

Fishy Business: How the Sustainable Fishery Partnership Agreement  
between the European Union and Guinea-Bissau Delays Fulfillment of  
Human Rights Obligations

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## ABSTRACT

### Fishy Business: How the Sustainable Fishery Partnership Agreement between the European Union and Guinea-Bissau Hinders Fulfillment of Human Rights Obligations

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With the European Union's claim of promoting human rights in its policymaking, this author used the framework of a human rights-based approach to development to empirically assess how the Sustainable Fisheries Partnership Agreement (SFPA) between the European Union (EU) and Guinea-Bissau, a trade agreement in the fishery sector, is affecting human rights promotion locally. Specifically, the author focused on the rights to work, food, and development, viewed as most relevant in the socio-economic and political context of Guinea-Bissau. It was hypothesized that the way the SFPA is being implemented causes a delay in promoting these human rights. Analyzing the terms of the SFPA in conjunction with catch data from Bissau-Guinean waters, complemented by relevant stakeholder insights, this paper shows competition between EU and Bissau-Guinean vessels, problematic overfishing of Guinea-Bissau's EEZ, and an unfair distribution of revenues. The SFPA therefore has created an exploitative situation that harm Bissau-Guineans' right to work and food as well as Guinea-Bissau's right to development.

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## **I. Introduction**

The European Union (EU) champions itself as a protector and promoter of human rights, saying that “human rights are at the heart of EU relations with other countries and regions”<sup>1</sup>. *The Economist*, in its July 3rd issue of 2021, termed the EU a “foreign-aid champion,”<sup>2</sup> with the only six countries that reached the threshold of 0.7% of gross national income (GNI) committed to developing countries were European. Considering statements like these, it is pertinent to evaluate how the European Union has been upholding such commitments to human rights that seem to be so necessary for developing countries, particularly on the African continent.

In its numerous external trade relations, the EU has an extensive network of so-called Sustainable Fisheries Partnership Agreements (SFPAs). These are trade agreements that allocate fishing licenses to EU vessels in third countries’ exclusive economic zones (EEZ) in exchange for a predetermined annual payment, partially conditioned on the development of the local fishery sector. Guinea-Bissau, a small, low-income, and food-insecure country on the West African coast, is one such countries that has an SFPA with the EU. In fact, the SFPA between the EU and Guinea-Bissau is one of the longest-running agreements and deemed essential to the EU fishing fleet. Guinea-Bissau, despite its disquieting economic situation, has ambitious plans to move forward, which it outlined in its 2015-2025 “Terra Ranka” Strategic and Operational Plan (Terra Ranka Plan).<sup>3</sup> Whether the Guinea-Bissau/EU SFPA can be viewed as a fair bargain to Guinea-Bissau, particularly by bearing in mind its Terra Ranka plan, remains an open question, which is why this author decided to shine a light on Guinea-Bissau’s EEZ both in theory and practice by asking:

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<sup>1</sup> "Human Rights", European Commission, accessed 4 December 2021, [https://ec.europa.eu/international-partnerships/topics/human-rights\\_en](https://ec.europa.eu/international-partnerships/topics/human-rights_en).

<sup>2</sup> The Economist, "Unsustainable Development Goals", 2021, <https://www.economist.com/europe/2021/07/01/foreign-aid-champion-europe-is-giving-more-than-ever>.

<sup>3</sup> Terra Ranka translates to “a fresh start [for the] country” from Guinea-Bissau Creole

**“How does the European Union’s Sustainable Fisheries Partnership Agreement with Guinea Bissau delay fulfillment of human rights obligations?”.**

Framing this question from a human rights perspective is valuable because this could help to i) hold EU decision-makers accountable to the policies done in the name of human rights, and ii) show the value of considering human rights when evaluating potential trade agreements between developed and developing countries. This author will be focusing specifically on the rights to work<sup>4</sup>, food<sup>5</sup>, and development<sup>6</sup>. This choice was made as these economic, social, and cultural (ESC) rights are viewed as the most pressing issues in Guinea-Bissau, a country with a strong fishery community, threatened by the EU’s disregard for the maximum sustainable yield (MSY), a measure of how much fish may be extracted sustainably. There is, of course, also a strong environmental sustainability factor related to the right to a “clean, healthy, and sustainable environment”<sup>7</sup>. However, the legal basis for such a right in international law remains soft and customary. This author will therefore view factors of environmental exploitation only in conjunction with food insecurity, showing the interconnectedness of issues at hand.

This paper is quantitatively and qualitatively assessing the impact of the SFPA on human rights in Guinea-Bissau’s fishery sector through a mixed-methods approach looking at the text of the SFPA (normative considerations), data-driven inputs on fish caught, cost-revenue analysis and first-hand insights by relevant stakeholders from the EU, Guinea-Bissau and third parties (practical considerations). This means that results are not solely a normative analysis of the text of the SFPA, but reflect the realities of how the SFPA is implemented in practice. By limiting this thesis to the factors of competition between local and EU vessels, overfishing and illegal, unreported, and

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<sup>4</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, Art. 6.

<sup>5</sup> *Ibid*, Art. 11.

<sup>6</sup> UN General Assembly, *Declaration on the Right to Development*, Art. 1.

<sup>7</sup> "Right To A Healthy And Sustainable Environment Report."

unregulated (IUU) fishing, and revenue streams with regards to this SFPA, this author is able to come to meaningful conclusions about whether it delays fulfillment of human rights obligations. In order to examine the SFPA as this thesis' unit of analysis, the author will draw upon theoretical frameworks at the intersection of history, political economy, international trade, development, and human rights and expand on current literature by framing this issue through an interconnected human rights lens.

The main hypothesis is that the way the SFPA is implemented delays fulfillment of the rights to work, food, and development by setting up a fishery governance system that creates competition between EU and local vessels, leads to overfishing, and unfair distribution of revenues. To study this hypothesis, the author will firstly place their contribution in the context of current scholarship in the field and highlight the importance of studying the unit of analysis from a human rights perspective. This will be followed by a presentation of the quantitative and qualitative data methods that include evaluation of data sets from reports published by Joint Scientific Committee (JSC), a body established by the EU/Guinea-Bissau SFPA, current market prices of relevant fish species, and an analysis of the interview material provided by stakeholders in the sector. Ultimately, the author will proceed to evaluate the results of the quantitative and qualitative data analysis in the framework of the right to food, work, and development.

## **II. Literature Review**

### **A. The Historical Trajectory of Extractive Policies by the Political West**

Walter Rodney's *How Europe Underdeveloped Africa* serves as a fitting starting point for tackling this issue as it gives a substantiated, albeit left-wing biased, economic, cultural, and social historical background to the question of development in Africa. His bias is helpful in understanding the political motivations and goals of a person of African descent and does not impede the

theoretical significance of his work. Rodney's main argument is tied to how colonialism and the depletion of both Africa's natural wealth and labor force (i.e. "brain drain", the phenomenon of intellectuals leaving less developed countries for better job prospects in more developed countries)<sup>8</sup> has led to African underdevelopment. While his solutions to this issue feed into communist ideology, this does not discredit his historical analysis, which will be the only part serving as a reference. Rodney argues that through colonialism "African political states lost their power, independence, and meaning"<sup>9</sup> and, arguably, it has proved difficult for powerless states to regain their previous power. "[C]ertain European (including American) scholars [put forward the argument that] the European slave trade was undoubtedly *a moral evil*, but it was *economically good* for Africa",<sup>10</sup> which will be rejected in this paper. Instead, this paper establishes a connection between the economic exploitation enabled by colonialism and the trade relationships that African countries enter into today.

Former Ghanaian President Kwame Nkrumah introduced the term "neo-colonialism" to describe the post-colonial fate of Africa that to this day plagues her. It "represents imperialism in its final and perhaps its most dangerous stage [where ...] the State which is subject to it is, in theory, independent [, but ...] in reality its economic system and thus its political policy is directed from outside."<sup>11</sup> This thesis will consider the political framework of neo-colonialism as a guiding post for the evaluation of the case study of the EU/Guinea-Bissau SFP. Nkrumah importantly identifies that States are made "incapable of independent development"<sup>12</sup> and have their economic and financial systems linked to those of their former colonizers. This linkage is an element to the

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<sup>8</sup> Walter Rodney, *How Europe Underdeveloped Africa* (New York: Verso, 2018), 21.

<sup>9</sup> *Ibid*, 272.

<sup>10</sup> *Ibid*, 115.

<sup>11</sup> Kwame Nkrumah, *Neo-Colonialism: The Last Stage of Imperialism* (London: Thomas Nelson and Sons Ltd, 1965), ix.

<sup>12</sup> *Ibid*, xiii.

EU-Guinea-Bissau trade relationship that is important when considering Guinea-Bissau's right to development.

Having set the historical-political tone for this paper, it is of importance to consider international trade publications for framing this research. The volume "Human Rights and International Trade", published by Oxford University Press in 2005, gathered an extensive range of experts to discuss the unlikely intersection of international trade and human rights. Anthony E. Cassimatis says that in trade policy "protecting human rights of *foreigners* always risks being subordinated to the economic interests of nationals (who generally vote)",<sup>13</sup> strengthening the previous allegation that the dependency factor of the trade relationship is important.

#### B. Resource Exploitation and the Environment

EU nationals' desire for sustainable fishing at home while keeping the supply of fish to the dinner table stable, will inevitably lead to degradation abroad. It is important, then, to consider existing literature on fisheries governance to put the SFPA into a suitable context. Bryan P. Galligan, a research analyst with the Jesuit Justice and Ecology Network Africa (JENA) focusing on marine fisheries, introduces in "*Fisheries extractivism and the right to subsistence: Conflicting governance models and the legal structures that enact them*" a differentiation between two types of fisheries governance, an extractivist model and a norm-based model. In the extractivist model, involved parties view "marine living resources as potential drivers of economic growth".<sup>14</sup> The norm-based model, in contrast, "foregrounds and prioritizes ethical and legal norms as governing principles for fisheries".<sup>15</sup> Examples of such fishery governance is a human-rights based approach.

