

Strategy to address coastal property rights and resource tenure issues for MFF Phase 3

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Introduction

The first two phases of the Mangroves for the Future program (MFF) have, as recognized in the mid-term review for Phase 2 (MTR-2) carried out in 2012, developed a robust and, in many regards, successful strategy of helping build coastal resilience in countries fringing the Indian Ocean and beyond. MTR-2 also recognized certain challenges and opportunities for taking this work further, particularly in enhancing regional initiatives, devolving management at the country and community level, making it relevant to the poorer sections of coastal communities, and hence ensuring sustainable and equitable outcomes.

To rise to these challenges and take advantage of these opportunities, MTR-2 suggested that future MFF work should address issues of access to, and devolved management of, coastal resources. Specifically, the second of MTR-2's 25 key recommendations was to pay greater attention to coastal property rights and resource tenure issues in the next phase of the MFF program:

MFF should develop strategies to address the coastal property rights/tenure issue, as this issue is common across the MFF countries and relevant at the transboundary scale where coastal resources are managed in common (Raakjær, Hirsch, & Gonsalves, 2012: 28).

This document puts forward a strategy on property rights and resource tenure to be implemented as a key part of MFF Phase 3. It builds on a draft that was tabled for consideration and discussion at the 10th Regional Steering Committee meeting in Hoi An, 11-14 September 2013 (RSC-10). The current version incorporates feedback prior to and at RSC-10 and is submitted to MFF as the full strategy document.

A key requirement of the property rights and resource tenure strategy is that it needs to be incorporated into the mainstream planning of Phase 3, rather than to be treated as an “add-on” component that sits on the edges of MFF core work. The strategy thus seeks to interlock with the governance structures, programs of work and project approaches that have been established by MFF during the first two phases. It also anticipates entrenchment of a “soft governance” framework by MFF during Phase 3.

An important aspect of the property rights and resource tenure issues facing coastal communities is that, while there are some common themes that cross-cut locations where MFF works, the issues tend also to be quite specific to legal, cultural, historical and local socio-economic and geographic conditions in each country and at each site. The strategy is thus designed to be adaptive to different conditions, and to be grounded in the experience and realities of particular MFF projects. To this end, the development of the strategy has been carried out with input, coordinated through MFF Secretariat, from national coordinators and others in several MFF partner countries. This input has drawn on issues that have emerged during the first two program phases. Appendix 1 contains the submissions on country-specific issues from Bangladesh, India, Pakistan, the Seychelles, Sri Lanka, Thailand and Vietnam.

Coastal property rights and resource tenure: a review of issues

Property rights and resource tenure: why are they important?

Property rights in land refer to the guarantees on which occupants and holders of land can rely that they have exclusive rights to use, mortgage and transfer that land through sale, gift or inheritance. Such rights may be permanent or temporary, conditional or unconditional, vested in individuals, joint-members of households, or

may provide access to a wider group. They are normally governed by a land code specific to the country in which the land is located. It is useful to distinguish between *property rights in land*, as a legally based tenure arrangement, and *land rights*, which is a morally or socially embedded concept over entitlement to land as a means to livelihood and residential space, usually in the context of actual or threatened expropriation.

Coastal resource tenure refers to the conditions under which access to natural resources near the coastline is governed. Tenure may be state-sanctioned or -stipulated, or it may be informally regulated and have a base in historical practice and cultural norms. Local resource tenure regimes often involve much more complex and spatially overlapping assumed rights in resources than are recognized in legally enforceable property rights.

Property rights in land, together with broader forms of individual and collective tenure over resources, are a fundamental determinant of who gets access to the benefits of livelihood development based on those land-based and other resources. They are often highly gendered and serve as a socio-institutional “filter” that shape benefit streams to men and women, rich and poor, people from different ethnic background, and so on. They are also the foundation of institutional arrangements for the management and conservation of resources. As such, property rights and tenure underlie the equitable and sustainable use and development of resources in the coastal zone.

Property rights and resource tenure in international development

Property rights and resource tenure are recognized by many international agencies as fundamental to sustainable, effective and equitable development, particularly in programs that take land and natural resources as their focus. Tenure reform is sometimes integral to development programs. The more robust approaches to tenure reform place the concept alongside livelihood realities, an understanding of the social and political structures that determine access to resources, and the geographical and historical contexts in which tenure reform is promoted.

In a wide ranging paper, SIDA puts tenure issues at the centre of its work on livelihoods, but also on poverty reduction, gender, food security, peace building, sustainability and other core goals (Ghezze, 2008). The paper states at the outset that:

National resource tenure rights policy has a bearing on the Swedish “Policy for Global Development.” This policy applies to all policy areas and the central goal of Swedish development cooperation, which is to help create conditions that will enable the poor to improve their lives (ibid. p5).

The SIDA approach builds on, but goes beyond, the EU policy on land tenure, which tends to focus mainly on agricultural lands. There are so many other resources associated with land, which are recognized by – but subsumed within – the EU approach, that SIDA considers it important to elaborate on questions of access to other resources in more detail. The approach refers to a range of different resource contexts, including coasts and wetlands (ibid. 41-43).

A generic set of guidelines on “responsible tenure governance” has been produced by FAO (Food and Agricultural Organisation of the United Nations, 2012). More specific to the context of coastal livelihoods, land tenure has been recognized as a significant issue in reconstruction and enhancing resilience among the rural poor in

coastal areas in the wake of the 2004 tsunami and the lesser tsunami that nevertheless killed 600 people in Indonesia in 2006. In a wide-ranging paper on coastal land tenure issues in tsunami-affected countries, Samarakoon (2006) recommended to an FAO workshop in Bangkok that the absence of formally recognized tenure rights is a major obstacle to livelihood security for the rural poor, and that “Carefully designed tenure rights are an instrument that can provide cohesion and political power to enable negotiation for improved governance” (ibid. p1). The report uses detailed case studies to caution against one-size fits all approaches, showing for example that individualized land titling such as in programs supported by AusAID and the World Bank may fail to address the needs of the rural poor in maintaining or securing access to common pool resources (ibid. p40).

