

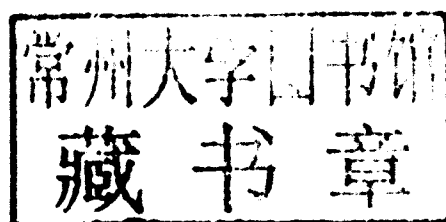
**Report of the**

**FAO WORKSHOP ON GOVERNANCE OF TENURE FOR RESPONSIBLE  
CAPTURE FISHERIES**

**Rome, 4–6 July 2011**



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## PREPARATION OF THIS DOCUMENT

This is the final report of the Food and Agriculture Organization of the United Nations (FAO) Workshop on Governance of Tenure for Responsible Capture Fisheries, which was held in Rome, Italy, from 4 to 6 July 2011. The report has been compiled by Nicole Franz, John Kurien, Rebecca Metzner, Elizabeth Wesche and Rolf Willmann drawing on contributions by workshop participants. The contributions by Anthony Charles, Patrick McConney and Jackie Sunde to summarizing the workshop outcomes are gratefully acknowledged.

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## ABSTRACT

The Workshop on Governance of Tenure for Responsible Capture Fisheries was convened by the FAO Fisheries and Aquaculture Department in collaboration with the Land Tenure Unit of the Natural Resources and Environment Department to generate inputs and guidance on the contents and process of developing fisheries sector specific implementation guidelines on the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. The workshop reviewed the experiences of tenure arrangements in different regions, fisheries and socio-economic settings around the world and listened to the voices of fishers on their perspectives of tenure in fisheries. These voices and case study findings together with other experiences and demands by fishworkers' organizations informed the principles and good practices identified by the workshop participants on governance of tenure for responsible capture fisheries. There was a consensus that secure tenure arrangements for the use and management of fisheries and other resources lead to more desirable outcomes in terms of resource use and sustainability. Tenure governance goals should be orientated towards improving food security and/or livelihoods, contributing towards well-being. Tenure arrangements that align use and management provide good incentives for sustainable use. Tenure arrangements can and should accommodate diversity. A specific focus should be given to equity issues, e.g. who holds fishing rights, which are crucial to community well-being, food security and poverty alleviation, and how tenure impacts on social, economic and human rights.

## CONTENTS

<b>1. INTRODUCTION.....</b>	<b>1</b>
<b>2. DAY ONE .....</b>	<b>2</b>
2.1 Opening of the workshop .....	2
2.2 Case study presentation.....	3
2.2.1 Inland fisheries, lagoons and marine protected areas (MPAs).....	7
2.2.2 Voices of fishers’ .....	12
<b>3. DAY TWO .....</b>	<b>13</b>
3.1 Summary of key issues of the case study presentations .....	13
3.1.1 Governance of tenure in fisheries .....	13
3.1.2 Governance of tenure as a process.....	14
3.1.3 Key factors to consider in tenure systems in fisheries.....	15
3.2 Tenure arrangements and forms of good governance that foster desirable outcomes for responsible capture fisheries.....	17
3.2.1 Small-scale capture fisheries .....	17
3.2.2 Indigenous and customary rights .....	18
3.2.3 Inland fisheries, lagoons and MPAs .....	19
3.3 Review of the first draft of the Voluntary Guidelines on the Responsible Tenure of Land, Fisheries and Forests .....	19
<b>4. DAY THREE .....</b>	<b>20</b>
4.1 Principles emerging on tenure and good governance of tenure in capture fisheries .....	20
4.1.1 Assumptions and goals underlying motivation for tenure governance.....	20
4.1.2 Emerging principles.....	20
4.1.3 Key implementation issues .....	21
4.2 Mechanisms, processes and actions for the implementation of governance in fisheries .....	22
4.2.1 Where there is no tenure system .....	22
4.2.2 Where tenure needs to be revived/reaffirmed .....	24
4.2.3 Where existing tenure needs to be protected .....	26
4.3 The way forward .....	27

## APPENDIXES

Appendix A – Agenda.....	29
Appendix B – List of participants.....	30
Appendix C – Prospectus.....	33

## 1. INTRODUCTION

This report provides a summary of the presentations, plenary and working group discussions of the Workshop on Governance of Tenure for Responsible Capture Fisheries, held in Rome, Italy, on 4–6 July 2011. The workshop was organized as a joint initiative of the FAO Fisheries and Aquaculture Department and the Natural Resources and Environment Department. Its agenda and prospectus are provided in Appendixes A and C.

The workshop was attended by 25 participants representing academia, civil society, non-governmental organizations and FAO. The full list of participants is given in Appendix C.

The workshop was inspired by the ongoing development process of the Committee on World Food Security (CFS) initiated Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (in short Tenure Guidelines). Moreover, the 29<sup>th</sup> Session of the FAO Committee on Fisheries (COFI) held in February 2011 recommended that an international instrument on small-scale fisheries in the form of voluntary guidelines should be developed to complement the FAO *Code of Conduct for Responsible Fisheries*. The small-scale fisheries guidelines will be in support of national, regional and international initiatives for poverty alleviation and equitable social and economic development, for improving governance of fisheries and for promoting sustainable resource utilization. Governance of tenure to fisheries, as well as to land and other natural resources such as mangroves, will be an important thematic area of these guidelines.