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<sup>13</sup> Anthony E. Cassimatis, *Human Rights Related Trade Measures under International Law* (Leiden, The Netherlands: Martinus Nijhoff Publishers, 2007), 285.

<sup>14</sup> Bryan P. Galligan S.J., "Fisheries extractivism and the right to subsistence: Conflicting governance models and the legal structures that enact them," *Marine Policy* 133, (2021): 1.

<sup>15</sup> *Ibid.*

He positions the EU in a gray area, where they voice norm-conforming opinions while following extractive practices. He posits that “this one-sided functioning of power strengthens and protects maximally extractive fishing practices while failing to protect human rights”<sup>16</sup>. By identifying the EU as a player in the extractive model, this paper will be able to apply Galligan’s focus on legal realities to an empirical example with the case of Guinea-Bissau.

The practice of this has been researched by Ifesinachi Okafor-Yarwood and Dyhia Belhabib, a team of academics with the former specialized in sustainable development at the University of St. Andrews<sup>17</sup> and the latter in fisheries management and maritime surveillance, working at the University of British Columbia. They say: “Despite evidence suggesting that certain species such as demersal are either fully or over-exploited, and some of uncertain status [...]), the EU [...] continues to exploit such species in West Africa”.<sup>18</sup> More specifically, their findings show the EU’s disregard of the maximum sustainable yield (MSY), a measurement that denotes the maximum amount of a certain fish species vessels are allowed to catch to ensure sustainability, and proves that not all that is preached on paper is found in reality. Though the authors make the right conclusions about the environmental implications of the EU’s Common Fisheries Policy (CFP) in third countries, they suggest better-negotiated agreements that limit overfishing as a solution. By studying the EU/Guinea-Bissau SFPA in depth, this paper will posit that this solution is both shortsighted and unrealistic and does not go far enough in addressing the underlying structural causes that lead to the signing of such unprofitable agreements. In fact, on paper the SFPA does look promising, it is the deficiencies in the implementation that need to be addressed.

### C. Human Rights and International Development

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<sup>16</sup> Ibid, 4.

<sup>17</sup> "Dr Ife Okafor-Yarwood - School Of Geography & Sustainable Devt."

<sup>18</sup> Ifesinachi Okafor-Yarwood and Dyhia Belhabib, “The duplicity of the European Union Common Fisheries Policy in third countries: Evidence from the Gulf of Guinea,” *Ocean and Coastal Management* 184, (2020): 2.

Based on commitments outlined in the UN General Assembly *Declaration on the Right to Development*<sup>19</sup>, it is helpful to introduce Peter Uvin’s rights-based approach to development as another guiding theory. This approach merges development with human rights principles by introducing the concepts of political conditionality and positive support. The EU, which champions itself on putting human rights at the center of its development policy, has, however, failed to make human rights a “constitutive part”<sup>20</sup> of development. It is necessary to move away from top-down political conditionality and positive support, which is the long-term goal of “creat[ing] the conditions for the achievement of specific human rights outcomes”<sup>21</sup> by building up the relevant institutions that reinforce the hierarchical international structure and assume that there is only one path to development is necessary to consider a country’s specific socio-economic realities in order implement trade agreements from a human rights-based approach. Arguably, it is useful therefore to consider the conditions on conditionality that Uvin proposes to make relations between the more and less developed more ethically justifiable, and which focus on the well-being and voices of local populations. This approach reflects an awareness of the geopolitical and hegemonic realities that this paper will expand on for the case of Guinea Bissau’s fishery sector. Further, it centers the analysis of the SFPA around the needs of the local population, particularly the artisanal fishers.

With this focus, it is important to point out that the Guinea-Bissau locals depend heavily on the fishery sector. In fact, Frank Asche et al. find by evaluating different indices related to the sector that Guinea-Bissau has an extremely high community factor, which means that locals are

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<sup>19</sup> UN General Assembly, *Declaration on the Right to Development*.

<sup>20</sup> Peter Uvin, *Human Rights and Development* (Boulder, CO: Lynne Rienner Publishers, 2014), 122.

<sup>21</sup> *Ibid*, 83.

heavily engaged within the fishery sector and depend on it.<sup>22</sup> This sets up the human rights issue on a micro level and shows that the SFPA has very real and local consequences, being dangerous “to the economy and food security of [the] people”<sup>23</sup>. Jeremias Intchama et al. confirm the overexploitation of Guinea-Bissau’s waters and a direct competition between Guinea-Bissau’s artisanal and subsistence fishers with foreign vessels. This mixing of industrial, foreign-operated vessels and domestic, small-scale vessels in the exclusive economic zone (EEZ) has exacerbated the extractive nature of the SFPA, considering that “over 33 groups of species targeted and caught by the industrial sector [... clearly overlap] with small-scale targeted species.”<sup>24</sup> In the realm of this data collection, the authors focused on determining an estimate for IUU fishing. This is of absolute importance for determining the extent to which Guinea-Bissau’s coastal waters are overexploited, which the authors find to be “extensive”<sup>25</sup>, as this affects the people on the ground and their right to food. However not only nutrition is at play here. They further state that “over 255,000 jobs [are provided] to local people [...], and [fisheries] contributing 6% of the national GDP<sup>26</sup>” are implicated. Based on the urgency elicited from their data, this author deduces a relevance of the right to food and right to work as related to the SFPA.

As shown, previous scholarship has been effective in identifying the macro-historical trajectory that has led to the structural issues of today’s Guinea-Bissau and the extractive practices still present nowadays. The blatant overfishing as well as the hypocrisy in EU fishery policy in third countries are not revolutionary findings. What, then, sets my results apart is the in-depth study of the normative formulations of the SFPA, the quantitative analysis resulting in a cost-

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<sup>22</sup> Frank Asche, et al., “Fisheries performance in Africa: An analysis based on data from 14 countries,” *Marine Policy* 125, (2021): 3.

<sup>23</sup> Jeremias Francisco Intchama et al. “Assessing Guinea Bissau’s Legal and Illegal Unreported and Unregulated Fisheries and the Surveillance Efforts to Tackle Them,” *Frontiers in Marine Science* 5, (2018): 1.

<sup>24</sup> *Ibid*, 3.

<sup>25</sup> *Ibid*, 9.

<sup>26</sup> *Ibid*, 10.

revenue analysis that confirm such findings, as well as first-hand insight from stakeholder parties that strengthen this author's argument. Moving beyond the socio-economic and political considerations that guided authors in this field before, I move toward a human rights lens to analyze these findings in terms of three relevant rights: the right to work, the right to food, and the right to development. Previous scholarship has usually failed to view these issues from the interconnected lens of human rights. It is hypothesized that the SFPA created a situation of Bissau-Guinean artisanal fishers competing with EU vessels, obstructing the right to work; that the terms of the SFPA are not followed in practice, leading to overfishing of Bissau-Guinean waters and worsening food insecurity (right to food) in the country; and that the SFPA is inherently unfair and extractive in its revenue distribution, leaving Guinea-Bissau to lag behind with its (right to) development.

### **III. Understanding the International Fisheries Regime**

To better understand how the SFPA between Guinea-Bissau and the EU could have culminated, we must first set up the relevant international frameworks regarding international fisheries, with reference to trade, territorial rights, and the parties' interests in the sector. This includes the *United Nations Convention on the Law of the Sea (UNCLOS)*, the development of the CFP as well as the basis for fishery development in Guinea-Bissau.

#### **A. The Foundational Framework: The *United Nations Convention on the Law of the Sea***

*UNCLOS* is the most comprehensive international treaty dealing with territorial rights and obligations regarding states' waters and the High Seas. Part V defines the EEZ as a legal regime where:

“the coastal State has: [...] sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone [...]”<sup>27</sup>

This sets up the sovereign rights of Guinea-Bissau in the waters that are the subject of analysis of this paper. Jurisdiction over the EEZ extends to 200 nautical miles off the coast of the respective state and thereby also extends a state’s rights and duties in these waters. These duties include the conservation of living resources by setting the total allowable catch (TAC)<sup>28</sup> for the area. However, the rights that come with an EEZ include “the sovereign right to exploit their natural resources”<sup>29</sup>. The SFPA finds its legitimacy in Art. 62(4)a, which specifically regulates that sovereign states—here: Guinea-Bissau—may license foreign vessels (e.g. EU vessels) to fish in their EEZ, while still respecting regulations about TAC.

#### B. The European Union’s Common Fisheries Policy

The CFP of the EU grew out of the Common Agricultural Policy (CAP) with the goal of applying the same objectives to the fishery sector as had been done in the agricultural sector. This includes augmenting productivity, ensuring stable markets, offering affordable consumer products, and providing healthy nutrition.<sup>30</sup> By having such objectives, the CFP proves to be an inward-looking policy, i.e. ensuring the best possible outcomes for European states and citizens. The Maritime Affairs and Fisheries Department (DG MARE) of the European Commission (EC) is responsible for formulating the EU’s fishery policy within Union territory and with foreign partners, empowered by the above-described terms of *UNCLOS*.<sup>31</sup> It is therefore also this department that designs and negotiates the SFPA. In its Annual Activity Report of 2020, DG

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<sup>27</sup> Ibid, Art. 56.

<sup>28</sup> Ibid, Art. 61.

<sup>29</sup> Ibid, Art. 193.

<sup>30</sup> "Common Fisheries Policy (CFP)."

<sup>31</sup> "Maritime Affairs And Fisheries."