World Fish also recognizes the integral nature of tenure to livelihood security of the rural poor in coastal areas. However, recommendations remain at quite a general level:

The rights of the poor to security of tenure over the resources upon which they depend for their livelihood need to be established and asserted so that they can make long-term investments in sustainable livelihoods and resource management. Post disaster operations need to deal early and sensitively with issues of land ownership. Where possible, land titles should be regularized. In a larger sense, property rights over resources need to be specified and secured to enable resource users to optimize their use and ensure their conservation (World Fish Centre, 2008: 3).

Property rights and resource tenure in the coastal zone

Coastal areas present a number of inter-related challenges related to property rights and resource tenure:

- First, there is a complex juxtaposition of land- and water-based resources, each governed by socio-culturally and legally specific rules of ownership and access. The intertidal zone is often an area with overlapping state agency jurisdictions, and it is also an area where the tenure arrangements change dramatically with conversion of open access or common pool resources – such as mangroves – into high value private lands for aquaculture.
- Second, the dynamic physical nature of the coastal zone presents particular challenges to assignment and recognition of permanent, exclusive and straightforward territorially-based rights over land and other resources. In particular, the accretion and erosion of deltas, lagoons and estuaries requires careful and locally adaptive approaches to property rights and resource tenure, both in terms of what is prescribed by national policy and in terms of recognizing customary arrangements. Climate change is bound to enhance the salience of this aspect of coastal property rights and resource tenure, in particular with sea level rise and intensified storm events.
- Third, there is often considerable ambiguity and overlap in resource access, with potential for conflict and absence of management responsibility and authority over vulnerable ecosystems and resources of importance for sustaining livelihoods.
- Fourth, coastal property rights and resource tenure in the countries in which MFF works are often marked by discrepancies between formal, legally recognized arrangements on the one hand, and actual informal practices on the other. Customary use of lagoons and estuaries are subsumed by more formalized regulatory regimes in the absence of attention to co-management.
- Fifth, resource use along coastlines and in adjacent seas sometimes involves transboundary governance, lending a regional dimension to rules of access and

use. This applies in particular to seas shared for fisheries, and it is exacerbated when one country's fishery is more industrialised and another's is more artisanal.

- Sixth, parts of the coastal zone and adjacent seas are home to traditional sea nomads, who in some cases are stateless, and to migrants attracted by employment in fishing, tourism and other industries. Neither of these groups has state-recognised access to territorially-based or inshore marine resources.
- Seventh, the coastal zone is subject to rapid development around high-value resources among a range of competing local and non-local users and claimants. This is particularly the case in areas of high tourism or aquaculture potential.

All of these considerations mean that coastal livelihood programs and natural resource management initiatives need to be developed with an awareness of the specific property rights and resource tenure arrangements prevailing in a particular area. They also mean that up-scaling lessons from local experience into the policy arena should pay attention to coastal property rights and resource tenure issues.

Resource-specific considerations

Coastal resources and some of the relevant property rights and resource tenure issues associated with them include land, water, forests, fisheries and coastal space.

Land

Whether for cultivation of income-generating crops such as *aloe vera*, or simply for living space, access to land is vital in providing livelihood security to those living in the coastal zone. Yet, many poorer households living along the coast have no, or only partial, formally recognized rights to the land that they cultivate and on which they live. In the case of the 2004 tsunami, this led many in southern Thailand, for example, to lose not only assets washed away by the tsunami itself, but also the opportunity to return, or to be compensated for land resumed by the state or by private developers in the aftermath of the event. A very similar situation faced fishing families in Sri Lanka, where undocumented land previously occupied by small scale fishers was subsequently allocated to tourism developers. As individual land titles are granted through land titling programs, it has become easier for outside investors to purchase properties and to fence them off.

Water

Access to freshwater in the coastal zone is often a fraught issue, and is an absolute constraint on people's ability to live, and make a living, in coastal communities. Competition for freshwater by tourist operators and new industries, particularly in island settings, tends to occur in situations of limited or no legally stipulated rights over access to freshwater resources by those who have traditionally relied on them. Depending on the main source – groundwater or streamwater – tenure issues governing access to freshwater may include the fact that groundwater is, in the vast majority of cases, an open access and unregulated resource. Those with the capital to dig deeper wells and install more powerful pumps pre-empt access by those who have fewer means to do so.

Meanwhile, estuarine and inshore brackish- and saltwater zones tend to be marked by open access, with the potential for unregulated and unsustainable exploitation of resources within these zones. However, customary arrangements exist, particularly for use of semi-enclosed lagoons, as does potential for the establishment of locally-negotiated arrangements for common use. As state regulation formalizes rights to manage, however, the opportunities to build on customary arrangements may be lost or neglected.

Forests

Mangroves have long been used by local communities as sources of firewood, collection of crustaceans and other aquatic organisms, and in some cases (for example in Ca Mau in southern Vietnam) as sources of building material. They have also been treated as wastelands under poorly regulated state tenure, leading to encroachment by high value but unsustainable activity, notably shrimp farming. Protection and re-establishment of mangroves has met with considerable success at a technical level, but the continuing ambiguity in tenure and jurisdiction remains an actual or potential threat to the long-term sustainability of such initiatives.