As part of the preparation for the workshop, several case studies were commissioned concerning tenure and rights issues in small-scale fisheries from around the world covering marine, riverine and lacustrine ecosystems. An initiative was also taken to conduct video interviews with members from fishing communities around the world about their perceptions on issues relating to tenure and rights over fisheries and riparian lands on which they live.

The workshop covered a wide range of tenure issues in fisheries and the related wider social and economic development and human rights aspects. The focus was on securing access and use rights for small-scale fishers, fishing communities and indigenous peoples to coastal and inland fishery resources that sustain their livelihoods.

The objectives of the workshop were:

- to exchange notes on the case studies in order to highlight the important commonalities and differences and listen to the voice of fishers from around the world and adapt the insights from their perspectives into the discussions;
- to arrive at a consensus on the good practices on governance of tenure illustrated in the case studies and the voices of the fishers;
- to briefly review the first draft of the Tenure Guidelines; and
- to advise on the scope and contribute to the drafting of some of the core implementation guidelines that can be applied to governance of tenure for responsible capture fisheries and map the way forward for the initiative to feed into the development process of the small-scale fisheries guidelines.

## **2. DAY ONE**

### **2.1 Opening of the workshop**

The Assistant Director-General of the FAO Fisheries and Aquaculture Department, Årni Mathiesen, welcomed participants and opened the workshop by recalling the ongoing development process of the Tenure Guidelines. The text of the guidelines will be negotiated through the CFS, which has recently been reformed to serve as a global forum on food and nutrition security.

For the Fisheries and Aquaculture Department, the Tenure Guidelines development process has been a welcome opportunity to develop normative guidance in response to the call by its Members at various recent sessions of the COFI to promote rights-based fisheries management. There are different views on how to go about developing and implementing rights-based fisheries management regimes, and some may go as far as arguing against rights-based systems altogether. But the underlying ultimate objectives of attaining sustainable fisheries, securing livelihoods and making the best use of limited fishery resources for societal well-being are shared among the proponents with these different points of view. The task is, therefore, to give guidance on how to reach these goals through responsible rights-based fisheries management regimes.

FAO and many other agencies from both governmental and civil society have worked on the issue of access and use rights in fisheries, including customary and traditional rights systems. The former late colleague Francis Christy Jr. coined the term TURF – territorial use rights in fisheries – in the early 1980s and was the first to propose individual catch shares for fishers when working for a think tank in the United States of America in the early 1970s. During the last decades many of his ideas have come to fruition and have been further developed.

Good governance principles relating to active, free and meaningful participation, transparency, accountability, non-discrimination, and rule of law are critical to protect against threats to the economic, social and cultural rights and well-being of vulnerable and marginalized fishing communities. Responsible governance of tenure in small-scale fisheries is foremost a responsibility towards those whose livelihoods depend on them. The rights of small-scale fishers need to be strengthened and secured and their capacities and capabilities developed so that they can fully take charge of their responsibilities.

Paul Munro Faure and Francesca Romano of the FAO Natural Resources and Environment Department informed the workshop participants about the ongoing development process of the Tenure Guidelines. They explained that tenure is the relationship among people with respect to land and other natural resources. The rules of tenure determine who can use what resources of the land for how long, and under what conditions. Tenure has significant implications for development. Where the poor and vulnerable have limited and insecure rights to land and other natural resources, it is difficult for them to overcome hunger and poverty. Conversely, equitable and secure rights can support social and economic development and the sustainability of the environment.

The Tenure Guidelines are intended to assist states, civil society and the private sector in improving the governance of tenure, and thus contribute to alleviating hunger and poverty, empowering the poor and vulnerable, enhancing the environment, supporting national and local economic development, and reforming public administration. They set out principles and internationally accepted standards for responsible practices and provide a framework that states can use when developing their own strategies, policies, legislation and programmes. They allow government authorities, the private sector, civil society and citizens to judge whether their proposed actions and the actions of others constitute acceptable practices.

The Tenure Guidelines are developed through an inclusive process. Detailed information about the CFS-led process is available on the Web site [www.fao.org/nr/tenure/voluntary-guidelines/en/](http://www.fao.org/nr/tenure/voluntary-guidelines/en/).



## 2.2 Case study presentations

The Workshop on Governance of Tenure for Responsible Capture Fisheries commenced with the presentation of the ten case studies that had been commissioned. The case studies covered a variety of countries and fisheries environments and were intended to help understand what governance of tenure means in fisheries. The case studies were also intended to help identify desirable themes and outcomes that need to be discussed in order to have a good coverage of the various aspects of tenure in fisheries.

