

Report of the

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

Rome, 4–6 July 2011



Copies of FAO publications can be requested from:
Sales and Marketing Group
Office of Knowledge Exchange, Research and Extension
Food and Agriculture Organization
of the United Nations
E-mail: publications-sales@fao.org
Fax: +39 06 57053360
Web site: www.fao.org/icatalog/inter-e.htm

Report of the

FAO WORKSHOP ON GOVERNANCE OF TENURE FOR RESPONSIBLE CAPTURE FISHERIES

Rome, 4–6 July 2011

The designations employed and the presentation of material in this information product do not imply the expression of any opinion whatsoever on the part of the Food and Agriculture Organization of the United Nations (FAO) concerning the legal or development status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries. The mention of specific companies or products of manufacturers, whether or not these have been patented, does not imply that these have been endorsed or recommended by FAO in preference to others of a similar nature that are not mentioned.

The views expressed in this information product are those of the author(s) and do not necessarily reflect the views of FAO.

ISBN 978-92-5-107045-1

All rights reserved. FAO encourages reproduction and dissemination of material in this information product. Non-commercial uses will be authorized free of charge, upon request. Reproduction for resale or other commercial purposes, including educational purposes, may incur fees. Applications for permission to reproduce or disseminate FAO copyright materials, and all queries concerning rights and licences, should be addressed by e-mail to copyright@fao.org or to the Chief, Publishing Policy and Support Branch, Office of Knowledge Exchange, Research and Extension, FAO, Viale delle Terme di Caracalla, 00153 Rome, Italy.

© FAO 2011

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.

ACKNOWLEDGEMENTS

The financial support provided by the Swiss and German Governments to the development of implementation guidelines to the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security is gratefully acknowledged.

FAO.

Report of the FAO Workshop on Governance of Tenure for Responsible Capture Fisheries. Rome, 4–6 July 2011.

FAO Fisheries and Aquaculture Report. No. 983. Rome, FAO. 2011. 34 pp.

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

1. INTRODUCTION.....	1
2. DAY ONE	2
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
3. DAY TWO	13
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
4. DAY THREE	20
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

APPENDICES

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 29th 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, Årnì 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/.

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*¹) 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*², 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,

¹ 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.

² 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 multilayer 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 Kwee 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, molluses 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

concerning small-scale fisheries and their roles in poverty alleviation and food security; and (ii) papers relating to FAO's Global Conference on "Securing sustainable small-scale fisheries: bringing together responsible fisheries and social development" and the "Bangkok Statement" produced by the Civil Society Preparatory Workshop for that conference.

FAO's definition of tenure – the rules that "define how rights to land and other natural resources are assigned within societies" as well as "rights to use, control and transfer these resources" – relates closely to the focus in discussions of responsible fisheries on the role of secure, well-defined 'rights', including *use rights* that specify resource access and *management rights* specifying who is to be involved in decision-making. Accordingly, the examination of the relationship of tenure to these use rights and management rights, as well as the importance of linking tenure and fishery rights to human rights. There is a need to recognize and reinforce the many existing tenure systems in small-scale fisheries, which can imply a need for government support in protecting and enhancing these tenure arrangements. He then discussed aspects to take into account in developing new tenure systems, where needed, creating suitable conditions for these to be both secure and fair. Such tenure systems need to meet societal objectives as best as possible, while being appropriate to: (i) the cultural and historical situation; (ii) the social and economic environment; (iii) the nature of the fish stocks and ecosystems; and (iv) the relevant financial and human capacities. For a 'place-based' approach to tenure, community (communal) rights may be useful, in the right circumstances, to draw on local institutions in creating incentives for resource stewardship, improving compliance and increasing the efficiency of management.

Four major factors of success in the governance of tenure were identified, as follows: (i) legal space and empowerment, in order to achieve the desired participation of fishers and fishing communities in the full range of management and policy-making, recognizing that good governance of tenure requires actions by government to create suitable policy environments; (ii) organizational capacity and institutional development, to support and build the capacity of organizations of fishers, as well as community institutions, as well as in governments, so that governmental staff and institutional arrangements understand the needs and rights of small-scale fishers and communities; (iii) addressing food sovereignty and household/community well-being, as tenure arrangements can strongly affect the interaction of small-scale fisheries with food security and livelihoods on the one hand and human rights and fishery rights on the other hand; and (iv) linking to beyond-fishery policy measures (including development policy) and livelihood diversification options, so as to produce more comprehensive approaches, ones better able to improve community well-being. Anthony Charles noted in closing that good governance of tenure will strive to achieve a balancing of social, cultural, economic and environmental goals, taking into account a range of rights and equity considerations, enhancement of food security and livelihoods, and both sustainability of the fishery and protection of local ecosystems.

2.2.2 Voices of fishers

Following the case study presentations, the participants watched a video produced by the International Collective in Support of Fishworkers (ICSF) highlighting a selection of testimonies from fishing community representatives filmed under the 'Voices of Fishers' project conducted in relation to the development of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.

The testimonies reported on tenure governance issues relating to marine, inland and coastal lands in Brazil, Chile, India, Indonesia, Panama, South Africa, Spain, Thailand and the Philippines. Participants noted that legal definitions are changing and need to be flexible to adjust to changing conditions and interpretations without compromising the security of tenure. The concept of rights has different connotations, depending on the historical moment, geography and value interpretations. Customs and traditions need to be understood and reflected in tenure systems without locking them in time.

It was also stressed that fisheries tenure cannot be viewed in isolation but need to be considered in connection with broader land and human right issues. The plenary discussions that followed and the group discussions that followed on Day Two and Day Three build on these inputs and a number of questions posed by John Kurien, the facilitator of the workshop.

3. DAY TWO

3.1 Summary of key issues of the case study presentations

Anthony Charles pulled together key issues from the 14 case study presentations, which are summarized as follows:

3.1.1 *Governance of tenure in fisheries*

About tenure

Tenure basically defines and distinguishes between ‘who is a user and, therefore, who has rights in the resource and who does not’. This requires legal and sociological assessments: Is there historical use, by whom and how? What perceptions of rights are common in the area? This also requires constructive political processes: How do people talk to each other? Socio-economic-cultural attributes, such as wealth, heterogeneity, land tenure, stability, class and caste of the group impacts resource use and practices, thereby tenure.

Tenure is about more than resource management. It relates to basic human rights; it has symbolic value and is about self-determination and should be guided by subsidiarity as a governance principle. Tenure is related to fishery access rights and management rights. In small-scale fisheries, these are seen as best discussed alongside human rights (“a rights-based approach, in defining and allocating rights to fish, would also address the broader human rights of fishers to an adequate livelihood...” COFI, 2007).

