



Rights & Fisheries

User Rights 2018, Yeosu, Republic of Korea, September 10 - 14 , 2018 – Presentation by Adam Soliman

Legal Considerations for Tenure and User Rights in Fisheries

By Adam Soliman

Tenure and User Rights in
Fisheries 2018 Yeosu,
Republic of Korea



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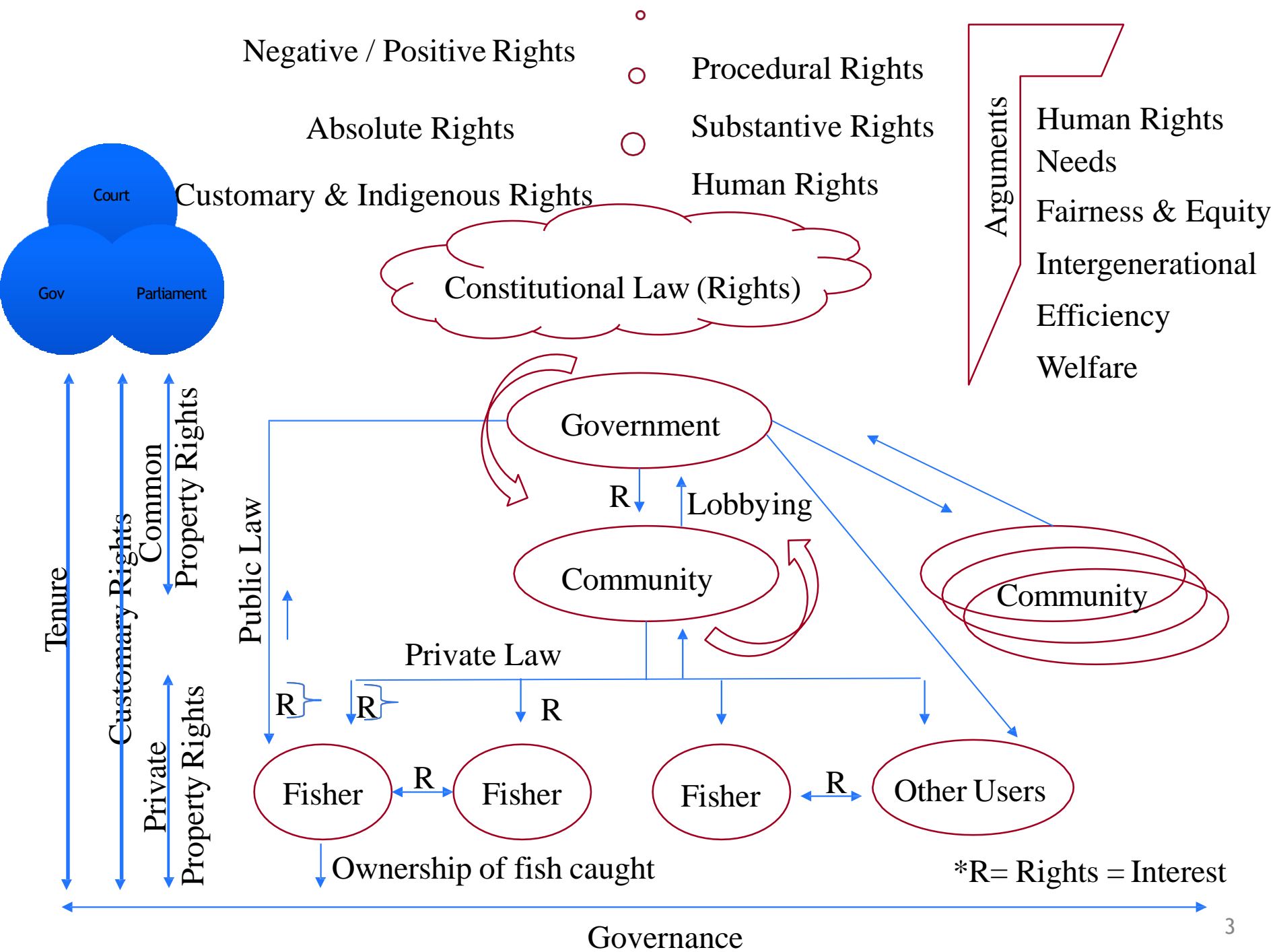
Human Rights Approach to Fisheries Management

Vs.

Constitutional and Human Rights

Vs.