Svein Jentoft of the Norwegian College of Fisheries Science, University of Tromsø, Norway, presented a paper on the case of *Governing tenure in Norwegian and Sami small-scale fisheries: from common pool to common property?* He gave a brief overview of the history of governance approaches in Norwegian fisheries, with special emphasis on small-scale fisheries. Key institutional mechanisms such as the co-management arrangements introduced in the Lofoten fisheries in the late 1800s and the Raw Fish Act installed in the mid-1930s empowered fishers by providing them with rights to manage conditions essential to their livelihood security. As resource management and environmental concerns became more prevalent from the mid-1970s onwards, legal measures to ensure an ordered, situated planning process have provided municipal authorities with a more proactive governance role and responsibility for spatial allocation of access to marine resources such as fisheries and aquaculture. All of these mechanisms are based on the principle that marine resources and territories are no one's property, that everyone has equal access, and that the governance responsibility therefore ultimately rests with the state. Proposals to regionalize fisheries resource governance have met resistance within government as well as among organized fisheries groups.

In recent years, the issue of indigenous (Sami) historical rights of tenure has challenged this state governance arrangement. Several suggestions to establish a separate Sami fisheries zone have been launched but also rejected. A major part of the paper discusses how these proposals have been handled politically, institutionally and legally. Not only has the process revealed deep division between the Norwegian government and the Sami governing institutions with regard to the recognition of traditional Sami tenure, but it has also disclosed rifts within the Sami community on the strategies to pursue. The dispute concerning a recent proposal to secure Sami fisheries tenure in Finnmark county, which the government also declined, is a case in point. It illustrates the importance of interactive governance, the need to communicate and deliberate on basic meta-governance principles of what constitutes justice in particular circumstances as far as tenure rights are concerned, and that the nature of the governance process is as essential for constructive outcomes as institutional designs and legally constituted principles. There are certainly justice principles that may support common property and tenure, but there are also principles of justice supportive of common-pool and open access. The challenge is to find mechanisms that can reconcile these principles. The Norwegian Sami case study presented in this paper illustrates that there is a middle ground that may balance the concerns that seemingly conflicting justice principles represent.

Tom McClurg of Toroa Strategy Limited, New Zealand, provided information about the *Governance of tenure in Maori capture fisheries: brief history and current context*. The presentation described three distinct aspects of governance of tenure that must all be integrated efficiently if tenure arrangements are to be effective and secure. The three aspects were portrayed as concentric rings comprising suites of institutions. The innermost ring is comprised of property rights (state property, common private property and individual private property). Property rights define relations between rights holders and non-rights holders with respect to things – in this case, natural resources. The middle ring is described as the zone of collective action, and the institutions in this ring define the relations that exist between rights holders. For instance, it includes the procedures by which a community makes day-to-day decisions about its common property rights. Alternatively, it provides frameworks by which individual property rights owners (for instance, shareholders in a company) make decisions about individual property rights that are held by the artificial legal individual (the company). The outer ring describes the zone of sovereignty. It encapsulates all of the institutions needed for the state to effectively protect property rights and govern relations between people generally. It includes the processes for legislation, adjudication, attenuation and enforcement.

In common with many traditional tribal societies, the property rights framework applying to fisheries in New Zealand fits the general description of common property rights. These rights were held predominantly at the level of the subtribe, or *hapu*, with an over-right at the level of the tribe (*iwi*). In pre-European times, no clear distinction was made between the institutions relating to collective action and those that would now be associated with the state. In fact, when Maori ceded sovereignty to the British Crown in 1840, a word had to be invented (*kawanatanga*<sup>1</sup>) for this concept within the Treaty of Waitangi.

The history of Maori tenure in capture fisheries is largely a history of erosion of tenure through the failure of successive governments to understand and protect the nature and extent of those rights as promised by the treaty. Only in the late 1980s did the Government recognize this failure, and a full and final negotiated settlement of fisheries claims for treaty breaches has now been achieved and implemented.

Interestingly, Maori accepted individual property rights in the form of perpetual individual transferable quota (ITQ) as the main form of compensation for commercial fisheries redress. The process of transferring agreed amounts of ITQ to mandated *iwi* organizations that collectively represent all Maori is nearing completion. However, it is increasingly clear that the non-commercial or customary aspect of the settlement is more problematic because it recognizes the continued existence of common rights but without simultaneously identifying their associated communities or providing clear and robust collective action frameworks through which those communities could exercise their rights effectively.

Jackie Sunde of the Environmental Evaluation Unit of the University of Cape Town, South Africa, presented the *Emerging proposals for governance of tenure in small-scale fisheries in South Africa*<sup>2</sup>, emerging as a result of the current small-scale fisheries policy process in South Africa, highlighting the need to recognize customary tenure systems and the emancipatory potential of customary law in establishing more equitable and sustainable forms of tenure governance.