Context matters

The overall size of the resource system matters and, therefore, boundaries of resource system and resource sectors are useful. Distinctive location and context specificities put resources in a unique position. In addition to spatial considerations, tenure must be understood in its particular historical context. User units in whose favour tenure will be allocated need to be defined.

Systems

Tenure-eligible systems are complex social-ecological systems. Tenure, therefore, applies to coupled, interdependent and co-evolutionary human-environment systems, and governance of tenure needs to be interpreted within the total social-ecological system of the fishery. Governance of tenure can be framed within resilience thinking to include concepts such as adaptive capacity, self-organization and networks. Building stronger institutions can be seen as a precursor to successful governance of tenure.

Good governance of tenure will achieve a balancing of social, cultural, economic and environmental goals, assist in reducing conflict, enhance food security and livelihoods for small-scale fishers and communities, and facilitate the protection of local ecosystems.

Diversity

Governance of tenure in fisheries needs to acknowledge the diversity of values held by various stakeholders as well as the potential coexistence of multiple property rights. Different resource sectors need different tenure arrangements. Tenure in fisheries applies to a wide variety of gear types and fisheries systems and needs to recognize and support different governance types (community-led management, co-management) across scales and multiple levels.

3.1.2 *Governance of tenure as a process*

Tenure, or conditions thereof, do not constitute a ‘blue-print’ for success and, therefore, should not be considered as panaceas. The design of governance of tenure arrangements does not equal implementation. Therefore, tenure can best be understood as a process.

Processes related to the governance of tenure in fisheries require fair and transparent administration as well as a doctrine of strict compliance with laws and rules.

There is a sequence of steps conducive to good governance of tenure for responsible capture fisheries:

- identification of relevant stakeholders and meaningful values;
- negotiations among stakeholders;
- definition of objectives;
- design of policies to reach objectives;
- implementation;
- monitoring; and
- feedback.

Governance of tenure emerges from local context and processes; local law is hence a determinant of the tenure system. If no tenure arrangement exists (or it is ineffective or unacceptable), then a new system must be appropriate to the cultural and historical situation and capacities of the fishery. As stressed in FAO (2005), “When designing management measures, it might be appropriate to consider those which provide exclusive or preferential access for small-scale fisheries.”³ ‘Deconcentration’ to local government units benefits from proximity to resource users, facilitating control and improving knowledge.

Relationships, including power relations

Tenure implies a host of relationships. These relationships include linkages and connections among people, institutions and resources at and between levels and scales. Governance of tenure is about the manner in which the host of relationships, interactions and connections are addressed, nurtured, managed and promoted.

It needs to be recognized that there are power differentials within communities that need to be addressed. Changes in governance involve the redistribution of power and the reconfiguration of fisheries networks. There is an important role for leaders in finding, modelling and aligning the path to good governance of tenure in fisheries and in empowering.

Capacity

Capacity-building support designed to enable communities to establish, claim and strengthen their rights and fulfill their responsibilities, including towards other sectors, needs to be provided. The capitalization of the important organizational knowledge of the local communities on fisheries resources management is a fundamental basis for the development of formal arrangements on governance tenure in small-scale marine fisheries.

³ FAO. 2005. *Increasing the contribution of small-scale fisheries to poverty alleviation and food security* . FAO Technical Guidelines for Responsible Fisheries. No. 10. Rome. 79 pp.

3.1.3 Key factors to consider in tenure systems in fisheries

Key factors to be considered in fisheries tenure governance identified in the case studies include the following:

Summary of key characteristics and factors to take into account in governance of tenure systems	
Key characteristics of governance of tenure	<ul style="list-style-type: none"> - flexibility; - integration; - participation; - practicability; - specificity; - fairness; - legitimacy; - subsidiarity; - responsiveness; and - coherence.
Factors to take into account in a fishery tenure systems	<ul style="list-style-type: none"> - societal objectives; - relevant history and traditions (including traditional values such as respect towards the resources, veneration of protective spirits); - social, cultural and economic environment; - key features of fish stocks and ecosystems (including key habitats such as deep pools and flooded forests); - relevant financial and human capacities; - genuine involvement in decision-making; - procedural rights; - support to rights holders in making claims and meeting obligations; and - communication as a major governance mechanisms.

Responsibilities

Tenure must include both rights and responsibilities. The former is about the legal framework, whereas the latter is partly about decision-making authority and partly about organizational capacity.

The thinking about tenure arrangements must be connected with that on the sustainability of the fisheries in line with the FAO Code of Conduct for Responsible Fisheries. This requires the provision of incentives for responsible behaviour of all parties – not just fishers but also for state agents with respect to responsibility, competence and corruption.

Respect, conflict and cooperation

The existence of traditional mechanisms of conflict resolution in fishing communities is a key factor in conflict management. Any type of organization and concerted resolution of conflicts should seek the opinion of and validation by local authorities (e.g. elders of the village) to increase the chances of success.

In addition, rules need to be defined for establishing legitimacy. Efficient enforcement by the state to exclude illegitimate users (intruders) has to be promoted and mechanisms for the resolution of legitimacy-related conflicts need to be created. It is important to establish a governance of tenure that enables mutual respectful behaviour of fishers and enhances cooperation among fishers. This is a very simple but pivotal value for the healthy continuation of any relationship, whether it is between two people, different races and/or religions or different species. These relationships are part of the accepted fabric of fisheries societies that are to be taken into account when formulating behaviour rules and getting involved in the fishery.

Governance of tenure 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. Local communities have various abilities, based often on respect and cooperation, to address conflicts that arise among them. These are important for the administration of a tenure system for fisheries.

Equity, fairness and development

A specific focus of attention is on equity issues: who holds fishing rights (crucial to community well-being, food security, poverty alleviation) and how does tenure impact on social, economic and human rights? As noted in FAO (2007), the definition and allocation of rights to fish must include “poverty-reduction criteria as a key component of decisions over equitable allocation of rights”.⁴

Also crucial is to relate tenure to the overall objectives of development policy in a broad perspective that includes post-harvest aspects and rights that arise beyond the fisheries ‘silo’.

Pre-existing rights

It needs to be recognized that coastal and marine spaces are often characterized by complex systems of ‘sea tenure’ that are important to map and to use in decision-making. Governance of tenure planning needs to provide for adequate time to understand local tenure systems and to develop genuinely consultative and participative processes, including for conflict resolution. Most inshore and coastal areas are defined by some type of system of tenure and are not really open access. This needs to be factored into management and conservation initiatives.

Before formally regulating tenure, informal tenure systems need to be identified and respected, particularly in cases of institutional engineering introduced by design. Because tenure systems already exist in many fisheries, these must be recognized and likely should be reinforced and supported to increase efficiency, equity and good governance.

