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## **Corruption and state-corporate crime in fisheries**

André Standing

Series editors: Aled Williams and Kendra Dupuy

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## Abstract

This U4 Issue paper describes corruption in the fisheries sector through the lens of state-corporate crime. It presents a case study from Senegal where Russian, European and Asian fishing firms, supported by their home governments, gained access to overfished stocks that are vital to local food security and the artisanal fishing sector. The discussion draws on further evidence from other countries and elaborates on the main observations from Senegal about the nature and implications of state-corporate crime in fisheries, including the role of corruption. The paper considers the policy implications for the international fight against corruption and illegal fishing, and argues that existing approaches based on law enforcement is insufficient. International efforts to address fisheries crime will require political reforms, including advancing democratic governance and human rights.

## Acknowledgments

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## About the author

André Standing is a researcher specialising on natural resource sectors, including forestry and fisheries. His work focuses on the political and social dimensions of resource sector governance, with an interest in political corruption, state and corporate crimes and the rights of marginalised communities.

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# 1 Introduction

Since the early 2000s there has been considerable international attention to dealing with illegal, unreported and unregulated (IUU) fishing, thought rampant in all parts of the world, particularly in poorer countries. IUU fishing is typically presented as vessels responding to weak regulations and law enforcement capacity, plundering the oceans and unfairly impacting on the law-abiding sector. For the last few years, illegal fishing has been regularly depicted as the activities of “fish pirates” (OECD 2004) or transnational organised crime (Osterblom et al 2011). These criminal elements in the fisheries sector are depicted as one of the most serious threats to legal fisheries and states, requiring substantial donor-led capacity building for national and international law enforcement.

In contrast, this U4 Issue Paper encourages further consideration of the interactions between corporate and state actors in fisheries that encourage unethical or illicit behaviours, what can be referred to as *criminogenic* relationships. The example described in this paper illustrates the havoc caused by political and business elites pursuing profit maximization with scant regard for environmental sustainability and the well-being of the majority of fishers. Traditional law enforcement strengthening may not be appropriate in this context, and it may have unintended outcomes.

The paper takes inspiration from the criminological literature on “state-corporate crime”, defined as “illegal or socially injurious actions that result from a mutually reinforcing interaction between (1) policies and/or practices in pursuit of goals of one or more institutions of political governance and (2) policies and/or practices in pursuit of the goals of one or more institutions of economic production and distribution” (Michalowski and Kramer 2006). This approach to understanding problems in the fisheries sector reveals several dimensions of corruption that remain largely understudied and weakly integrated into fisheries policy discussions. Yet as will be argued, the ‘abuse of power’ needs to be taken more seriously in understanding the political economy of fisheries and designing fisheries reforms, including on the role of law enforcement.

The paper is structured as follows. It begins by describing events in Senegal over the past four years involving some of the largest fishing boats in the world, owned by corporations based in Russia, Europe and Asia. This research stems from the author’s work for the Coalition for Fair Fisheries Arrangements, an international network working on the rights of small-scale fishing communities. Information used in the paper derives from fieldwork in Senegal during mid-2011, follow-up conversations with local experts at international meetings and through emails, and it draws on various published reports.

The discussion draws on further examples and sets out areas for research and analysis on criminogenic state-corporate relations, including the role of the state in fisheries crime, the importance of private investments and subsidies, and also the need for thinking about crime beyond the law. This part of the paper describes several forms of corruption that are important in understanding state-corporate crimes, including conflicts of interests, regulatory capture, embezzlement of revenues and bribery.

The paper concludes by highlighting some key policy considerations for international efforts at reducing illegal fishing, which includes support to democratic governance reforms and consideration to human rights as key strategies for addressing state-corporate abuses. This is intended to broaden policy debates on how to address fisheries crimes and corruption beyond law enforcement.

## 1.1 Industrial fishing for small pelagics in Senegal: A case study

Senegal is West Africa's largest producer of marine fish. Recorded exports increased from 500,000 tonnes in 1950 to a peak in the early 2000s of 5.5 million tonnes (UNEP 2002). By the mid-2000s the fisheries sector employed at least 60,000 fishers, over 90 per cent in the small-scale sector, with an additional 540,000 people engaged in related services and trade. About 17 per cent of the active work force in Senegal depends on marine fisheries for their livelihood (Lossa et al. 2008, 6).

Artisanal fishers targeting small pelagic fish species, such as sardines and mackerel conduct most of the fishing in Senegal. The North West Coast of Africa is extremely rich in these species. Vast schools of small-pelagics migrate from the Southern part of Morocco as far down as Guinea-Bissau. Alongside the small-scale boats that catch these fish are the industrial trawlers owned by companies from Europe, Russia and Asia, including many over 120 metres long that catch up to 100 tonnes of fish in one haul of their nets – such is the scale of these nets that fish is not landed on board, it is pumped by vacuum pipes. These boats are commonly referred to as the “super trawlers”. Some transfer their catch at sea to even bigger boats. The Soviet Union pioneered the use of these “mother ships” in the 1960s; factory vessels that freeze and package fish, allowing other boats to stay at sea for extended periods. This is important as super trawlers are expensive to run and owners must avoid periods of inactivity due to high bunkering costs. They cannot afford to stop fishing.

Up to a million tonnes of small-pelagics is caught every year off North West Africa (FAO, 2011). Some of this is ground up and used for fishmeal for farmed fish in Europe and Asia, but the majority is frozen or canned and then sold in Europe, or to markets in West Africa, of which Nigeria, Ghana and the Ivory Coast are the most important. The small-scale catch of small-pelagics is typically dried and salted and is consumed locally or dispersed through informal trading networks throughout West Africa, as far as Gabon and Angola.

In Senegal, authorizations for industrial fishing vessels targeting small-pelagics were phased out in the late 1990s. Industrial fishing still exists in Senegal, and there is an industrialized fishing fleet of about 130 boats, but these target high value demersal (bottom dwelling) species and migratory tuna and billfish, almost all of which is exported to Europe and Asia. For several decades the majority of these foreign industrial fishing firms operated under bilateral access agreements, with the EU signing their first with Senegal in 1979, which was later joined by bi-lateral agreements with China and the Soviet Union. However, in 2005 Senegal's fishing authorities rejected all bilateral fisheries agreements and encouraged, through tax incentives, foreign firms to establish joint-venture partnerships with Senegalese firms.

Despite its economic importance, the fishing sector in Senegal is facing considerable ecological problems. The growth in the fisheries sector has been unsustainable and there has been chronic overcapacity for decades, partly stimulated by government investment in local fisheries development, including fuel and boat building subsidies (UNEP 2002). Overcapacity has meant Senegalese fishers have migrated throughout West Africa and the government of Senegal has negotiated bilateral access agreements for its domestic fishing sector with Mauritania, Gambia, Guinea-Bissau and Cape Verde.

Senegal also suffers from high levels of illegal fishing, such as industrial boats operating in restricted areas, both industrial and artisanal boats using banned fishing gear (such as ultra-fine fishing nets) and misreporting catches to the government. One study in 2010 estimated the value of illegal fishing in Senegal at approximately 35 per cent of the official reported catch (MRAG 2010). The combined effects of overcapacity and illegal fishing has meant the trend in Senegal is for local fishers to spend more time at sea catching less, the size of fish being caught has been in decline and some species that

were once abundant are now scarce (UNEP 2002). Fishing enterprises are laying-off employees and downsizing; between 1997 and 2005, the number of Senegalese pirogues<sup>1</sup> actively fishing reduced by nearly 50 per cent (Lossa et al. 2008, 6-10). Fish prices, particularly the small pelagic species that dominate the local markets, are increasing; the local market price of a 45kg box of sardines has risen from 3,000 CFA (4.6 Euros) in 2009, to between 12,500 and 15,000 CFA (19 to 23 Euros) in 2011 (CFFA 2011a). This decline in production and increase in price is generating food security concerns; in the early 2000s 75 per cent of animal protein consumed by the Senegalese came from marine fisheries (UNEP 2002), although this proportion has almost certainly declined since then.