MARE dedicates one section to the twelve SFPAs that are operational, indicating that negotiations of these agreements may be delayed or hindered by i) “unrealistic financial expectations of the partner country”<sup>32</sup> and/or ii) “non-compliance of the partner country with the EU Regulation on the fight against illegal, unreported and unregulated fishing”<sup>33</sup>. Therefore, the Commission attributes the non-implementation of an SFPAs or the failure of it to factors outside of its control, arguing that there is such an inherent risk in international negotiations. It seems the Commission forgets its powerful position in such negotiations. The report fails to focus on negative impacts of the SFPAs on the third countries, merely stating that such SFPAs are mutually beneficial as they enhance fisheries governance, economic activity and job expansion abroad.

The SFPAs between the EU and Guinea-Bissau took its first shape on 16 June 2007 and is renewed every four years. This, now 15-year-old, agreement lays the foundation for the fisheries cooperation between the two parties. As part of this agreement, there was a first protocol to the Agreement on 27 December 2007, which was replaced by a new protocol on 27 June 2019, valid for a period of five years. The protocols were analyzed in a comparative manner, highlighting improvements in the text. The Protocols may be subdivided into two sections: the operative clauses and the Annex. Art. 1 is most substantive in that it sets the parameters of the fishing licenses by species. This is done by dividing the term of the protocol into two: the first two years and the subsequent years. In years 1 and 2, fishing effort is limited by measurements of gross register tonnage (GRT), a volume measurement of fish caught, for demersal species and small pelagic, as shown in the below table. This is known as the **effort management system**.

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<sup>32</sup> DG Maritime Affairs and Fisheries, *Annual Activity Report 2020*, 36.

<sup>33</sup> Ibid.

Table 1: Fishing opportunities, years one and two

Type of fish	GRT per year
Crustaceans	3,700
Demersal and cephalopods	3,500
Small Pelagic	15,000

In subsequent years, fishing opportunities for the same species are instead measured in catch limits per species as dictated by total allowable catch (TAC) in tons through a **quota management system**. These are distributed as follows:

Table 2: Fishing opportunities, starting year three

Type of fish	TAC in tons per year
Crustaceans	2,500
Demersal	11,000
Cephalopods	1,500
Small pelagic	18,000

There are also regulations regarding the highly migratory (and expensive, i.e. profitable) species (here: tuna), which are caught via seiners, longliners and pole-and-line vessels. However, the JSC reports offer no data on tuna catches, meaning the author was unable to come to any conclusions regarding tuna fishing in Bissau. The fishing opportunities are to be distributed among member states to the EU. Only Spain, Portugal, Greece, and Italy have had access to Guinea-Bissau waters under the SFPA.

In exchange for these fishing opportunities provided by Guinea-Bissau to EU vessels, the EU commits itself to financial contributions as per Art. 4 of the Protocol. The annual contributions were elevated from €7 million in the old Protocol to €15.6 million in the new Protocol, of which the €500,000 of fishery sector-specific contributions were elevated to €4 million. However,

pursuant to Art. 4(7), these contributions are all “paid into a single Public Treasury”<sup>34</sup>. Owners of the EU vessels will only be paying an estimated €4 million<sup>35</sup>, meaning that the rest (15,600,000 – 4,000,000 = 11,600,000€) is paid by EU member states.

The sectoral support mentioned is more extensive and more heavily conditioned than previously, albeit that the money is made readily available to Guinea-Bissau’s Public Treasury. In specific, the Protocol asks the Joint Committee (“a committee made up of representatives of the Community and Guinea-Bissau”<sup>36</sup>) to devise a multiannual sectoral program in line with Guinea-Bissau’s national strategy for fisheries and the blue economy. The EU reserves the right to delay or suspend its financial contributions to Guinea-Bissau, based on progress made with this program. While this inevitably leads to more accountability of the Guinea-Bissau government/Ministry of Fisheries, it might be questioned whether such policies could not be considered to impede Guinea-Bissau’s sovereignty, making the EU an ultimate decision-maker for a quite significant amount of money that the Public Treasury of Guinea-Bissau is dependent upon.

Further, the EU is aiming to further scientific cooperation between the two parties by monitoring “the evolution of stocks and fisheries in Guinea-Bissau’s fishing zone.”<sup>37</sup> How successful this scientific cooperation can be, considering that there is barely any baseline data available is questionable. Current data on fish stocks are merely approximations done by scientists. Again, the language of the Protocol is more optimistic than realistic.

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<sup>34</sup> *Protocol On The Implementation Of The Fisheries Partnership Agreement Between The European Community And The Republic Of Guinea-Bissau (2019-2024)*, Art. 4(7).

<sup>35</sup> *Ibid*, Art. 4(3).

<sup>36</sup> *Fisheries Partnership Agreement Between The European Community And The Republic Of Guinea-Bissau For The Period 16 June 2007 To 15 June 2011*, Art. 2.

<sup>37</sup> *Protocol On The Implementation Of The Fisheries Partnership Agreement Between The European Community And The Republic Of Guinea-Bissau (2019-2024)*, Art. 6(2).

The JSC, “made up of scientists appointed in equal number by each of the Parties”<sup>38</sup>, is assigned the task of “compiling data on fishing efforts”<sup>39</sup>, contributing “to the stock assessment process”<sup>40</sup>, and “drawing up [...] an annual scientific report on the fisheries covered by this Protocol”<sup>41</sup>. The JSC is meant to meet annually. Unfortunately, the last meeting was from 27-31 March 2017, which is also the last year for which a scientific report is available. The catch numbers that three of the four publicly available JSC reports have been statistically analyzed. The results will be presented in the following section. The report from the 6<sup>th</sup>—or extraordinary—meeting of the SFPA JSC (7-12 October 2016) focused on the homogenization of data inputs, an extremely necessary endeavor as will become obvious when looking at the data sets coming out of the JSC reports. The report cites, for example, that databases have become so convoluted, that there were five different nationality entries just for China: “CHINA, CHINES, CHINÊS, CHINESA and CHINÊSA”<sup>42</sup>. Other JSC reports considered later in this thesis are reports 4 and 5 based on meetings from 28-30 April 2015 and 10-12 May 2016, respectively.

*Chapter IV (Catch reporting)* of the Annex to the Protocol, requires each EU vessel in Guinea-Bissau’s EEZ to keep a fishing logbook. For the first two years of this Protocol, the vessel master must “declare the vessel’s catch by submitting to Guinea-Bissau its fishing logbooks for the period of its presence in Guinea-Bissau’s fishing zone.”<sup>43</sup> Copies of this fishing logbooks must also be submitted to the EU as well as one of the following three research Institutes: the Institut de recherche pour le développement (IRD), the Instituto Español de Oceanografía (IEO), or the

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<sup>38</sup> Ibid, Art. 7(1).

<sup>39</sup> Ibid, Art. 7(3) a.

<sup>40</sup> Ibid, Art. 7(3) b.

<sup>41</sup> Ibid, Art. 7(3) c.

<sup>42</sup> Sobrino, Nahada and Rodríguez, *Report Of The Extraordinary Joint Scientific Committee Guinea Bissau - EU: Making Operational The Guinea-Bissau Industrial Fisheries Data Base*, 6.

<sup>43</sup> *Protocol On The Implementation Of The Fisheries Partnership Agreement Between The European Community And The Republic Of Guinea-Bissau (2019-2024)*, Annex, Chapter IV, 2.1.

Instituto Português do Mar e da Atmosfera (IPMA). Starting in the third year (January 2022), the EU expected to move toward an electronic reporting system (ERS) for logging the fish catches. There is no indication that Guinea-Bissau has the capacity to do this.

Therefore, besides an increase in the annual financial contributions on the side of the EU, there are only two major improvements in the new Protocol, found in *Chapter V (Landings and transshipments)* and *Chapter VIII (Signing-on of seamen)* of the Annex. *Chapter V* requires EU vessels to make in-kind contributions to Guinea-Bissau in the form of landing part of their catch in Guinea-Bissau. This amounts to 10t from cephalopods and fin-fish vessels and 5t from shrimp vessels per year. *Chapter VIII* dictates that EU vessels must sign on Bissau-Guineans to help with the fishing under International Labor Organization (ILO) standards and proportionally to the GRT capacity of their vessels. This expands job opportunities to the local population though the fish ends up being landed elsewhere.

### C. The Fishery Sector in Guinea-Bissau: Blue Economy Aspirations

Picking up Frank Asche et al.'s research that identified a high community factor in Guinea-Bissau, it is pertinent to describe the fishing culture locally. This artisanal fishing is done in wooden, canoe-shaped boats and supposedly requires much physical exertion.

Illustration 1: Traditional Fishery Boats in Bissau<sup>44</sup>



<sup>44</sup> Picture credits: Norbert Plambeck

Regardless, as a coastal state bordering the species-rich Gulf of Bissau, Guinea-Bissau has, to date, left unused a natural resource and an economic opportunity. In March 2015, when unveiling its Terra Ranka Plan, there was a large emphasis on embracing the blue economy opportunity at their doorstep. In fact, fishing is seen as one of four major economic areas that will bring prosperity to the country, alongside agriculture (largely export of cashew nuts), tourism, and mining<sup>45</sup>, and as the second-largest economic growth sector.<sup>46</sup> In fact, Guinea-Bissau hopes for a “doubling of revenue and value added from fishing”<sup>47</sup>. This shall be done by focusing on four program areas: “(i) strengthening governance of the fishing and aquaculture sector; (ii) research and quality certification; (iii) the development of small-scale fishing and; (iv) the development of aquaculture.”<sup>48</sup>

It is important to note two things regarding this operational plan. First, it seems that Guinea-Bissau recognizes it needs to enhance “surveillance of its marine territory”<sup>49</sup> as well as, effectively collect[...] all license fees”<sup>50</sup>. This would let us believe that, to date, both maritime surveillance and the collection of license fees has not been implemented the way it should have been. Second, the government of Guinea-Bissau calculated that the planned changes in the fishery sector would require an investment amounting to 63 billion CFA francs, which is about €95.7 million, of which none has been secured.<sup>51</sup> This highlights the developmental challenge that Guinea-Bissau faces not only in the fishery sector but even in its wider goals of becoming “a positive Guinea-Bissau,

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<sup>45</sup> República da Guiné-Bissau, *Strategic And Operational Plan For 2015-2020 "Terra Ranka"*, 12.