Management rights

Management regimes designed by the communities themselves ensure local ownership of management measures and makes it easier, or even guarantees their implementation. Experience shows that there is better compliance where boundaries are set and management rules formulated by communities themselves. The recognition of tenure arrangements needs to be a critical issue in planning and implementation of fisheries management. The reinforcement of community and user property rights is identified by a number of case studies as a priority to improve MPA governance.

Communities can use MPAs as a tool to secure their access to resources and their rights to manage them. Establishing or strengthening tenure rights provides a strong motivation for opting for MPAs. Enabling conditions include the existence of community organizations and/or appropriate legal frameworks. There is also evidence of strong linkage between social and biological success, with social considerations determining long-term biological success of MPAs.

Forms of tenure

For a ‘place-based’ approach to tenure, it should be considered having community or communal rights to draw on local institutions and local moral pressure to create incentives for better resource stewardship, to increase efficiency of management and to improve compliance.

Co-management and community-based management are governance arrangements that are now widely utilized in some regions. TURFs may be especially suitable for tenure arrangements in sedentary fisheries.

Customary tenure rights emerge through systems of access and use and are a function of membership of groups and local relations. Rights are shared, relational, nested and not absolute. Common property and individual rights under community-based norms can be understood as a system of complementary interests held simultaneously.

Administration is nested within layered communal tenure systems, depending on where rights are vested. Dispute resolution processes are embedded in local layers of accountability. Customary rights are a function of and operate within the social environment. This allows for their administration to be flexible and adaptive.

⁴ FAO. 2007. *Social issues in small-scale fisheries*. COFI/2007/6. Rome.

Customary or local communities should be entitled to free, prior and informed consent with respect to their tenure rights to land and marine resources. Customary community law is founded on the premise that it is a system of law developed by the community through practice by the community. ‘Community fisheries’ practices include a focus on compliance through better regulations, bringing together technical know-how and local knowledge, involvement of neighbouring communities, downward and upward decentralization able to capture cross-scale linkages, provision of management funding, and recognizing and compensating participatory governance. Legislation should be promoted that provides flexibility to contemplate informal tenure arrangements, assimilate learning and adapt to changing conditions.

3.2 Tenure arrangements and forms of good governance that foster desirable outcomes for responsible capture fisheries

Based on the broad topics covered and insights gained from the case studies and the voices of fishers, participants were divided into three subgroups: (i) small-scale capture fisheries; (ii) indigenous/customary rights; and (iii) inland fisheries, lagoons and MPAs. Each group was requested to discuss about the tenure arrangements and forms of good governance that foster desirable outcomes for responsible capture fisheries.

The key outcomes of the three group discussions are summarized below. It was noted that most issues discussed in the group were not confined to the particular fishery realm that the group was dealing with but applicable more widely. The summary highlights the common issues but points to the specific matters relating to the groups as appropriate.

3.2.1 Small-scale capture fisheries

Tenurial (rights) arrangements in small-scale fisheries worldwide exhibit a very wide diversity of forms and sources of origin. In some countries, legal-institutional support is forthcoming for these arrangements; in others, there is only a nominal acceptance of their legitimacy. However, over the last few decades, there has been an increasing groundswell of popular support from the small-scale fishers themselves rallying for recognition of their rights to fishery resources for their livelihood and coastal lands for their habitation.

Much less has transpired on issues of governance of these rights arrangements. But there is increasing evidence that small-scale fishers in India, the Lao People’s Democratic Republic, the Republic of Korea, the Republic of Tanzania, the Caribbean, the Philippines and Viet Nam, – to name but a few – are coming to terms with the need for improved governance of their rights. Along with the state, and in some countries with the support of non-governmental organizations (NGOs), they are also experimenting with a variety of forms of governance that will lead to desirable outcomes in the form of more sustainability of resources, greater equity of access, recognition of legal plurality and so forth.

It has been observed that tenurial rights exercised on land are often transferred to notions of rights in aquatic bodies. Negotiation takes place among stakeholder groups about how land rights translate into aquatic rights. In these negation processes, power is at play.

There is a need to investigate the perceptions of what people think “governance of tenure” actually is in practice. In some countries, governance will be more state-centred. In others, more civil-society and private-sector participation may be encouraged.

There is limited capacity for many governments to institute new governance arrangements. This stresses the need to rely more on civil-society participation when introducing new models of governance. It also reflects collective adaptive capacity for self-organization and greater initiatives for capacity building.

An approach to design tenure systems involving three levels was proposed for consideration:

- meta-level of rights (e.g. the Constitution);
- institutional level; and
- operational level (at the local level).

The question of who is genuinely a small-scale fisher and who has entitlement to rights are fundamental at the local level. Access and rights should not be equated. Poor people need to have access to resources even if they do not hold the rights. Rights are bundles of entitlements that include access. There is, hence, a need to disaggregate these bundles and to consider governance arrangements for each of the rights or for each cluster.

There is a need to determine the goals of tenure: why should a tenure system be established? The purpose should be clear and also relate to food security, resource sustainability, etc. It cannot be assumed that goals are seen from the same perspectives by all stakeholders. In commercial small-scale fisheries, livelihoods may be a more appropriate goal than (or in addition to) food security.

Small-scale fisheries tenure needs to be understood and included in MPAs, marine managed areas and processes of marine spatial planning. Too often, small-scale fisheries are less prominent than other marine uses and get marginalized or lose whatever informal tenure/rights they had earlier established. This may require advocacy, as spatially planned areas tend to become larger with more competing stakeholder groups.

Tenure structures may be part of a larger management plan for an area, addressing non-fishery issues as well. This is important in an ecosystem approach to fisheries (EAF) and marine spatial planning. Hierarchy of levels of rights can be constructed in different ways.

3.2.2 Indigenous and customary rights

The diagnostic identified that certain people such as tribes, indigenous and customary communities have tenure arrangements for fisheries that include spatial components, temporal components, and use and management aspects. The distinction between tenure arrangements for land and for fisheries may not apply as fisheries are not necessarily separated from land.

Legal recognition assumes different expressions and is of key importance for indigenous and customary rights. There is the overarching human rights imperative to fair and humane treatment. Tenurial arrangements should recognize tribal sovereignty in certain terms, e.g. allocation of property rights, laws and processes of enforcement and adjudication. Often the governance structure of the community is eroded by undermining intrusions that curtail the communities ability to protect community members' rights to collective actions and utilization. 'Rights-based' fisheries can mean very different things to different groups and there is a whole spectrum of access rights and management rights. Multiple tenure systems for a shared resource cause problems and potential spillover effects.

Tradeability of rights is an important issue. Tradeable rights are open to renegotiation as conditions change and, hence, they are more adaptable to the future. In New Zealand, Maori tribes/subgroups can sell parts of quotas with the consent of 70 percent of the tribe.