## 1.2 Return of the Russian super-trawlers

With growing concern over the future of the fisheries sector in the country, the decision by the Minister of Maritime Affairs in 2010 to provide authorizations to several ‘super trawlers’ to target small-pelagic fish species led to widespread condemnation. Information about precisely how many trawlers were provided with licences emerged gradually in the public domain since late 2010. Over a two-year period the total number of authorizations for super trawlers reached 44, although only 29 of them went on to engage in fishing before the licences were revoked.

A Senegalese member of the International Collective in Support of Fishworkers – an international organization launched in 1984 that works towards the establishment of equitable and sustainable fisheries – was among the first to become aware of the trawlers when he was told by local fishers about six Russian boats fishing in the far north of the country’s waters. He asked the local fishing authorities for a list of fishing licences allocated by the government to identify these boats, but only received an outdated list from 2007.<sup>2</sup> An official at the central office of the Ministry for Maritime Affairs in Dakar also claimed to know nothing about these boats, saying they were probably illegally fishing in Senegalese waters. Yet in late 2010 more Russian and East European flagged trawlers were docked in the Dakar port for refueling and servicing, making it more difficult for the authorities to avoid giving out information on their legal status.

Further pressure for information came from the secretariat of the Senegalese Association of Fishing Companies and Ship Owners (GAIPES), who were provided with information from the Ministry that these boats were part of a foreign fleet that had been operating in Senegal since March 2010 under short-term licence agreements (for two month periods only), renewed in 2011. Concern by GAIPES was based not on the direct competition posed by these super-trawlers for the same catch, for few members of GAIPES target small-pelagics. However, the depletion of small-pelagics has a cascading effect on other species, and the method of catching fish by these trawlers generates considerable by-catch of marine wildlife including other commercially important species (Greenpeace, 2012a). EU evaluations of fisheries in Morocco during the mid-2000s revealed that the fleet of super trawlers targeting small-pelagics caught more demersel species than the entire fleet of local fishers, although they were not licensed or managed for these other species. Thus, the impact of super trawlers goes beyond just over catching small fish and poses dangers to the entire fishing industry in Senegal.

The legality of providing authorisations to the super trawlers was contested. Local fishers argued there was no way under Senegal’s fisheries laws that super trawlers were allowed to gain individual licences, and all fishing licences should be presented to an industry Advisory Board, a multi-

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<sup>1</sup> Pirogues are locally made canoes, from which fishers use a combination of nets or hand-lines.

<sup>2</sup> Personal communication, Dakar, August 2011.

stakeholder committee set up in the mid-2000s that was designed to bring accountability to the licensing process. Initial reports claimed the authorizations were granted by the Minister acting in isolation and were therefore not formerly registered (Faye 2011). The Minister had tried to make amendments to the national fisheries law of 1998, by approaching Parliament to allow for 'exceptional licences' at his discretion. The amendment was not approved. However, others claim that the legality of the licences were ambiguous.<sup>3</sup> The Advisory Board had in fact consented to the licensing, through a combination of political pressure and possibly bribe payments. What also transpired is that the authorizations were based on charter arrangements, not individual licences. Four Senegalese shipping agents acted as the brokers for the authorizations. Persistent rumours in Senegal were that the brokers included political elites, although their names have not been established. The use of charter arrangements also required local companies to be part of the deal (providing the foreign firms with a local partner), which several consented to. Some members of GAIPES had been involved from the outset.

During 2011 several lists were produced by local NGOs with the names of authorized vessels, but a complete list was eventually compiled by Greenpeace in 2013 (Greenpeace 2012b). The list contained 15 vessels flying the Russian flag, and the flags of other boats included Belize (10), Peru (5), Lithuania (3), Latvia (2), and one each from Comoros, Georgia, Vanuatu, and the Faeroe Islands. Research by the author has attempted to reveal the countries where these vessels' owners are based. The majority are in Russia, others are in Iceland, Ukraine, China, Latvia and Belgium, although it is difficult to establish whether some companies are subsidiaries of others. Most of these boats originate from the former Soviet Union's state-owned fishing fleet, which became privatized and fragmented during its political transition, but remains under the ownership of Russian and former Soviet Union business elites.

The licences were given with favourable terms. Normally licence fees in Senegal are based on 30 per cent of the landed price of the estimated catch, with the international market value of small-pelagic fish being about 400 CFA per kilo. Yet in this case the foreign trawlers were requested to pay 17 CFA per kilo; 4.25 per cent of the market value. In total, the Ministry of Fisheries reported that they were set to receive payments of 5 billion CFA, or 7.6 million Euros, from licensing the trawlers. Sources in Senegal claimed that each trawler might catch approximately 300,000 tonnes of fish during one fishing season, with a market value of around 183 million Euros (Allix 2011).

Members of GAIPES and the National Council for Local Fishing in Senegal (CONIPAS) held a meeting with the Russian Embassy in Dakar to request information about the licencing agreement. The Russian Ambassador stated that this had formed part of a protocol signed between Russia and Senegal, although none of the Senegalese fishers were aware of the protocol and nothing on it had been published in local newspapers. The agreement has now been acquired by local NGOs (unofficially, as it was 'leaked'). It does not include access to fish for Russian boats, it was a government-to-government agreement for development assistance, including scientific research and financial and technical support for combating illegal fishing, although it also contains clauses to ensure that the two countries exchange information on opportunities for Russian fishing in Senegal. It also established a joint commission on fisheries between the two countries, although there has been no further information made available on whether this commission has met.

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<sup>3</sup> This was explained to the author by an employee of an EU funded fisheries programme in Dakar, August 2011.

The Russia-Senegal co-operation agreement may have been an outcome of a ‘military co-operation pact’ that the governments of Russia and Senegal signed in 2007. At the time this agreement was signed, the Foreign Minister of Russia, Sergei Lavrov, claimed that as a consequence of the renewed co-operation between the two countries, “our wish is to sign a fishing accord with Senegal” and he explained that this could be structured on past EU fisheries agreements, where access for fish is joined by financial aid for fisheries development (Recalde 2007a). The Senegalese and Russian foreign ministers provided a joint statement on the announcement of the pact, describing how “the private sector must be the engine of their co-operation’ and ‘that fishing is a priority sector which will be very profitable for the two countries” (ibid.).

This is not a new arrangement; the Soviet Union had a series of bilateral fisheries agreements with several African countries, including Senegal, in the 1970s and 1980s. Between the 1950s and the 1980s the vast majority of small-pelagic fishing by foreign countries was done by the state owned fishing enterprise of the Soviet Union. In West and Southern Africa, Soviet Union catches were reported to the FAO in 1982 as over 1.8 million tonnes, compared to the next largest foreign fishing nation Spain, which recorded 652,000 tons (Iheduru, 1995). The situation changed following the break-up of the Soviet Union, when Soviet fisheries collapsed. Fish production by Russian firms declined by 50 per cent from the early 1990s to the mid-2000s and the estimated 2,500 strong Russian industrial fishing fleet contains many ships in a state of disrepair (Tribiloustova 2005).

This resurgence of Russian fishing in West Africa has taken place as the Russian government has embarked on a drive to rescue its fishing industry, and can be seen as one part of Russia’s return to Africa as a major actor in the extractive industries, described by some as Russia’s scramble for Africa’s resources (Cohen 2011). In 2009 the Russian government announced an investment for its fishing industry of USD 2.5 billion (Fuller 2009), and this money may be helping to fund the reinstatement of fisheries agreements in West Africa. In early 2011 Russia also signed a similar confidential protocol with the government in Guinea-Bissau, alleged to be worth 15 million Euros.<sup>4</sup> Again it is outwardly directed towards capacity building and combating illegal fishing, but it allows access to Guinea’s waters for Russian trawlers. This protocol is also in direct contradiction with national laws; Guinea-Bissau fisheries law restricts the size of trawlers to 2,000 Gross Regional Tonnage (GRT), but the Russian fleet operating in West Africa is made up of boats between 4,000 and 6,000 GRT. As with Senegal, this is not the first fishing agreement that Russia has negotiated with Guinea-Bissau. It was in the 1980s when the USSR first paid the government for fishing access, widely known to be a swap deal involving the supply of Soviet military equipment.