<sup>46</sup> *Ibid.*, 13.

<sup>47</sup> *Ibid.*, 16.

<sup>48</sup> *Ibid.*, 29.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

politically stable through inclusive development, good governance, and preservation of its biodiversity.”<sup>52</sup>

#### **IV. Methodology**

##### **A. Data Collection and Analysis**

I aim to employ a mixed methods approach<sup>53</sup> to study the impact of the SFPA on the human rights of Bissau-Guineans, where my qualitative data informs and adds value to the quantitative analysis. Quantitative data is collected from the SFPA between the EU and Guinea-Bissau, which includes the two protocols (signed in 2007 and 2019) to the agreement that numerically outline the fishing opportunities for EU vessels per category of fish as well as the financial contributions by the EU to Guinea-Bissau. Further data of significance are four reports by the Joint Scientific Committee (JSC), a body set up by the SFPA to enhance scientific cooperation between the EU and Guinea-Bissau. The 7<sup>th</sup> report is publicly available, the other three (4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup>) were kindly provided by the Deputy Head of Unit Trade Negotiations and Sustainable Fisheries Partnership Agreements at DG MARE, Emmanuel Berck. These reports include total catch data in Guinea-Bissau’s EEZ and information on the number of licensed EU vessels. Unfortunately, catch logbooks for specific vessels are not publicly available as their commercial nature sets up a confidentiality conflict. To employ statistical analysis, market prices for the targeted fish species are also relevant for data collection.

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<sup>52</sup> Ibid, 11.

<sup>53</sup> Abbas Tashakkori and John W. Creswell, “Editorial: The New Era of Mixed Methods,” *Journal of Mixed Methods Research* 1, no.3 (2007): 4.

The quantitative data from the data sets of the SFPA Protocol is assessed based on the numbers from the three JSC reports (4th<sup>54</sup>, 5th<sup>55</sup>, and 7th<sup>56</sup>). They feature more or less complete statistics on the number of EU and other third-country vessels operating in Guinea-Bissau waters each year, the number of fish sorted by species caught each year (in t), and more specific data on subspecies. Based on this data, this author was able to understand catch patterns of EU vessels, the lack of homogenization in fishery data, and determine violations by EU vessels from 1999-2016. With the available data, the author calculated annual catch data by EU vessels and when data allowed even by Guinea-Bissau's few industrial vessels. Based on the annual catch numbers and average market prices for the relevant fish species, this author further conducted a cost-revenue analysis based on the annual catch compared to the financial contributions. All of this is done with the human right-based approach to development in mind, trying to produce quantitative evidence related to the right to work, food, and development.

Qualitative data collection took place through semi-structured, virtual interviews with experts in the field as they are working principally on the policy-making area of the fishery sector in Guinea-Bissau and are therefore responsible for and/or in charge of the current trade situation. My first interview was with Dyhia Belhabib (PhD), who currently works as a principal investigator at Ecotrust Canada, a charity working towards "building an economy that provides for a healthy and resilient natural environment"<sup>57</sup>, as well as serving as the co-founder of University of British Columbia's Nautical Crime Investigation Services (NCIS), which tries to develop AI to deter crimes at sea.<sup>58</sup> Her professional background focuses on fairness in fisheries and coastal

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<sup>54</sup> *4ª Reunião Do Comité Científico Entre A República Da Guiné-Bissau E A União Europeia.*

<sup>55</sup> Sobrino, Nahada, Rodríguez, *Acordos de parceria para pesca sustentável união europeia – países terceiros: 5ª Reunião do Comité Científico entre a República da Guiné-Bissau e a União Europeia.*

<sup>56</sup> Sobrino, Intchama, Rodríguez, *Acordos de parceria para pesca sustentável união europeia – países terceiros: 7ª Reunião do Comité Científico Conjunto entre a República da Guiné-Bissau e a União Europeia.*

<sup>57</sup> "Our Approach."

<sup>58</sup> "Nautical Crime Investigation Services (NCIS)."

communities and how fisheries agreements translate into a lack of transparency and food insecurity. She therefore turned out to be predominantly critical of the SFPA between Guinea-Bissau and the EU.

Second, the author had the valuable opportunity of speaking with a Bissau-Guinean businessman, who preferred to remain anonymous for the purposes of this paper. He referenced close ties to his government and particularly the Ministry of Fisheries. The interview was done in French with a qualified translator present. His main work in the fishery sector is trying to find investors to build up the fishery sector in Guinea-Bissau. He says about the SFPA, without completely denouncing it, that they are “searching for a better solution for the fishery sector”. Having been involved with artisanal fishery in Guinea-Bissau, he is able to say that the SFPA and the promises it makes for small-scale fishery remain unfulfilled.

The author further had the honor of talking to a member of DG MARE. Emmanuel Berck, acting as the Deputy Head of Trade Unit Negotiations and Sustainable Fisheries Partnership Agreements, discussed the SFPA from a European perspective, calling it a “historical agreement”. He views the SFPA as "essential for the EU fleet, because [of] the variety of different species [...] and [the] strategic importance. But at the same time with [...] the financial compensation and activity generated, it's also substantial for the economy of Guinea-Bissau."

Lastly, MEP Izaskun Bilbao Barandica from the Basque Country of Spain submitted a written statement. She is part of the Partido Nacionalista Vasco in Spain and on the European level with the Renew Europe alliance, which is a liberal-democratic party.<sup>59</sup> This author reached out to all other MEPs of the Fisheries Committee to ensure the breadth of political opinion in the EU be represented in this paper, but they chose to decline the invitation for an interview. Reasons given

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<sup>59</sup> "Izaskun BILBAO BARANDICA."

included time and language constraints. MEP Barandica grew up in a small town by the coast in a fisher’s family, her father having been a fisherman. Her mother and brother were/are also engaged in the fishery sector, so she is “very familiar with the sector and its problems”. She posits that the SFPA is essential to Guinea-Bissau based on the money that flows into the Public Treasury as well as the plans to support the local, small-scale fishery sector.

Questions asked in the interviews generally circled around the following, though they might have been followed up on with more specific questions depending on the flow and direction the interview was taking:

Table 3: Interview Questions

1	What is your connection to the fisheries sector?
2	What is your view on the SFPA between Guinea-Bissau and the EU? Is it economically profitable for Guinea-Bissau? Is it economically profitable for the EU?
3	To your knowledge, is illegal, unreported, and unregulated (IUU) fishing a problem in the Gulf of Bissau? If yes, do you know of any initiatives implemented to fight back against it?
4	To your knowledge, how has the SFPA influenced the local fishers of Guinea-Bissau?
5	To your knowledge, has the SFPA improved the fishery sector in Guinea-Bissau? If yes, how so?

The qualitative data collected is used to serve the purpose of further explaining the quantitative results. Focusing specifically on the factors of competition between Bissau-Guinean and EU vessels, overfishing, and revenue distribution, the qualitative insights from the interviews are informative substantively, reflect the parties’ stance toward the SFPA, and outline the rights and responsibilities of each party.

#### B. Limitations

Limitations to my research might be a relative lack of transparency when it comes to accessing commercial data on fish caught per EU vessels. This limitation was overcome by accessing the

total annual catch by EU vessels outlined in the JSC reports, but leaves the thesis unable to assign blame to a specific vessel/their owner.

There are also some weaknesses to the available data sets. Firstly, the most recent numbers are from 2016, leaving a gap of six years in a very dynamic sector that can change momentarily. Another issue is the discrepancies in measurements used in the JSC reports. For example, the first two years of the SFPA, the fisheries opportunities are outlined in GRT, a volume measurement of a vessel's storage capacity for caught fish, while starting with the third-year quota system, the TAC is given through t. It is impossible to say whether the catch data in the JSC reports, which is provided in gross tonnage, was caught as part of the GRT or TAC limits. For making a relative comparison possible and a homogenization of the data, the catch data is compared to the TAC, which should not affect the quality of the data but is important to be noted.

Another limitation is that the evaluation of the micro-human rights violations regarding the artisanal fishers of Guinea-Bissau is inferred from previous ethnographic studies and not by own research of the investigator. The author of this thesis was unable to travel to Guinea-Bissau to gather first-hand insights from the fisher persons themselves and neither does the author identify as a fisher. This does not limit the evaluation, however, since ethnographic work by other scholarship was consulted and one interviewee offers insights into the life of a local.

## **V. Viewing the SFPA through a Human Rights Lens**

In the human rights-based analysis of my quantitative and qualitative data and to answer this author's hypothesis, some legalistic background to the rights to work, food, and development must be presented. The right to work and the right to food are both found, among others, in the *International Covenant on Economic, Social, and Cultural Rights (ICESCR)*. An important caveat to the *ICESCR*, and therefore this analysis, is the treaty's commitment of "achieving progressively

the full realization of the rights”<sup>60</sup>, i.e. allowing resource-poor or economically disadvantaged countries the time to implement such rights. The right to work is outlined in Art. 6, while the right to food can be found in Art. 11.<sup>61</sup> With Guinea-Bissau and EU member states all parties to the *ICESCR*, they have bound themselves to fulfill these treaty obligations, albeit progressively.<sup>62</sup> It is also important to note that the aforementioned rights are clearly individualistic, highlighting a sole right-holder in the form of a person and a duty-bearer in the form of the state. In an integrated world, where Guinea-Bissau depends upon EU fishery license payments as income, it seems necessary, however, to highlight the connection between Guinea-Bissau’s incapacity to offer these outlined rights and the EU’s predatory trade behavior that could be said to cause this incapacity.