Tenure can be understood as a vehicle for the negotiation of arrangements, e.g. a process among and within stakeholder groups to agree on principles. These stakeholders need to be capacitated to be able to participate in these negotiations as the discussions are part of the tenure arrangement process. This is particular important for more vulnerable groups with less negotiation power. The implementation of the principle of free, prior and informed consent is important for indigenous and customary right holders.

3.2.3 *Inland fisheries, lagoons and MPAs*

Inland

Tenure arrangements in inland fisheries are layered and often encompass private rights linked to land and common property rights linked to fishery resources. These arrangements can be temporal or even environmentally driven (i.e. changing from private to common property as water levels rise in flood plain areas, for example in Cambodia and the Lao People's Democratic Republic).

The strength and performance of these systems of tenure are related to the quality of the common property systems in place. Well-run cooperative systems can be as efficient as purely private tenure arrangements. Stakeholder owned and run cooperative systems perform better than government run systems as they usually have better accountability mechanisms.

A key issue is the presence of traditional systems with overlapping state allocated rights (e.g. lease rights in Bangladesh). These often enter into conflict.

Lagoon

Tenure systems in lagoons are similar to inland fisheries but are often plagued by multiple ownership of lagoon resources (i.e. fish, shells and shale, mangroves). Integrated ownership systems linking use rights to management rights foster better outcomes as trade-offs are internalized.

The role of government in management is best focused on establishing principles for management, enforcement of rights and adjudication and possibly capacity building. It is the rights holders who are best placed to carry out management. Commercial activities that may be conducted in lagoons need to be integrated into resource management responsibilities and management arrangements.

Funding of management is best provided at a rights-holder level rather than from the government. This may be done through market concessions or self-taxation to avoid distorting application or political manipulation of funds.

MPAs

There is a need to be clear on management objectives of MPAs and to avoid the application of a one-size fits all policy. Tenure for MPAs should build on existing tenure arrangements in the area.

State or exogenously (e.g. NGO) driven MPAs should, as far as possible, recognize and integrate existing use and management rights to minimize attenuation of existing rights. Where existing use rights are attenuated, the following should be considered:

- expropriation only in extreme and justifiable cases;
- voluntary trade-offs respecting the principle of free, prior and informed consent;
- concern about hold-outs – highlighting need for collective governance rules; and
- adequate compensation as a last resort.

3.3 **Review of the First Draft of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests**

The second set of group discussions on Day Two was on the First Draft of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests⁵ (VG). The groups discussed the articles of the draft VG and considered if they were appropriate and relevant to fisheries. The groups formed spontaneously and discussed in particular VG Part 3, VG Part 4 and VG Part 5.

There was overall consensus that the normative language of the draft VG sections was adequately suited to the overall context of governance of tenure/rights in fisheries. However, one widely shared comment was that the use of the term 'fisheries' in the current title of the VGs may be confusing as it

⁵ Available at www.fao.org/fileadmin/user_upload/nr/land_tenure/pdf/First_Draft_VG_English_Final.pdf

refers to an activity as well as to a resource, as opposed to ‘land’ and ‘forests’ that are only resources. The definition given to ‘fisheries’ was noted to be faulty and the definition of ‘fisheries’ may need to be adequately clarified in the final VG text.

Overall, the text was welcomed, and it was confirmed that the VG should focus on small-scale capture fisheries in developing countries. This seems to be enshrined in the draft of article 1.1: “These Voluntary Guidelines seek to improve governance of tenure of land, fisheries and forestry. They seek to do so for the benefit of all, with an emphasis on vulnerable and marginalized people,...”.

4. DAY THREE

4.1 Principles emerging on tenure and good governance of tenure in capture fisheries

Patrick McConney and Jackie Sunde summarized the key points arising from the discussions of Day One and the group discussions of the morning of Day Two.

4.1.1 Assumptions and goals underlying motivation for tenure governance

Secure tenure arrangements for the use and management of fisheries and other resources leads 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 human well-being.

Tenure arrangements that align use and management provide good incentives for sustainable use. Integrated ownership systems linking use rights to management rights foster better outcomes as trade-offs are internalized. Customary tenure perspectives bind use and management as opposed to the conventional approach, which tends to separate out management as a government function.

The purpose of tenure arrangements needs to be shared clearly, respecting the different perspectives of different stakeholders.

Often a range of tenure arrangements are possible to achieve the same ends. These may range from collective, cooperative arrangements to private tenure arrangements; from more state-centred to people-centred. Tenure arrangements can and should accommodate diversity.

The governance arrangement does not speak directly to the performance of the arrangements, which is largely contextual. A set of context specific indicators of performance is needed to evaluate effectiveness.

There are common features that apply to land and aquatic tenure systems and to land and fisheries tenure systems. The distinction between the two is not always useful. There is a need to combine both the activity and the notion of territory or spatial use in the design of governance of tenure of fisheries.

Rights are often layered in a hierarchy. They may also overlap and simultaneously include private property and communal rights spread over different temporal or spatial dimensions.

Governance arrangements need to be intra- and inter-sectoral, especially in the presence of conflicting and competing rights.

Context-specific tenure arrangements must be an integral part of management plans for small-scale fisheries, lagoons, inland waters and MPAs.

4.1.2 Emerging principles

Where certain people (e.g. tribes, indigenous and customary communities) have a defined use of a particular resource in space and time, their tenure rights should be legally recognized.

Tenure rights comprise different dimensions of use and management and should include both spatial and temporal aspects.

Use and management rights should be aligned.

Where a process of legal recognition is embarked upon, a thorough process of investigating claims should be engaged upon to avoid excluding key groups who may have related or overlapping claims.

Customary and indigenous communities are required to ensure that their customary management responsibilities are exercised in such a way that their resource use is sustainable. The state has a legitimate responsibility to ensure that customary use is sustainable and fulfils 'desired outcomes'.

The state and communities have a responsibility to ensure that tenure arrangements are not discriminatory and do not contravene human rights principles and standards.

Governments have a responsibility to provide an enabling environment for building adaptive capacity and self-governance.

In instances where people have overlapping claims, a process of negotiating and adjudicating among stakeholder and rights-holding groups should be undertaken.

Tenure guidelines must cover broad spatial planning and ecosystem approach requirements.

The processes for determining and assessing rights, adjudicating and negotiating claims and ascertaining management-desired outcomes must be participatory and follow the principle of free, prior and informed consent.

The subsidiarity principle should apply.

The funding of tenure arrangements needs to be creative and innovative and include the use of markets for financing.

4.1.3 Key implementation issues

The following summarizes key issues to be considered in the development of implementation guidelines for the governance of tenure for responsible capture fisheries.