Although Russian firms made up the majority of the super trawlers involved in Senegal, another firm was China Fisheries, a subsidiary of the world’s largest fishing company, Pacific Andes. Several vessels owned by China Fisheries were listed as having gained authorizations to fish in Senegal during 2011/12. The majority of small-pelagics caught by China fisheries is caught off Peru and Chile, although in 2009/10 there was a sharp decline in fish there, explained in articles by the International Consortium of Investigative Journalists as the outcome of political corruption, very weak regulation and massive frauds (Rosenblum and Cabra 2012).

This collapse of fishing off Peru and Chile has caused China Fisheries, and other firms, to venture into new areas. In 2010 China Fisheries was loaned 190 million USD by the international investment firm Carlyse Group, and in reports to shareholders this was explicitly recognized to assist it to expand into

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<sup>4</sup> Personal communication, IUCN, Bissau, June 2011.

West Africa, described as having enormous potential as a source of fish and a consumer market for its products. In 2010, Pacific Andes also invested in one of the largest fish processing vessels in the World, the *Lafayette*, a 228m Russian oil tanker converted to a fish processing factory, that sometimes flies a Russian flag and sometimes the flag of Peru, which operates between West Africa and South America. Reports show that despite optimistic projections, the *Lafayette* is running at a loss, costing the company 55 million USD in 2013 (Talksen 2014). This highlights the financial pressure facing companies in the small-pelagic sector, and why gaining access to new fishing grounds is vital for financial survival.

### 1.3 Public protests and the confidential Russian fisheries agreement

Anger over the ecological and economic impact of the fleet of foreign fishing boats in Senegal led to strikes and a protest march in Dakar in March 2011. A press release issued by the organizers of this protest highlighted that the ‘juggernauts of 100 m long’ threaten the food security of millions of people (CFFA 2011a). The argument was supported by the government’s own research. Before the foreign trawlers were provided authorisations and licences, the Senegalese National Institute for Fisheries Research had recommended a 50 percent *reduction* of the fishing effort on small-pelagic stocks to stem overfishing (CFFA 2011a). Yet the foreign vessels’ fishing power was several times the capacity of the national Senegalese fishing fleet targeting small-pelagic fish species.

The Minister of Maritime Affairs responded to the protests by refuting claims that the vessels represented a threat to the livelihoods of Senegalese fishers. On national radio he claimed, “if this stock isn’t fished, it dies and that will be an enormous loss to the country” (Faye 2011). He said he would open a dialogue with the Senegalese fishing sector, but refused to have fishing associations dictate policy: “The State has its responsibilities. I do not tell them what they need to do, so I don’t want them to tell me what I have to do” (CFFA 2011a). The secretary-general of the National Collective of Small-scale Fishers (CNPS) responded: “If the government doesn’t suspend these licences, we will go and find the trawlers and fight it out with them. We are going to chase them out of our waters at whatever price” (CFFA 2011a).

The decision to grant super trawler licences has also generated concern within the European Commission, as well as the Spanish fisheries sector. Senegal’s official decision in 2006 to not sign a bilateral fisheries agreement with the EU was based on the argument that these had provided poor returns and had led to overfishing, although the EU claim that negotiations went sour when the government demanded increased payments and they refused to commit to using the funds for fisheries development.<sup>5</sup>

The EU have been trying to renegotiate an agreement since then, and at times the Senegal authorities have suggested they would reconsider their position (Murais 2007). The EU provided a grant of six million Euros to the Senegal government to help fund fisheries development in 2007 (Recalde 2007b). When this was announced, the Spanish Minister for Fisheries commended the Senegalese government for their commitment to sustainable fisheries and claimed that the Senegalese authorities had confirmed to him that the total number of fishing licences issued to foreign fleets would be frozen (Murais 2007). The Russian fisheries agreement therefore represented an unwelcome development for

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<sup>5</sup> The European Commission’s Directorate-General for Maritime Affairs and Fisheries published a press release describing this in 2009 entitled ‘Is Europe Really Giving Senegal a Raw Deal?’ (DG MARE 2009).

European firms, including the Spanish industry, which is the single greatest beneficiary of EU access arrangements with developing countries.

The European Commission subsequently sent representatives to Senegal to investigate the legality of this licensing decision (CFFA 2011b). In January 2010 the EU passed a stringent regulation aimed to stop the flow of illegally caught fish entering the European market. If there was evidence of malpractice in the licensing decision by the Senegalese authorities, then the EU could ban imports of pelagic fish from Senegal. This did not happen, and the EU have successfully reopened negotiations for a new fisheries partnership agreement with Senegal, to begin in 2015.

#### 1.4 Missing funds?

Protests over the Russia protocol led to investigations by journalists over the payment of funds involved. Because of the secretive nature of this licensing arrangement, there were widespread allegations of corruption. These may have been validated by claims made in the media that the funds paid to the Ministry of Maritime Affairs failed to be transferred to the national treasury's account. The Minister of Maritime Affairs reported that five billion CFA was paid as a result of these licences. Yet by July 2011, only 200,000 CFA had been declared by the Ministry, confirmed by the Minister of Finance.<sup>6</sup>

Journalists investigating the missing funds believed they might have been directed towards the 2012 presidential election campaign (Allix 2011). The allegations gained traction amid protests over President Abdoulaye Wade's announcement that he wanted to change the Senegal Constitution and run for a third term; an unpopular decision that some believed could only be achieved with the assistance of vote buying. The use of state revenues to finance elections and buy off voters has been a persistent problem in Senegal (USAID 2007, 45), although whether the five billion CFA was embezzled for this purpose remains unsubstantiated and President Wade lost the election, congratulated internationally for accepting defeat. Nevertheless, his legacy was marred by persistent claims that senior ministers in his government, including his son who held several ministerial positions, had amassed large personal fortunes. His son was later arrested and faced a highly publicized trial for unexplained wealth of over 240 million USD.

#### 1.5 Broken promises, the arrest of Oleg Naydenov, and a new ruse

The election of a new President in 2012 brought optimism that the foreign trawlers would no longer be licenced. Promises to this effect had been made in election speeches by Maky Sall, who won the election in March 2012. In April 2012 Sall announced that all licences for foreign trawlers had been revoked. A new fisheries Minister also announced that a full investigation into the licensing of the foreign trawlers would be made. Sall gained international praise for this decision, being awarded the prestigious Peter Benchley Award for ocean conservation (the author of the book 'Jaws') in New York in April 2013. Yet in a speech hours after receiving the award, Sall caused controversy by explaining the licences were only temporarily revoked. His government would allow the return of the Russian vessels under strict management (Pala 2013). His fisheries minister confirmed that the ending of the licences in April 2012 was to enable a biological rest period, and to allow further assessment of the stock.

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<sup>6</sup> Personal communication, CONIPAS, Dakar, July 2011.

Evidence of improving relations between Senegal and Russia surfaced towards the end of 2012. The two governments concluded a joint fisheries research operation to establish new data on fish stocks,<sup>7</sup> and Russian government announced that it was offering free university scholarships for Senegalese fisheries officials, vehicles, office equipment and other resources to help negotiate long-term access agreements in Senegal, as well as with Mauritania, Morocco, Guinea-Bissau and Namibia (Jean-Matthew 2012).

However, in early 2013, relations between the two countries soured, with news that the Senegal navy had impounded a Russian trawler, *Oleg Naydenov*, for fishing illegally. The Russian trawler, along with several others, formed part of the fleet granted licences to fish by Guinea-Bissau as part of the bi-lateral fisheries agreement there with Russia. The arrest of *Oleg Naydenov* was controversial for many reasons. Guinea-Bissau and Senegal share a common area of their exclusive economic zone, managed by the defunct *Agence de Gestion et de Cooperation entre la Guinee-Bissau et le Senegal*, which was established to manage off-shore oil and gas exploration, but contained a commitment to coordinate fishing licensing as well. The Russian government claimed that the vessel had been operating in the common waters of Guinea-Bissau and Senegal when it was arrested. Greenpeace and the Senegal authorities disputed this, and claimed that there had been many incursions by Russian vessels into Senegal's waters leading up to the arrest.

