

# Searching for the Right Rights

The UserRights 2015: Fisheries, Forever conference, held in Siem Reap, Cambodia, was a global forum on rights-based approaches for fisheries

In welcoming the participants of the UserRights 2015: Fisheries, Forever conference, organized by the Food and Agriculture Organization of the United Nations (FAO) and Government of Cambodia in the historic Angkor Wat city of Siem Reap, during 23-27 March 2015, Eng Chea San, Director-General of Fisheries Administration, Ministry of Agriculture, Forestry and Fisheries (MAFF), Cambodia, hoped the conference would allow different groups to share their experiences to arrive at a collective understanding of rights regimes to benefit fishing communities.

Mekong Basin, industrial and urban development and climate change that can threaten capture fisheries in such a sensitive and fragile ecosystem.

In his opening speech Mam Amnot, Secretary of State, MAFF, Cambodia, hoped a rights-based approach to fisheries, especially by promoting small-scale fisheries, would contribute to better nutrition, food security and income, reduce poverty and improve livelihoods of the poor and disadvantaged people, in particular.

At the plenary session, Kate Bonzon, Senior Director, Oceans Programme, Environmental Defense Fund, United States (US), provided an overview of the types of user rights and their potential contributions to conservation of fishery resources, food security and poverty eradication and development of fishing communities.

There is a striking diversity of tenure rights in the fisheries sector, she said, ranging from some comprising a few participants to those comprising thousands; some targeting sedentary, nearshore species to those targeting highly migratory species; and some comprising capital-intensive fishing craft, gear and techniques to those just hand gleaning, employing wind power for propulsion and using rudimentary gear.

## Tenure rights

There are tenure rights systems focusing on single species or multiple species, those based on secure shares of fish or secure areas to fish, those for allocating rights to groups or individuals, and those allowing transferability of rights on a permanent or short-term basis, or not at all. These distinctions highlight the flexibility of tenure rights systems, she observed.

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Highlighting the case of Cambodia, he observed how collective action for mutual benefits was needed to empower fishing communities and to ensure fish for present and future consumption. The community fisheries approach of Cambodia—an approach that was based on upholding mutual responsibilities for sustainable use of fishery resources—was instrumental in eliminating private ownership, replacing it with collective ownership, he said.

Referring to the Mekong river, Tonle Sap Lake and the coastal waters of Cambodia, Jean Francois Caubain, Ambassador of the European Union to Cambodia, lauded “the most extensive and well-developed system of community fisheries in the world” but cautioned against dams and infrastructure development in the

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Kaing Khim, Deputy Director General, Fisheries Administration, MAFF, Cambodia, shared Cambodia's experience with implementing a user rights system in lake fisheries, highlighting its social, economic and environmental aspects. In 2000, a government policy was proclaimed whereby the individually owned fishing lots were abolished, taken over and re-distributed to the small-scale fishers in the form of Community Fisheries. These reforms were introduced to address conflicts between small- and large-scale fishing gear, on the one hand, and to reduce overfishing pressure, on the other. The reforms were to ensure that the rural Cambodian communities enjoyed access to fish for food and livelihood. A total fishing lot area of nearly 8,600 sq km have been released to local small-scale fishers since 2010. The remaining 10 per cent was kept for conservation purposes. As of now, there is a total of 516 Community Fisheries.

The fisheries laws were amended to introduce a legal framework for Community Fisheries, which are now led by Community Fisheries committees comprising local, elected representatives. Although the Community Fisheries areas are State property, the communities have tenure rights to particular fishing grounds. The communities can not only organize fishing activities in accordance with law, but can

also undertake aquaculture and fish processing, pursue alternative livelihoods and undertake fisheries management in these areas. They are to combat illegal fishing operations in collaboration with the fisheries authorities. The Community Fisheries reforms have led to enhanced fish production, elicited greater participation of people in resource management and have helped them understand the importance of conservation initiatives.