The legal recognition of tenure arrangements can take different forms:

- sometimes there may be a claim to sovereignty (e.g. case with some Canadian tribes);
- there may be a straight forward property claim or a property claim with an associated governance structure; and
- human right to equal and fair treatment with respect to regulation of access to resources.

The governance of tenure has three related levels: meta level, institutional and operational level. These levels are integrated, and management and use are indivisible.

Tenure arrangements can facilitate civil-society participation in introducing new models of governance that facilitate collective adaptive capacity for self-organization.

Where a process of legal recognition is embarked upon, a thorough process of investigating claims should be engaged upon to avoid excluding key groups who may have related or overlapping claims.

Marine protected area planning, whether originating as a conservation or fisheries management initiative, needs to include small-scale fisheries tenure in the planning process. In particular, large- scale marine spatial planning must accommodate local-level rights holders and recognize local tenure arrangements.

Tenure may allow for open access, so any management plan must allow for the local context to determine the nature of the arrangements.

4.2 Mechanisms, processes and actions for the implementation of governance in fisheries

Following the review of the previous day's outputs, participants then looked at mechanisms, processes and actions for the implementation of governance of tenure under three different scenarios: (i) where there is no tenure system; (ii) where tenure needs to be revived/reaffirmed; and (iii) where existing tenure rights need to be protected.

4.2.1 Where there is no tenure system

The group approached the task through the perspective of a community requesting government support for establishing fishing rights within the framework of the ecosystem approach to fisheries. The key features emerging from the case study presentation summary were rearranged within this framework and are presented below.

Why deal with tenure?

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 and contributing towards well-being. Tenure arrangements that align use and management provide good incentives for sustainable use.

Initiation and planning

This step includes the evaluation of national and local laws, decrees and policies, constitution, administrative, fisheries and other natural resources legal framework with regard to tenure-relevant provisions. Secondly, the existence of informal and formal tenure, rules and regulations has to be evaluated. Consultations serve to assess the real situation and the needs and wants of users and the conditions and context for tenure arrangements. Processes for determining and assessing rights, adjudicating and negotiating claims and ascertaining desired management outcomes should be participatory.

There is a sequence of steps conducive to good governance of tenure for responsible capture fisheries: identification of relevant stakeholders and meaningful values; negotiation among stakeholders; definition of objectives; policies designed to reach objectives; implementation; monitoring; and feedback. Tenure must be understood in its particular historical context, and there is a need to recognize that there are power differentials within communities that need to be addressed.

Definition of scope

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 does tenure impact on social, economic and human rights.

Governance of tenure has three related levels: meta level, institutional and operational level.

Tenure eligible systems are complex social-ecological systems. Boundaries of resource system and resource sectors are useful.

Thinking on tenure arrangements must be connected with that on the sustainability of the fishery in line with the FAO Code of Conduct for Responsible Fisheries.

Identification and prioritization of issues

In many instances, people have overlapping claims and this will necessitate a process of negotiating and adjudicating among stakeholder and rights-holding groups. Tenure must cover broad spatial planning and ecosystems approach requirements.

Setting of operational objectives

Where certain people – tribes, indigenous customary communities – have use of a particular resource defined in space and time, their tenure rights should be legally recognized. Use and management rights should be aligned. There is a need to identify and respect informal tenure systems before formally regulating tenure, particularly in cases of institutional engineering introduced by design.

The state has a legitimate responsibility to ensure that customary use is sustainable and fulfills ‘desired outcomes’. The state and community have a responsibility to ensure that the tenure arrangements are not discriminatory and do not contravene standards of human rights.

Governments have a responsibility to provide an enabling environment for building adaptive capacity and self-governance, including the human right to equal and fair treatment with respect to regulation of access to resources. Building stronger institutions can be seen as a precursor to successful governance of tenure.

Governance of tenure that enables behaviour of fishers to respect one another is a simple but pivotal value to the healthy continuation of any relationship, whether it is between two people, different races and/or religions or different species. A governance of tenure system that enhances cooperation between and among fishers is part of the accepted fabric of fisheries societies and is taken into account when formulating behaviour and getting involved in the fishery.

If no tenure arrangement exists, then a new system must be appropriate to the cultural and historical situation and capacities of the fishery. The tenure system should provide incentives for responsible behaviour of all parties, not just fishers but also incentives (or disincentives) for state agents regarding responsibility, competence and corruption.

Selecting indicators and performance measures

There is a need for context-specific indicators of performance for evaluating effectiveness, flexibility, integration, participation, practicability, specificity, fairness, legitimacy, subsidiarity, and responsiveness of a governance of tenure system.

Factors to take into account in fishery tenure systems include societal objectives, relevant history and traditions, social, cultural and economic environment, key features of fish stocks and ecosystems, and relevant financial and human capacities. Performance measures should clarify who holds fishing rights (crucial to community well-being, food security, poverty alleviation) and how tenure impacts on social, economic and human rights. They should also be able to capture values (e.g. respect of the resources, veneration of protective spirits).

Development and evaluation of tenure options

A range of tenure arrangements are possible often to achieve the same ends. These may range from collective, cooperative arrangements to private tenure arrangements; from more state-centred to people-centred. There is, hence, a need to recognize and support different governance types (e.g. community-led management, co-management) and governance across scales and multiple levels. Governance of tenure applies to a wide variety of gear types and fisheries systems.

The capitalization of organizational knowledge of local communities on fisheries management is a fundamental basis for the development of formal arrangements on governance tenure in small-scale marine fisheries. Governance arrangements need to be intra- and inter-sectoral, especially in the presence of competing rights.

Funding of tenure arrangements needs to be creative and innovative and include the use of markets for financing.

Governance of tenure can be framed within resilience thinking to include concepts such as adaptive capacity, self-organization and networks. Capacity-building support enables communities to establish, claim and strengthen their rights and fulfill their responsibilities, including towards other sectors.

Changes in governance involve the redistribution of power and the reconfiguration of fisheries networks. Co-management and community-based management arrangements are now widely utilized in some regions. TURFs may be especially suitable for tenure arrangements in some fisheries.

For a ‘place-based’ approach to tenure, it should be considered to have community or communal rights to draw on local institutions and local moral pressure to create incentives for better resource stewardship, to increase efficiency of management, and to improve compliance.

Customary tenure rights emerge through systems of access and use and are based on membership of groups and local relations. Rights are shared, relational, nested and not absolute. Common property and individual rights under community-based norms can be considered as a system of complementary interests held simultaneously. Governance of tenure arrangements may require access rights to be limited to some resource users and to exclude others, often resulting in conflicts; thus, conflict management mechanisms must be established.

Dispute resolution processes are embedded in local layers of accountability. Customary rights are a function of, and operate in, the social environment and this allows for their administration to be flexible and adaptive. Customary community law is founded on the premise that it is a system of law developed by the community through practice by the community.