South Africa has a very diverse set of tenure systems, arising from the interface between customary law and the colonial and apartheid legacy of fisheries management. A de facto plural legal system exists; however, customary law and associated tenure systems have largely been ignored by the State. Prior to 1994, South Africa's fisheries system was dominated by the interests of the industrial and recreational sectors. Legislation introduced over the past century was geared towards these sectors and largely excluded black, small-scale fishers, introducing a centrally managed, individually-based system of access rights, de-coupled from community. Post-apartheid legal reform failed to recognize and accommodate the customary rights of traditional fishing communities, and these communities are now articulating a demand for a complex net of tenure rights, one that weaves customary rights with a normative human rights framework. The new South African Constitution recognizes customary law as a legitimate body of law insofar as it is consistent with the Bill of Rights. Precedent setting court judgement in the Richtersveld case (2004) in this country has recognized that customary law is not limited by tradition; it is 'living' customary law and this living law is the basis of a customary community's culture and the origins of their tenure rights and regimes. Emerging African jurisprudence has also confirmed the rights of customary local communities to their culture and points to the centrality of customary law and tenure systems in the protection of culture.

This presentation emphasized the potential of 'living' customary law to give substance to the call for a 'bottom-up', community-based, participatory approach to small-scale fisheries governance. Within customary tenure systems, rights are a function of the membership of groups and the local social,

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<sup>1</sup> A word from the Maori languages first used in the Declaration of Independence of New Zealand, 1835. It reappeared in 1840 when the Treaty of Waitangi was being translated from English into Maori. It was used there to translate the concept of sovereignty.

<sup>2</sup> This presentation was based on a paper written collectively by Jackie Sunde and Merle Sowman, Environmental Evaluation Unit, University of Cape Town, and Henk Smith and Wilmien Wicomb, Legal Resources Centre, Cape Town.

cultural and economic relations within which they are embedded. Rights are defined through systems of access and use in the context of these relations and are not absolute. Such rights may simultaneously be communal and recognize individual entitlements within a collective context. Use and management of resources is interrelated, and administration of rights is nested within layered communal tenure systems, depending on where the right is vested. Similarly, dispute resolution processes are embedded in local layers of accountability. Because customary rights are a function of, and operate in, changing social relations, they allow for their administration to be flexible and adaptive.

This presentation argued that good governance of tenure in fisheries must confirm the recognition of living customary law as a legitimate body of law alongside statutory law in fisheries governance systems. Towards this end, decision-making should be devolved to the local level and governance should emerge from this local context. Thus, it is the State's role to respect, protect and promote these local processes, facilitate their interaction across different scales, and provide guidance towards ensuring that these processes are in line with a normative human rights framework.

Patrick McConney of the Centre for Resource Management and Environmental Studies, University of the West Indies, Barbados, presented *Tenure in transition: changing traditions in a Caribbean beach seine fishery* co-authored with the consultant and former Grenada Chief Fisheries Officer, James Finlay.

Fisheries governance, tenure and governance of tenure are poorly documented in the eastern Caribbean. This is in large part because such institutions have not developed. An exception is found in Grenada where interdisciplinary research and fishing industry consultations on the beach seine fishery have led to fishery tenure rules being recommended for legalization. The setting is Gouyave, a west coast town known as the fishing capital of Grenada where beach seining for coastal pelagics and small-scale pelagic longlining for tunas are integrated fisheries. A variety of conflicts have arisen out of the recent erosion of traditional beach seine rules. The case describes the rules of tenure and the process of developing recommendations to reduce conflict over contested resources and space.

The fishing industry, through consultations, devised a plan through which legislation could be used to strengthen, but not entirely replace, a system of informal tenure rights and rules. A critical factor was the extent to which legislation would allow local-level interpretation and development of the beach seine rules to continue through existing informal institutions rather than be completely replaced by the formal judicial system for adaptive governance of tenure.

In this case, fishers did not want to become empowered for community-based management, but instead wanted to have access to a civil tribunal system set up specifically for the fishery. They saw the need to have informal, semi-formal and formal dispute resolution mechanisms. Principles such as fairness and equity were important as well as the adaptive capacity to modify the tenure system as circumstances changed.

The case study demonstrated that fishers can be innovative in creating governance structures but are powerless to have them implemented. The case also provided some criteria for assessing the success of governance of tenure for responsible small-scale marine capture fisheries. State and industry stakeholders will require a considerable amount of capacity building for governance of tenure through co-management to have a reasonable chance of success. Such capacity building must encompass much more than training. It must include changes in the vision for fisheries management and the structures or institutional arrangements that are intended to make and keep it functional.

Robert S. Pomeroy of the University of Connecticut-Avery Point, United States of America, presented issues of the *Governance of tenure in capture fisheries in Southeast Asia* and focused on the governance of tenure of capture fisheries in Cambodia, the Philippines, Thailand and Viet Nam. Weak governance has been identified as one of the main causes of the present poor condition of fisheries in Southeast Asia. Secure tenure for fishers to fisheries resources has been proposed as an important component in improving fisheries governance in the region. The presenter pointed out that having

good governance in place is essential for achieving most fisheries management goals and helps to protect and enable tenure arrangements.