Dedi S Adhuri, Senior Researcher, Research Centre for Society and Culture, Indonesia Institute of Sciences, gave the example of a project to introduce an ecosystem approach to fisheries management through revitalizing the *awik-awik* traditional co-management regime in Jor Bay, East Lombok, Indonesia. This was to manage conflicts between fishing, cage culture and aquaculture, and to protect the mangrove, coral and seagrass habitats in an area of 10 sq km, with the involvement of two village communities. The project led to the elimination of destructive fishing practices, and a reduction in the number of conflicts within, and between, user groups in the Bay, he claimed.

Patricia Jack-Jossien, Vessel Day Scheme (VDS) Manager, Parties to the Nauru Agreement (PNA), Majuro, Marshall Islands, spoke about the purse-seine VDS—an effort control scheme introduced in 2007 to set

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Unlike in the past, UserRights 2015, held in the historic Angkor Wat city of Siem Reap, Cambodia, attracted participants mainly from developing countries

overall limits on the number of days purse-seine fishing vessels could be licensed to fish in PNA waters. The VDS replaced guaranteed access to PNA waters of purse-seiners from distant-water fishing nations, against access fee. In 2015, a total allowable effort (TAE) of nearly 45,000 days was set. Vessels participating in VDS—about 280 vessels—have onboard observers and are tracked by satellite. The value of a fishing day has shot up from US\$1,100 in 2010 to US\$10,000 in 2015. The VDS revenue from the PNA purse-seine fishery has increased over

terms of reduced budget and staff. In spite of the rights-based system, the population of endangered fish species continued to deteriorate, she observed. Local communities were also slow to adopt the rights-based system.

Sherry Pictou, Bear River First Nation, Canada, talked about the relationship between a property rights approach and indigenous rights approach in the context of inland and marine capture fisheries in Mi'kma'ki ancestral homelands, or Atlantic Canada, especially Nova Scotia. She examined the history of individual transferable quotas (ITQs) as well as the decision of the Supreme Court of Canada—known as the Marshall Decision—upholding a treaty right of the Mi'kmaq people to a livelihood fishery. Two First Nation communities that have been trying to assert a treaty right to a livelihood fishery in Atlantic Canada are the Bear River First Nation and Paqtnek First Nation, she informed. The fishing grounds of the First Nations included inland and marine areas.

According to the Marshall Decision, even if the Mi'kmaq people could not accumulate wealth from fishing or fish for economic gain, they could produce a moderate livelihood for their families from fishing. The Fisheries and Oceans Canada (DFO), however, does not recognize the treaty right of Mi'kmaq people and there is still no mechanism for implementing their right to a livelihood fishery, she observed.

### Human-rights standards

The Mi'kmaq people are opposed to property rights for several reasons: firstly, in the property rights approach, the marketplace is supreme and placed above indigenous rights; secondly, in countries like Canada, property rights regimes such as ITQs have undermined small-scale fisheries and livelihoods; thirdly, the property rights approach runs counter to the Small-scale Fisheries Guidelines and the Tenure Guidelines that are based on human-rights standards, including indigenous rights under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP); fourthly, property

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six-fold from US\$60 mn in 2010 to US\$365 mn in 2015, now accounting for 14 per cent of the value of PNA exclusive economic zone (EEZ) catch. The VDS is the “most transformative agent in the fishery, not only as an excellent sustainability tool but also as an economic instrument”, she concluded.

Minerva Arce-Ibarra shared the experience of community territorial use rights introduced in 2007 in the upper Gulf of California, Mexico, for the conservation of endemic endangered fish. A combination of fishing permits and catch quotas to benefit three local communities, including the native Cocopah People, was introduced in a designated area in the Gulf to protect reproductive fish aggregations and to regulate fishing pressure. The permits were valid for two years and were renewable. Although heritable, the permits were not transferable. The Cocopah People, however, were not happy since their ancestral land formed part of the nucleus zone of the protected area.