Fisheries

Fishing is either the economic mainstay or an important supplementary source of food and income to people of diverse socio-economic status, and is often particularly important for poorer – often landless – families living along the coastline in MFF member countries. Formal rights of access to, and rules of exploitation of, fisheries are determined by governments within their respective exclusive economic zones. However, competition not just between local users over a usually diminishing resource, but also between artisanal fishers and larger business-owned trawlers and industrial purse-seiners, sharpens attention to rules of use and access that need to be negotiated under *de jure* state-regulated but *de facto* open-access regimes. Furthermore, in Sri Lanka and elsewhere, water-based tourism activities, seaplane landings and so on take little or no account of the significance of the sea-space required for local small-scale fishers.

Coastal space

Space itself is a resource at a premium in the coastal zone, particularly in the increasingly pervasive situation of competition for prime sites for tourism development. Over and above the land on which tourist developments are built, with the exclusion of local users that this entails, a premium is put on sites of particular scenic value, which tend to be set aside for larger scale developers ahead of local entrepreneurs or subsistence users of the beach-space. Further, and beyond the fencing off of holiday homes, hotel and other tourism properties themselves, the activities of tourists, tourist operators and local authorities keen to preserve an exclusive milieu for paying customers can block access by local residents to beach- and inshore areas, with implications for sustainable livelihoods of those living in coastal communities.

Coastal property rights and resource tenure: a review of MFF experience

Building on the experience of post-tsunami reconstruction, MFF seeks to enhance resilience in coastal communities through sustainable livelihoods and natural resource management, with a strategy of policy support based on the experience and learning that comes from community-level interventions. MTR-2 identified a gap in MFF sustainable livelihoods work, which appeared to be rather blind to:

- the property rights and resource tenure contexts that condition access to resources and influence rights to manage them
- local institutional arrangements for managing common property
- the transboundary resource demarcation and resource sharing arrangements that apply in the case of shared seas

Yet a closer look at MFF projects, national level policy challenges and transboundary arrangements reveals that property rights and tenure issues are in fact ubiquitous. Without access to land, fisheries, water, mangrove and other coastal forests, and coastal space, the coastal communities that are the target of MFF investment have

no means to access the benefits of these investments. Property rights and resource tenure thus become a key institutional “filter” through which the management and spread of benefits from MFF projects become more or less sustainable and equitable.

This section of the strategy therefore seeks to review what we know, and what can be gleaned, about the MFF experience to date. It does so empirically through a review of the experience in individual MFF member countries and specific project localities, and thematically through a review of MFF’s 15 programs of work.

In order to review MFF experience of property rights and resource tenure issues to date, the strategy draws on local, country and regional experience.

Local experience: lessons from the small grants program

In 2012 MFF produced a synthesis of results and lessons from its Small Grants Program (Mangroves for the Future, 2012). In its discussion of the regional context, the review obliquely recognizes the significance of property rights and resource tenure arrangements in diverse resource niches of the coastal zone: “That many of these niches are, or were until recently, open access or common property resources, has made them particularly important for the poor” (ibid, p4).

Yet, of the reviews of the 79 projects, only a handful – mainly in Thailand – refer to questions of access to resources. This is despite that fact that the majority of projects would, *prima facie*, involve questions of access to land and other resources. The following is a selection of reviewed projects drawn from each country with an indication of ways in which a strategic approach to property rights and resource tenure might help raise questions of equity and sustainability in the project achievements. It should be emphasized that the following commentary is based on a reading of the MFF publication and not from field-based observation of the projects in question.

India

Project 1.3 - *Mangrove restoration: participatory assessment of current practices*. This project, as is the case of many in India, focuses on the technical aspects of mangrove restoration and “ownership” of the Joint Mangrove Management program. These are relevant concerns, but they beg the question of “ownership” of the land on which the mangroves are being restored. This is particularly relevant given that the degradation of mangroves in the first place came about either because of privatization of common pool resources for shrimp farms, or because of *de facto* open access regimes on state land under conditions of intensified competition for resources in intertidal areas.

Indonesia

Project 2.4 – *Empowering coastal communities in mangrove forest areas*. This awareness-building project emphasizes building of community awareness and receptiveness to mangrove rehabilitation and associated livelihood activities. It is involved the community in producing maps for planning future land use. One of the significant livelihood activities is crab culture. There is no mention in the project summary of tenure arrangements on mangrove areas and the replanted forest, including rights to harvest. Nor is there an indication of where the crab culture cage units would be located and the associated rights of individuals or community enterprises to invest in these areas. A property rights and tenure analysis would give a much clearer indication of ways in which livelihood security could be enhanced by such a scheme.

Maldives

Project 3.3 – *Establishing a waste disposal site*. As a low-lying island state with very limited land and an economy based on tourism, the Maldives faces significant problems of waste disposal. This project seeks to replace haphazard dumping and burning of rubbish with proper waste disposal. There is little indication in the project description of whose land serves as dumping grounds, and what the tenure status is of the land on which the new waste disposal facility is built. These would appear to be critical issues in a more generalized approach to waste management in such a severely land-constrained nation.

Seychelles

Project 4.4 – *Building the capacity of artisanal shark fishers to participate fully and effectively in the Seychelles National Plan of Action for the Conservation and Management of Sharks*. This project seeks to enhance management of the open water shark fishery by involving fishers through the Artisanal Shark Association in the stock management of sharks in order to stabilize the fishery into a sustainable source of livelihood. There is no indication in the documentation of the extent to which the Association has exclusive rights to manage the fishing grounds under common property arrangements, or the extent to which this is an open access resource that would require the Association to work with a much wider set of stakeholders.

