**Implementing the Voluntary International SSF Guidelines**

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The following thoughts on the implementation of the Voluntary SSF guidelines are drawn from a paper that I am presenting at the “Too big to ignore” conference in Hyderabad, India, from December 9-14 this year. Here I reflect on my personal experience from having been involved in the process of developing the guidelines at various stages. I also draw on academic literature on implementation that can be found within the disciplines of political science and public administration that I believe is relevant.

*Implementation challenges*

Implementation is the process by which “intent is translated into action” (Rein and Rabinovitz 1987:308). When agreeing with the voluntary guidelines, states express intent, not obligation. The test of good will is not the intent but the action. The former is now, the latter is later. Intent declared is not always carried out, or at least not to the full. Sometimes they are just meant to fend off criticism.

One should not assume that translating the guidelines into action will be a graceful, one-dimensional transition. Rather one should expect a cyclical, interactive, and iterative process where original intent and action is subject to repeated questioning, debate, evaluation and reformulation. Lessons learned in the implementation process will often lead to reconsideration of the original intent and to subsequent reformulation of principles and goals. The stated principles, and the values and norms underpinning them, are therefore unstable. When meeting interest group and bureaucratic demands, the initial intention is likely to be diluted. The meaning of concepts and operationalization of principles will be subject to negotiation. This has characterized the revision of the zero-draft and is not likely to stop once the guidelines have been agreed to. A somewhat cynical view on the guidelines would be that they are at most “a point of departure for bargaining among implementers” (Majone and Wildavsky 1979: 180).

*Technical or political?*

If needed in order to secure small-scale fisheries, the voluntary guidelines are meant to spur new legislation at the level of each nation state. That would be a clear sign that governments are willing and able “to walk the talk.” As far as legislative reform is zero-sum, it is likely to meet resistance to maintain status quo. The burden of proof rests with those who want reform, not with those who defend the current order. Machiavelli (1469–1527) observed, “it must be considered that there is nothing more difficult to carry out, nor more doubtful of success (…), than to initiate a new order of things. For the reformer has enemies in all those who profit by the old order, and only lukewarm defenders in all those who would profit by the new order…” (From “The Prince”).

Legislative change and the subsequent implementation are separate but both up-hill battles. However, once such legislation is in place, a new set of implementation guidelines for particular context that exists within a country or fishery would need to be developed. As they stand now, the voluntary guidelines contain normative principles stated in a language arrived at by consensus. They are thus meant to be globally valid.

Negotiating the guidelines is as political as it is “technical”. Similarly, the process of implementation is no less political than the process of creation. When delegates were arguing about language, they were not only considering clarity and precision, but also their own national interests. They were, in other words, thinking of the *performative* role of the guidelines in their own country. Their argumentation was informed by a concern for what the guidelines might imply for them: Would the guidelines be implementable? Would they be able to “sell” them at home? Whose toes would they be stepping on? In some instances delegates had to consult their own government during the meeting about what they could agree on. Unavoidably, translating intent into action has consequences not just for the small-scale fisheries but also for other stakeholders inside or outside the fishing industry. I assume this was exactly their worries when some delegates had problems with the term “redistribution” (and a number of other concepts).[[1]](#footnote-1)

The most controversial issues tend to be packaged in language that allows maximum interpretation flexibility. This makes the implementation process more political than technical. What is actually agreed on and later acted upon is likely to be in conformity of the “majority” interpretation. For the sake of conformity, it may therefore be wise to define key concepts, for instance, in an attached glossary or footnote, like governance, redistribution, tenure, co-management, gender perspective, informal sector, and rights, that all triggered controversy at the Technical Consultation meeting. These concepts proved difficult for some of the delegates who expressed poor understanding of their content or translatability to their home language. Such concepts are not just technical and neutral, they are politically charged. For instance, politically conservatives tend to have problems with the idea of redistribution. Those with a feminist agenda will oppose gender neutral language, such as fisherfolk unless it is specified that is means both men and women. Some country delegates consistently argued for less gender specific language, to the dismay of civil society representatives who forcefully spoke up to defend the proposed language on this point.