In spite of regulated access, women and youth continue to fish due to lack of any alternative employment. The enforcement regime became weak with the downsizing of federal fishery institutions in Mexico, including in

rights regimes commodify treaty and other legal obligations, putting them on the market to be bought and sold, thus taking out the human ecology; and fifthly, given their struggle to implement a livelihood fishery in light of a narrow mandate coming out of the Marshall Decision, Bear River First Nation and Paqtnkek conclude that *corporate law* and *property law* supersede their *human rights law* and Canada's highest aboriginal and treaty rights. She drew attention to the 2014 United Nations Report of the Special Rapporteur on the Rights of Indigenous Peoples, Canada, which pointed out the issue of resolving Indigenous Treaty and Land Claims.

For indigenous peoples and small-scale fishing communities, *rights-based* means something different than ITQs, she observed. An indigenous rights-based fishery recognizes ancestral rights and the spiritual dimension of rights (Netukulimk). They use any resource they need and leave the others for future use. She concluded by stressing the need for implementing the SSF Guidelines from the perspective of small-scale fisheries, including the indigenous peoples.

Kristján Skarphéðinsson, Permanent Secretary, Ministry of Industries and Innovation, Iceland, observed that the fisheries in Iceland are now "sustainable, efficient and highly profitable". The Icelandic fishing fleets, including smaller boats, have evolved efficiently to deal with harvesting their allocated quota shares, to process the catch and to provide better working conditions for the crew.

One of the greatest achievements of the Icelandic fisheries management system, he said, was the undisputed support for the science-based decisions to granting fishing quotas. As a result of the quota management system, there are fewer fishing vessels and fewer processing plants (because of mergers and acquisitions in the sector). There is also more automation in the sector. Fewer people are now working in the fisheries sector. The Icelandic workforce involved in fishing and fish processing has more than halved from 12 per cent in 1983 to 5.3 per cent in

2014. However, some new jobs are created in the information technology and engineering departments.

With fewer and more efficient vessels not having to race for fish, the total fuel consumption of fishing vessels has gone down from 244,000 tonnes in 1993 to 151,000 tonnes in 2013. Between these years, marine products export revenue has gone up from US\$1.4 bn (ISK187 bn) to US\$2.0 bn (ISK272 bn). While the cod catch almost halved from 460,000 tonnes in 1981 to 236,000 tonnes in 2013, its export value more than doubled from US\$303 mn to US\$720 mn in the same period.

The average earnings before interest, taxes, depreciation and amortization of Icelandic fisheries companies rose from 7 per cent during 1980-1984 to 15 per cent in 1984-1992 and further to 22 per cent between 1992-2012, despite cod catches generally going down during this period. Quota holdings have

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concentrated in the hands of bigger companies that are vertically integrated. The catch share of the ten largest quota holders has progressively increased from 24 per cent in 1992 to 32 per cent in 1999, to 47 per cent in 2004 and further to 52 per cent in 2014.

#### Powerful companies

The direct fisheries charges—income tax, social security fee, fishing fee and other fee—levied on fisheries companies have increased from US\$37 mn (ISK5 bn) in 2004 to US\$184 mn (ISK25 bn) in 2013, which is about 10 per cent of the value of marine products exports. The critics are of the view, he noted, that the bigger companies have become very powerful and that they should be paying much more than 10 per cent of export value to the exchequer.

New legislation is in the pipeline to clarify that the fishing rights are the property of the State; that fishing quotas will be in the form of time-bound contracts between the State and individual companies; and that the State will collect a fee for leasing these contracts. The Parliament has to decide upon time frames for the contracts, the time frames within which the State will either renew contracts or revoke them. Special community quotas—that already make

system and individual transferable effort (ITE) units, which were fully transferable and divisible. The value of the gear unit in terms of headrope length was adjusted against changes in fishery productivity/effort creep. This facilitated the removal of 100 vessels between 2000 and 2007.