Rights are often layered in hierarchies. They can also overlap and may simultaneously include private property and communal rights spread over different temporal or spatial dimensions. It is advisable to promote legislation that provides flexibility to contemplate informal tenure arrangements, assimilate learning and adapt to changing conditions. Administration is nested within layered communal tenure system, depending on where rights are vested. Customary and local communities should be entitled to free, prior and informed consent principles with respect to their tenure rights to land and marine resources.

Community fisheries practices are expected to facilitate compliance through better regulations, to bring together technical know-how and local knowledge, to involving neighbouring communities, to foster downward and upward decentralization (capturing cross-scale linkages), and should be entitled to management funding (recognizing and compensating participatory governance).

Formalizing the tenure system

Customary and indigenous communities are required to ensure that their customary management responsibilities are exercised in such a way that their use is sustainable. The subsidiarity principle should apply, including ‘de-concentration’ to local government units, which benefit from proximity to resource users in terms of control and knowledge. Any management plan must allow for the local context to determine the nature of the arrangements.

Tenure must come with both rights and responsibilities. The former is about law, whereas the latter is partly about decision-making authority and partly about organization capacity.

Monitoring and evaluating performance

Good governance of tenure will achieve a balancing of social, cultural, economic and environmental goals, assist in reducing conflict, enhance food security and livelihoods for small-scale fishers and communities, and facilitate the protection of local ecosystems.

A sound governance system demands participation, legitimacy, genuine involvement in decision-making, fairness and coherence. Such a system should uphold procedural rights and support rights holders in making claims and meeting obligations.

4.2.2 Where tenure needs to be revived/reaffirmed

The group questioned itself of what is needed to make the state and others respect and recognize tenure arrangements.

Assessment and evidence gathering

Evidence can be gathered through story-telling, mapping, gap analysis, documenting rights and institutional arrangement (rules, relations and usage, leadership). This calls for an interdisciplinary, participatory process with free, prior and informed consent of communities.

There is need to develop a robust, participatory methodology to assess rights, rules, relations and usage. This should recognize the back and forth negotiations across levels between local, national and international instruments, some of which are mandatory while others are voluntary.

A gap analysis of what exists has to be conducted. This should include the capacity of organizations to defend tenure systems and put tenure into action. It needs to be assessed what is legally imperative and desirable from a sustainability, livelihoods and equity perspective.

A participatory and interactive strategy and plan (with an appropriate flow chart) for addressing the gaps needs then to be developed (back and forth iterative process). This should include the identification of clear objectives as well as of the mechanisms and activities for operationalizing these objectives.

Assessment of the existing relations and statutory tenure systems

It is necessary to assess the equitability of the distribution of benefits. If there are any discrepancies, a mechanism to address inequities should be put in place.

Existing tenure systems should be assessed in terms of sustainable outcomes (e.g. the level of proof must be appropriate and not onerous) and through a process that is participatory and legitimate, incorporating local ecological knowledge and values. Transparency should run through the whole process.

Assessment of legal provisions for the respect and recognition of tenure

Existing laws at different levels, including a country's constitution having relevance for the governance of tenure in fisheries, need to be reviewed and possibly amended and harmonized.

Capacity development

Capacity development refers to both government and communities. A governance capacity development structure should involve all relevant governance levels and actors and be cognizant of power differentials between different groups.

Capacity development should be appreciative of the fact that the world looks different for different stakeholders, and that they may attach different meanings to tenure. Capacity development should include how to deal with complexity, uncertainty and incorporate adaptive learning approaches.

There is an overall need to provide information about the process of reviving/reaffirming governance of tenure arrangements. A process of education and capacity development will ensure that communities are able to address any aspects that are discriminatory and to adapt customary practices accordingly.

Reaching of agreements on resource sharing

There is a need for a mechanism for negotiating overlapping claims so that people with different claims can arrive at compromises and agreement about how common resources should be shared. These mechanisms could vary depending on the sectors in conflict and need to refer to the guiding principles in deciding intersectoral resource conflicts (e.g. which principles – such as food security – predominate?).

Negotiating interests needs to take place across the sectors within fisheries and between fisheries and other sectors. It needs to be looked at how this applies to both the human systems and resource systems and how resource units and tenure systems interact. It is advisable to look at good practices from other resource sectors.

Adequate enforcement mechanisms with appropriate sanctions need to be ensured and, if need be, legal remedy should be sought. Feedback loops and monitoring have to be built into negotiation mechanisms right from the beginning.

Legalization

The sequence may differ for when the legalization procedure takes place, and the actual procedure will depend on the local historical context. It is not a linear process and usually time consuming as it has to run parallel and to go back and forth as an iterative and adaptive process (e.g. needs to include assessing existing dispute resolution processes and, where necessary, develop appropriate mechanisms).

Recommendations

The use of a flow chart to revive and reaffirm governance of tenure arrangements can be helpful. Developed resource materials include methodologies and guidelines for collecting evidence across different countries.

It is important to highlight key tenure aspects from international legal instruments and to get best practice examples of policy practice.

4.2.3 *Where existing tenure needs to be protected*

The group focused its discussion on the protection of tenure rights for small-scale fisheries communities and identified three steps: (i) investigation; (ii) adjudication; and (iii) implementation.

Investigation

The investigation focuses on the risk of loss of rights to fishing grounds, coastal lands and healthy fishing grounds. Main driving forces behind the risk of loss include pollution, technological development, conservation, economic growth and climate change.

There is then a need to ascertain what pre-exists in terms of claims and who guarantees those claims. There are methodologies for ascertaining claims (e.g. best practices from New Zealand and South Africa).

Oral claims need to be balanced with positive law. Responsible behaviour that has led to sustainable use should be documented. There is a need to look into the distinction between possession and property rights.

Adjudication

In terms of adjudication, there is a need for prioritization and recognition of claims backed by others: if common rights exist, there is a need to properly identify who are the right holders within the community. Community claims should in any case be prioritized over individual claims. Mechanisms for adjudication can include 'first come first served' principle, with prioritization based on the history of claims and uses. There are important mutual interests at the shore-water interface to be considered.

There can be claims across multiple dimension resources, as in the case of flood plains, inundated forests, coastal waters, etc. Compensatory mechanisms may be needed to compensate those whose claims will become formally extinguished (based on prioritization of rights). Reducing the substance of claims across the board is another method to accommodate 'excess' number of claimants.

An important issue in this phase is the *substance of rights and entitlements and the question of 'whose rights'*? Attributes of rights include spatial boundaries, temporal limits and tenure limits or attenuation.

