Implementing the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries

1. **Partnering for Implementation**

* **How do you see the role of your organization and others in the implementation of the SSF Guidelines?**

The Fisheries Law Centre (FLC) is a non-profit research centre dedicated to the advocacy of small-scale fisheries around the world. The FLC is committed to the SSF guiding principles in our mandate to conduct research, build capacity for stakeholders and facilitate legal representation. The role that FLC can play in the implementation of the FAO SSF Guidelines is to provide legal analysis and research to governments, non-governmental organizations and all other interested parties. The FLC is uniquely positioned to help in this context because of its specific expertise in the under-research area of fisheries law. We can help guide and navigate the implementation of the Guidelines through the tangled web and often complicated legal structures in countries around the world.

The legal situation surrounding fishers around the world has received painfully little attention due to the fact that much of the work by the FAO and other organizations has focused on agricultural communities. Though fish and seafood are usually considered to be relatively profitable foodstuffs, particularly compared to cereal grains, many fishing communities remain impoverished, seemingly voiceless sectors relegated to the periphery of their nations. Much of the profit on fish and seafood is actually earned by post-catch processors, which yields no benefit to the fishing communities. If the fish are exported for processing and then re-imported (as has happened in the case of grains sent to South Africa for processing followed by re-importation of the finished good) this reduces food security for the communities.

The FLC currently runs both a Global Summer Internship Program in Fisheries Law (GSIP) and a Global Fisheries Legal Education Program (GFLEP).

The GSIP will help further the FAO SSF Guidelines by training and raising awareness among law students about the complex problems facing small-scale fisheries and their livelihood. This highly specialized area of law is not taught at a majority of law schools and, as a result, there is a clear gap around education and training. Due to its strong global network, the FLC has the unique ability to provide interested law students with the opportunity to engage in community-based learning with various universities and NGOs around the world. After receiving formal legal training, students are placed at NGOs and other hosting institutions to collaborate on legal research needs identified by those local authorities. The program’s aim is to develop a group who understands the challenges faced by fishing communities around the world and are familiar with the applicable laws.

The GFLEP is designed to provide continuing legal education about fisheries such as courses, workshops, and lectures to legal professionals (i.e. law professors, environmental lawyers, general practitioners, etc). To ensure that the program’s content is meaningful, relevant and objective, the FLC brings in non-legal experts and speakers to combine their perspectives with formal legal knowledge. Non-legal professionals such as fishery managers, government employees and fisheries science academics, also attend these programs and thereby enhance the quality of participation and the robustness of the key outtakes. The trans-disciplinary nature of fisheries law demands this broad base of collaborative partnerships; FLC is focused on providing this collaboration in order to deliver the mandates stated in the Guidelines.

The FLC will also use the Guidelines to inform our curriculum design. The scarce programs that currently exist usually focus on environmental law, criminal law and the prosecution of violations. The Guidelines have inspired the FLC to add a strong focus on small-scale fisheries to our curriculum.

* **How can partnerships be fostered and strengthened to include the ‘voices of the marginalized’?**

Small scale fisheries, indigenous peoples and smaller coastal communities are often marginalized by existing legal and regulatory structures and a key step in helping to amplify their voices is by providing them with better access to justice. This can be done by educating and involving current and future legal advocates about the issues facing these communities and the laws that govern their actions. Helping these communities to fully understand their rights and options will enable them be heard and have these conversations with more confidence. It is FLCs mission to help facilitate advocacy within the legal community and encourage involvement in the issues faced by coastal communities, indigenous peoples and small-scale fisheries.

Many legal avenues are inaccessible for small scale fisheries today. Not only is there a lack of lawyers and courts in close proximity to these marginalized communities, but there are also many legal issues which these communities cannot tackle effectively even if the structural aspects of the legal framework were more accessible. Enabling SSFs to access the legal system and to collaborate with other engaged stakeholders will help them to respond to their concerns over policies that affect their livelihoods; to participate actively in policy-making decisions or in consultations; to assert their rights (and in some cases their jurisdiction or even sovereignty); and to offer alternatives that are derived from their traditional concepts of governance.