*Oleg Naydenov* was towed to Dakar port and the owners of the vessel were instructed to pay 1 million USD as bail, before the crew would be released. The Russian government, including through the office of the Russian Commissioner for Human Rights, Democracy and the Rule of Law, issued several press statements denouncing the arrest, and alleging the crew (including 60 Russians and 23 citizens of Guinea-Bissau) were being treated inhumanely, without adequate food or water. The Russian fisheries agency described Senegal's actions as an act of 'piracy', and that they were planning a case against Senegal at the International Tribunal for the Laws of the Sea.<sup>8</sup> The Russian Foreign Minister scheduled a meeting with President Sall in early January 2014, and several further press statements made it clear that Russia would use all diplomatic means necessary to assist the vessel to leave port. The Russian government also accused Greenpeace of orchestrating the arrest as retaliation to the Russian government seizing the Greenpeace vessel *Artic Sunrise* and its crew in September 2013 (when Greenpeace was protesting against oil drilling in the Arctic). It was also claimed that Greenpeace was acting on behalf of other fishing nations to limit Russian competition to resources in the region.

The head of research for the Institute of Africa under the Russian Academy of Sciences, Leonid Fituni, commented in a Russian newspaper that: "This refers to marine as well as many other resources. That is why every attempt is being made to keep Russia sidelined and to prevent the Russian fishing fleet from returning to the African shores. As to who or what is used for this purpose – be it the Senegalese authorities, Greenpeace or somebody else – is a secondary matter" (Surkov, 2014).

The *Oleg Naydenov* was allowed to leave port at the end of January, when an out-of-court settlement was agreed, reportedly following the payment of 1 million USD to Senegal by the owners of the vessel. The amount paid has not been confirmed, and according to some, the payment has again not

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<sup>7</sup> See: "Russia estimates amount of fish in Senegal's water" *Voice of Russia*, 29<sup>th</sup> December, 2012. Available at: <http://bit.ly/1GMIUsi>

<sup>8</sup> Russia accuses Senegal of 'piracy', *Al Jazeera*, 10 January 2014.

surfaced on state accounts and the fishing ministry is not forthcoming with further information.<sup>9</sup>

Yet in September 2014 further controversy was to follow, with the discovery by local organisations that a new charter arrangement was being established for ten Russian fishing vessels. This time the avenue was through a Senegalese fish processing company, called *Africamer*.

*Africamer* was Senegal's largest fish processing company, but it went into liquidation in 2011 due to mismanagement and dwindling fish supplies. At its peak it owned 17 freezer trawlers, processed 20,000 tons of fish each year and employed 2,500 people. Yet, as described in an article by Diouf (2014) for CFFA, in late 2013 *Africamer* submitted a proposal to the Senegal fishing authority for 10 new licences and supplied information that it was about to invest heavily to get back on its feet. It was later discovered that a proposal was made by the Russian Federal Agency of Fisheries for 10 licences that would supply *Africamer* with a steady supply of fish for processing, and it was they who were providing the investment for the revival of the company. The issue is now highly politicized, as Diouf describes that there is support from fishworkers to get their jobs back. Yet commentators considered this a ruse, another way Russian firms will bypass obstacles to get access to fish in Senegal. Moreover, it has been pointed-out that the Russian vessels package and process all their catch on board, so are unlikely to support the revival of *Africamer's* fish processing factories (ibid).

At the beginning of 2015, Senegalese NGOs organized a meeting to reiterate that only Senegalese fishers should have the right to fish for small-pelagics in Senegal's waters.

## 2 The broader picture in fisheries' sector development

What is occurring in Senegal speaks to tendencies in the fisheries sector in many countries. Slowly, there is an accumulation of evidence that in certain fisheries sectors, harmful corporate behaviours are widespread. Indeed, there may be a particularly criminogenic culture in fisheries - the last industrial sector involved in hunting in what is often a hostile and capricious environment. The following discussion highlights a number of areas in which further work should be directed. It draws inspiration directly from the literature on state-corporate crime (Kramer, Michalowski and Kauzlarich 2006), but also speaks to a wider literature on the importance of natural resources for continuing neo-colonial relations in Africa (i.e. what many refer to as the continuation of a foreign scramble for African resources in a post-colonial context).

### 2.1 The role of the state in corporate crime in the fishing sector

The case from Senegal reveals the ways in which states are implicated in the harms caused by corporations, either through direct facilitation or through omission. To simplify, there is the role of the state at the local level where fishing takes place – i.e. the *host* countries to foreign fishing firms, and the role of foreign governments – the *home* countries to multinational fishing enterprises.

At the host level, a straightforward problem comes with bribery and extortion. We know this is common in many places (Sundstrom 2014, Standing 2008), and that firms view bribes as extortionate

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<sup>9</sup> Personal communication, Greenpeace, Dakar, January 2014.

and highly costly to their operations. Governments can be presented as *rent-seeking* and this problem exists at multiple levels – from extracting bribes from vessel owners, to embezzling money from licence payments. In several countries there are reports of missing funds from fishing payments, and there are few countries in Africa, at least, where information on payments for licences or fines is published and audited (Standing 2012). In Senegal, out-of-court settlements exist to speed up cases, and these are opportune for abuse. The flip side is that fishing firms that pay bribes receive a rent-dividend, allowing them to circumvent the law; a mutually beneficial outcome for the briber and the payer. Moreover, in a highly corrupt environment, vessel owners may rationalize ignoring rules because state authority lacks any credibility. An environment characterized by bribery and extortion is therefore conducive to high levels of crime.

However, bribery and extortion is only one part of the state-corporate crime nexus. A more insidious aspect relates to the process of regulatory capture that may be an explanation to both weak rules of fisheries management and the failure of states to control criminal activities. Pena-Torres (1997), writing on overfishing and conflicts between corporates and small-scale fishers in Chile, describes how weaknesses in access restrictions and overfishing beyond limits put forward by scientists, was caused by political lobbying by powerful fishing firms and their close ties to political elites. This enabled a small group of firms to protect themselves from new entrants, and despite successive years where catches were beyond quotas, the regulatory agency refused to impose sanctions.

Singleton (2000) describes that capture of fisheries management is also achieved by small-scale fishing interests as well as environmental groups, revealing that it is not always powerful fishing firms who benefit from special dispensations. Likewise, in India conflicts between commercial trawlers and small-scale fishing communities have raised concern that the state has sided with more powerful business leaders at times, but then a reverse in fortunes has been experienced as fisheries issues become important in deciding local elections – the more numerous small-scale fishing communities can be important sources of votes (Bavinck 2005).

In the case of Senegal these dynamics are clear, and there was success in gaining commitments by politicians to revoke the licences for foreign trawlers running up to the general elections. Here we see the importance of local resistance by victims in defining the crimes of the powerful (Lasslet et al. 2012). Yet the overtures of politicians in responding to these acts of resistance can be fickle. The power of votes from the more numerous small-scale fishers in many African countries as a counter force to corporate interests is considerably undermined by the lack of democratic elections, and the fact that fisheries remains a peripheral issue in deciding government elections in most countries.

Whereas regulatory capture relies on delineation between the state and private sector, conflicts of interests blur this distinction. The role of political elites in extractive industries and sectors of economic importance is ubiquitous in Africa, as it is in many other places. Political and economic power is intertwined. In the fisheries sector, it has manifest where state-run enterprises have been privatized and national policy encourages (through tax incentives) or mandates (through national fisheries law) the establishment of joint ventures between foreign fishing companies and local businesses, as is the case in Senegal, Namibia, Mauritania, Mozambique and Angola.