It is an equal-opportunity fishery, she said, where many women are involved since the 1970s as skippers, cooks and deckhands. Fifty per cent of crew member observer programmes comprise women. There is also participation of indigenous and non-Australians in these activities. There are programmes to improve safety, to protect fishers and fishworkers and to upskill these workers.

The social effects of the gear unit rights system and ITEs include: generating stable employment, long-term career paths, higher remuneration, and profit-sharing arrangements in the form of bonuses. Alternative career paths such as onshore fleet managers, mother ship operators, scientific observers, fisheries managers, and marketing and recruitment officers have opened up.

Seventy per cent of fishing rights, however, are held by medium to large companies (companies owning five to 12 vessels), she said, and the remaining 30 per cent are held by smaller operators owning one to four vessels. Altogether, there are 19 owners. This is unlike the situation that prevailed in the year 2000 when large and small operators held equal shares of fishing rights.

### **Economic impacts**

As far as the economic impacts of fishing rights are concerned, the number of fishing vessels has come down from 134 before the introduction of gear units in 1998-99 to 52 vessels in 2011-12. During the same period, the income per vessel has increased from US\$860,000 to US\$1.4 mn. The environmental benefits include improvement in stock status of banana prawn and tiger prawn, and a smaller environmental footprint—which is only about 8 per cent of the area fished. There is 50 per cent

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up 5.3 per cent of the total quotas—also have to be agreed upon, he concluded.

The Plenary Session continued on Day 2 of the conference. Annie Jarrett, Chief Executive Officer, Northern Prawn Fishery Industry Private Limited (NPFIL), Australia, talked about the experience with user rights in Australia's Northern prawn fishery, focusing on their social, economic and environmental aspects. The landed value of Northern prawn fishery in Australia's Far North, mainly comprising banana prawn and tiger prawn in an area of 770,000 sq km, is the most valuable prawn fishery of Australia (worth between US\$50 to US\$74 mn). The prawns are caught by 52 freezer trawlers 20-24 m in length, employing twin, triple and quadruple otter trawl.

It is a limited-entry fishery regulated through input controls in the form of statutory fishing rights (SFRs) comprising boat SFRs (one SFR per boat) and gear SFRs. She spoke about how an open-access fishery between 1965 and 1977 transformed into a limited-entry fishery after going through various stages of reforms. The initial effort control measures were not successful in reducing fishing effort and capacity or in checking overfishing.

The reforms in the year 2000 led to the introduction of gear unit rights

reduction in bycatch of turtles, rays and sharks.

A rights-based system can be highly successful or totally disastrous, she observed. One of the key lessons in developing and implementing user rights is full stakeholder engagement. “We have to get the ‘rights’ right; lack of buy-in from stakeholders will result in abuse and failure of the rights system”, she warned.

Ragnar Arnason, Department of Economics, and Chair, Institute of Economic Studies, University of Iceland, said the ITQs are the “most widely applied rights-based fisheries management system in the world”. The ITQ regime has been adopted by at least 22 major fishing nations. Close to 25 per cent of global catches are now taken under ITQs. Looking at the outcomes of ITQs, especially the general pattern emerging from around the world, these are economically very successful (by reducing fishing effort, by increasing the unit price of landings, by reducing fishing capital, and by enhancing the value of quotas) and biologically moderately successful (by leading to recovery of biomass, by reducing discards and by enhancing a sense of resource stewardship among fishers).

As far as the social outcome of ITQs is concerned, they have altered the structure of the fishing industry and fishing communities. More efficient fishing operations and techniques are being promoted. ITQs have tended to consolidate fishing operations. As a result, there are fewer fishing vessels and a lesser number of fishers. Some people get rich and a more capitalistic culture is being promoted. Although property-rights regimes, in principle, solve the main problems in fisheries, there are difficulties, in practice. It is difficult to define and enforce property rights. It is prohibitively costly to enforce them. ITQs are also infeasible from a socio-political perspective.