The legal basis is weaker, but not absent, with the *Declaration on the Right to Development*, a UN General Assembly (GA) resolution that only constitutes soft law. The right to development here is not held by an individual, but rather by a developing state, and the duty is borne by developed states. Regardless of the questionable legal standing of this GA resolution, it is clear that the EU has committed itself to such goals and it is even clearer that Guinea-Bissau seeks to develop itself, as outlined through the Terra Ranka Plan in section III.

With these three different rights, we transcend the traditional two-leveled right-holder and duty-bearer relationship in the domestic sphere toward a three-leveled one in the international sphere. This three-leveled relationship better encapsulates that while there are responsibilities of state to citizens, there are also important state-to-state responsibilities that will inevitably and directly impact the capacity of a state to fulfill its obligations toward its citizens.

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<sup>60</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, Art. 2.

<sup>61</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*.

<sup>62</sup> "3. International Covenant On Economic, Social And Cultural Rights."

I deliberately choose not to focus this paper on the right to a healthy or clean environment, though its applicability is unquestionable, for the simple reason that it is more difficult to establish a legal basis when barely any climate litigation has proven successful and those who have were based on regional treaties like the *European Convention on Human Rights (ECHR)*.

#### A. The Right to Work

The right to work is important to consider in Guinea-Bissau, which has blue economy aspirations and seeks to develop its fishery sector to drive economic growth. By evaluating the percentage of annual catch both by EU and Bissau-Guinean vessels, which can be understood as the relative competition between EU and Bissau-Guinean vessels for the available fish in Guinea-Bissau's EEZ, this author could make indirect deductions about the right to work and finds it to be inhibited by the presence of foreign vessels. However, the text of the SFPA and the interviews conducted draw a more balanced picture, ultimately disproving the original hypothesis of an obstructed right to work for Bissau-Guineans. It is concluded that the SFPA has had an overall positive impact on the right to work, and that the inhibiting factors draw a line to the interconnected, but macro, right to development.

There is a clear trend of EU fishery vessels crowding out artisanal and traditional fishing boats of Bissau-Guineans, leading to less fish caught locally. The following graphs and tables outline the discrepancy between the EU's and Guinea-Bissau's percentages of overall fish caught in Bissau-Guinean waters. Numbers for fish caught by Guinea-Bissau were only available in report 4 and only for the species of crustaceans and cephalopods, which is why they serve as the basis for deduction here. Furthermore, for cephalopods data was only available starting in 2000, whereas data on crustaceans caught dates back to 1999. There are two elements that should be addressed before diving into the analytical part of the results. First, it is obvious, yet perhaps curious, that

there was no fish caught by the EU in the years 2013 and 2014. This is related to an EU decision to not fish in the EEZ in those years as a response to the politically instable climate in Guinea-Bissau at the time. Secondly, it is also clear that while the discrepancy between EU percentages is visually obvious, it has to be noted that the graphs operate on different scales, showing that the EU caught less percentages of overall catch of cephalopods as compared to crustaceans. This does not impair, however, the clear comparison of percentages of fish caught by either party nor does it weaken the argument.

Graph 1: EU and Bissau-Guinean percentages of total annual catch (t) of crustaceans (1999-2016)

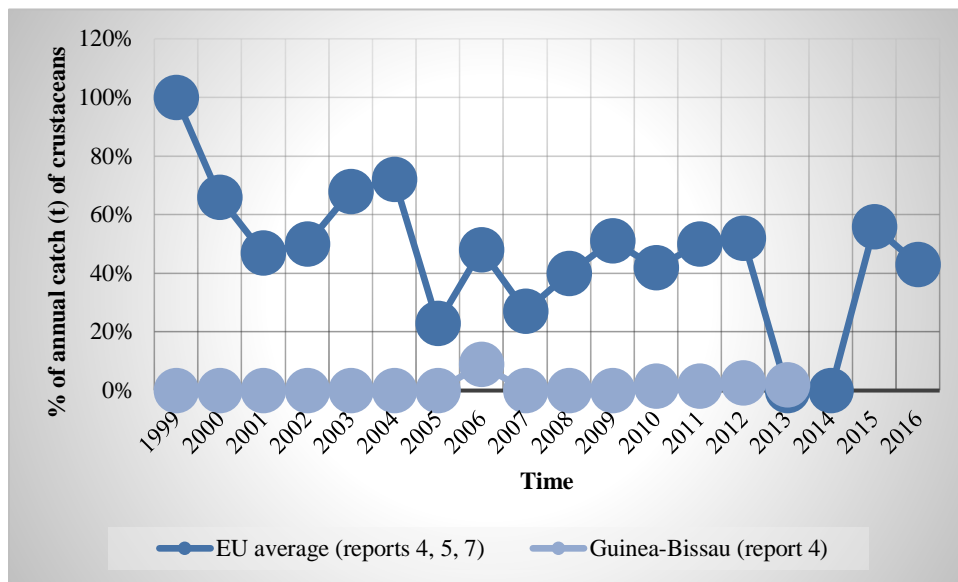


Table 4: EU and Bissau-Guinean percentages of total annual catch (t) of crustaceans (1999-2016)

Time %	'99	00	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16
<b>EU</b>	100	66	47	50	58	72	23	48	27	40	51	42	50	52	0	0	56	43
<b>Guinea-Bissau</b>	0	0	0	0	0	0	0	8.9	0	0	0	1.5	1.5	2.6	1.9	n/a	n/a	n/a

As can be seen more clearly from Table 4, Guinea-Bissau barely caught any crustaceans in the EEZ in the time period considered. 2006 is an exception where Guinea-Bissau accounts for almost 9% of that year's total catch of crustaceans. Meanwhile, the EU consistently caught more than 40% of all crustaceans caught each year in Bissau-Guinean waters.

Graph 2: EU and Bissau-Guinean percentages of total annual catch (t) of cephalopods (2000-2016)

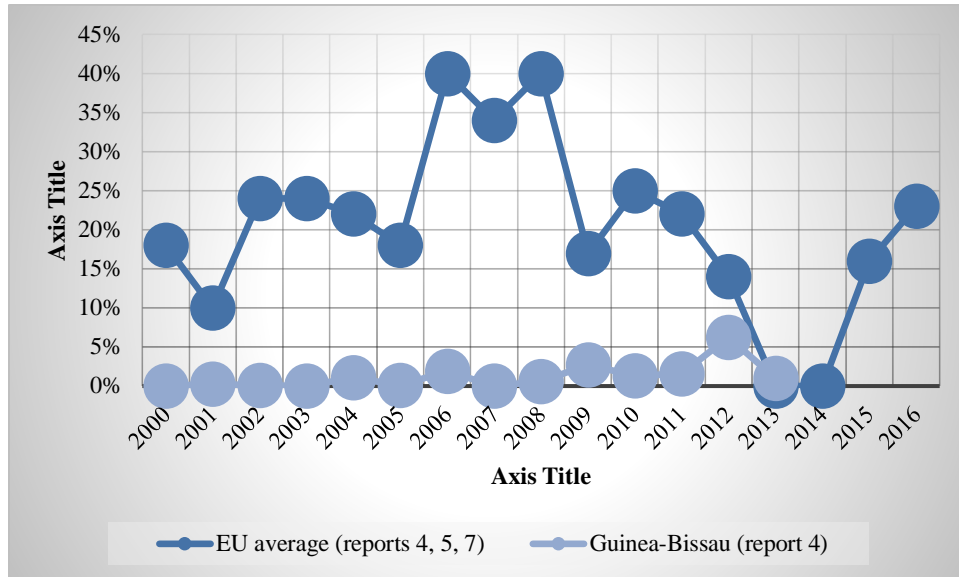


Table 5: EU and Bissau-Guinean percentages of total annual catch (t) of cephalopods (2000-2016)

Time %	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12	'13	'14	'15	'16
<b>EU</b>	18	10	24	24	22	18	40	34	40	17	25	22	14	0	0	16	23
<b>Guinea-Bissau</b>	0	0.3	0.1	0	1.1	0.1	1.9	0.04	0.6	2.7	1.4	1.6	6.3	1	n/a	n/a	n/a

Similarly, but not as strongly, the percentages of catch of cephalopods reflect the domination by EU vessels over Bissau-Guinean vessels. This sets up the argument for a competition between Bissau-Guinean and EU vessels that the former had already lost from the beginning. Lost already, because a large part of this discrepancy stems solely from the fact that the EU can employ a larger number of vessels than Guinea-Bissau, which only has two or three industrial vessels at hand.<sup>63</sup> This lack of industrialized fishing vessels that feeds into a lack of employing Bissau-Guineans in the fishery sector therefore is directly related to Guinea-Bissau's attempts at development—or right to development. Nevertheless, the indication from the data that EU vessels are a serious and unbeatable competition for Bissau-Guinean vessels reflects a

<sup>63</sup> Interview with Emmanuel Berck

sentiment voiced by Okafor-Yarwood and Belhabib, who wrote that legal as well as IUU fishery by foreign vessels have driven local fishers into poverty, relying on an income at less than US\$ PPP 1.00 per day.<sup>64</sup> Their research, published in *Ocean and Coastal Management*, relied on the method of triangulating published reports by relevant stakeholders. They also conducted an “analysis of the catch data between the EU and countries with whom it has a fishing partnership agreement in West Africa extracted from the Sea Around Us Database covering 2010 and 2014” as well as considered “IUU fishing regulation infringements/sanctions between 2012 and 2017”.<sup>65</sup>

However, there might be an unexpected value-added brought by the SFPA to the Bissau-Guinean job market through Chapter VIII of the Annex to the 2019 Protocol of the SFPA, which requires EU vessels to sign on local fishers. Specifically, vessels must at least sign on five and up to eight seamen, completed by national seamen. The distribution is dictated by the GRT of a vessel, the higher the GRT, the more seamen shall be signed on. Emmanuel Berck, the Deputy Head of Unit Trade Negotiations and Sustainable Fisheries Partnership Agreements, confirmed this policy taking place on EU vessels in his interview with me. There is no quantitative method available to this author to corroborate this claim, but it should be noted that no enforcement or compliance mechanism is laid out in the 2019 Protocol to ensure that the jobs reach Bissau-Guineans.