This is a well-supported policy for it can increase value added to countries and support the integration of domestic firms into the commercial sector, historically dominated by foreign companies. Foreign partners in joint ventures contribute capital and fisheries expertise, but ideal local partners are those who offer political influence. This is facilitated by the lack of competitive and open tendering for joint ventures, or the fishing quotas that are needed to set them up, and the advantage of insider knowledge by those working in government. Thus, in countries, such as South Africa and Namibia, the

indigenization of commercial enterprises, historically dominated by foreigners, is supported on political grounds as part of grander narratives of post-colonial transition. Yet such empowerment can be used in ways that does little to undermine existing business interests or advance the interests of historically marginalized populations (Ponte and Sittert 2007; Melber 2003; Rey and Grobber 2011, Standing 2008).

This is well described in Mozambique, where in the commercial prawn sector, dominated by Japanese and Spanish companies, the policy of insisting companies form joint venture to access shrimp quotas in the 1990s became a mechanism for enriching senior members of government and the security forces (Buur et al 2011). The former president, who has amassed a vast business empire in Mozambique and Southern Africa, also includes fishing enterprises in his portfolio (Nhachote 2012).

Thus, conflicts of interests could be an important consideration not only in understanding the concentration of wealth from fisheries, but also the institutional failures that facilitate harmful corporate behaviors. For example, political elites may directly intervene in the job of fishing authorities.<sup>10</sup> Alternatively, those with the responsibility to regulate fishing vessels may be paralyzed in the knowledge that their actions may harm powerful interests: who would arrest the president's boat? This alerts us to the fact that not all employed by the state are complicit in state-corporate crimes and many will probably grit their teeth in anger.

## 2.2 The role of home governments

It is difficult to find examples where home governments of distant-water fishing fleets proactively prosecute or punish firms for crimes in foreign waters, or simply facilitate host countries in their investigations. In Senegal, the Russian government has used various tactics, including bullying, threat of litigation and the use of financial inducements, to advance the interests of its firms and avoid excessive regulation or prosecution. There are several cases reported elsewhere where fishing boats have evaded prosecutions or have escaped with reduced fines that can be explained by political pressure exerted by their home government. It may be the case that host countries avoid harsh punishments of foreign firms to maintain diplomatic relations and investments in other sectors, such as mining or the military (Standing 2008).

There is a growing body of evidence that highlights how foreign nations act unethically to further the interests of their fishing firms abroad. One avenue is through bribes or gifts in negotiating bilateral access agreements. Of particular importance may be the 'goods and services' contracts that form part of these agreements that are opportune for concealing gifts (Havice 2010, 985). Foreign negotiators also influence outcomes by providing first class air tickets for officials and their spouses to attend meetings, they pay extremely generous *per diems*, offer lavish hotel accommodation and entertainment, and even pay the overseas tuition fees for the children of ministers (Tsamenyi and Hanich 2009, 388).

Most fisheries countries, including Japan, South Korea and Taiwan, also make aid payments conditional on fisheries access (Mfodwo 2008). Russia's latest fisheries agreements in Senegal, and possibly in other West African countries, is one example where development assistance to the fisheries sector was used to influence the host government in authorizing fishing that not only contradicts fisheries regulations, but threatens the sustainability of other parts of the domestic

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<sup>10</sup> The author is aware of several examples, but the problem is poorly written-up in the literature.

fisheries sector. Another example is the fisheries protocol signed between the government of Mauritania and the Chinese state fishing corporation, Poly-Hondone Pelagic Fishery, worth USD 100 million. The signed protocol (leaked to the public by a member of parliament) provides substantial investments in the country for local fisheries development, but also fishing opportunities for approximately 50 Chinese boats for 25 years. The scale of fishing being authorized is alarming, significantly increasing existing overcapacity in several of the Mauritanian fishing sectors. There is also concern over the agreement's extended timeframe (EU agreements – generally the longest – only last around five years), as well as the fact that the Company has been granted a generous tax holiday, for no obvious reason (Cheriff 2011).

In Ghana, where Chinese companies are active in fisheries and other extractive industries, the Chinese state provided funding in 2012 for four marine patrol vessels that are to be used to fight IUU fishing and oil-sector related piracy. These vessels are to be supplied by the parent company of Poly-Hondone Pelagic Fishery, the China Poly Group Corporation, one of China's most important manufacturers of weapons.<sup>11</sup>

In Namibia, funds provided by the Spanish Cooperation Office (the main source of Spanish overseas aid) may have been used to lobby the Namibian government to promote Spanish fishing interests (Rey and Grobler 2011). Spain has given 50 million Euros for development projects in Namibia since 2006. This has ensured the Namibian government has not signed access agreements with the EU, which would open up Namibian waters to more 'foreign' competition i.e. other EU member states engaged in distant water fisheries such as France (ibid). In Namibia, and elsewhere, we therefore see a combination of domestic conflicts of interests, regulatory capture, and foreign influence shaping unethical and criminal behaviours of firms (see also Buur, Baloi and Tembe 2012 for an extended example in the shrimp fisheries in Mozambique).

Understanding state-corporate crime requires that we appreciate the wider international and sector context. For example, Russia's drive to expand and rebuild its fisheries sector, requiring considerable state subsidization, involves the renewal of Soviet-era fisheries agreements in West Africa and ambitious targets for increased production by Russian fishing firms. In China, fisheries is one component of the state's "going out" strategy. Vast subsidies have been provided to help Chinese fishing firms expand globally and simultaneously take pressure off the heavily degraded China Sea (Mallory 2013). The link between subsidies and illegal fishing is now well known. It causes overcapacity that has created a situation where rule breaking and overfishing is practically inevitable. Despite this, foreign distant water fishing nations continue to provide capacity enhancing subsidies to their fishing firms, including those known to have been caught for illegal fishing. Efforts to reform fisheries subsidies through the WTO have been slow, frustrated by vested interests (Sumalia 2013).

### 2.3 The criminogenic role of private investment

In addition to public subsidies, the case of Senegal highlights the problematic impact of private investments in fishing enterprises. The investment of 190 million USD in China Fishery by the Carlyse Group was justified because expanding fishing operations into West Africa was highly profitable, and that there is a large surplus of fish available. However, this investment enabled the expansion of super trawlers into a region where all scientific evidence shows overfishing.

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<sup>11</sup> On the purchase of the patrol boats, see the statement on the Republic of Ghana's Ministry of Food and Agriculture's website: 'President commissions new patrol boat for fisheries', 1<sup>st</sup> March 2012.

Another example comes from Mozambique. In 2014, a new tuna fishing firm was launched in the country, EMATUM, capitalized entirely by a government backed Euro bond attracting 8.5% interest for investors over a six-year period. Investors rushed in given the high returns. The bond issue, handled by Credit Suisse and Russian bank VTB, amounts to 850 million USD, of which reportedly 270 million will buy 30 vessels, supplied by a French ship builder, and the remainder to be used for investments in fish processing factories and training (Korby, Burkhardt and Pronina 2013). The ownership of the company is split between government and military agencies, although EMATUM is a private corporation. The announcement of the company and the raising of the capital was done without publicity or parliamentary debate - EMATUM was created two weeks before the Euro bond was issued. It has caused considerable controversy – there was no competitive tendering for the shipbuilding contract, there is no documentation on how all the money will be spent, and the country is now exposed to unprecedented financial risk.