These difficulties apply in particular to artisanal fisheries in developing countries, especially in Africa and Asia that contribute 50 per cent of global fish catches. For these reasons, attention has been drawn to community fishing rights.

Examining the case studies presented during the conference, while bio-economic outcomes appear to be good if individual rights are robust and communal rights are weak, social outcomes appear to be good if communal rights are robust and individual rights are weak, he observed.

Seth Macinko, Associate Professor, Department of Marine Affairs, University of Rhode Island, US, said it is important to clarify what is meant by rights-based approaches, in what sense are rights involved and what kind of rights are being discussed. How does one say that a particular programme is based on rights? Is the term ‘rights’ referring to ‘human rights’, ‘indigenous rights’, ‘user rights’ or ‘tenure rights’, he asked.

According to those pushing for privatization, ITQs are seen as “one of the greatest institutional changes of our times: the enclosure and privatization of the common resources of the ocean”.

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He said that the whole argument for privatization of fisheries was conceptually flawed since fisheries management was different from ownership of fisheries resources. An overall catch limit could be divided into individual assignments that each vessel can fish where and when they want to, subject to other rules. The prearranged assignment is a tool; however, to insist that the tool must be private property and only “works” if it is private property, is ideology, he said. Individual fishing quotas should be seen only as catch-share-based fishing and not as property-rights-based fishing. The menu of available policy options could be larger if the tool—catch shares—can be liberated from the ideology of private property. “Policy options are being forced off the table by ideological dogmatism”, he argued.

The consequences—both intended and unintended—of the privatization approach, however, should be addressed, he said, especially issues such as small vessels getting replaced by larger, more efficient and expensive vessels, and concentration of quotas with a small number of highly specialized vessels. The privatization approach to using assigned catches has taken fishery resources away from

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the public and small fishers and given them to large quota holders who do not pay for the quotas allotted to them. Proponents of the privatization approach are now openly talking about inviting Wall Street in and he feared that the “wet enclosure movement” will eventually displace members of coastal communities from fishing.

As practised, the privatization approach is inconsistent with Tenure Guidelines, the SSF Guidelines, and human rights and indigenous rights, he observed. Societies should debate whether they would like public assets to remain under public ownership or if they should be privatized. There should be public policy discussion in regard to how to employ pre-assigned catch while meeting the trust obligations of public ownership and who should be the lessors (for example, the parties doing the leasing) in a catch share system.

In the panel discussion that followed on experiences with rights-based approaches in fisheries, Christiana Louwa, El Molo Forum, Kenya, expressed frustration that the Kenyan fisheries law does not protect tribal people. Increasingly, their fishing opportunities are being taken away by “outsiders”. The rights of indigenous people under the UNDRIP are also not enjoyed by the tribal people.

Arthur Bogason of the World Forum of Fish Harvesters & Fish Workers (WFF) pointed out that catch shares are the same as ITQs. One cannot lightly discuss transferability issues when livelihoods of people are involved. Under ITQ or catch-share regimes, communities are left without fishing rights to their traditional fishing grounds. No one has estimated the depreciation costs of their assets such as houses and fishing equipment after losing access to their fishery and after being forced to leave their settlements.

The Plenary Session continued on Day 3 too. Naseegh Jaffer, Director, Masifundise Development Trust (South Africa) and Co-ordinator, World Forum of Fisher Peoples (WFFP), held that in South Africa there is skewed ownership of fishing rights. Towards addressing issues related to overfishing, South Africa adopted the Marine Living Resources Act, 1997 (MLRA). Subsequently, the long-term fishing policy (LTFP) was adopted in 2005, which allocated fishing rights under an individual quota system that mainly benefited large commercial fishing industry and fish-processing companies.