All in all, it seems that the EU’s disproportionate percentage of the overall catch in Bissau-Guinean waters is related to the EU’s superior number of industrial vessels. A crowding out factor by EU vessels vis-à-vis Bissau-Guinean vessels is negligible. Rather, the SFPA has positively impacted the local right to work through the text of the SFPA, which requires employment of Bissau-Guineans on EU vessels.

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<sup>64</sup> Ifesinachi Okafor-Yarwood and Dyhia Belhabib, “The duplicity of the European Union Common Fisheries Policy in third countries: Evidence from the Gulf of Guinea,” *Ocean and Coastal Management* 184, (2020): 1.

<sup>65</sup> *Ibid*, 3.

## B. The Right to Food

A crowding out factor is more obvious when it comes to the right to food—or rather: the overexploitation of marine resources in Guinea-Bissau’s EEZ. Guinea-Bissau is already being described as a “low-income food-deficit country”<sup>66</sup> by the World Food Program (WFP). Though overfishing may not explain food insecurity in Guinea-Bissau, its termination would logically make available more food for local consumption. Therefore, food security is severely impaired by EU vessels continuing to fish in Guinea-Bissau waters but not landing it on Guinea-Bissau lands. Dr. Belhabib put it well when she was saying that this is “definitely taking away food from the mouths of people.” MEP Barandica made clear that for landings to happen in Guinea-Bissau and selling in the European market, local hygiene standards need to be raised. Mr. Berck made the same point. This argument has a built-in fallacy, however, in that landing in Guinea-Bissau would open up a whole new consumer market in Guinea-Bissau alone as well as beyond its borders for pan-African trade. Selling in Europe does not have to be the final goal.

In this section, my quantitative data comes in the form of the EU’s average annual catch (in t) from 1999-2016 for crustaceans, cephalopods, demersal, and pelagic. The averages are calculated from the numbers provided by the 4<sup>th</sup>, 5<sup>th</sup>, and 7<sup>th</sup> report. This is done to account for the at times considerable discrepancies between the reports when it comes to certain years’ catch data. This catch data is in turn compared to the normative terms of the SFPA, which is given in TAC (in t), and therefore allows direct comparison. The following table outlines the overall results, showing EU violation only for its catches of cephalopods.

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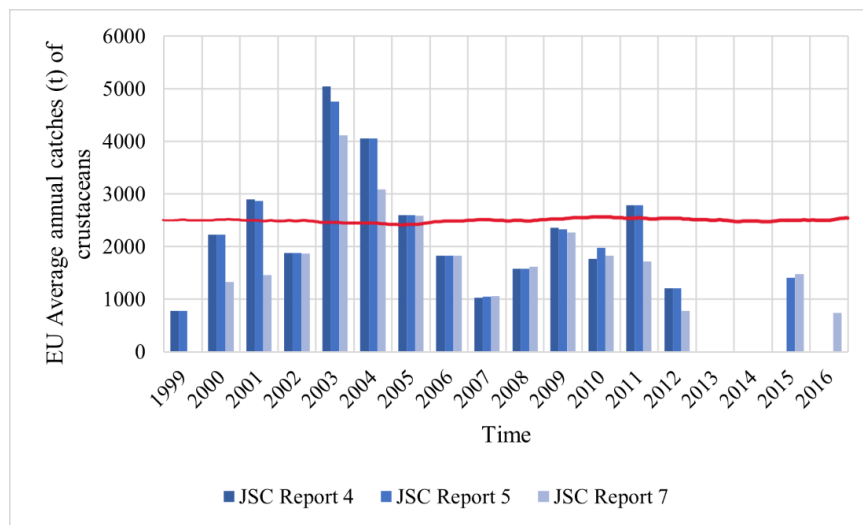
<sup>66</sup> "Guinea-Bissau Country Strategic Plan (2019 - 2024)."

Table 6: EU average annual catch (t) compared to SFPA-outlined TACs, by species

Species	SFPA-outlined TAC (t)	EU average annual catch, 1999-2016 (t)
Crustaceans	2500	1960.96
Demersal	11000	2589.94
Cephalopods	1500	3603.18
Small pelagic	18000	1145.94

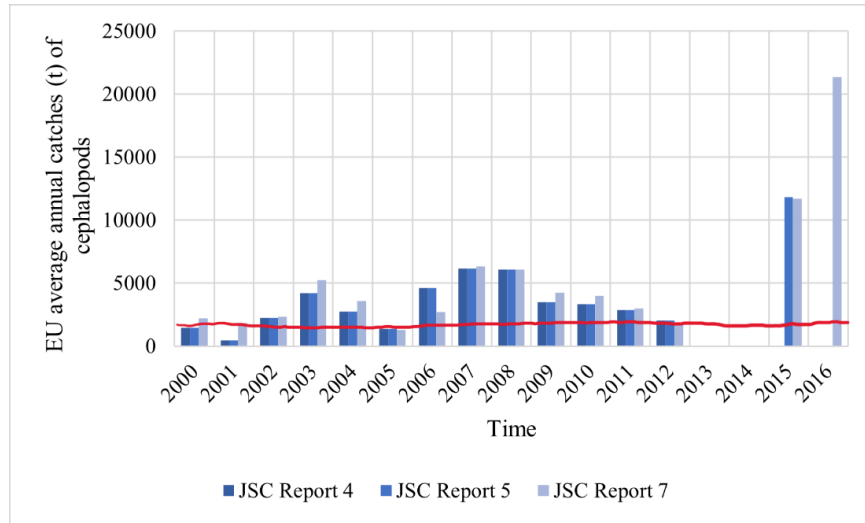
The numbers marked green indicate no overfishing by the EU, on average for the time period 1999-2016. The red marker suggests overfishing. However, these results only scratch the surface and by digging deeper, this author found more extensive violations of the TAC outlined in the SFPA. All of the following graphs portray 0-3 bars per year, each bar representing the catch numbers from a report as specified in the legend. The year 1999 only has two bars, because report 7 started data collection in the year 2000. Similarly, 2015 has two bars and 2016 only one bar as reports 4 and 5 were published in 2015 and 2016 respectively, meaning that the most recent numbers were not available to the JSC yet. In each graph, the red line reflects the TAC for EU vessels as prescribed in the SFPA.

Graph 3: EU Average annual catch (t) of crustaceans, 1999-2016



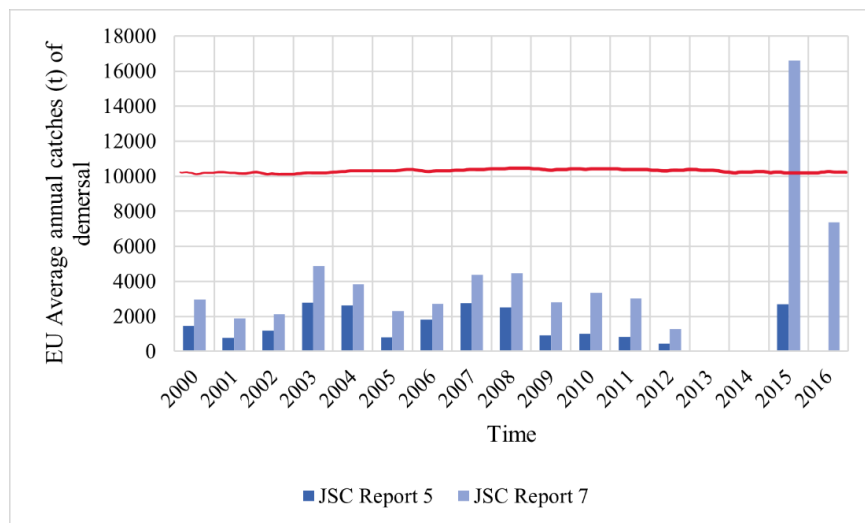
Graph 3 shows that, contrary to the average catch numbers from 1999-2016, there are certain years where EU vessels overfished crustaceans. Specifically, we are talking about violations as reflected in the numbers of at least one report in years 2001, 2003-05, and 2011.