Donors threatened to stop foreign aid to the country unless more transparency was forthcoming, although they have backed down amid diplomatic concerns to keep good relations with a country on the crest of a major mining boom, for which many firms from donor countries have direct commercial interests.<sup>12</sup> Several local experts speculate that the lack of transparency, the inflated bond issue (850 million is far in excess of what is needed), and the speed at which the deal was completed all point to high risks of corruption, and that financing for EMATUM may have been diverted for political actions in the run up to the general election. Further concern lies with the likelihood that the company, when established, will contribute to overfishing in the country, particularly sharks and bill fish for which the vessels (being those that use the ‘long line’ method of fishing) will almost certainly catch in large quantities, and that government oversight will be ineffective. There is also anxiety among investors about the status of six of the vessels purchased through the Euro bond offering, which are patrol vessels that the company subsequently announced will be fitted with military equipment to combat piracy and illegal fishing. Yet the confidential investor prospectus was only three-pages. The *Economist* pointed out that investors were aware EMATUM is a risky venture, but they “know there are huge gas reserves off the shores of Mozambique that will eventually bring in lots of foreign exchange, even if tuna does not”.<sup>13</sup>

## 2.4 State corporate crime beyond the law

Illicit behaviors of foreign fishing firms exist in an environment where there are various forms of collusion and abuse of power between firms, host governments or political elites and foreign government agencies. This is a starting point to the study of state-corporate crime, and alerts us to the fact that states and corporations are “functionally interdependent” and therefore it is normal for the deviant actions of one to occur with some form of assistance, either through omission or facilitation, from the other. What needs to be further explored is that the institutional environment that both encourages deviance and fails to stop it, is created by the interests of firms, investors and states. Corporations do not react to imperfect institutions; they can be integral to their creation (Tillman 2009 and Tombs 2012).

This is revealed in work by Havice and Campling (2010) on tuna fisheries in the Pacific, where Pacific Island States have negotiated regulations and property rights over tuna with distant water fishing nations, including Japan, South Korea, and the EU. Their account highlights how

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<sup>12</sup> Mozambique attempts to placate donors about \$850m bond, *Mail and Guardian Newspaper*, 14<sup>th</sup> November 2013.

<sup>13</sup> *The Economist*, ‘Investing in frontier markets: a fishy tail’, 23<sup>rd</sup> November 2013.

disappointing characteristics of the sector, including overfishing and skewed benefit sharing, has been the outcome partly of intense political lobbying, coercion and the innovative ways firms respond to new regulations. Their story is not simply of uneven power between distant water fishing nations and developing host nations, but nevertheless they describe:

“[D]istant water fleets employ multiple strategies to advance their competitive position within changing market and regulatory conditions. Strategies include: lobbying their “home” governments and Pacific island countries and adjusting accumulation strategies in response to economic and regulatory change. Some distant water fleets have flexible organizational and production structures that enable them to respond quickly to (including to circumvent) regulation, and even to shape management outcomes. Others are more constrained, making them less likely to survive if competitive conditions tighten further and/or if key government supports are withdrawn. In short, policy decisions trigger an array of firm-level responses that can elicit unintended environmental and economic effects. Industry functioning (and resulting environmental and economic outcomes) is subject not only to the design and designation of property rights (as neoliberals would have it), but also to how such designations are taken up in the context of the competitive conditions of the global market.”

Orthodox policy in fisheries, which finds the solution to overfishing with secure long-term access rights, fails to recognize that the behaviours of fishing vessels are not simply conditioned by the availability or absence of property rights. They are shaped by a far more complex and contradictory set of interests by their home governments, investors, creditors, shareholders and parent companies.

From such accounts of the multiple strategies used by firms in the face of regulatory change, illegal fishing can also be understood as one type of strategy for profit maximization or survival. We should begin exploring state-corporate crime appreciating that deviant behaviours of vessels are an outgrowth of the competitive and financially precarious fisheries sector, characterized by overcapacity, a dwindling resource, increasing fuel costs and volatility in financial markets, rather than an anathema to its functioning. However, analysis needs to go further and understand illegality in terms of corporate organization. It has been shown that multinational fishing companies deploy some older vessels to fish illegally (the costs of losing them being minimal), other modern vessels within their fleet are deployed elsewhere and may even utilize eco-labels to improve market access (Gregg and Lutgen 2007). Some vessels may catch legally for a part of the year, and switch to illegal methods to target other fish with the changing of fishing seasons. Within corporate structures, criminality therefore may be evident to different degrees within subsidiary companies and individual boats.

There is increasing attention in other sectors of corporate crime, such as private military groups and the banking sector, to how larger companies organize criminality, including through outsourcing some of the more criminal ventures to others which are less vulnerable to detection or reputational damage, then laundering the proceeds through supply chains in ways that support the financial stability of otherwise law abiding business enterprises. These type of dynamics are raised in some fishing sectors, including global tuna fisheries (Sloan 2003). This suggests that the *pirates* may be the most visible part in criminogenic business sectors and the focus on them draws attention away from the larger interests at stake.

We require more research on the extent to which illegal fishing is not so easily made distinct from legal fishing, but rather embedded in the businesses strategies of larger corporate entities. The corporate veil obstructs this – the tremendous challenges in tracing ownership of subsidiary companies and the flow of finances through multinational corporate entities.

## 2.5 Criminalisation in the fisheries sector

While approaches to regulating corporate behaviour may be weak, decisions on what is criminalised and what is not is the outcome of inherently political processes. Criminology has long debated the implications of crime being an unreliable starting point to understand harmful behaviours of the powerful, including states and corporations (Swchendinger and Swchendinger 1970). If the powerful can influence the law then how can crime be a neutral, unproblematic starting point for the study of deviant behaviour? In the case of Senegal the arrest of *Oleg Naydenov* was the first illegal event by the foreign boats. Throughout this saga legality has been ambiguous and if we limited our interest to what was technically illegal then the wider picture would be missed.

The global fight against illegal fishing fails to make adequate distinction between the crimes of the powerful and the crimes of coastal people. A great deal of activities by states and corporations that cause harm against the environment or coastal livelihoods or food security for the poor are also not criminalised, and national laws controlling fishing differ between countries. Some activities are left feebly regulated, and others are criminalised that probably should not be. In Kenya, local fishers are banned from using spear guns to catch fish due to the (unproven) idea that this causes harms to coral reefs. Such activities are lumped together in global statistics on illegal fishing. Meanwhile, Kenya, as all countries do, license various forms of commercial fisheries that have a far worse impact on marine ecosystems, including long-line vessels that catch threatened sea life, including sharks whose trade is weakly regulated internationally.

This further complicates the current focus on illegal fishing as a primary cause of problems in the sector and it poses challenges to measuring the cost of illegal fishing—how are we to measure the bad contribution from illegal fishing, such as loss of biodiversity and unfair benefit sharing, if the contribution of some legal fishing contributes to the same problems? Whether what is currently defined in national and regional laws as legal fishing is less or more destructive in the long term than illegal fishing is not always certain. Moreover, the global fight against illegal fishing obscures injustice in laws and leads to harsh treatment of peasant communities as well as workers. These sort of international fights against illegalities, presented as moral crusades, tend to distract attention from more progressive movements and narratives.

## 3 The policy implications for anti-corruption

The intention of this paper has been to describe forms of deviant behaviors in fisheries as the outcome of state-corporate relationships. The concept of corruption, or the abuse of power, forms an important part of this approach. This reframing of the problem hopefully contributes to wider efforts related to reducing the harms associated with IUU fishing. Yet it suggests that the current way of thinking about IUU could be limited.

There is a tendency in debates and publications on IUU fishing to focus on the criminal activities of fishing vessels and explanations have focused on the rational-choice model. Rule breaking is caused where state regulation is weak and the profits of getting away with illegal fishing are high. However, institutional weakness, or the inability of regulators and fisheries managers to reduce illegal actions, is not always simply due to lack of capacity, or even weak political will. Illicit activities by firms requires a wider understanding of firm and intra-firm context and behavior, and this reveals that in some fisheries sectors it is impossible to make a clean distinction between those corporations that

operate illegally and those that operate entirely legally. There may be sectors where crime and unethical behavior are systemic, rather than an anathema to way those sector work.

Efforts to address IUU fishing can encourage a focus on the *pirate vessels*, whereas these may in fact be the last link in the chain. Moreover, legalistic definitions of crime can be a problematic starting point to deciding on what is good or bad corporate behavior, given that the law and its implementation is the outcome of politically contested processes.

A key question following this analysis is the extent to which policies being advanced to reduce IUU fishing are effective, and in what ways can a perspective on state-corporate crime contribute?