The presentation reviewed national laws, policies and administrative structures in each country with respect to the governance of tenure in the fisheries sector. Specific case studies of governance of tenure arrangements for selected fisheries in each country were presented, including: community fisheries in the Tonle Sap Lake fishery in Cambodia; coastal resources co-management in Chumphon Province in Thailand; community-based fisheries co-management system in Hinatuan, Surigao del Sur and Indigenous People's Rights in the Philippines; and co-management and fishing rights in the provinces of Thua Thien Hue, Quang Nam, Binh Dinh and Ben Tre in Viet Nam.

The presentation identified a number of recommendations for improving governance of tenure in capture fisheries, including:

- decentralization: this refers to the systematic and rational dispersal of power, authority and responsibility from the central government to lower or local-level government or institutions;
- co-management and community-based management;
- national and local policies that support co-management mechanisms and granting of exclusive fishing rights to community-based institutions;
- supporting legal frameworks at national and local government levels; the legal framework should clarify/define the designated tenure area and the co-management mechanism for governance.
- the sea has multiple functions and meanings to people – in addition to its economic function as a source of food and livelihood, the sea has social and political value, as well as important religious and cultural meanings;
- a variety of laws, formal and informal/customary can impact upon access and governance. Rights, authority and responsibility must be clear;
- governance of tenure arrangements may require access rights to be limited to some resource users and to exclude others, often resulting in conflicts. Conflict management mechanisms must be established; and
- management organizations should be financially sustainable.

Paul O. Onyango of the Norwegian College of Fisheries Science, University of Tromsø, Norway, and University of Dar es Salaam, the United Republic of Tanzania, presented a paper on the *Governance of tenure in the Lake Victoria fisheries*. He noted that secure tenure for fisheries is an essential ingredient for not only improving but also ensuring good fisheries governance. Poverty in fishing communities can equally benefit considerably from good governance of tenure for capture fisheries. A historical analysis of the governance of tenure system for capture fisheries in Lake Victoria can be divided in two periods: namely, the traditional (pre-colonial period) and the after independence (post-colonial period). The co-management regime introduced in the lake in the late 1990s was grounded on an ownership regime based upon the customary tenure system.

During the pre-colonial period, entitlement to land and other resources was based on traditions and customs of the respective tribes riparian to the lake. Ownership of these resources was communal, i.e. family, clan or tribe-based. Under this system, chiefs, headmen and elders had the power of land administration entrusted by the community. Access to fish and fishing grounds was open to all community members. In the post-colonial period, territorial user rights were introduced. The lake was divided broadly among the three riparian countries, namely Kenya, the United Republic of Tanzania and Uganda. Kenya and the United Republic of Tanzania subdivided the lake further into provincial/regional areas, which were then subdivided into districts. In Uganda, the subdivision was at the county level. While access within the national areas remained open, crossing borders to the other country was now restricted. The three riparian countries introduced a co-management regime where local communities and the government shared ownership of the fish resources and fishing grounds.



It was proposed that a good governance of tenure arrangement should be able to make among others every effort to uphold:

- equity and the perceptions of fairness in distribution of resources among various actors in the Lake region;
- legitimacy, i.e. the capacity of governance of tenure to bring about and maintain the belief that fisheries institutions are the most appropriate and proper ones for the community; and
- respect and cooperation among fishers.

J. M. (Lobo) Orensanz of the Centro Nacional Patagónico, Argentina, was unable to attend the workshop but had provided a paper on the *Governance of tenure in small-scale fisheries with respect to sedentary species in Latin America*. Small-scale fisheries targeting sedentary organisms forms a category with well-defined characteristics, to a large extent because the nature of the harvested resources favours harvest strategies and tenure systems that emphasize the spatial dimension. In contrast to other small-scale fisheries, benthic fisheries in Latin America are usually oriented to products of high value in local or export markets and tend to be very selective in their targets.

The default scenario for benthic fisheries in Latin America is one in which access is either non-regulated or nominally regulated by a registry or by loose licensing. There are, however, many traditional tenure systems (“invisible” even if effective), as well as recent introductions of formal access privileges in systems where they were not established by tradition. The latter constitute informative experiments in institutional engineering from which many lessons can be derived.

Latin American benthic fisheries are rich in tenurial arrangements, including: (i) limited entry or moratoria combined with a total allowable catch (TAC); (ii) catch shares; (iii) territorial use privileges, either over seabed tracts or fishing spots; (iv) some combination of the preceding two; and (v) communal rights vested on indigenous peoples or traditional users. No specific arrangement should be expected to suit all systems; emphasis should be in flexibility and in the nature of the process leading to the strengthening or adoption of a particular arrangement. In that sense, practices highlighted as most important on the basis of experiences covering various arrangements are:

- identification and respect of informal tenure systems before formally regulating tenure, particularly in cases of institutional engineering introduced by design;
- identification of stakeholders, respect for their values, and provision of participatory ambits for negotiation of objectives and policies, discussion of support to decision-making, and monitoring;
- definition of rules for establishing legitimacy, promoting efficient enforcement by the state to exclude illegitimate users (intruders), and creation of mechanisms for the resolution of legitimacy-related conflicts;
- promotion of legislation that provides flexibility to contemplate informal tenure arrangements, assimilate learning, and adapt to changing conditions;
- provision of incentives for responsible behaviour of all parties – not just fishers; most important are incentives (or disincentives) for state agents regarding responsibility, competence and corruption; and
- implementation of feedback mechanisms that respond adaptively and timely to indicators that are meaningful to the users.