Neutralizing, or outright removing, such concepts will water down the text; make it more “voluntary” as it were, whereas an explicit and precise definition will have the opposite effect. But less ambiguity will make it more difficult to reach agreement. Therefore many delegates will be happier with a low exactitude. However, that is likely to make the implementation process more cumbersome. What is agreed on for the sake of expediency early in the process may later haunt the implementation, because implementation depends on clarity (and consensus) about what concepts really mean at a concrete level if not in abstract. The drafting process was done through expert workshops and CSO consultations, with much more time to deliberate on the terms used what they mean and why they are used. Most of the country delegates who met in Rome have not taken part of this process. The implementation may suffer, as a consequence, unless technocrats in charge of the implementation are more knowledgeable about this terminology than many of those at the negotiation.

One may, of course, argue that if there is no agreement on the language to begin with, there will be no guidelines to implement at the end of the day. There is, in other words, a dilemma for which there is no easy recommendation. Disagreement still prevails, which can be seen from the bracketing of sentences that still flourish throughout the document. The handling of these brackets further on will determine how strong the text will be in the end. For instance, from the perspective of indigenous small-scale fishing people it would matter at lot what would remain of the following sentence (brackets indicating disagreement):

“Local norms and practices, as well as customary or otherwise preferential access to fishery resources and land by small-scale fishing communities [including indigenous peoples [and ethnic minorities], should be recognized, respected and protected in ways that are consistent with international human rights standards.” (paragraph 5.4.). Likewise, indigenous peoples should pay attention to whether the following principle will stay or not: “[The free, prior informed {consent} {consultation} of indigenous communities on matters of fundamental importance for their rights, survival, dignity and wellbeing consistent with UN DRIP should be ensured]. (Paragraph 3.1.5.)

It remains to be seen how the many brackets will be dealt with. A compromise might mean that controversial language will be deleted, so that the final document risk having no teeth. That may be less troublesome than one may think since small-scale fisheries are already addressed by the existing guidelines on the right to food and on tenure as well as the Code of Conduct for Responsible fisheries, albeit in less detail.

*Implementation as interaction*

The implementation of the guidelines would need an overseer, and FAO is well positioned to play such a role. But FAO might benefit from building a partnership around that role, a “system for implementation review” (Victor et al. 1998) involving academics that are representing their discipline rather than their country and government. CSOs have an important function and should therefore be represented in the partnership, but those representing should not necessarily come with a limited mandate defined by their organization but be free to speak their own mind. If not, interactive learning by arguing and doing will be hampered, which is key to implementation.[[2]](#footnote-2) States are at the receiving end of the guidelines and have had their opportunity to voice their views in the negotiations. State government must also be a key implementer. They are therefore better kept outside the implementation review, or else the classical question of “who governs the governor?” applies.

One should not expect a “top-down” and orderly implementation process. This is especially the case due to the move “from government to governance”, which can now be observed in many countries (Bevir 2011). Similar developments and demands can also be witnessed in fisheries (Kooiman et al. 2005). Fisheries governance is not a sole responsibility of the state but one that involved organized stakeholder groups. Effective implementation would also hinge on stakeholder participation (Hill and Hupe 2009; Bellamy and Palumbo 2010) in a process of interactive governance in accordance with “good governance” principles such as democracy, transparency and accountability.

The move from government to governance also puts pressure of governments to become more accommodating to stakeholder concerns and interests. It transforms the role of the state from supreme governor to mediator and negotiator. Therefore the willingness to strike compromise is likely to increase. The guidelines are not written in stone. In the course of implementation they will be adjusted to stakeholder demands.

