia, s 32.

⁴⁴⁶ African Charter, art 17(2).

⁴⁴⁷ *ibid* art 17(3).

⁴⁴⁸ Maputo Protocol, art XVII.

⁴⁴⁹ African Children's Charter, art 21.

⁴⁵⁰ Santos, Djaló and Mendes (n 427).

⁴⁵¹ *ibid*.

⁴⁵² *ibid*.

return any small fish to the sea'.⁴⁵³ This indicates sustainable traditional practices in contrast with unsustainable industrial fishing. It is devastating to see the ripple effects of overfishing on various human rights including cultural rights.

In The Gambia, harvesting, processing and selling of wild oyster is culturally the role of women of the Jola, Balanto and Manjago ethnic groups.⁴⁵⁴ Harvesting of matured oysters is done by collecting them from mangrove prop roots using an axe or cutlass while cockles are combed for in the sand.⁴⁵⁵ Activities related to overfishing have an impact on the rights of these women. The fishmeal factories in The Gambia release waste products into Gambian waters.⁴⁵⁶ This has an adverse effect on aquatic life including the mangroves. This in turn affects the rights to work and culture of women who rely on the mangrove ecosystem. The Gambia is predominantly a patriarchal society. Women play minimal roles in key decision making. Oyster harvesting forms part of the cultural identity and role women play in the aforementioned tribes. An infringement on this right undermines the core of the identity of these women. It is therefore imperative that maximum effort is made to curb overfishing and ensure the protection of the rights of the Guinean and Gambian populations especially those who are vulnerable.

4.7 Right to a general satisfactory environment

The right to environment is explicitly provided for by the African Charter⁴⁵⁷ and the Maputo Protocol.⁴⁵⁸ Neither of the two Constitutions explicitly provide for this right, however, since both states are parties to the African Charter and the Maputo Protocol, the right should be guaranteed by both states. Human activities have a great impact on the right to a general satisfactory environment. Polluted coastal areas would have a negative impact on local communities. Polluted waters affect fish populations and fish habitats leading to the death and/or migration of fish species. This

⁴⁵³ Santos, Djaló and Mendes (n 427).

⁴⁵⁴ UNCTAD (n 387).

⁴⁵⁵ Wabnitz and others (n 385).

⁴⁵⁶ *ibid.*

⁴⁵⁷ African Charter, art 24.

⁴⁵⁸ Maputo Protocol, art XVIII.

would affect the right to work of local fishers and fishmongers as well as the right to food of the community. Coastal pollution can also affect the right to health of the local communities due to contaminated water sources and air pollution. It can also have a negative impact on cultural and religious rights as many coastal communities depend on the aquatic ecosystem in the enjoyment of these rights.

In Guinea-Bissau, industrial fishing vessels have been criticised for having a destructive effect on the aquatic ecosystem.⁴⁵⁹ Although the use of some fishing gears and methods is prohibited in Guinea-Bissau, bottom trawling by industrial vessels, the use of small mesh nets, ropes, harpoons, and hooks, which wash up on the beaches, and fuel spills damage the environment. In The Gambia, waste products from fishmeal factories are released into the surrounding waters.⁴⁶⁰ This has led to fish dying off, the disappearance of aquatic birds and a change in the ecosystem.⁴⁶¹ The water pollution would also have an adverse effect on the people living in coastal areas, affecting the water they use for their basic needs.

4.8 Conclusion

Despite elaborate national laws and concession to several treaties, human rights in Guinea-Bissau and The Gambia are being violated due to overfishing. Rather than using a human rights-centred approach, the states have been more focused on economic gains. Unfortunately, the effects of overfishing have led to more economic losses than gains, meaning that the states have lost on both sides. It is important to reform laws and policies and ensure their enforcement in order to protect the rights of the Guinean and Gambian populations. In order to be policy makers rather than policy takers, the states must focus on nation building. The focus should be on the people within the state and meeting their needs. The surplus of natural resources can be sold to obtain economic gains. Since human rights are interconnected,