Sri Lanka

Project 5.2 – *Coastal planting on Hadijar Beach*. This project seeks to re-establish coastal vegetation through reforestation of an area damaged by a cyclone and later by the 2004 tsunami. It has run into problems including an order by the urban council to remove protective covers on the vegetation. There is little in the project description that details rights of jurisdiction over the area in question, suggesting that ambiguity of tenure and associated arrangements governing the rights to manage may be behind some of the project's challenges.

Thailand

Project 6.5 – *Participatory rehabilitation and conservation of aquatic habitats at Mae Nang Khao*. This project involves mangrove reforestation and enhancement of the local fishery through juvenile fish release and control of destructive fishing methods. Interestingly, while tenure arrangements are referred to in the form of encroachment on national forest reserve for rubber cultivation, illegal logging and hunting in nearby hill areas, there is no mention of the tenure status of the main targeted area of the project itself. Areas of the mangrove environment have been zoned as juvenile fish habitat and community forest (presumably for sustainable extractive use), but there is no detail of the property rights or tenure security that allow such an area to be managed sustainably and to be protected from future encroachment.

Country experience

In the process of developing the current strategy, MFF country coordinators and other staff have provided synopses of, and key examples of, property rights and resource tenure issues in their respective countries that impact on communities' access to and management of their resources. The following extracts from the materials provided are exemplary rather than comprehensive. They are intended to ground the strategy, and they also demonstrate both commonalities between the country cases as well as a need for the strategy to be adaptive to specific country circumstances. Appendix 1 contains the full versions of materials provided by the country coordinators and other staff.

Bangladesh

The dynamic nature of the coastal zone complicates tenure issues in Bangladesh. Accretion of land, hence the creation of new cultivable land in a land-short and heavily populated country, sets up a tension between smallholders and state agencies, the latter of which have laid formal claim to newly accreted land for afforestation. More recently, a portion of such land has been reserved for allocation to smallholders. However, the benefits to the rural poor are attenuated by the grabbing of land by local elites, often using the landless poor as fronts in various forms of shareholding relationships.

Highly unequal social relations also lie behind higher value uses of coastal land by hotels, prawn farmers and others. Wealthier elites also tend to get prior access to fisheries licenses. The questions of resource tenure in Bangladesh thus go beyond issues of community versus state agency jurisdiction, and coastal projects need to take careful account of the social and economic relations that determine control over and access to land and other coastal resources.

India

A case study from Kerala (Damodaran, 2003) reviews the implications of the establishment of a State administered Coastal Regulation Zone (CRZ) in response to a notification under the 1991 Environmental Protection Act. Intended to strengthen conservation and sustainable use of resources in this zone, and despite basic acknowledgment of customary practices, the new regulation nevertheless replaced traditional property rights and customary resource tenure arrangements that had been based on longstanding practice, strengthened by traditional belief. In the context of rapidly growing pressures including population growth, incursion of trawlers and tourism development, there has been a breakdown of management and a severe decline in fish catches by smaller operators, in part explicable by the vacuum created by incursion of formal tenure arrangements that cannot be enforced, replacing functioning customary arrangements. Furthermore, planting of coastal forests in the absence of customary rights to collect wood has distanced conservation activities from the longstanding local communities. This is a case in point of the need to recognize, as the study emphasizes at its outset, that “Environment management plans for coastal zone areas need to be sensitive to the dynamics of property rights regimes” (ibid. p2). Another study in the same State finds that the major problem is not with the tenure reform *per se*, but rather with its centralized and hence one-size-fits-all nature. The study shows that bottom-up panchayat-specific attention to appropriate property rights provides the flexibility to adapt to local livelihood needs and socio-economic conditions (Ramachandran, Enserink, & Balchand, 2005).

A highly relevant report on coastal land rights in India states, and goes on to demonstrate, that “there are very clear linkages between the rights to the coast and the right to fish as without the former, the latter will be difficult to operationalise and eventually rendered meaningless” (Rodriguez, 2010: 3). More generally, the report shows how closely complex access arrangements to coastal space, land and marine resources are connected with livelihoods, how these have traditionally been governed by caste-specific arrangements not recognised by law, and ways in which these arrangements have been undermined by legislation such as CRZ through top-down formalization of exclusive rights to use and manage. The report is particularly helpful in demonstrating the relevance of coastal space for fishing-based livelihoods, and the necessity of access to the shoreline for livelihood, social and cultural needs of coastal communities. The report recommends that, “the State has to recognize the rights of the fishing community to access and use of beach space, as well as regulate the entry of external actors” (ibid. p32).

A study in Orissa shows that landlessness is particularly acute in coastal areas, indeed more so than in scheduled caste areas in the hinterland (United Nations Development Program, 2008). In part this is due to land conversion for non-agricultural purposes, in particular by wealthier and more powerful groups.

In sum, the intensification of coastal fisheries and use of coastal land for diverse purposes including tourism, port and industrial (especially energy) development has occurred under a legislative regime that provides weak protection for rural communities along the coast, affecting the poorest and most vulnerable groups the most. This has been well recognized in public discourse in India for some years, but there is still a great deal of scope for strengthening and innovating local institutions to ensure that access to resources is governed in more sustainable and equitable ways.

Pakistan

The coastal province of Balochistan faces numerous issues relevant to property rights and resource tenure. Intensified use of the coastal zone, and associated competition for coastal resource exist in a situation of considerable ambiguity over rights to resources. Mangroves are governed by under State authority, but unlike other forests, there is no clear demarcation between State and Protected status. At the same time, poorer members of coastal communities depend on mangroves for numerous livelihood benefits.