The LTFP led to a series of strategic errors, he said. It failed to recognize traditional and customary fishing communities, thereby making them illegal. Only biological information informed legislation and policy. Social sciences played no role. There was insufficient institutional capacity put in place to manage the fishery. There were no serious consultations with fishing communities either. As a result of these errors, small-scale fishers were criminalized. There was increased poverty and food insecurity, breakdown of social cohesion, especially in poor rural communities, and inability of fishers to meet their livelihood needs. The fishery was badly affected by mismanagement and politicking. As a result, the fishery management system lost its legitimacy.

Fishing communities started mobilizing for a new form of ‘access’ rights, based on their human needs. Intensive action concurrent with the development of the SSF Guidelines

decried 'ITQs', 'private rights', 'property rights', 'shares' and 'user rights' in favour of a human rights-based approach to allocate fishing rights to fishing communities. A new fishing policy for the small-scale subsector was adopted in 2012 and the MLRA was amended to implement this policy.

ITQs and similar rights-based practices do not conform to universally accepted human-rights standards and are not appropriate for allocating fishing rights, he observed. The key to shaping policy and legislation in relation to fisheries management is meaningful participation of fishing communities. A plurality of allocation and management approaches is needed in order to sustain a fishery. Equity and subsidiarity must be the key underlying principles when allocating fishing rights, he said.

Sidibe Aboubacar of the Inter-African Bureau for Animal Resources (IBAR) of the African Union, said there is a prevailing fear among marginalized small-scale fishing communities in Africa that the fisheries sector would be privatized and the powerful would be allocated exclusive rights over their common-property resources. User rights-based approach is new to Africa. Rights allocation could cause controversy if the criteria for allocation are not clearly defined and accepted by stakeholders. Fishing rights should be combined with management rights. Rights to manage a fishery in a collaborative manner should be vested with a well-defined membership-based organization such as a co-operative, he suggested.

Nadine Nembhard, Co-ordinator, Caribbean Network of Fisherfolk Organization (CNFO), supported a human-rights-based approach in fisheries and observed that equity is the most important aspect of access rights. She gave the example from Belize where traditional fishers are given access to fish in a marine protected area.

At the Closing Session on Day 5 of the Conference, commenting on the forum highlights from various perspectives, KwangSuk Oh, Director, International Co-operation Division, Ministry of Oceans and Fisheries,

Republic of Korea, observed that a key message coming from the forum was the need for making rights-based approaches coherent with human rights. In this context, he highlighted the importance of good governance. It was necessary to have binding legislation to protect women, equity and human rights, he said. National and local governments have a role in good governance as well. Helga Josupeit, Fisheries and Aquaculture Department of the FAO highlighted the need for discussing specific rights of women in all stages of the value chain as another key point emerging from the forum.

Rebecca Metzner, Branch Chief, Fisheries and Aquaculture Department Policy, Economics and Institutions Branch (FIPI) FAO, informed there were 139 participants attending the conference from 38 countries from across Africa, Asia, Latin America, the Caribbean, Europe and North America. The discussions were holistic, covering a full package of considerations, including a human-rights-based approach in fisheries. The forum benefited from new tools such as the Right to Food Guidelines, Tenure Guidelines and the SSF Guidelines, which was not the case when similar conferences were held in the past. There was a triangulation of food security, livelihood and wealth discussed at the forum. It examined equity and efficiency issues and discussed which takes priority, when, where and how. It looked at imbalance of power, different degrees of rule of law and enforceability. The meeting recognized issues such as heterogeneity: different types of people, jobs, countries, gender, and so on. It examined different categories of fishers and fishing communities, including both scale and scope. Looking forward, she highlighted the need for capacity building for "on-the-ground action", especially to raise awareness of fishers, fishery managers, fishing communities and politicians and to set a time frame for transition to rights-based fisheries, employing adaptive management. This dialogue should continue, she said, to seek coherence at various levels. 3

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**UserRights 2015: A Global Forum on Rights Based Approaches for Fisheries: Full Report of the Workshop by Sebastian Mathew, ICSF**