The FLC supports the rights of indigenous peoples and recognizes that their voices are also often marginalized. We support the requirement for free, prior informed consent from, and consultation with, indigenous communities on matters of fundamental importance for their rights, survival, dignity and wellbeing. Consistent with UN DRIP, these requirements should be ensured under section 5 of the Guiding principles. Without such recognition, indigenous voices will more than likely remain marginalized, and partnerships involving SSFs and indigenous principles will be difficult to establish and maintain.

As mentioned earlier, the FLC places law students and research fellows in local NGOs and universities around the globe, including institutions in China, the Solomon Islands, South Africa, West Africa, and Fiji. By educating the legal community about the issues in small-scale fisheries and enabling representation and advocacy, FLC will foster active participation and collaboration and thereby strengthen the peoples’ voice in local fishery matters.

* **What will be required at local, national, regional and global levels to ensure effective and efficient partnerships?**

In order to work effectively, such partnerships require knowledge and understanding of the laws governing implementation of the Guidelines. Some countries already have legislation that is sufficient to support the implementation of the Guidelines, but many do not. In either situation, partnerships are unlikely to succeed without the ability to navigate the regulatory maze. To ensure that SSFs are included in the political systems of their nations and have the capacity to access the legal system, it is vital that lawyers and law students are educated in their needs and the laws related to it. Existing at the periphery of their societies, there is a distinct need for these communities to be fully researched and understood.

In particular, food security remains a key issue in many developing nations. Some scholars have “pointed out the ‘core’ role of developing-country regimes as abusers of agricultural resources and agents of hunger and famine. Furthermore, foreign activities like land acquisition or market manipulation (leading to food price hikes) can create domestic conditions of deprivation and risks of internal conflict that are not effectively accounted for by state-centric approaches.” One of the best ways to address the situation is to re-examine the legal and institutional challenges which face food security in general. For example, the common inability of SSFs to access the legal system effectively drastically limits their ability to meaningfully participate in their political, legal and social systems.

On the global level, communication between countries and their respective governments - between NGOs and research institutions, between advocacy groups, Indigenous Peoples and local coastal communities -will prove to be invaluable in building effective and efficient partnerships. As noted above, effective and efficient partnerships with indigenous peoples depend on free, prior and informed consent and consultation regarding issues which affect them and their resources. Without such communication, implementation on a global scale will likely face many hurdles.

1. **Information and communication – promoting experience sharing and collaboration**

* **What best practices with regard to communication would you recommend for SSF Guidelines implementation at local, national, regional and global level?**

The best way to communicate the SSF Guidelines to various levels of governments will be to approach them as facilitators of dialogue and information. In this role, the facilitators must ensure that decisions are subject to free, prior and informed consent from local communities and indigenous peoples, thus giving them a meaningful voice. This should include consultation during the planning stage of the implementation of the Guidelines. Consultation enables communities and indigenous peoples to be part of the solution and fully bought in to the concepts and impact, and generally promotes involvement which is necessary for any successful implementation.. With their input, the Guidelines can continue to be an evolving and global document. For the purposes of meaningful access to justice, laws must realistically reflect the reality of the situation of these communities and indigenous peoples.

The FLC’s GFLEP is designed to enable communication among the various parties involved in SSFs. FLC will train local community and Indigenous members in the legal matters related to their fishery. The participants of these courses have various bases of knowledge, and this allows for a broad range of views on fishery-related issues. Fisheries law is inherently interdisciplinary in nature and, as a result, having discussions between participants from different backgrounds is invaluable in designing an implementation scheme at the local level.

* **What are your experiences from participatory monitoring and evaluation?**

The FLC provides a global educational program that is designed to engage fishery-related parties in educational topics involving the broad area of fisheries law. The educational topics are specifically chosen to create a participatory dialogue within the class regarding issues facing small-scale fisheries around the world. The varied backgrounds of participants provide different views, thereby and enlightening all participants as to different perspectives about the problems faced by SSFs.