### 3.1 The limitations of traditional law enforcement

The dominant approach to fighting IUU fishing lies with strengthening law enforcement. In many developing countries fishing authorities are being provided with resources and capacity building support by bilateral and multilateral donors, which aims to improve the ability of local authorities to detect and punish fisheries crimes. Capacity building is informed by international guidelines as developed, for example by the FAO's Port State Measures, and there is a voluntary arrangement in existence for several years for states to produce National Plans of Action on IUU fishing, which few have managed to do in Africa.

There are also efforts to support law enforcement against IUU fishing through improved intelligence gathering and cross border law enforcement efforts. Interpol and UNODC have increased their attention to the fisheries sector, and plan to provide more assistance to countries in fighting IUU fishing.

The overall impact of existing efforts to improve law enforcement remains unknown, as there is very little data that links increased capacity building for law enforcement with a reduction in underlying harms. Arrests of vessels and seizures of fish are not reliable proxies because these only describe the activities of law enforcement. The task of understanding the outcome of any intervention is difficult given that there is a major gap in data or monitoring of the prevalence of IUU fishing in general, and the range of activities that are involved is quite large – fishing without a license, the use of banned fishing gears, fishing in prohibited areas, misreporting catches, retaining too much by-catch or throwing too much by-catch overboard and so on.

There are also several factors that are well recognized to be major barriers to success for law enforcement. There is an enormous difficulty in monitoring the activities of vessels at sea, and while many vessels are obliged to have on-board observers, they are not always reliable or able to carry out their duties without undue influence. There is increasing coverage of satellite tracking installed on boats, although many developing countries do not have this equipment and there are ways in which data can be tampered with. Then there are significant barriers in prosecuting vessels and their beneficial owners.

While vessels are vulnerable to arrest or IUU listing, the beneficial owners of these vessels remain largely immune from criminal prosecution, often residing in states that are unwilling to co-operate with criminal investigations. Thus, as Griggs and Lugtun (2007) conclude on their research into law enforcement in the fisheries sector:

“The global proliferation of companies engaging in IUU fishing makes it clear that corporate accountability for multinationals is desperately needed. International Law with its focus on

State actions makes this venerable branch of the law inadequate to deal with the problems of corporate regulation. Similarly, domestic law and its concentration on the activities of private actors within its borders make it equally incapable of responding to transnational crime”.

Solving this dilemma goes well beyond the realm of fisheries alone. Nevertheless, there are opportunities and some emerging support to undertake proactive investigations into financial crimes in the sector, including problems of transfer pricing and tax avoidance. This would be a positive development, placing more emphasis on corporations and financial sector interests than vessels.

There are multilateral initiatives in the fisheries sector that address illegalities with a different approach. Perhaps most relevant is the EU’s IUU Regulation, which came into force in 2010. This attempts to put trade sanctions on states to ensure they have the ability to effectively regulate fisheries to avoid illegalities. States that cannot demonstrate this are warned by a ‘yellow card’, and then where the situation is sufficiently bad, their exports are banned from the EU, by a ‘red card’.

Whether this is effective or not remains difficult to establish. Anecdotal evidence suggests countries such as Ghana that have been warned by the EU through a yellow card have taken steps to improve domestic regulations. Yet, the EU parliament’s external evaluation completed in 2013 on the EU IUU regulation was unable to highlight evidence of a significant impact (European Parliament 2013), which is further argued in other assessments (Clarke and Hosch 2013). There are also some criticisms that the EU is unable to apply the regulation consistently—the analysis of problems in exporting states leading to yellow/red cards is not transparent, and that it contains loopholes that enable flag states and companies to falsify documentation. Part of the problem may be that decisions on which countries to issue yellow and red cards is influenced by political interference by EU member states, because they decide collectively on the implementation of the regulation.

As a policy that could address state-corporate crimes it would need to expand its analysis of compliance to include governance and human rights considerations, including the prevalence of corruption in exporting states. The difficulty here is that if the rules are strengthened and applied rigorously and consistently then the EU may find the list of states that it should not import from gets rather long. The necessary support provided to exporting countries to match the EU’s expanded criteria will also become hugely ambitious. Moreover, there is a risk that EU demands for exporting countries would come under scrutiny by World Trade Organisation rules.

Still the EU IUU regulation has only been in effect for a few years, and with more resources, protection from political interference and more consistent and transparent application of the rules, it may well be an effective tool to block the import of the most unethically produced fish products. Whether these will simply be re-routed to other consumer markets remains quite likely, so the global impact of the EU’s efforts may be undermined unless scaled-up to other major consumer markets.

The analysis of state-corporate crimes in the fisheries sector provides further reasons why existing law enforcement approaches are not sufficient in isolation or in certain places. They do not overcome the problem of corruption in law enforcement including through political interference. The author’s knowledge on existing efforts to improve the capacity of law enforcement in fisheries in Africa suggests very little, if anything, is being done to address these problems, either through the direct technical assistance provided to national fishing authorities, or through indirect trade sanctions such as the EU’s regulation.

A law enforcement approach also does not address state-corporate crimes entirely, given that a considerable part of the problem lies with regulatory capture and conflicts of interests, which requires

political responses. What is more, strengthening law enforcement capacity in contexts of high levels of corruption has been shown to not only be ineffective, but also to come with high risks of human rights abuses and unfair criminal trials (Downs 2014).

### 3.2 Alternative approaches to addressing state-corporate crime and corruption

If law enforcement offers a limited approach to addressing state-corporate crime, are there any alternatives? The honest answer to this must be pessimistic for the short term. It is unlikely that technical fixes can solve state-corporate crimes. The underlying problems are structural and the same people and organisations expected to make reforms may hold vested interests. Moreover, responses to regulatory changes inevitably give rise to a complex array of counter responses, adaptations and mitigations. This is described by Havice and Campling in Pacific Island tuna fisheries, and Burr in Mozambique. Some of the examples presented in this paper are also occurring in countries classified by the international communities as ‘failed states’, while key actors include those from foreign fishing nations that have weak commitments to human rights and imposing high standards of ethical behaviors for their firms.

The challenge of combatting systemically corrupt situations is now well-described through the literature on anti-corruption. One of the key points in this debate is that past reforms may have failed because they assumed a principle agent model to explain government corruption, whereas the reality is that corruption tends to become systemic as a collective action problem, where political elites, regulators and the private sector have little interest in realizing reforms (see Marquette and Peiffer, 2015). Faced with this reality, the chance of challenging state-corporate crime is daunting.

We cannot lose sight here on structural issues. One of the most important challenges in addressing unethical behaviors of corporations and states in the fisheries sector lies with overcapacity among some segments of the fishing sector, caused by subsidies and short-term speculative investments. The case study from Senegal speaks to this problem, and it may well be that the financial situation of this fleet of super trawlers hunting large schools of small fish makes them ungovernable in a context where there are other fishing and ecological interests. Moreover, we see in Senegal that it would be a distraction to think how these super trawlers can be better managed or policed – the point made by small-scale fishers and other observers is that the only solution is to ban their access altogether.

These are important debates to reflect on for fisheries, and suggest regulatory reforms aimed at existing institutions of fisheries governance may be frustrating. Thus, in cases such as fisheries, the solution will involve civil society and the struggle by victims. So this final part of the paper reflects on what might assist this.

#### *3.2.1 A human rights-based approach?*

One approach to state-corporate crimes and corruption in the fisheries sector is to expand the use of human rights obligations and litigation. The use of a human rights framework for addressing state-corporate crime is advantageous compared to relying on fisheries laws, as this potentially overcomes problems where harmful activities are not adequately criminalized in national jurisdictions. Of particular importance in the fisheries sector is the right to food, given that some of the harmful state-corporate behaviours can threaten the food security and incomes of local communities. The Senegal case study is an example of this.