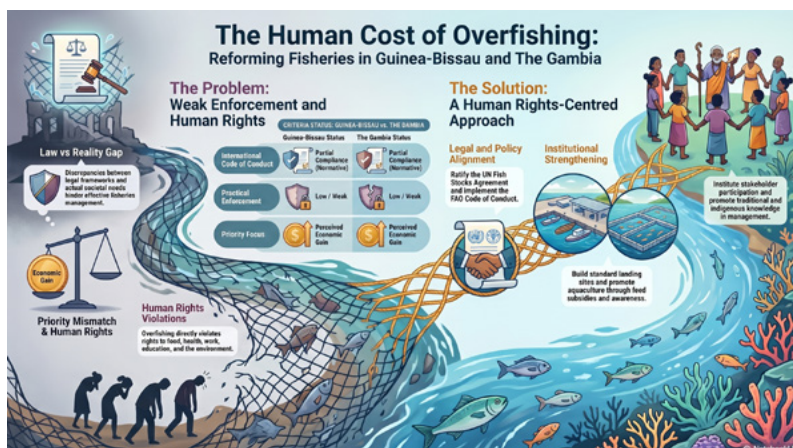
⁴⁵⁹ Santos, Djaló and Mendes (n 427).

⁴⁶⁰ Wabnitz and others (n 385).

⁴⁶¹ *ibid.*

the violation of one right leads to the violation of other rights. Therefore, Guinea-Bissau and The Gambia must ensure that their laws, policies and international agreements are human rights-centred. They must also ensure the implementation of such laws and policies.

5. Key findings, conclusion and recommendations



5.1 Key findings

Guinea-Bissau and The Gambia both have a rich normative framework on fishing. They are signatories and parties to key international and regional treaties and have incorporated some international standards within their national systems. However, on the ground realities seem to vary from the legal framework. Discrepancies between the letter of the law and the current needs of the people pose a problem. Also, a high level of corruption hinders government officials from ensuring compliance with the law. Prioritising perceived economic gains over the socio-economic needs of the people has led to the infringement of various human rights such as the rights to work, health, food, education, culture and the environment. There is a need for both states to adopt a human rights-centred approach in the revision and implementation of their fisheries regulatory systems.

5.2 Conclusion

From the research, it is evident that socio-economic rights are violated as a result of weak enforcement of fishing regulations which enable overfishing. Regulatory frameworks have a direct impact on overfishing. Weak and unenforced regulatory frameworks lead to overfishing and subsequent violations of human rights while strong and enforced regulatory frameworks prevent overfishing and ensure the promotion and protection of human rights. Although the fishing regulatory frameworks of Guinea-Bissau and The Gambia are extensive, they must be up to date and respond to on the ground realities. It is also essential that national regulatory frameworks align with good international regulations such as the Fish Stocks Agreement, PSMA and Code of Conduct. Neither Guinea-Bissau nor The Gambia has full compliance rates with the Code of Conduct within their normative framework. This implies an even lower level of compliance in practice. Overfishing has resulted in the violation of the rights to work, health, food, education, culture and the environment. In order to mitigate these human rights violations, fishing regulations must be revised to the context of each state. Relevant international principles should be reflected in the regulations while taking into account societal realities. The fishing regulations must also be enforced to ensure that all those in the fisheries sector are compliant.

5.3 Recommendations

The following are recommended:

5.3.1 Legal and policy recommendations

Guinea-Bissau and The Gambia should ensure that their laws and policies meet the needs of on the ground realities. They should also adopt a human rights-centred approach in the revision and implementation of their fisheries regulatory systems and promote the use of sustainable traditional and indigenous knowledge in fisheries. Both states should ratify and implement the UN Fish Stocks Agreement. Guinea-Bissau should also ratify and implement the PSMA and FAO Code of Conduct. It should

also improve its regulations on aquaculture. Lastly, African states should strengthen regional collaboration efforts and be more involved in global treaties drafting to ensure that the African context is accounted for.

5.3.2 Institutional recommendations

Guinea-Bissau and The Gambia should prioritise the well-being of their populations and nation building. Both states should also build standard landing sites to reduce the number of catches from their waters that are landed in other states. Furthermore, both states should strengthen institutional collaboration for better management of aquatic resources. Guinea-Bissau and The Gambia should institute community governance of shared resources and stakeholder participation in fisheries management. Both states should also promote aquaculture through awareness raising and subsidising the cost of feed and other relevant materials. African regional economic integration organisations should join the membership of FAO to ensure that the African context is adequately recognised in FAO's treaties and initiatives.

5.3.3 Non-legal recommendations

A quantitative study should be done to discover on the ground realities. Also, an in-depth study on the impact of international agreements should be made. Academics, legal practitioners and other stakeholders should enhance knowledge sharing by educating the public of their rights and advocating for their protection.