Competition for the coastal zone is particularly severe in areas designated for exclusive Middle-Eastern luxury developments and for Pakistan military recreational use, which involve complete alienation of sections of the coastal fringe from local communities. Elsewhere the alienation is more subtle, for example where low-key tourism development brings in outsiders, which in the cultural context of rural Pakistan then restricts local women from engaging in shared use of beach space for livelihood purposes.

There are also transboundary issues where fishers have been imprisoned in neighbouring countries for incursion into coastal waters, in part due to vague demarcation. Scarcity of fresh water in the coastal zone intensifies with population growth and tourism developments. Land and coastal space are increasingly a source of competition.

A bewildering array of legislation governs access to resources in the coastal zone, and these are superimposed on complex and locally specific customary arrangements. A priority is the study of, and building awareness of, the tenure and property rights issues governing sustainable and equitable use of the coastal zone, both among local level project managers and at the policy level.

Seychelles

In the Seychelles, there are two key resource tenure issues. First is the blocking off of access to beach space by tourism and residential investments. In the absence of a public access law, this severely restricts the ability of nearby communities to pursue livelihoods and to enjoy their traditional uninterrupted access to the sea.

The second key issue is the open access nature of the inshore fishing areas, leading to overexploitation and decline in the resource. The exception is in protected areas, which are quite strictly enforced. However, even the establishment of marine parks appears to be driven more by the potential tourist dollar than by conservation- or socially-driven concerns.

In contrast to other country cases, the solutions in this relatively affluent MFF member state appear to be at the legislative level rather than in seeking to (re)establish some form of customary or locally specific tenure. This means that solutions are likely to involve engagement at the national policy level, on potentially quite politically sensitive issues.

Sri Lanka

Sri Lanka has a National Strategy and Action Plan (NSAP) that already recognizes property rights issues at the national policy level. The NSAP is particularly explicit on the need to give attention to common property and common pool resources, which are important in terms of equity, giving access to non-private natural resources to the rural poor, and sustainability, in providing the basis for management regimes geared around local and often customary-based management. These regimes are particularly relevant in barrier-built and estuarine lagoons, whose semi-enclosed space can be associated with a defined set of surrounding communities.

A specific context of Sri Lanka is its post-conflict status, which means that it is especially important to avoid exacerbating conflict and hardship among the most vulnerable groups. It should be noted that traditional fishery rights exist in brush-pile, stake seine and beach seine fisheries. It is important to recognize such customary access rules.

The NSAP took the position that neo-liberal property rights interventions that seek to promote economic efficiency through privatizing hitherto common-pool resources are likely to adversely affect the livelihoods of women and the rural poor, and to exacerbate conflict. A rights-based approach is adopted, predicated on the importance of access to fisheries, in particular for the diet of the rural poor. This is a clear example of where a narrow approach to property rights based on individualized title conflicts with more inclusive tenure arrangements.

Similarly, many problems arise from the long-term leasing of crown land for unsustainable activity, notably shrimp farming. Even when abandoned, the tenure status of such farms makes restoration of natural habitats problematic under the terms of the lease agreements. Enforcement of the terms of the agreements appears weak, for example in the unregulated conversion of abandoned shrimp farms into salt pans.

Thailand

The 1997 Constitution, and its 2007 replacement, guarantees the rights of communities to participate in the management of natural resources, but it stops short of recognising land rights, for example to indigenous communities. Community forestry has been the main thrust of projects in Thailand with respect to resource tenure. Although there is no legislation providing for communal tenure over forests, and the Community Forest Bill has been debated for more than 20 years, in a number of situations *de facto* agreements have been negotiated whereby local communities assume the responsibilities to manage and the rights to use certain non-timber products from mangroves and other coastal forests. Pred Nai in eastern Thailand is one outstanding such example in Thailand (Fisher, Maginnis, Jackson, Barrow, & Jeanrenaud, 2008: 46-52). Mangroves at Pred Nai are owned by the state, managed under community-based arrangements, and claimed by private owners on conversion to shrimp farms. Tacit arrangements for management of rehabilitated mangroves in areas of abandoned shrimp ponds exist in absence of secure, legally recognised tenure.

In the case of fisheries, the number of departments involved make such agreements difficult to achieve. These include Department of Fisheries, Department of National Parks, Wildlife and Plant Conservation, and Department of Coastal and Marine Resources.

There is widespread awareness of community rights issues among the general public, NGOs and government agencies. However, the lack of relevant legislation for community-based tenure makes it difficult for government partners on the NCB to sign on to a strategy that enshrines such rights. The present state of collaborative planning- rather than tenure-based governance of resources under community-based coastal ecosystem management arrangements usually requires place-specific agreements and is based on zoning areas for use, conservation and protection.

Vietnam

Resettlement of mangrove dwelling households/communities has generated conflict in many parts of the Mekong Delta fringe where households have claimed traditional rights that are not recognised by the state, and hence are uncompensated. This happened, for example, during the World Bank supported Coastal Reforestation Program in Soc Trang.

Tenure ambiguities and irregularities are specific to the post-socialist land allocation process in Vietnam, and especially the 1993 Land Law. Land is allocated in association with designated uses, but the capacity to monitor and enforce those uses is limited. In coastal areas, vested interests of tourism operators, shrimp farmers and others can lead to rights being allocated to more powerful at the expense of less powerful players.

Many poor families rely on collection of clams, crabs and other products outside the flood protection dykes, where tenure is most ambiguous. Given the upheavals in land and resource tenure arrangements in Vietnam's recent history, it is problematic to talk of customary practice and tenure arrangements, but nevertheless there is in many places a significant gap between formal regulations and existing resource practices.