Graph 4: EU Average annual catch (t) of cephalopods, 2000-2016



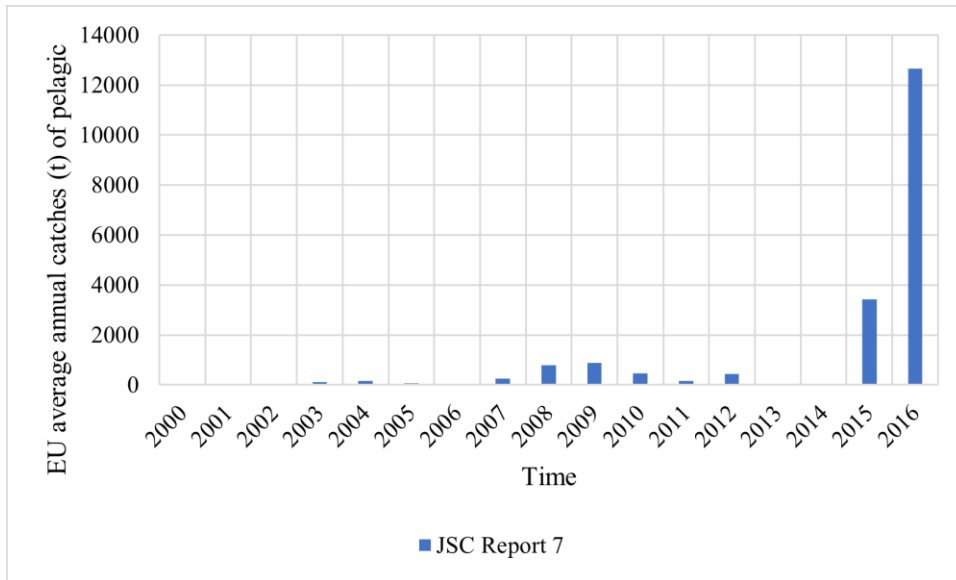
Cephalopods are the most extreme example of overfishing with violations occurring in all but three years. Furthermore, there has been a worrying, extreme, and exponential increase in the tons of cephalopods caught, most recently scoring over 20,000t. This is about 13 times as much as the SFPA permits.

Graph 5: EU Average annual catch (t) of demersal, 2000-2016



Demersal are less impacted by violations. The only one recorded is in 2015.

Graph 6: EU Average annual catch (t) of pelagic, 2000-2016



Lastly, pelagic are not affected by any violations. In fact, until 2015 they were barely caught by EU vessels. In 2016, there was an explosive growth in pelagic caught, but not large enough to violate the terms of the SFPA.

The four species draw an interesting picture moving from no violation to one violation, to several violations, to ultimately a majority of years with violations. It is unclear what drives these behavioral patterns of EU vessels, but this could be related to consumer behavior. Regardless, there is sufficient evidence to support the claim that EU vessels illegally overfish Bissau-Guinean waters, which automatically feeds into less availability of fish for locals. It also hurts the marine ecosystem and blue economy opportunities of Guinea-Bissau as EU vessels blatantly disregard the MSY, which informs the TAC, making these fishing patterns completely unsustainable.

IUU fishing is seen as an urgent issue that needs to be addressed by the Bissau-Guinean businessman this author interviewed. He confirmed that IUU fishing constitutes a huge problem to the country and describes past initiatives to fight against it. The Spanish government used to

send its coast guard to help, however, it wanted this to be financed by the EU, which the latter rejected. He admits that it might not be in EU interest to improve maritime surveillance where EU vessels profit from unpoliced waters. Guinea-Bissau on its own stops many Chinese as well as some EU vessels that fish illegally, though it does not have the capacity to fight against IUU fishing on its own.

Another source that proves the problematic state of fish stock in Bissau-Guinean waters are the JSC reports. Report 5 finds “that the fisheries are showing high fishing mortality values, and considering the precautionary principle, it would be advisable to reduce them.” Report 7 elaborates on this by specifically by recommending a month-long resting period (January) to allow for a regeneration of fish stocks based on the scientists’ finding that fish mortality is too excessive to meet sustainable standards.<sup>67</sup>

One counterargument for delivering on the right to food coming from the side of the EU is that the 2019 Protocol does indicate that every quarter some fish caught by EU vessels shall be landed in Bissau as a sort of donation in kind. Mr. Berck mentioned this provision in his interview as well. Again, there is no possibility for this author to confirm that these landings in Guinea-Bissau take place.

As shown, the data on fish catches points to blatant overfishing by the EU—not by accident, but purposefully violating the terms of the SFPA. The argument here, then, is not that the SFPA is inherently unfair and unsustainable (which it might still be, but cannot be proven based on the limited available data on fish stock in Guinea-Bissau’s EEZ), but that the SFPA creates a situation of letting EU vessels enter Bissau-Guinean waters, where governance is too weak to supervise correct implementation. The donations that the SFPA dictates EU vessel to land

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<sup>67</sup> Sobrino, Intchama, Rodríguez, *Acordos de parceria para pesca sustentável união europeia – países terceiros: 7ª Reunião do Comité Científico Conjunto entre a República da Guiné-Bissau e a União Europeia*, 6.

in Guinea-Bissau as a donation do not compare to the food and money Guinea-Bissau is losing out on by having its marine resources extracted on such a large scale by foreign vessels. Even worse, with both legal and IUU fishing in Guinea-Bissau's EEZ, it is undoubted that more fish is being taken out than can be sustained in the long term. This does not only worsen the food insecurity situation in Guinea-Bissau today, but ensures it will be worsened for the future, as well.

### C. The Right to Development

As the *Food and Agricultural Organization of the United Nations (FAO)* declared Guinea-Bissau to be a "low-income food-deficit country", there is no question that developed countries have largely failed to offer the support Guinea-Bissau needs to develop itself. While there may not be a legal obligation, let alone an enforcement mechanism, for financial support by MEDCs to LEDCs, many MEDCs have been found to commit financial aid out of moral obligation. Specifically, when the EU boasts of considering human rights in its policymaking,<sup>68</sup> they should be held to account, particularly so where their funds if used properly can make a great difference. Guinea-Bissau's gross domestic product (GDP) was calculated to be at US\$ 1.4bn in 2020 by the *Economist Intelligence Unit*.<sup>69</sup> Though its country report alleges agriculture, forestry, and fishing make up 32.6% of the GDP, export revenue from fisheries amount to US\$ 0, suggesting what is commonly known about Guinea-Bissau: revenue comes almost exclusively from the export of cashew nuts.<sup>70</sup> Its mining and fishery potential remains unexploited. The Terra Ranka plan was a visionary in the pathways it imagined for bringing the country onto the path of development. What is missing is the funds to turn theory into practice and EU willingness to provide such funds, which in accordance with obligations from the *Declaration of the Right to Development* it should. That

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<sup>68</sup> "Human Rights."

<sup>69</sup> Economist Intelligence Unit, *Country Report: Guinea-Bissau* (supplied by Norbert Plambeck), 6.

<sup>70</sup> Ibid.

the EU is unwilling can be deduced from the below cost-revenue analysis conducted by this author. Using the catch data outlined in the previous sections taken at an average EU market price<sup>71</sup>, the average annual revenue for a specific fish type could be calculated. Adding all of them up, resulted in an average annual revenue of approximately €55 million for the companies that send their vessels into Bissau-Guinean waters. This amount is about 3.5 times as high as revenue Guinea-Bissau receives for licensing EU vessels (€15.6 million). The Bissau-Guinean businessman felt that the SFPA was designed to be “more than profitable” for the EU. The translator even suggested that one of his hand gestures indicated the SFPA not really being profitable to Guinea-Bissau at all, reaffirming the win-lose composition of the SFPA.

Table 7: Cost-Revenue Analysis by total annual catch (2016), market prices, and financial contributions

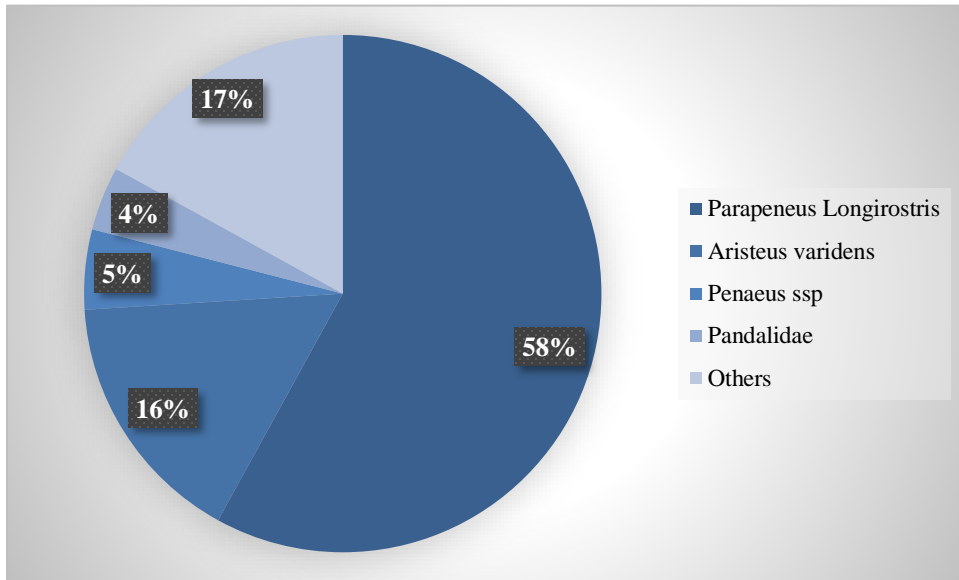
Species	Scientific name (Subspecies)	Catch (kg), 2016	Market price (€/kg)	Annual revenue (€)	Annual financial contribution (€)
<b>Crustacean</b>	<i>Parapeneus Longirostris</i>	429,299.00	15.00	6,438,000.00	
	<i>Aristeus varidens</i>	118,400.00	15.00	1,776,000.00	
	<i>Penaeus spp</i>	37,00.00	8.00	296,000.00	
	<i>Pandalidae</i>	29,600.00	3.85	113,960.00	
<b>Cephalopods</b>	<i>Octopus vulgaris</i>	1,281,360.00	7.84	10,045,862.40	
	<i>Sépia spp</i>	640,680.00	3.42	2,191,125.60	
	<i>Merluccius polli</i>	6,406,800.00	2.02	12,941,736.00	
<b>Pelagic</b>	<i>Trachurus trecae</i>	2,632,448.00	1.23	3,237,911.04	
	<i>Sardinella spp</i>	5,328,176.00	3.38	18,009,234.88	
				<b>55,049,829.92</b>	<b>15,600,000.00</b>