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Annexe 1

Table 2 showing the criteria met by Guinean laws

Criteria	Decree-Law no 2/86	Decree no 4/96	Decree-Law no 6-A/2000	Decree-Law no 10/2011	Decree no 21/2016	Decree no 22/2016
Effective conservation and management of aquatic ecosystems	Yes	Yes	Yes	Yes	Yes	Yes
Sustainability and future generations	Yes	Yes	Yes	Yes	Yes	Yes
Prevention of over-fishing and excess fishing capacity	Yes	Yes	Yes	Yes	Yes	Yes
Protection and rehabilitation of fish populations and fisheries habitat	Yes	Yes	Yes	Yes	Yes	No
Science-based decisions and traditional knowledge	No	No	Yes	No	No	No
International co-operation and compliance in trade	Yes	No	Yes	Yes	No	Yes
Precautionary approach	No	No	No	Yes	No	No
Selective and environmentally safe fishing gear and practices	Yes	No	Yes	Yes	No	No
Monitoring, control and enforcement	Yes	Yes	Yes	Yes	Yes	Yes
Transparent decision making processes and stakeholder participation	Yes	No	No	Yes	No	No
Awareness raising and maintenance of nutritional value, quality and safety of fish and fish products	No	No	Yes	Yes	Yes	No
Responsible aquaculture	No	No	Yes	Yes	No	No
Protection of human rights	Yes	No	No	Yes	No	No

Annexe 2

Table 3 showing the rate of compatibility of Guinean laws with the 13 principles outlined from article 6 of the FOA Code of Conduct for Responsible Fisheries

Law	Number of criteria met	Number of criteria not met	Compatibility rate	Status
Decree-Law no 2/86	9	4	69%	Repealed
Decree no 4/96	6	7	46%	Repealed
Decree-Law no 6-A/2000	10	3	77%	Repealed
Decree-Law no 10/2011	12	1	92%	In force
Decree no 21/2016	6	7	46%	In force
Decree no 22/2016	5	8	38%	In force

Annexe 3

Table 4 showing the criteria met by Gambian laws

Criteria	Fisheries Act 1991	Fisheries Regulations 1995	Fisheries Act 2007	Fisheries Regulations 2008	Merchant Shipping Act 2013	Fisheries and Aquaculture Policy of The Gambia 2018
Effective conservation and management of aquatic ecosystems	Yes	Yes	Yes	Yes	No	Yes
Sustainability and future generations	No	Yes	Yes	Yes	No	No
Prevention of overfishing and excess fishing capacity	No	Yes	Yes	Yes	No	No
Protection and rehabilitation of fish populations and fisheries habitat	No	Yes	Yes	Yes	Yes	No
Science-based decisions and traditional knowledge	Yes	No	Yes	No	No	No
International co-operation and compliance in trade	Yes	No	Yes	Yes	Yes	Yes
Precautionary approach	No	No	Yes	No	No	No

Criteria	Fisheries Act 1991	Fisheries Regulations 1995	Fisheries Act 2007	Fisheries Regulations 2008	Merchant Shipping Act 2013	Fisheries and Aquaculture Policy of The Gambia 2018
Selective and environmentally safe fishing gear and practices	Yes	Yes	Yes	Yes	No	No
Monitoring, control and enforcement	Yes	Yes	Yes	Yes	Yes	No
Transparent decision making processes and stakeholder participation	Yes	No	Yes	No	No	Yes
Awareness raising and maintenance of nutritional value, quality and safety of fish and fish products	Yes	Yes	Yes	No	No	Yes
Responsible aquaculture	Yes	Yes	Yes	Yes	No	Yes
Protection of human rights	No	Yes	Yes	No	Yes	Yes

Annexe 4

Table 5 showing the rate of compatibility of Gambian laws with the 13 principles outlined from article 6 of the FOA Code of Conduct for Responsible Fisheries

Law	Number of criteria met	Number of criteria not met	Compatibility rate	Status
Fisheries Act 1991	8	5	62%	Repealed
Fisheries Regulations 1995	9	4	69%	Repealed
Fisheries Act 2007	13	0	100%	In force
Fisheries Regulations 2008	8	5	62%	In force
Merchant Shipping Act 2013	4	9	31%	In force
Fisheries and Aquaculture Policy of The Gambia 2018	7	6	54%	In force



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