Regional experience

Existing MFF project sites include shared fisheries in the Gulf of Mannar between Sri Lanka and India, and potential future sites include coastal boundary issues in the Gulf of Tonkin between Vietnam and China. Indeed, with the accession of Cambodia and Myanmar to the MFF partnership, MFF countries now include the entire coastline from the Iran-Pakistan border to the Vietnam-China border, with the exception of Malaysia and Singapore. This means that there are many potential coastal boundary resource sharing and management sites to consider. A particularly tricky issue is where the shared resource in question involves different country jurisdictions and where one jurisdiction is more protection-oriented and the other is geared to promoting the interests of industrial fisheries. In such a situation, MFF policy influence at the top level through National Coordinating Bodies rather than limiting intervention to the local project level may be the more relevant course of action. Given the several shared seas in the region shared by MFF countries, such as Gulf of Mannar, Palk Bay, Gulf of Thailand, Gulf of Tonkin and Bay of Bengal, reference to regional agreements may be required.

Thematic synopsis: ecosystem-specific issues

MFF is concerned with mangroves, but also with other coastal ecosystems including other wetlands, coral reefs, seagrass beds, beaches, estuaries and lagoons. Each of these ecosystems is subject to a range of formal and informal, demarcated and overlapping property rights and resource tenure arrangements that determine access, rights and responsibilities of management. The following are some of the property rights and resource tenure issues pertinent to each ecosystem.

Mangroves and other wetlands

Mangroves and wetlands sometimes fall under the jurisdiction of forestry departments, sometimes fisheries departments, and sometimes remain under ambiguous tenure. Reclamation for shrimp farming or hotel construction converts the tenure status of such lands into individualized private property, sometimes but far from always with state-recognised land title. The high market value of such land can be a major obstacle to its rehabilitation as mangroves.

Coral reefs and seagrass beds

The seabed is usually under the jurisdiction of marine protection or fisheries agencies. The economic value of these environmentally significant areas – hence their status as a resource – is often in the form of a positive externality associated with environmental services, for example in the tourism attraction and protective role played by reefs, or the fisheries habitat provided by seagrass beds. This means that their exploitation or degradation in open access circumstances often leads to impacts on others than those immediately benefiting from exploiting or degrading the resource. Nevertheless, there is scope for co-management of these resources even where tenure remains with state agencies.

Beaches

The multiple benefits of beaches, combined with their often ambiguous tenure status, makes them a particularly rife area for conflict and overlapping claims to rights of use and access. There is a tendency for tourism enterprises to restrict access to, and sometimes along, beaches, even when the beaches themselves nominally remain public land. The importance of beaches in many places to artisanal fishers is rarely enshrined in formal rights of access. Traditionally, beachfront land would have been of lower value than cropland or orchards set back from the beach, and in many parts of the coastline investors have acquired private property rights in beachfront land quite inexpensively from local landholders at early stages in the tourism development process.

Estuaries and lagoons

There is often little formal difference in tenure of estuaries and lagoons – i.e. semi-enclosed seaspaces – from more open waters. Yet, in many parts of the coastline, use of such water bodies for fishing is associated with surrounding communities, often with customary rights and practices that have sustained the fishery for a defined group. With investment in coastal businesses, the formal status of lagoons as state territory has usurped such customary practices, leaving open the question of ownership of the lagoons themselves and their littoral, raising implications for the security of investment in restoration projects.

Toward a property rights and resource tenure strategy in Phase 3

This strategy seeks to insert property rights and tenure at the heart of MFF work in Phase 3. It seeks to achieve context-specific solutions to dealing with the issues and enhancing the projects and programs referred to above. It does not seek to impose a one-size-fits-all solution. Certain core principles apply, notably the equitable

access to coastal land, space and natural resources in pursuit of sustainable livelihoods, and an approach that seeks to replace conflict over resources with their cooperative use, conservation and management. But beyond this, the key to the strategy is to adapt and apply solutions that are based in the needs and possibilities of the diverse localities and countries where MFF works.

In order to mainstream the strategy, this section seeks to dovetail its structure with the MFF Programs of Work and with the main Phase 3 approach.

Property rights and resource tenure in the MFF Programs of Work

MFF operates through 15 programs of work, under three main headings: application of knowledge, empowerment of civil society and enhancement of governance. All three of these areas require careful consideration with regard to property rights and resource tenure.

- Application of knowledge requires a deepened awareness about, understanding of, and ideas on how to apply property rights and resource tenure innovations or to ensure that investments work with the knowledge of how distribution of benefits are shaped by existing ways in which access to resources is conditioned.
- Civil society empowerment requires an understanding of non-state elements of resource tenure, including customary rights and practices, together with the potential for autonomous innovation in co-management around common-pool resources.
- Enhanced governance requires transparency and reduced ambiguity in the rights of access to land and other resources by the poor as well as the better off, local communities as well as external investors.