There are possibilities, albeit slim, for coastal communities and NGOs to bring litigation to the home countries of fishing firms. International law provides a clear obligation to states to provide judicial remedies for victims of human rights abuses by companies overseas, and this commitment is made in the third pillar of the United Nations Guiding Principles on Businesses and Human Rights. Yet as Skinner, McCorquadal and de Schutter (2013) show, commitments to achieve this have been weak, and many states have adopted regressive policies. For the time being, the opportunity for human rights litigation against fishing firms from EU member states remains a possibility, whereas similar actions against firms from Russia, China and Japan, for example, is not.

While there are enormous barriers confronting fishing communities to bring human rights litigation against their own governments or the foreign business enterprises involved in fishing, there may be opportunities through regional and continental bodies. In Africa, cases can be brought against governments to the African Commission on Human and People's Rights, which sits in Tanzania. There are encouraging cases, including decisions supporting the rights of forest communities against land grabbing by the government in Kenya. The African human rights court, however, is generally considered weak, and cases involve considerable time and expenditures by the plaintiff.

An ambitious idea is to try to improve the work of the Commission in fisheries, through support for proactive investigations and advocacy on the right to food in the fisheries sector, which would fall under its mandate. A comprehensive report on the application of human rights obligations in the fisheries sector would provide a strong compliment to other policy reform documents.

### *3.2.2 Advocacy campaigns at consumers and investors*

There is a long tradition of advocacy campaigns against unethical businesses, which have included many in the fisheries sector. We do not need to go into detail on these here, although they remain a viable approach for coastal communities and NGOs to respond to state-corporate crime.

Another approach to confront corporate criminality in the fisheries sector is through targeting investments in unethical firms. Greenpeace leads the way here, and one of its success stories was a campaign against a Chinese tuna fishing company wanting to raise 150 million USD through a public offering on the Hong Kong Stock Exchange. The campaign exposed evidence that the company was engaged in systemic crimes, and that the 150 million USD investment would support the expansion of unethical and criminal fishing. The campaign was a success, and motivated concern by the Chinese government regarding its international image.

Whether this approach could be scaled-up in a meaningful way is open to doubt, and the influence of reputational damage for investors and their home governments is continuously found to be weaker than expected (Tillman 2009b). However, work by both governments and the non-governmental sector to bring attention to investors and shareholders of ethically dubious fishing practices by companies is an area that could be given further attention. This may have been an effective strategy for challenging the 190 million USD investment to assist China Fisheries to expand into West Africa, for example, and it may yet become an issue in the USD 850 million Euro Bond investment in Mozambique's tuna fishing company.

Development agencies could therefore support others to undertake increased investigations into firms and support resulting campaigns for disinvestment by prominent investors. This is important in the context of increasing use of public-private investments in fisheries conservation, and the new attention focused on raising private capital for funding the work of environmental NGOs in the marine fisheries sector, predicted to eclipse the amount provided by bilateral donors (NatureVest 2014).

These developments need to occur alongside attention to the environmental and social impact of investment decisions on fisheries and coastal communities by many of the same sources of capital to be used for conservation.

### *3.2.3 Access to information and accountability*

The case study from Senegal reveals the pivotal role of local and international civil society in challenging state-corporate crime where the harms manifest.

Senegal, in comparison to other West African countries, has relatively strong media freedoms and a vibrant political environment for challenging government decisions. Although it is premature to pass any judgment on how successful protests and campaigns have been against the licensing of foreign trawlers, so far local fishing organisations, journalists and NGOs such as Greenpeace have had success in exposing problems and managing to get decisions overturned. The situation in other West African countries is not as positive. Although fishing organisations and local civil society in countries such as Guinea, Guinea-Bissau and Mauritania have long been raising complaints at the actions of their governments and foreign fishing companies, their impact has been far less successful. Nevertheless, it is reasonable to believe that efforts to combat state-corporate crime require democratic reforms, and it is prevalent precisely where these conditions are absent.

The fisheries sector at both a national and international level is characterized by secrecy and limited access to information. This should be prioritized as a starting point for addressing state-corporate crime. At the national level, there must be efforts to ensure that information on access agreements, licensing and other forms of access arrangements (chartering, joint ventures etc.) are made public in a timely fashion. In the majority of African countries this basic information is unavailable. In Senegal the negotiation of access for foreign fishing vessels was done in secrecy and subsequent information, including on payments, fines, contracts or protocols between Russia and Senegal, have been obscured from public scrutiny.

There is also a related problem in the limited information about company ownership. While the list of vessel names in Senegal was eventually made public through NGO investigations, the details of the beneficial owners of these vessels is still obscured through offshore tax havens and complex company structures.

Transparency reforms in access arrangements in the fisheries sector should explore how vessels can be authorized to fish in ways that reveals who their beneficial owners are. Greggs and Lugten (2007) argue that one important avenue is to ensure that the 1986 UN Convention on Conditions for Registration of Ships, which contains strict provisions on the identification and accountability of beneficial owners, needs to be ratified and extended to fishing vessels (which it is not). Plans to develop a global record of fishing vessels by the FAO unfortunately do not contain any plans to capture this information.

There are also opportunities to improve institutions of public accountability at the national level. Despite considerable development assistance for fisheries reform in Africa, very few fishing authorities have websites or annual reports with financial information. There are also vague ideas to assist small-scale fishers to have permanent platforms to engage in policy dialogue with Ministers, and parliaments tend to have a limited oversight role.

The need for political and governance reforms to fisheries was raised in the Policy Framework and Reform Strategy for Fisheries and Aquaculture in Africa, produced by NEPAD and the African Union

Commission and endorsed by African Ministers for Fisheries in late 2013 (AUC-NEPAD, 2014). Unfortunately, there were no details of how this will be done and what commitments should be made by African countries on access to information in the fisheries sector.

What seems encouraging is that in January 2015 the government of Mauritania, in collaboration with the African Progress Panel, announced a Fisheries Industry Transparency Initiative (FITI). The concept will work along the lines of the Extractive Industries Transparency Initiative (EITI). The FITI has been in existence for several years as a World Bank working concept, although they have yet to publish details on how it will work in practice. The recent launch represents the first steps in developing a more detailed proposal, which requires the active involvement of civil society and the fishing industry. It is too early to predict whether this initiative will gain the necessary support from the industry and other governments.

There have been improvements among some flag states of distant water fishing nations. The EU, representing its member states, is now far more open with regard to its fisheries partnership agreements in developing countries. In Mauritania and Senegal, the EU has recently provided the opportunity for civil society observers in parts of the negotiation, and the EU now publishes evaluations of its agreements. Yet commercial fishing in Africa that comes under EU FPAs accounts for a small proportion of the total. The majority of fishing by EU member state companies is through joint ventures or is occurring through reflagging to the countries where the vessels operate. A new EU regulation on fisheries authorisations that will be finalized in 2015 may help improve transparency in licensing of EU registered firms operating in developing countries outside EU fisheries agreements. Yet access agreements by all non-EU interests remain largely confidential.

Because this situation has been recognized as a source of problems for so many years, the test now is to consider how changes can be brought about. Again, a commitment for transparency by African Ministers through the AU would be a tremendous achievement. Donors funding efforts to develop a Pan African reform strategy for fisheries, should consider making democratic governance reforms at the national and international level a priority. Ultimately, it will be political reforms, not law enforcement, where progress against state-corporate crimes and corruption in fisheries will be achieved.

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#### INDEXING TERMS

Fisheries  
Industrial fishing  
Natural resource management  
State-corporate crime

#### FOTO

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This U4 Issue paper describes corruption in the fisheries sector through the lens of state-corporate crime. It presents a case study from Senegal where Russian, European and Asian fishing firms, supported by their home governments, gained access to overfished stocks that are vital to local food security and the artisanal fishing sector. The discussion draws on further evidence from other countries and elaborates on the main observations from Senegal about the nature and implications of state-corporate crime in fisheries, including the role of corruption. The paper considers the policy implications for the international fight against corruption and illegal fishing, and argues that existing approaches based on law enforcement is insufficient. International efforts to address fisheries crime will require political reforms, including advancing democratic governance and human rights.