It also needs to be noted that this represents a conservative figure. First, the JSC reports offer no data on the subspecies of demersal caught by EU vessels, meaning this author was unable to assign a market price and calculate revenue for demersal. Second, the JSC reports are limited in

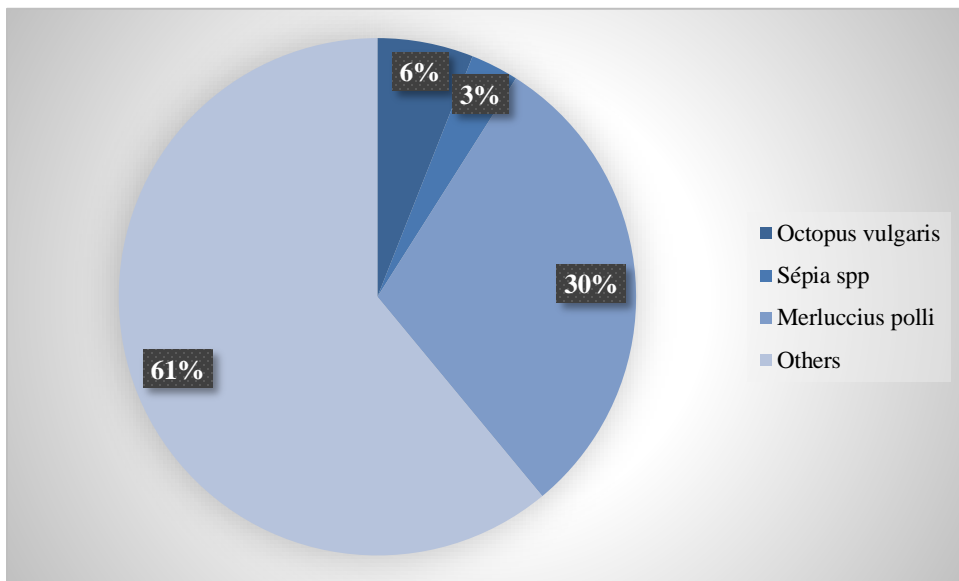
<sup>71</sup> *European Price Report.*

the subspecies they focus on. The following three graphs show that for each species, there is a large part of the EU catch that is an undetermined subspecies.

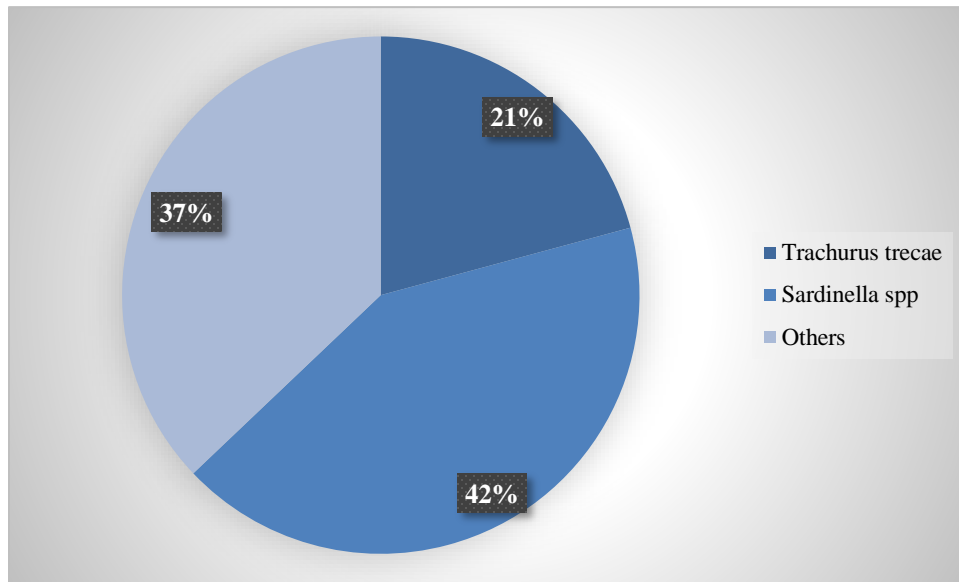
Graph 7: Composition of subspecies of crustaceans



Graph 8: Composition of subspecies of cephalopods



Graph 9: Composition of subspecies of pelagic



Specifically, 17% of crustaceans, 61% of cephalopods, and 37% of pelagic are unspecified in the JSC reports, making the actual revenue that EU companies earn much higher than has been calculated above. The discrepancy based on a lack of data is estimated to be in the millions. This does not weaken this author’s argument—to the contrary—it makes the case even stronger.

The only weakness to the above calculation is that Guinea-Bissau lacks the capacity to fish on a comparable scale to the EU, considering its lack of industrial vessels. Further, it would not immediately be able to export the fish to EU markets due to hygiene standards at the processing and storage facilities in Alto do Bandim, the industrial port in Bissau, capital of Guinea-Bissau. Mr. Berck raised this issue as something that DG SANTE, the EC’s Directorate-General for Health and Food Safety, is working on in cooperation with the responsible institutions in Guinea-Bissau:

“I think when I go there [Guinea-Bissau], I see very concrete infrastructure, I see an administration that is quite well-equipped, so I think, [...] things are moving in the right direction. Now their challenge is to [...] produce added value, to get this fish being transformed. I saw next to Bissau, how some areas have been transformed with now landing facilities, cold rooms, ice machines. You need to build a road to go to the port. [...] They have this big ambition to be accredited for exportation to the EU. We are supporting them in this endeavor. That is DG SANTE.”

Mr. Berck further detailed the EU investments in Guinea-Bissau's fishery sector that he is aware of:

"For the field of fisheries [...], we have a [...] series of actions that we co-finance based on the strategic documents that Guinea-Bissau has produced itself. [...] It covers a wide range of actions from supporting [...] fisheries governance, fisheries management, science, monitoring, control, and surveillance. [...] And of course it's a lot of money, so [some of it] is used for installations, maintenance, sometimes also staff. [...] Another component to highlight is the one for the traditional fishery sector, the *pêche artisanale*, where there is a variety of actions to provide equipment to the local fishermen, ovens to smoke the fish for the processing by women, some equipment for disembarking."

His claim of EU infrastructure and equipment investments through the SFPA's fishery sector contributions has been partially refuted by the non-EU interview participants. Dr. Belhabib argued that a lack of capacity on the side of African states in conjunction with European opportunism to lead to such disadvantageous agreements and that other countries that "are perceived to be the bad guys in the region", Russia and China, have done better investing-wise. While Russia has supposedly started building freezers, storage, and processing facilities in these African countries to land the fish directly there and stopped using fishmeal, China has also invested into tangible things like local infrastructure, such as the renovation of the Presidential Palace in Bissau. The businessman from Guinea-Bissau similarly stated that the EU must make tangible investments that are visible to local people, so that the positive impact is directly felt. He concedes that looking back 10 years, one can see definite improvements, but that much remains to be done, waiting for the highest bidder to develop the country. Whether the EU makes the requested and necessary investments and simply fails to market their impact better, or if these investments remain incomplete as "colleagues in the delegation are scrutinizing the way that public finance is working"<sup>72</sup>, clearly not enough is being done by the EU. MEP Barandica seemed to agree on that

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<sup>72</sup> Interview with Emmanuel Berck.

point, stating that based on a report by the EU Parliament on this particular SFPA, which identifies that there have been “no significant improvements in the sector”, what needs to be done are “studies, projects and the construction of infrastructure to support fishing, in particular an industrial fishing port with the capacity to land, preserve and process fish.”

With the EU clearly acknowledging the need to develop Guinea-Bissau’s fishery port in Bissau as well as better supporting the small-scale sector and yet profiting from the status quo and seemingly unwilling to change it, it is not difficult to see why it has neglected its human rights obligations toward Guinea-Bissau under the *Declaration of the Right to Development*.

## **VI. Conclusion**

This paper has looked at the Sustainable Fisheries Partnership Agreement (SFPA) between the EU and Guinea-Bissau in the way it was phrased as well as the way it is implemented by bearing in mind the human rights obligations of the EU, specifically the right to work and food for Bissau-Guineans and the right to development for Guinea-Bissau. The author collected and evaluated the data coming from the SFPA and the available JSC reports and conducted interviews with stakeholders, which confirmed that the behavior of the EU normatively seeks to be equitable and supports even small-scale development in Guinea-Bissau. However, the reality is not quite as straight-forward. While the SFPA has contributed to infrastructure development, it is contentious how effective these investments have really been. In fact, locals view the usual “bad guy” states China and Russia as more open to invest, which is why Guinea-Bissau has started to look for better solutions, hoping the EU will feel compelled to compete for more investments. Food insecurity has been worsened by extremely unsustainable practices that violate the terms of the SFPA and job security, while counterbalanced by EU vessels being required to sign on Bissau-Guinean fishermen is dwindling in the local small-scale sector due to the competition with foreign industrial

vessels. To date, EU investments have failed to target these sectors by boosting fisheries governance and policing of Bissau-Guinean waters and enabling sanitary landing sites in Guinea-Bissau.

All in all, the SFPA can definitely be said to exacerbate the delay of fulfilling human rights such as the right to work, to food, and to development. The political instability that has plagued Guinea-Bissau, while important in real-world diplomacy and risk-assessment by potential investors, was disregarded for the purposes of this thesis. The instability resulting mostly from Guinea-Bissau being a safe haven for illegal narcotics is not tangential to the subject of this paper. In the future, however, research into the importance of functioning, local institutions for upholding trade agreements, as well as a sociologically assessment into the way that such agreements are negotiated by observing the way perceived power and hierarchy influence international diplomacy would be interesting. If these issues could be tackled at their origin, there might yet be a way forward.

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