More specifically, ways in which the five programs of work under each of these headings may take on board property rights and resource tenure include:

Apply knowledge	Empower civil society	Enhance governance
<p>1. <i>Improving knowledge management</i></p> <p>Eg enhancing training materials for coastal managers to raise awareness of property rights and tenure</p>	<p>6. <i>Promoting civil society engagement</i></p> <p>Eg marking out community fisheries and community forest access rights</p>	<p>11. <i>Supporting national coastal programs</i></p> <p>Eg clarifying jurisdictional responsibility of state agencies over coastal resources</p>
<p>2. <i>Designing sound coastal rehabilitation</i></p> <p>Eg ensuring that rehabilitation structures and ecosystems are managed with understanding of jurisdictional arrangements</p>	<p>7. <i>Building capacity for management</i></p> <p>Eg negotiation skills for formal recognition of customary tenure</p>	<p>12. <i>Strengthening integrated coastal planning</i></p> <p>Eg overlaying tenure and property rights maps on top of land use planning and zoning</p>
<p>3. <i>Adopting reef-to-ridge approaches</i></p> <p>Eg mapping out the complex tenure mix of resources and zones from</p>	<p>8. <i>Supporting environmentally sustainable livelihoods</i></p> <p>Eg associating community-based</p>	<p>13. <i>Contributing to marine protected areas</i></p> <p>Eg Establishing co-management of MPAs by prioritizing rights of limited</p>

reef to ridge	management with rights over common pool resources	harvest in buffer zone
4. <i>Integrating economic valuation</i> Eg incorporating externalities, in PES programs, requiring knowledge of rights of use and access of the resource and of areas impacted by its use	9. <i>Improving community resilience</i> Eg incorporating tenure arrangements into land and resource use zoning exercises at community level	14. <i>Promoting management assessment and monitoring</i> Eg assignment of participatory monitoring role and responsibility to individual/joint owners of resources/land areas in question
4. <i>Applying monitoring, learning and evaluation</i> Eg ensuring that MLE takes into account changes in rights of access associated with new activity	10. <i>Financing coastal conservation</i> Eg payment for environmental services initiatives, which require mapping of rights to receive payments based on tenure	15. <i>Encouraging sustainable business practices</i> Eg Incorporating right of access by local communities into business plans for coastal development

Regional and national governance

There are three elements to the strategy at national and regional levels of governance:

- Understanding the different national legal and policy contexts within which property rights and tenure systems operate and incorporating this understanding into program and project initiatives
- Seeking to influence national policy toward a regime more enabling of sustainable and equitable coastal livelihoods than at present
- Establishing transboundary resource governance arrangements that take into account the shared nature of coastal and marine resources

Incorporating legal and policy contexts

Rights and access to coastal land, space and other resources are governed significantly by a complex set of laws and policy on resource tenure. Moreover, enforcement of formal/legal resource tenure arrangements is quite variable within and between MFF countries. In some instances, a blind eye is turned to the activities of powerful elites. In others, poor smallholders are accommodated or tolerated, but often in conditions of extreme tenure insecurity. Each MFF country has its own specific set of issues with respect to its property rights and resource tenure framework. For example:

- In Thailand the land tenure system under the 1954 Land Code is highly bifurcated between individually registered plots, which can be bought, sold, mortgaged and inherited by their owners, and public land that is either managed as state land or is allocated on a non-permanent basis through various government departments such as the Agricultural Land Reform Office and the Royal Forest Department. There is no legal provision for community tenure, despite a push for community forest legislation that goes back more than 20 years.
- In Vietnam, the tenure arrangements are highly influenced by the post-socialist nature of the country's political economy. The 1993 Land Law saw recognition of the rights of individuals to use agricultural land, but under 20 year leases in the

case of annual cropland and 50 year leases on land to be used for perennials. At the same time, many areas that had previously been under collectivized management were leased out by commune authorities to individuals with good connections and/or capital to invest in various enterprises. Many coastal areas were converted from mangroves to shrimp farms under such arrangements.

- In both Sri Lanka and Cambodia, albeit in quite different ways, the post-conflict nature of the society has meant an upheaval in land ownership, yet in the case of Cambodia there is legal provision for recognition of community fisheries and community forest ownership and stewardship. On the other hand, the reality of such arrangements is that the more abundant resources tend to get allocated under concessions to more powerful players, and community tenure is over residual low-value resources.
- In India, the Coastal Regulation Zone saw the imposition of a Federal set of principles at the State and *panchayat* level, with implications for customary resource access arrangements.

These are just a few examples of highly complex country-specific ways in which the legal and policy framework conditions resource access. For the purposes of MFF Phase 3, the Secretariat should devise a template for documenting, comparing and monitoring tenure arrangements relevant to the coastal zone of MFF member countries.

Influencing national policy

As the country representations to the Strategy drafting process indicate (see Appendix 1 below), the national legal and policy environment sometimes places constraints on achieving coastal resilience, through MFF projects and more generally. As reaffirmed at the Management Committee meeting on 7 June 2013, MFF seeks to influence policy in support of sustainable and equitable livelihoods in coastal communities.

One of the hallmarks of MFF identified in MTR-2 is the grounded approach to influencing policy through drawing of experience from local projects. To date, much of the experience drawn has been at the technical or governance level. There is a great deal of property rights- and resource tenure- relevant experience to be gleaned from local projects, and the National Coordinating Bodies should be in a position to address relevant policy areas based on documentation and analysis of such experience.

Enhancing transboundary resource governance

As MFF builds up a regional cooperative role, it should seek to engage with transboundary resource demarcation issues involved in regional cooperation on shared resources. These include issues specific to sea nomads whose livelihoods are based on resources that are not exclusive to any one national jurisdiction.

In most cases, transboundary issues will be dealt with at a bilateral level, for example in the Gulf of Mannar or, as China enters the MFF framework as a dialogue partner, in the Gulf of Tonkin. Additionally, there is scope for engaging with ASEAN and other institutional arrangements for regional cooperation, but in the first instance the emphasis should be on case- and place-specific questions of overlapping jurisdiction rather than on overarching paper-based agreements.

Project grants

MFF should develop guidelines for assessing the potential for project proposals to contribute to livelihood benefit flows and sustainability, and hence to coastal resilience, as filtered through access and exclusion issues inherent in property rights

and resource tenure arrangements at project sites. The guidelines should be developed in the form of a set of questions for project proposal screening, which in turn will inform the guidelines given to project proponents.