Property (and contractual) Rights (Common or Private)





Promotion of Rights in Fisheries

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Where do you promote Rights?

- International Law (binding agreements, non-binding agreements, instruments & codes)
- Domestic Law (Constitutional Law, Fisheries Act)
- Through government lobbying (Fisheries Regulations and Policies)
- Through the courts (Constitutional challenge, Administrative challenges, declarations)
- Private (Private contracts)
- Informal (communal informal arrangements)

Factors to keep in mind: cost, time and enforcement



Promotion of Rights in Fisheries

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Commentary on Key messages from the International Expert Meeting on the Contribution of Human Rights to the Sustainable Development of Fisheries

- **The Right to an adequate standard of living:** weak recognition of customary resource rights increase the vulnerability of SSFs
- **Labour Rights:** sever violations of labour rights e.g. occupational safety and health, child and forced labour, as well as exploitation of migrant workers.
- **Equality and non discrimination:** human rights institution are often not equipped to address issues in fisheries.
- **Political rights and fundamental freedoms:** access to information, access to justice, etc limit effective participation.



Property Rights & Fisheries

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There are several types of Property Rights:

- ✓ State property or public property
- ✓ Common property or collective property
- ✓ Private property
- ✓ Open-access



Property Rights & Fisheries

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- Property is a **bundle of rights**, and individual rights within this bundle can be separated, transferred, removed or added.
- Several rights of property can be attached to a single good.
- “Ownership” is composed of the following rights:
 - ✓ Possession, management and control
 - ✓ Income and capital
 - ✓ Transfer *inter vivos* and on death
 - ✓ Protection at law
- Rights & Ownership can come with **duties** as well

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- Different types of **proprietary interests** also exist that fall short of true ownership:
 - ✓ Corporeal (tangible) hereditaments vs. Incorporeal (non tangible) hereditaments
 - ✓ Real Property vs. Personal Property

 - ✓ Rights to have access to, or to exploit certain resources
 - ✓ *Profits a prendre*

 - ✓ Easements – right of way
 - ✓ Licences – a permit (from an authority) to use something, do a particular thing or carry on a trade
 - Bare licences
 - Contractual licences
 - Licences by proprietary estoppels
 - Licences coupled with an interest / right

Instruments



Negative vs. Positive Rights

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With each right is attached a reciprocal obligation.

That means that in order to have meaning, a right must *create an obligation in others to restrict their conduct or even to act on behalf of others to secure the realization of that right.*

This quality of rights is described with the distinction between positive and negative rights.

Negative rights are liberty rights, those which only require that others not impede your ability to satisfy them.

Positive rights are welfare rights which require the participation of others to enable the right-holder to satisfy this right.



Negative vs. Positive Rights

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Additionally, when rights are recognized in law, they can take the form of *immediately realizable rights* or *progressively realizable rights*

This flexibility allows for greater acceptance in adopting these rights in law, given that the adoption will likely carry a cost to other stakeholders.

By spreading the costs out, the shock of the transition becomes more palatable.



Negative vs. Positive Rights

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- ✓ Human rights include both **negative** and **positive** rights.
- ✓ While positive rights set rules for one's actions, negative rights necessitate inaction.
- ✓ Positive rights create a duty to act
- ✓ The enforcement of positive rights is more controversial, mainly because of the costs of protecting those rights
- ✓ In some cases, the protection of some positive rights **may lead to illogical results.**

For example, creating a positive global right to live above poverty may create significant issues, particularly as this right may accelerate the exhaustion of global resources. If a nation has a rapidly increasing population but an economy that is unable to support such a population growth, then efforts to relieve the poverty conditions—to satisfy individuals' positive rights—without addressing the sustainability of such population growth will place a strain on the ability to protect the positive right



Substantive vs. Procedural Rights

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Substantive Rights

For individual fishermen, allocation rights are only a small part of the overall puzzle.

Labor rights, a right to work, prohibitions on slavery, the right to food, the right to clean environment: all of these rights form part of a broader legal regime created to benefit and protect individuals.

Procedural Rights

In the context of fisheries management, procedural rights—*rights of consultation*, participation in policy development, information—may be the most important and the most grounded in international law.

Substantive rights, on the other hand, tend to emerge from hard-fought battles and are buttressed by clear procedural rules.



Thank you

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Acknowledgments:

Ministry of Oceans and Fisheries,
Republic of Korea (MOF)

United Nations Food and
Agricultural Organization (FAO)

