

How to secure equitable access rights to coastal lands and fishery resources

*Svein Jentoft & Bob Pomeroy – Co-moderators
Simon Funge-Smith Rapporteur*

Access rights are complex issues to address and rarely present clear cut answers since they cross social, cultural norms as well as legal and ethical bases within each national or regional context. The moderators raised the a first point regarding the nature of equity in access rights since any allocation or access situation already requires decisions relating to who can or cannot gain access and this is going to result in winners and losers. The issues of access right are therefore always going to be contentious and it is important to ensure that access rights are equitable and socially just. The moderator emphasized that it was unlikely that a consensus was going to be achieved on the working group topic and the objective of the working group was more to collates the diversity of opinion relating to the matter of access rights. The moderator also encouraged the group to address some of the points raised by the pre-conference civil; society workshop.

Recognition of small-scale fisheries and right to adequate representation

Policy that favours large scale industrial production over small-scale fisheries. Small scale fisheries can provide quality nutrition locally and sustain livelihoods in ways that industry cannot. This failure to recognize this contribution is an issue. Impacts on small-scale fisheries are a manifestation of the failure to respect rights in general. These failures are largely driven by national level laws and policies. This in turn is driven by global policy, developments and demands. The right to be adequately represented in global fora (such as this conference) is critical. There is a general lack of fisherfolks voice in this respect.

The problem of access rights appeared with the acceptance of the inevitably of industrial fishing and the fact that this is commonly perceived as an efficient form of fishing and is often promoted at the expense of small scale fisheries. There is a need for a reversal of this assumption and appropriate recognition of the importance of small scale fishery.

The role of the United Nations is recognized in the promotion of basic human rights and FAO has a strong role to play in ensuring that these are equitable.

Identification/allocation

Access should be given to those and their families who derive their livelihood from fishing. It is not a complex matter, however identifying those households is a challenge. Outsiders can create problems. There are challenges relating to the issues of scale and criteria as to decide who are the "fisherfolk" and who are not. The guaranteeing of rights of access falls down so the varying scale and category of fisherfolk. In particular the small and medium scale, fixed versus migratory fishers. Brazil is trying to resolve fishing rights through the development of management plans but this is challenged by the issue of outsiders or migratory fishers.

Many customary practices, access and entitlements are often inequitable to women. This is somewhere where tradition may actually have to change to more equitable accommodate the rights of women (e.g. South Africa) is looking more broadly and going beyond access rights form the harvesting perspective and actually in clouding the marketing and value chain aspects. Therefore women's involvement in the post harvesting aspect is a way to go beyond male domination of harvesting/production.

Zoning / weak enforcement and IUU fishing

Weak governance complicates the issues of access rights and the tendency of industry (which is driven by maximization of profits), versus sustainable exploitation. There is potential for spatial planning to resolve some of the conflict areas (especially in the nearshore 5 mile zone). However, nearshore zoning and exclusion zones for small scale fishing are poorly enforced (e.g. 5 marine mile limit or similar). Thus rights may be given but are not really delivering benefits due to the illegal actions, or uncontrolled or unregulated extraction by the larger scale parts of the fishery sectors. There is a real need for action on the encroachment of larger scale commercial fishing into the small-scale fishing zones is the main driver undermining the rights of small scale fishers. Shared waters also need to be considered where fishers are crossing boundaries and running in to problems of legality across boundaries.

Over-capitalization in fisheries is a critical issue. The proliferation of processing factories or unchecked increases in fishing capacity (especially at larger/commercial scales) can be a driver of fishing effort and undermine sustainable fishing efforts. In this case the fishers themselves are drawn in to more intensive fishing driven by the goal of increased income.

The issue of management rights go beyond user and access rights. This also raises challenges regarding who has the right to management between fisheries, companies and government.

Protected areas

The loss of access due to the declaration of protected areas is an important issue and it is important to consider the situation of local communities and small scale fisher folk in the development of these areas. It is not so much opposition to protected areas, but that protected area should not result in loss of access by small fishers. The important matter is the adequate involvement of local communities in declaration of protected areas and this should be made an obligatory consultation as part of MPA development.

Tourism

The loss of fisheries livelihoods is also an outcome of tourism development. With the arrival of tourists and those purchasing beach rights or land close to beaches, fishers lose access to the beaches. The construction of large hotels is also an other driver of this loss of access.

Development of aquaculture

Large scale or industrial scale of aquaculture may have been allowed to grow unchecked. This may lead to subsequent impact on the environment. The loss of traditional fishing grounds to large scale aquaculture operations has caused issues. The requirement for feeds by aquaculture is impacted. The impact of large scale cage culture has also impacted the seabed and the benthic fishery species. The use of aquaculture as an alternative to fisheries is not an option (at as industrial model) although may be possible under a small scale model. There is a general trend to favour aquaculture development over fishery management and support to the small scale fishery sector.

Exclusive/Contract fishing rights in inland waters

Rights/contract to fish are issued to investors or large landholders in inland waters(Pakistan). There is consequent loss of access to small scale fishers.

ITOs

The loss of access to resources due to the increasing implementation of unsustainable models of resource use. The loss of fisheries resources seems to stem from industrial operations (e.g. introduction of ITQ) and preferential allocation to industrial fisheries, which do not fish sustainably. Prior to introduction of ITQ, Chilean fishers were not poor, however subsequent allocations between large and small scale fisheries has seen the destruction of natural resources. ITQ systems may be quite inappropriate for some basic reasons, the quota assigned to small scale fisheries is allegedly designed for the small scale fisheries. However industrial fishers are typically looking to change the rules in their favour and often have the influence to do this. The medium scale fleets are often able to benefit from both sides of this and undermine the measures. The allocation of share between small-scale and industrial scale requires a larger allocation to the small-scale fishery.

Legal aspects

Corruption in fisheries agencies is a challenge to the realization of sustainable fisheries, particularly in the case of illegal payments from larger scale operators. This undermines effective management measures(especially in the case of the use of illegal gears. Another manifestation of this is political interference in the management of fisheries

The complexity of the access and allocation is sometimes used as an excuse to avoid taking action. The traditional access to fisheries is often ignored in legal development. Article 6.18 of the CCRF urges states to give preferential access to traditional fisheries users. The voluntary nature of the CCRF means that this is often ignored or fails to be implemented. The rights to coastal lands and traditional residence in these areas are often indivisible from the rights to fish. Therefore coastal lands and their associated coastal fisheries are rarely enshrined in any sort of human rights. There are examples in some other global instruments (e.g. indigenous communities rights) and there is a need for some sort of right to tenurial security in coastal areas.