### **2.2.1 Inland fisheries, lagoons and marine protected areas (MPAs)**

Prateep Kumar Nayak of the Natural Resources Institute of the University of Manitoba, Canada, presented the case of *Governance of tenure in lagoon social-ecological systems: lessons from around the world*. He focused on coastal lagoons as complex social-ecological systems and introduced perspectives on some of the key conditions for governance of tenure. Lagoon tenure is a largely neglected area as the existing literature on marine and terrestrial tenure tends to subsume tenure issues of coastal lagoons. There are three interrelated aspects of key attributes of tenure and its governance in

coastal lagoons. First, the distinct location of coastal lagoons at the interface of the sea and the land, and the resulting 'in-betweenness' character is a determinant factor. While laws and practices of the sea apply on one side, cultures, norms and regulations associated with the terrestrial resource systems offer influence from the other. Second, an emphasis on the need to understand lagoons as complex social-ecological systems (SES), whereby interconnections and cross-influence among the SES attributes become important factors for how tenure is defined and governed. Third, using the SES context, it is possible to understand lagoons as highly interconnected systems of human and environment, which brings attention to relationships, interactions and connections between people and their lagoon environments as important factors for tenurial arrangements.

Examples from a number of lagoon cases around the world were given and their outcomes analysed through a multitier framework, originally discussed by Elinor Ostrom in her recent work on sustainability of social-ecological systems, to organise some of the key lessons for governance of lagoon tenure following three broad categories: (i) resource system and resource unit dynamics; (ii) resource users; and (iii) governance and institutional system. General lessons relevant to governance of tenure in the context of other resource systems were listed. Distinctive location and context specificities put resources in a unique position. Lagoon tenure is not the same as land or sea tenure; a fact that equally applies to all other resources for tenure considerations. Tenure eligible systems are 'complex social-ecological systems' that combine both the human and biophysical processes. Moreover, tenure applies to coupled, interdependent and co-evolutionary human-environment systems.

Extending the current understanding of tenure, it was added that tenure implies a host of relationships that involves linkages and connections between people to people, institution to institution (at and between levels/scales), people to resource (environment), and resource to resource. Therefore, governance of tenure is about the manner in which the host of relationships, interactions and connections are addressed, nurtured, managed and promoted. There is a need to relook at the existing definitions of lagoon tenure, both legal and otherwise, by exploring critical questions on 'who should define tenure' and 'whose realities count,' thereby including important clues from 'how people define or what do people understand by tenure' into the tenure analysis. In this context, attention to key external drivers and their nature of influence is essential. Tenure, or conditions thereof, do not constitute a 'blue-print' for success and, therefore, should not be considered as 'panaceas'. In conclusion, tenure is not a static concept and, therefore, can be best understood as a process and its governance as continuous. Such a perspective may have the potential to further our understanding on lagoon tenure and its governance in the face of multilevel challenges.

Wolf Hartmann of the Mekong River Commission, the Lao People's Democratic Republic, presented the case of *Governance of tenure in Lao fisheries*. The Lao People's Democratic Republic is a socialist country in the Mekong Basin and its dominating governance principle of 'democratic centralism' is an expression of a continuous tension between central and local government units in all areas of political decision-making, including that of aquatic resources management. Over the last two decades in particular, fisheries management implementation has been decentralized to the local user level, albeit with continuing supervision from above, and 'community approaches' are now taken as an important ingredient into socio-economic growth and poverty alleviation.

Local regulations may be enacted to regulate the use and protection of natural resources, including fisheries, at the local level. Village committees govern communal resources, such as water, fish and fisheries. Usually, such committees are made up of four groups: the village chief and local head of the governing party; respected elders; mass organizations (for example, women's unions, youth organizations, village patrol units); and a technical group including the forest caretaker, the village doctor or village veterinarian. These village committees can represent both the state to the community and the community to the state, depending on the context. Even though full participation in a village meeting is the ultimate decision-making mechanism, the village committee is influential in the affairs of the village. From a legal perspective, village aquatic resource management regulations fit well into what is known as "village law", or "*kot labiap ban*" in Lao.

Local-level fisheries governance approaches focus frequently on property rights, which are highly complex. Among other things, this complexity is due to: (i) a coexistence of governance systems (age-old traditional as well as modern, socialist property rights); and (ii) the fact that fisheries are part of an integrated natural resource use system, which overlaps with farming and the extraction of wild resources. A new fisheries law has attempted to reflect the complexity of governance needs and reality of decentralized community management. Flexibility, integration and participation were important governance principles applied in developing the law.