Forms of protection and substance of rights include for example artisanal inshore protection zones, the identification of a community authority to hold communal rights (e.g. in the Maori case: kinship

groups) and liability rules to establish the nature of protection of the right (e.g. examples in Cambodia, Japan, the Republic of Korea, New Zealand).

Implementation

Implementation includes the question on how to record rights. This could be done through a registry of rights or a depository of rights (e.g. potentially a ‘group of elders’; community members in general as in traditional systems).

In fisheries, recording may encounter some resistance as secrecy is important where tenure security is usually low and competition high (e.g. intellectual right – ‘I know my spot’). Fishers perceive a danger in recording their fishing grounds and do not necessarily have an interest in sharing their knowledge, which is part of their working capital. Fisheries operate in a changing environment, owing to natural causes as well as to man-made causes (e.g. wind farms, offshore drilling, etc.). Because of these factors, fisheries productivity can increase or decrease in certain areas.

When rights are properly protected, fishery tenure arrangements could be capable of supporting the generation of income by resolving competing claims.

There is a need for formal state processes of upholding and protecting rights (e.g. Indonesian Constitutional Court ruling by which customary rights are protected by the Constitution). Transborder issues can be important in fisheries and need to be considered in tenure protection arrangements.

4.3 The way forward

The workshop closed with the agreement that the findings complement the ongoing process of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. Once those guidelines are approved, the findings will also prepare the ground for implementation guidelines for fisheries.

In addition, the workshop provided useful inputs to the development process of the Voluntary Guidelines on Securing Sustainable Small-scale Fisheries.

APPENDIX A**Agenda**

Summary programme for the Workshop on
Governance of Tenure for Responsible Capture Fisheries
July 4–6, 2011, Rome, Italy

Monday, 4 July 2011

Opening and introduction to workshop structure
Case presentations
Presentation of the DVD on *Voice of Fishers* and plenary discussions

Tuesday, 5 July 2011

Group discussions
Plenary discussion
Group discussions on the 1st June public draft of the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests*
Group discussions reports presented in plenary

Wednesday, 6 July 2011

Summary presentation of the case studies and of the various group discussions
Group discussions: implementation guidelines
Reports from working groups
Plenary discussion: the way forward

APPENDIX B**List of participants****Charles, Anthony**

Management Science/Environmental Studies
 Saint Mary's University
 Halifax, Nova Scotia
 CANADA B3H3C3
 Tel.: 1 (902) 420-5732
 Fax: 1 (902) 496-8101
 E-mail: tony.charles@smu.ca
 Web: <http://husky1.smu.ca/~charles/>

Gomez, Daniel

Land Programme Officer
 FIAN International
 Tel.: +31 651712287
 E-mail: danzemog@riseup.net , d.gomez@fian-nederland.nl

Hartmann, Wolf

PO Box 7035,
 01000, Vientiane
 LAO PEOPLE'S DEMOCRATIC REPUBLIC
 E-mail: hartmann.wolf@gmail.com

Jentoft, Svein

Professor
 Norwegian College of Fishery Science
 University of Tromsø
 9000 Tromsø
 NORWAY
 E-mail: svein.jentoft@uit.no

Kebe, Moustapha

Fisheries Economist – Livelihood Expert
 67, Cite ISRA Bel Air
 Dakar
 SENEGAL
 Tel.: +221 77 569 31 81
 E-mail: kebe_tapha@yahoo.fr;
tapha.kebe@orange.sn

Kumar Nayak, Prateep

PhD Candidate
 Natural Resources Institute
 University of Manitoba
 70 Dysart Road
 Winnipeg, MB R3T 2N2
 CANADA
 E-mail: nayakprateep@gmail.com

Maharaj, Vishwanie

Senior Program Economist, Fisheries
 World Wildlife Fund
 1250 24th St., NW
 Washington, DC 20037-1193
 USA
 Tel.: 202-495-4711
 Fax: 202 223-6971
 E-mail: Vishwanie.Maharaj@wwfus.org

McClurg, Tom

Director
 Torao Strategy Limited
 74 Cambridge Terrace
 Private Bag 24-901, Wellington 6042
 NEW ZEALAND
 Tel.: +64 4 385 4005
 Mob: +64 21 285 4005
 E-mail: Tom@toroastrategy.co.nz

McConney, Patrick

CERMES
 University of the West Indies
 Cave Hill Campus
 BARBADOS
 E-mail: patrick.mcconney@cavehill.uwi.edu

Onyango, Paul O.

Norwegian College of Fisheries Science
 University of Tromsø
 Breivika 9037, Tromsø
 NORWAY (valid to August 2011)
 Department of Aquatic Sciences and Fisheries
 University of Dar es Salaam,
 PO Box 35064, Dar es Salaam
 TANZANIA (permanent address)
 E-mail: poo022@uit.no;
onyango_paul@udsm.ac.tz

Park, Seong-Kwae

Div. of Marine Business and Economics
 599-1 Daeyeon 3-Dong
 Nam-Gu, Busan, 608-737
 KOREA
 Tel.: +82-51-629-5958
 Fax: +82-51-629-5953
 Mob: +82-10-5611-3954
www.pknu.ac.kr
 E-mail: skpark@pknu.ac.kr

Pomeroy, Robert S.

University of Connecticut-Avery Point
 Agricultural and Resource Economics/
 CT Sea Grant
 Room 380, Marine Science Building
 1080 Shennecossett Road
 Groton, Connecticut 06340-6048
 USA
 Tel.: 1-860-405-9215
 Fax: 1-860-405-9109
 skype:bobpomeroy
 E-mail: robert.pomeroy@uconn.edu

Sharma, Chandrika

International Collective in Support of Fishworkers
 (ICSF)
 27 College Road
 Chennai 600 006
 INDIA
 Tel.: 91-44-28275303
 Fax: 91-44-28254457
 E-mail: chandmegh@gmail.com
 www.icsf.net - www.icsf.org

Sunde, Jackie

Environmental Evaluation Unit
 University of Cape Town
 Private Bag X3,
 Randebosch, Cape Town
 SOUTH AFRICA
 E-mail: jsunde@telkomsa.net

Williams, Johan H.