Additionally, the FLC has experience conducting local assessments. For example, we conducted an on-the-ground assessment of the Community Quota Entity (CQE) program currently implemented in the State of Alaska. The FLC met with the community of Old Harbor, Alaska and conducted interviews to learn about the effectiveness of the program from the perspective of the local aboriginal community. The CQE program is a community-based, participatory fisheries management regime for remote coastal communities. Similarly, the FLC can provide research in other locations to assist in planning and implementation of the SSF Guidelines.

* **How can progress in implementing the SSF Guidelines be measured and reported in a useful way?**

Implementation of the Guidelines from a legal standpoint should be measured using both qualitative and quantitative analysis. The empowerment of SSFs through access to justice should include education that enables them to design their own framework for measuring and reporting. Rather than simply imposing an external solution, providing access to legal advocates and experts provides SSFs with access to the proper tools for tackling a problem. The knowledge and expertise of impassioned and properly trained legal professionals can drive the implementation of many of the FAO's Guidelines in a way that is truly responsive to the individuals on the ground.

1. **Challenges and Opportunities – needs for support and interventions**

* **What do you think the main implementation challenges are, generally as well as in a specific country context, and how could they be overcome?**

One of the biggest challenges to implementation will be the availability, or lack thereof, of legal knowledge in the fisheries context, due to the interdisciplinary nature of fisheries law. In order to have a complete understanding of the necessary steps to successful implementation, it will be critical to study several jurisdictions in order to research what methods are successful and what has failed to this point. After collecting this information, the resulting analysis should be able to better illuminate common problems associated with program implementation and offer solutions to these issues.

Another challenge is the potential lack of capacity to do the necessary research involved in implementing the Guidelines in that countries may lack the necessary research resources to perform these tasks. Fisheries law spans many disciplines, from property law to human rights and it is difficult to have experts in each of these fields in place in every country that will be implementing and utilizing the Guidelines. FLC’s GFLEP is designed to overcome this by training local actors to do the necessary research on the ground, at the local level. At the local level, different actors have different needs and actor-specific training poses various challenges.

The legal hurdles involved in individual countries will pose yet another challenge to effective implementation. Different countries attribute different degrees of property rights to fishing licences to fish. This will affect what that government can and cannot do legislatively in order to support implementation. The FLC can provide guidance by analyzing the regulatory regime of any country where the Guidelines will be implemented and propose recommendation on how best to proceed in that local context.

* **What are your experiences of addressing these types of challenges and what have been successful or unsuccessful strategies and approaches?**

The FLC is in a unique position to address these challenges to implementation. We have staff located around the globe who are experts in various areas, from fisheries law to property law. A successful example of this interdisciplinary collaboration was an analysis of the regulatory hurdles involved in implementing community-based fisheries management regimes for the purpose of improving the livelihood of SSFs in the United States, Canada, South Africa and India. The FLC staff researched and analyzed these countries’ laws and regulations in order to assess the legal feasibility of implementing these programs within the existing legal framework of each country. As noted, we also provide educational courses designed to engage professors, lawyers, fishery managers, government employees, and law students across the globe in the many different facets of fisheries law.

* **How would interventions vary, depending on the time frame (e.g. what can be done within the next 12 months, in the next 5 years, in the long term) and depending on the existing resources (e.g. small/medium investments or large/transformative investments)?**

The FLC is intent on training the next generation of localized fisheries law advocates. The number of participants to FLC’s GFLEP will continue to grow as the FLC partners with more NGOs and universities across the globe. Currently, we have partnered with institutions in countries including China, the Philippines, the Solomon Islands, Canada, the US, and more. As these programs grow, they will expand to locations outside these initial hubs. The FLC’s goal is to provide an educational presence in every region of the world.

The FLC has much to offer fishing communities, indigenous peoples and the FAO. Advocacy is severely wanting in these regions. Without trained advocates, it is difficult for many fishing communities to represent themselves at the proverbial bargaining table. Even for those who do have advocates, it is often politically-motivated and driven “from above”, not fully representing the needs of indigenous peoples or the local community.