Chandrika Sharma of the International Collective in Support of Fishworkers (ICSF) presented a paper on *MPAs: securing tenure rights of fishing communities?*, which was co-authored by Ramya Rajagopalan. The presentation focused on tenure issues in relation to MPAs. This focus is relevant in a context where MPAs are set for expansion in the coming years. Parties to the Convention on Biological Diversity (CBD) have agreed on a target of bringing at least 10 percent of oceans under protection by 2020. The Conferences of Parties (COP) of the CBD have consistently reiterated the need to respect the rights of indigenous and local communities (ILCs) in the context of protected areas.

A review of literature of MPA implementation from the perspective of tenure reveals a mixed picture. There are many cases where MPA implementation has led to weakening/denial of tenure rights of fishing communities. In these cases, MPA implementation has been associated with conflict, denial of livelihoods, impoverishment/criminalization of local populations, and has even compromised the safety of fishers, even when there is no clear evidence of biological success. Significantly, such cases are often associated with strengthening of the tenure rights of the tourist sector.

There are also several cases where tenure rights have been strengthened (or there is hope that they will be strengthened) during MPA practice. In all such cases, it can be seen that communities are using MPAs as a tool to secure their access to resources and their rights to manage them, and that strengthening/establishing tenure rights is a strong motivation for communities opting for MPAs.

Based on the literature review, the presentation identified some elements of good practice with respect to MPAs, including: biological and social success in MPA practice is closely interlinked; coastal and marine spaces are often characterized by complex systems of 'sea tenure', which are important to map and use in decision-making around MPA practice; providing for adequate time to understand local tenure systems and for developing genuinely consultative and participative processes (including for conflict resolution) around MPA practice; ensuring that international commitments to recognizing rights of ILC, including to participate in decision-making, is reflected in legislation, policy and practice at the national level; recognizing and supporting different governance types, including community-led management and co-management; capacity building support designed to enable communities to establish, claim and strengthen their rights and fulfill their responsibilities, including with respect to other sectors, and; recognizing that there are power differentials within communities that need to be addressed. In conclusion, the paper stresses that MPA practice has to move towards greater equity and participation, both as an end in itself, and as a means to more sustainable conservation and management.

The above-solicited case studies were complemented by additional reports by participants from the Republic of Korea and Senegal and an NGO-perspective.

Seong Kwae Park of the Division of Marine Business and Economics, Pukyong National University, the Republic of Korea, presented three Korean cases: (i) *onshore fisheries: the Gusip co-management fisheries community*; (ii) *offshore fisheries: the Kyongbuk red snow crab trap fisheries association*; and (iii) *inland fisheries: the Yaedong co-management inland fisheries community*.

The presentation identified important principles in relation to the governance of tenure in these fisheries. As a start, the central government developed an enhanced awareness of the existence of a great diversity of resources, fisheries and fishing communities along the Korean coast. This was accompanied by a growing awareness by fishing communities that the government cannot solve all

problems and that community-government partnerships were needed with regard to tenure systems. However, it was noted that tenure systems themselves can cause new problems and thus needed to be continuously adapted and improved. The presenter also noted that government incentives must be selective, especially when reorienting direct government financial transfers to fishermen or communities, and that the concept of cross-compliance implies that government helps those who help themselves.

In the Republic of Korea, the government provides guidelines for promoting co-management that include simple standard criteria. The communities participating in the co-management programmes create their own rules, following those guidelines and the rules on fishing communities' operational activities include a variety of plans regarding resource enhancement, fishing ground improvement and monitoring, control and surveillance. The government sets TACs based on stock assessment for eleven target species that are of importance for resource recovery or conservation. In turn, fishing village cooperatives, associations or regional cooperatives allocate vessel quotas within TACs.

Major factors of management success have included the establishment of comprehensive well-coordinated networks; the promotion of awareness about sustainability issues; fair and transparent administration; a culture of strict compliance with laws and rules; and the presence of leaders for path finding, alignment and empowerment.

The most important general lesson to be drawn from the Korean case is that income is important to induce change, including awareness-raising and self-motivation. Other lessons include that direct exposure to advanced domestic or overseas fisheries proved very useful in promoting self-motivation and voluntary participation, as did the establishment of relationships with newspaper publishers, the industry, educational institutions, government agencies and eco-tourism establishment.

Moustapha Kebe, Fisheries Economist from Senegal, presented a paper titled *Governance of tenure in small-scale fisheries of Senegal (West Africa)*. He noted that in Senegal (West Africa), the fisheries sector plays a socio-economic role through its important contribution to food security, poverty reduction, employment, welfare and balance of trade. This importance is particularly related to the dynamics of the artisanal subsector. Fisheries resources are considered as a national heritage, a common property. The process of decentralization is ongoing since 1996, but the competence of fisheries has not been transferred to local authorities as with other natural resources.

