LEGISLATION ON AQUACULTURE: A PRELIMINARY REVIEW

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While the legal regime of marine fisheries has been studied in great depth that of aquaculture has been comparatively neglected. To partly overcome this lacuna, the FAQ undertook a study three years ago to examine the legal regime governing aquaculture.

The study focused on these key legal issues:

- the general place of aquaculture in the legal system
- access to and use of water and land
- environmental aspects, including fish disease, import of live fish and the introduction of non-indigenous species

Given the vastness of the subject, the comparative study was necessarily limited to particular countries. Nonetheless, ft attempted to capture the differences between common law and civil law systems, developed and developing countries, and centrally planned and capitalist countries.

The Aquaculture Steering Committee of the Fisheries Department of FAO defined aquaculture thus:

Aquaculture is the farming of aquatic organisms, including fish, molluscs, crustaceans and aquatic plants. Farming implies some form of intervention in the rearing process to enhance production, such as regular stocking, feeding, protection from predators. etc. Farming also implies individual or corporate ownership of the stock being cultivated For statistical purposes, aquatic organisms which are harvested by an individual or corporate body which has owned them throughout their rearing period contribute to aquaculture, while aquatic organisms which are exploitable by the public as a common property resource, with or without appropriate licences, are the harvest of fisheries.

Aquaculture is by nature a multidisciplinary and multiform activity. There are thus a varying number of ways in which a state and its legal system could deal with it. *"Aquaculture lacks a firm legal status of its own, it being classified neither as agriculture, nor animal husbandry, nor truly fishing* states the African Regional Aquaculture Centre.

There is also a mistaken view that aquaculture is a new activity and therefore, it is hardly surprising that countries have yet to elaborate legal frameworks for it. The fact, however, is that the technique of aquaculture has been known and used for centuries. Moreover, there is evidence that its legal implications were at least examined a century ago.

In studying the countries, FAO categorised them into three, viz, those with a specific set of rules on aquaculture; those with some specific aquaculture legislation; and those with an enabling law.

The last category includes most of the countries reviewed, particularly the developing ones. It covers all the countries with a basic law (usually the Fisheries Act) for

- setting up some principles on aquaculture, or
- investing the legitimate authority with the power to regulate aquaculture.

Based on this preliminary analysis of selected legislation on aquaculture, the study arrives at the following observations:

- Few regulations exist which are purposely designed to protect or allow aquaculture. Provisions for aquaculture are usually incorporated into existing legislation. The aquaculturist must often cope with a complex network of laws and regulations dealing with land tenure, water use, environment protection, pollution prevention, public health, and fisheries in general. This leads to confusion, conflicts and overlappings.

  Such confusion springs from the difficulty in resolving the problem of conflicting uses of natural resources. Many aquaculture activities involve resources which other members of society can or already do utilise. Moreover, there are social and cultural factors which may impede an effective implementation of legislation.

- There is a great global diversity of legal frameworks governing aquaculture operations. This is because the individual needs of countries vary considerably. Therefore, legislation should consider:

- the purposes of the industry (e.g. market - local or

export; employment; sport; recreation);

- the resources or species used;
- the system for production (e.g. pond, peal cage, open water etc); and
- the environment in which production is done (low-lying inland plains; coastal swamplands, lakes/reservoirs, along rivers and streams, in the sea (bays and inlets), along irrigation systems.
- However, aquaculture laws are subject to ancillary changes in the law with regard to water and land, as well as the environment and fiscal matters. (This is in contrast to marine fisheries whose laws are not as affected by these collateral changes.) Hence, it is not realistic to recommend a model aquaculture law to cover all circumstances.
- Freshwater farming is less closely regulated (than that in marine waters) since it is usually conducted on privately owned land, in legally controlled water, and without the need for capturing wild broodstock or seed.
- There is a tendency to over-regulate. By creating legal uncertainties, some regulations can hamper the establishment of an aquaculture enterprise or its continued operation.

Lately, the importance of aquaculture has in-creased in many countries, in terms of both volume of production and diversity of aquacultural practices. Furthermore, for several countries aquaculture is also an important means to raise food production.

However, this importance is not reflected in the legal regimes governing aquaculture. In view of this, it is necessary to analyse a country's individual needs and its policy towards the role of aquaculture in its society. Such an analysis would facilitate an examination of the existing legal regime. From this could follow changes to the law, and removal of obstacles to development. ■