However, just because the government and stakeholder representatives agree on the guidelines, does not guarantee implementation. Rather one should assume that the implementers will be dragging their feet, especially if they meet resistance. Also, as new participants are drawn into the process that they were not involved with from the beginning, the momentum might get lost. Therefore, as Susskind (2006: 282) argues, “even though the parties to a mutual gains negotiation are almost always satisfied with the outcome (or they would not have agreed to accept it, they still need to worry about the mechanisms of implementation.” “Parties must therefore invest time in crafting the best ways of making their agreement “nearly self-enforcing.” This may require adding incentives or disincentives to the terms of the agreement.” It is clear that the guidelines are voluntary for states. The implementation depends as much on the messenger as the message. In many instances the state has a poor reputation among small-scale fishing people to begin with. Much will hinge on the legitimacy that both the state and the guidelines enjoy in the eyes of stakeholders. The guidelines may help the state to look better, but only in so far as they are well received by stakeholders. For this reason, the implementation process must be interactive through and through, as participation is found to increase stakeholder support and compliance (Susskind 2006; Jagers et al. 2012).

Many countries ratify conventions they never implement, for instance when they realize that they have signed up for more than they can deliver because they meet opposition at home. Signing up to conventions, declarations, or in this case guidelines have symbolic value, they show good will. But they may also be “widow- dressing” and branding in order to make a country look good from the perspective of the international community and domestic constituents. Governments implement what they have committed themselves to, not always because they want and intend to do so, but because they are pressured from within or from the outside. As far as international environmental codes are concerned, Raustiala and Victor (1989:671) conclude that “minimal implementation of international environmental commitment in these states (that they studied – my addition) mainly reflects low public pressure for environmental protection.” Civil society organizations like those who have been involved so far have a clear role in preventing from happening. They can be effective in providing internal pressure. FAO can provide similar stress from outside or the “above” by designing a mechanism where governments would be obliged to report back on some predefined performance indicators. FAO can also be instrumental in encouraging civil society organizations and the academic community to do their part. All this would make implementation into a process that is partly top-down and bottom-up, as illustrated in figure 1..

*Implementation obstacles:*

According to Rein and Rabinovitz (1989), implementation is subject to three hurdles -or “imperatives”; a legislative and a bureaucratic imperative and one regarding consensus building. The guidelines would have to pass all three. First, what is legally required in order to bring about change for small-scale fisheries may vary from country to country. The legal status of small-scale fisheries, be they indigenous or not, would need to be investigated in particular cases, and in some countries new legislation may be required to accommodate the change that the guidelines aim for. Legal processes in order to improve the rights of small-scale fisheries are now taking place in some countries (such as South Africa, Cambodia), and would provide insights into the conditions for successful implementation of the guidelines. As to the second imperative, the bureaucratic demands are not always conducive to implementation. There is no guarantee that legislation will pass the bureaucratic barrier. Bureaucrats will also have ideas about what is feasible from an administrative point of view, for instance because of poor data. “Who are small-scale fishers anyway, how many and where are they?” Should the implementation process pass this hurdle, it would next have to face the industry and all other stakeholders who may or may not like the notion that small-scale fisheries deserve special attention. Without consensus implementation may come to a halt or need to start all over again, maybe after it has been put to rest for a while. Rein and Rabinovitz argue: “We cannot assume that the legal imperative will always dominate.” (p. 309). In order to understand how legislation is implemented, we need to appreciate how the legal, rational and consensus principle manage trade-offs.”

There is also the risk of capture by the special interest. Certain stakeholders might attempt to bend the guideline operationalization and implementation to their benefit. Raustiala and Victor (189:669), however, find that “while regulatory capture is a risk, the capturing influence of target groups has been offset through informed participation by countervailing groups.” Thus, for the sake of equity and justice, implementation should be sensitive to power differentiation between and within stakeholders groups, also within small-scale fisheries (Jentoft 2007; Cooke and Kothary 2002). Goal displacement would be expected, especially since the guidelines are voluntary, causing disappointment and disillusionment among those who initially had high expectations to the guidelines and for whom they were primarily targeting; the poor and marginalized. This is particularly the danger when implementation is not controlled by one single authority but is open to negotiation among multiple parties. This is obviously an eventuality implementers should be prepared for.

Thus, implementation is a process of evolution with uncertain outcomes. Raustiala and Victor (1989: 660-1) hold: “When national implementation is complex, more political and economic interests are likely to be affected, leading to political mobilization and shifting coalitions. Typically these coalitions become more complicated, with less predictable outcomes…” It is reason to think that the less binding the guidelines are, the less predictable the outcome. However, once the voluntary guidelines have been adopted, enacted and operationalized though an interactive process where agreement has been reached, predictability will go up.