Fisheries policy was marked between 1960 and 1990 by a political will of increasing production to meet local fish demand and for export. This led to overexploitation of main fisheries resources and fishery overcapacity. Subsequently, relevant strategies for sustainable management and restoration of fisheries resources were developed in the new 2008 Fisheries and Aquaculture Policy, including: (i) regulation of access to resources for artisanal fisheries; (ii) reduction of fishing capacity on demersal resources; (iii) development of fisheries management plans; (iv) promotion of the participation of fishing communities in local fisheries management; and (v) creation of MPAs.

The success of the various practices relating to good governance of tenure initiated by fishing communities along the coast and supported by local authorities (regulation of fishing effort for pelagic resources, introduction of individual quotas, setting up of conflicts management committees, etc.) was the basis of the development of formal arrangements. These include a system of fishing licence/permit and registration of artisanal canoes to control access to resources, and the creation of organs of collaboration and local governance through the local small-scale fisheries committees as planned in the Marine Fisheries Code (Law 98-32 of 14 April 1998).

- The most important general lessons about governance of tenure in small-scale fisheries in Senegal can be summarized as follows: the existence of *traditional mechanisms of conflicts resolution* in fishing communities is a determining factor in the management of conflicts. Seeking the opinion and validation of management measures by the local authorities (notables and elders of the village) ensures better chances of success.



- Capitalizing on the important *organizational knowledge* of local communities on fisheries resources management is a fundamental basis for the development of formal arrangements on governance of tenure in small-scale fisheries.
- *Ownership* of the management measures by the communities makes it easier, or even guarantees their implementation. In the landing site of Kayar, regulation related to the ban of gillnets (fishing nets using monofilament, systematically forbidden by the 1998 Marine Fisheries Code, and source of conflicts) is strongly supported by the local population.
- *Migration*, as both a fundamental component of the living conditions of coastal fishing communities and a potential source of conflicts between fisherfolk, is an important determinant of governance of tenure of artisanal fisheries.

Vishwanie Maharaj of the World Wildlife Fund, the United States of America, presented a *Case study on the traditional use of mangrove concessions in Ecuador*. Segundo Coelho, the lead author, was unable to attend the workshop. In 1999, through Executive Decree 1102, the “Agreement for sustainable use and custody of mangroves” was established by the Ecuadorian Ministry of the Environment. This legislation allowed for agreements (contracts) between the state and a group of organized customary users to exclusively use and guard a defined mangrove area. Once a management plan is approved, an association of customary users (a concession or cooperative) is able to sustainably carry out a number of permitted activities that bring together rights and responsibilities. Permitted uses include regulated and careful removal of the mangroves for subsistence, sustainable capture and culture of fish, molluscs and crustaceans, among other species, and ecotourism. Obligations to tend the ecosystem can include caring for the mangroves through reforestation, surveillance, informing the authorities of illegal activities, preparation of a technical assistance agreement to carry out research and education, and obtaining the necessary permits. Concessions are granted for a period of ten years and renewal is not automatic. The agreement can be dissolved by mutual consent or revoked if the management plan is not fulfilled after the ten-year period. While a bundle of exclusive use and management rights were granted to the concession holders, the state retained ownership of the area.

To date, 40 concessions representing more than 37 000 hectares have been granted. During 2007 and 2008, a comprehensive evaluation of 26 concessions was carried out. Results indicated that key success factors include democratically run organizations with strong leadership and fair and transparent rules, the ability of the concession to generate social and economic benefits, technical assistance and start-up grants and selecting an optimally sized area. These factors were important in engendering better voluntary compliance. Important benefits observed in successful concessions included higher catch per unit of effort for major target species, improved mangrove coverage, increased detection and reporting of illegal activities, strengthening of the organization and improved ability to self-manage. Apart from benefits to the concession members, the evaluation revealed that cooperation reduced management costs for government agencies. For example, the cost of surveillance by law enforcement officials was reduced because locals “policed” the area.

Recommendations based on evaluations of the Ecuadorian concessions may only be relevant to tenure rights programmes for relatively recent artisanal user groups. Such populations are not usually knowledgeable about the ecology of the region and have not had sufficient time to develop customary sustainable practices and organizational cohesion. Thus, start-up financial and technical assistance is essential for such groups. Careful structuring of financial assistance to avoid long-term dependence on aid is important, where small grants are provided to initiate longer-term self-financed improvement programmes. Technical assistance should foster cooperation with government authorities, research institutions and relevant non-governmental organizations to carry out restorative and conservation practices, improve economic and social well-being, and develop a functional organization that can resolve internal conflicts and create effective internal rules. Furthermore, such assistance should be structured to develop local capacity and self-reliance.

To conclude, Anthony Charles of Business and Environmental Studies, Saint Mary’s University, Canada, presented a *Governance of tenure in small-scale fisheries: key considerations*. He noted that current thinking on fishery tenure builds on several key documents relating to this topic, such as (i) the 1995 Code of Conduct for Responsible Fisheries and related technical guidelines, particularly those