Specialist Director
 Ministry of Fisheries and Coastal Affairs
 NORWAY
 Tel.: + 47 9002 4446
 E-mail: jhw@fkd.dep.no

FAO

Food and Agriculture Organization
 of the United Nations (FAO)
 Viale delle Terme di Caracalla
 00153 Rome
 ITALY

Franz, Nicole

Fishery Planning Analyst
 Fisheries and Aquaculture Policy
 and Economics Division
 Fisheries and Aquaculture Department
 Tel.: +39 065705 3031
 Mob: +39 345 8643925
 E-mail: Nicole.Franz@fao.org

Kurien, John

Lead Consultant – GTRCF
 BN-284, Thanal M.S.Road
 Bapujinagar
 Trivandrum-695011
 INDIA
 E-mail: kurien.john@gmail.com

Metzner, Rebecca

Fishery Analyst
 Fisheries and Aquaculture Policy
 and Economics Division
 Fisheries and Aquaculture Department
 Tel.: +39 06 5705 6718
 Mob: +39 347 9211269
 E-mail: Rebecca.Metzner@fao.org

Munro-Faure, Paul

Principal Officer
 Climate, Energy and Tenure Division
 Natural Resources Management and
 Environment Department
 E-mail: Paul.MuntoFaure@fao.org

Oh, KwangSuk

Fishery Officer
 Fisheries and Aquaculture Policy
 and Economics Division
 Fisheries and Aquaculture Department
 Tel.: +39 06 5705 3156
 Mob: +39 340 2288591
 E-mail: KwangSuk.Oh@fao.org

Romano, Francesca

Land Tenure Officer
 Climate, Energy and Tenure Division
 Natural Resources Management
 and Environment Department
 E-mail: Francesca.Romano@fao.org

Wehrmann, Babette

Senior Land Tenure Officer
 Climate, Energy and Tenure Division
 Natural Resources Management
 and Environment Department
 E-mail: Babette.Wehrmann@fao.org

Wesche, Elizabeth

Intern
 Fisheries and Aquaculture Policy
 and Economics Division
 Fisheries and Aquaculture Department
 E-mail: Elizabeth.Wesche@fao.org

Willmann, Rolf

Senior Fishery Planning Officer
Fisheries and Aquaculture Policy
and Economics Division
Fisheries and Aquaculture Department
Tel.: +39 06 5705 3408
Fax: +39 06 5705 6500
E-mail: Rolf.Willmann@fao.org; www.fao.org/fi

APPENDIX C**Prospectus**

Workshop on Governance of Tenure for Responsible Capture Fisheries
Rome, 4–6 July 2011

Introduction

The Governance of Tenure for Responsible Capture Fisheries is an initiative of the FAO Fisheries and Aquaculture Department, together with the Natural Resources and Environment Department, which is intended to contribute to the larger effort of FAO and its partners to develop and support the implementation of Voluntary Guidelines for Responsible Governance of Tenure of Land, Fisheries and Forests (VG).

FAO has been working on governance of tenure since some time. Many studies on various aspects of land tenure in relation to administration, rural development, poverty alleviation, etc., have been completed. The need for norms on governance of tenure was highlighted by the Voluntary Guidelines on the Right to Food. The Natural Resources and Environment Department has, in turn, from 2006 onwards, taken the initiative forward by producing several discussion papers and conducting several regional consultations and sector studies on the issue of governance of tenure of land and other natural resources. Following the request by the recently reformed Committee on World Food Security (CFS) to take the initiative forward, there has been a renewed fervour to complete the process in 2011.

The Fisheries and Aquaculture Department has also been in the forefront of developing normative instruments (e.g. the Code of Conduct for Responsible Fisheries in 1995) and technical guidelines on issues pertaining to access and use rights in fisheries (e.g. FishRights Conferences – 1999 and 2006), which are in fact akin to issues of tenure in relation to land. More recently, the special attention on small-scale fisheries world over has also paid much attention to issues of rights of access and use of fisheries resources in the context of poverty alleviation, environmental protection and human rights. Between 2008 and 2010, several conferences and regional consultations organized by the Fisheries and Aquaculture Department have emphasised the need for addressing the issue of fishing rights within a wider human rights-based development framework.

Tenure in fisheries

Tenure⁶ in fisheries alludes to the manner in which relationships between people in the course of the utilization of the fishery resources is defined and negotiated. It is about the rights and the responsibilities that resource users take upon themselves in defining what resource, and where, when, how and by whom that resource will be appropriated for the use of society. Secure tenure hence is an important component of the larger pursuit for aquarian reforms. Governance of tenure⁷ is then about the manner in which tenure is administered and conflicts resolved. It is about the incentives and enforcement mechanisms that may be put in place to ensure that the expected results from tenurial

⁶ Tenure is an institution, i.e. rules invented by societies to regulate behaviour. The rules of tenure define how rights to land and other natural resources are assigned within societies. They define how access is granted to rights to use, control and transfer these resources, as well as associated responsibilities and restraints. In simple terms, tenure systems determine who can use what resources, for how long, and under what conditions. (FAO's working definition)

⁷ Governance of tenure comprises the mechanisms and processes according to which citizens and groups can articulate their interests, mediate their differences and exercise their legal rights and obligations in respect to land and other natural resources. Governance concerns the rules, processes and structures through which decisions are made about access to land/natural resources and its use, the manner in which the decisions are implemented and enforced, the way that competing interests are managed. (FAO's working definition)

arrangements can be achieved effectively. Having good governance in place helps to protect and enable tenurial arrangements. Good governance also helps to prevent blatant malpractices commonly associated with administration of tenure.

There is a considerable body of oral knowledge and written works about the various forms of tenure that exist in fisheries world over, though the corpus of literature that alludes to the issue of tenure is not necessarily written with a focus on tenure as such. There is a rich strand of work that reflects on customary marine tenure. More recently, there has been a considerable amount of writing and reflections on rights in fisheries. There have also been efforts that link the issue of rights and tenure *inter alia* to achieving poverty alleviation of fishing communities, ensuring riparian rights and environmental protection of fishery resources.

Case studies and voice of fishers

To take forward the discourse on tenure and rights in fisheries, a series of case studies were commissioned covering different regions of the world and different realms in fisheries (marine, inland, lagoons, lakes, marine protected areas), focusing largely on current good practices (and efforts to arrive at good practices) in governance of tenure. The case studies were undertaken by scholars who have worked on the issues earlier.

To obtain the views of the people involved in fisheries, a small project called the “Voice of Fishers” was commissioned, which attempted to get the perspectives of the fishers and the coastal communities about issues relating to tenure and its governance. This was intended both as a reality check and an effort to listen to the concerns of those who bear the burdens and blessings of governance of tenure. This effort was coordinated by the International Collective in Support of Fishworkers (ICSF).

The workshop

The workshop will bring together the authors of the case studies, a few persons representing some of the international organizations interested in issues of governance and a few FAO staff members who are closely involved with the process of formulation of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests. The objectives of the workshop will be:

- to exchange notes on the case studies written to highlight the important commonalities and differences and to listen to the voice of fishers from around the world and adapt the insights from those 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 Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security; 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.

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 for 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. 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. A specific focus should be given to equity issues, e.g. who holds fishing rights, which are crucial to community well-being, food security, poverty alleviation, and how tenure impacts on social, economic and human rights.

ISBN 978-92-5-107045-1 ISSN 2070-6987



9 789251 070451
I2431E/10.11