Given the great diversity of small-scale fisheries, contextualization is necessary. The guidelines must therefore be universal enough to allow a considerable degree of freedom at the level of each country and community. Guidelines that are not perceived to be relevant to particular situations are not likely to be implemented. Also the broad scope of the guidelines necessitates a process that is inclusive, despite the risks mentioned above. Research on the implementation of environmental codes suggests that “participation during the negotiations of international commitments and the making of national implementing policy is high, but it has often proved difficult to expand participation at the implementation phase” (Victor et al. 1998:23). Whether countries with a tradition of stakeholder participation are more inclined than others to effectively implement the guidelines, is a research question.

Other country characteristics may also play a role here, for instance the relative importance of small-scale fisheries, and the level of development and industrialization. Implementation can be compared with how countries score on the human development index, good governance index, and Gini index. Once standards for effective implementation have been determined and compliance is investigated, this should be rather straightforward. It is also likely that certain situations and events may influence to implementation (cf. Krämer 2006). Policy change in fisheries often occurs when some crisis calls for rethinking and action. One may perhaps not expect much support for a more progressive small-scale fishery policy as a consequence of the voluntary guidelines if the state of affairs in fisheries is characterized by tranquility, development, and growth. If existing systems seems to be working, people find little reason to fix them. Developed countries can afford to ignore small-scale fisheries (which they often do) and are therefore not likely to invest much in them, whereas less well-off countries may find them more important. If small-scale fisheries are in a bad condition but still “too big to ignore”, the guidelines are more prone to find fertile ground. When small-scale fisheries play a minor role, governments can afford to implement the guidelines, as the turmoil they might create will be minimal and isolated.

*Methodology*

The overseer (FAO and partners) would need a suitable monitoring and evaluation scheme. The study conducted by Pitcher et al. (2009) is an example of what can be done. They compared country compliance with the Code of Conduct for Responsible Fisheries, and found substantial variation. However, what they measured is conformity, not achievement. Countries may already have been living up to the principles of the code at the time it was initiated, and their policies may have been initiated after but regardless of the code. What the overseer would want to know is whether the guidelines are leading to change of policy and whether that change of policy is making a difference in small-scale fisheries (although the latter might be more cumbersome due to other factors that may determine change). Ideally, one would need to know what small-scale fisheries would have been without the guidelines and be able to separate what other variables are have influence. Pre-post (before and after) analysis is tricky as causal chains might be spurious. “Conterfactual” research is even more difficult, as when trying to answer how small-scale fisheries would have developed without the guidelines. Small-scale fisheries are a dynamic sector, undergoing constant change brought about by internal and external drivers that are hard to control in any experiment. The guidelines may at best impact how they are developing, the direction and pace.

One would need to take into account that implementation is often time consuming and incremental. The guidelines may take years before they take full effect. For the parties involved, also those in charge of monitoring and evaluation, patience would be required. Snapshot research would therefore not be ideal. Instead, research should be longitudal; follow implementation processes over time. People with experience from implementation research and who knows the academic literature would know how to do this. The lessons learned from the implementation of the Code of Conduct and other guidelines would be very relevant. Given the close link between the Code, the rights to food and tenure guidelines, evaluating the implementation of the small-scale fisheries guidelines will also be a partial evaluations of these instruments. To separate the impact that the small-scale fisheries guidelines have from these other instruments, would therefore also be difficult. But at the end of the day, what matters is really what positive change will take place in small-scale fisheries, and not exactly which instrument it can be attributed to.

1. Paragraph 5.8, which is bracketed in its entirety and in parts, and thus not agreed upon, reads: “[States may consider redistributive reforms in accordance with national legislation when these can facilitate equitable access to fishery resources for small-scale fishing communities in accordance with the provisions of the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries, and Forests in the Contexts of National Food Security {as long as it is in the public interest}]” [↑](#footnote-ref-1)
2. Freeman (2006: 367) defines implementation “as the process by which agencies learn to deliver it (i.e. a policy – my addition).” [↑](#footnote-ref-2)