Similarly, considerations of access and exclusion will also provide an enhanced framework for monitoring, learning from and evaluation of projects (MLE). By so doing, this component of the strategy is designed to enhance evaluation of project proposals and management of projects in a manner that is sensitive to the property rights and resource tenure issues that are likely to shape benefit streams and sustainability of particular initiatives.

Capacity development

MFF should build understanding and awareness of social dimensions of MFF projects through questions of access in the form of property rights and resource tenure arrangements, and by drawing attention to the institutional underpinning of coastal rehabilitation. This should include a compulsory module on coastal property rights and resource tenure in the postgraduate certificate program in integrated coastal management supported at AIT, and potentially at other higher education institutions. At the same time, universities with a strong social science grounding can be brought in to help resource the program. The program can draw on existing social science networks with interest in property rights and resource tenure, and can work toward a specifically coastal approach to resource tenure research and training in the region.

Case studies for the module should be drawn from the accumulated experience – including both successes and challenges – of the MFF small grants program. Ideally there should be a strong field-based component in such a module. The module should include principles and concepts of property rights and resource tenure as well as case-specific examples.

Knowledge management

In addition to the university-based module, MFF should develop a toolkit for practitioners and policy makers on property rights and resource tenure. This should be a core component of the MFF knowledge base. The toolkit may contain materials oriented at different actors. At the local level, an advocacy-oriented kit needs to be adapted to context and made available in local languages. At the project management and policy levels, English may suffice, but even here national language materials are likely to be more effective.

Private sector partnerships

Property rights are an important prerequisite for private sector investment in coastal projects. At the same time, the potential for exclusion of local communities through such investments means that attention to resource tenure issues requires delicate consultation and negotiation with private sector actors. MTR-2 recommended MFF to involve the private sector not only in financial support for coastal projects, but also in improved practice in the spirit of corporate social responsibility (see Recommendation 20). If MFF-3 is to live up to this recommendation, then attention needs to be paid to issues including shared access and shared benefits from activities such as tourism and mining that derive from understanding of pre-existing rights and access arrangements.

MFF should work toward documenting specific cases to suggest ways in which private sector engagement can be enhanced by attention to access issues framed by clear property rights and resource tenure arrangements. In particular, principles of Corporate Social Responsibility should be employed in cooperation with progressive

businesses to provide exemplary cases of cooperation geared at shared access to the coast in areas where exclusion has become an issue of concern.

Implementing the strategy

In order for the strategy to be mainstreamed, it needs to be implemented within the MFF program framework. This involves at least three prongs that should help shape the work of Phase 3 on property rights and resource tenure.

Building expertise at MFF Secretariat

In order to deal with the complex legal, cultural and social issues associated with property rights and resource tenure, MFF-S needs to develop both in-house expertise and access to a professional advisory cohort, the latter either from within the MFF country teams, or externally, or through a combination of these. This can be seen as a type of MFF-“think-tank” on property rights and resource tenure, which in turn can integrate into the knowledge hub approach being pursued by MFF.

A useful place to start is by building awareness at various levels of MFF – Secretariat, NCBs and other project staff – of the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (Food and Agricultural Organisation of the United Nations, 2012). These guidelines have been promoted by G20, Rio+20 and the UN General Assembly, and they were endorsed in May 2012 by the World Council on Food Security. While international principles and guidelines clearly need to be adapted to the specific tenure conditions of coastal areas and further to the complexities of each country and local context, they provide an important set of principles for any investments in building coastal resilience aimed at enhancing sustainable and equitable use of resources.

Member country expertise: training national coordinators

National coordinators do not necessarily need to become experts in the complexities of property rights and resource tenure, but they do need:

- 1) to become better sensitized to the significance of such issues
- 2) to become familiar with legislative, institutional and cultural aspects of property rights and resource tenure in their own countries that are relevant to use, access and management of natural resources on which coastal livelihoods depend

Training in this area can be done in-house at MFF-S, by regional universities, through externally recruited specialists, or – and ideally – through a combination of these.

Linking with existing initiatives and networks

In many MFF countries, property rights and resource tenure are subjects of long-standing discussion, debate, policy dialogue and sometimes conflict. Various scholarly and civil society networks exist within and between the countries in question. These include networks associated with regional organisations such as RECOFTC and World Fish, various university-based networks such as the scholarly Asia Resource Tenure Network, grassroots campaigns such as SEAFish for Justice, and more livelihoods-oriented networks such as the Asian Fisheries Livelihoods Network. MFF should identify and tap into these academic and advocacy networks to enhance the capacity of MFF projects and policy initiatives in dealing with, or advocating in relation to, these issues.

Conducting detailed country-specific and regional studies of property rights and resource tenure issues relevant to MFF work

This strategy has been compiled by a single author over a very limited timeframe and has been based largely on review of relevant documentation. In order to achieve a more robust and country-specific understanding of property rights and resource tenure issues *in situ*, MFF should in Phase 3 undertake more in-depth and field-based/project-specific analysis of such issues. Careful documentation of findings will feed back into the training and knowledge hub/think-tank elements of the strategy referred to above.

Appendix 1: Country input

NCB/Country expert summary of issues and cases

In order to ground the strategy, it has been most helpful to have NCB- or expert-provided summaries of key property rights and resource issues exemplified by local examples in six of the MFF countries for input into the strategy. In some cases, the respective countries have provided a list of relevant legislation on coastal land, fisheries, forest and water tenure.

Country responses

The country responses are provided verbatim below (with minor editing for typographical errors in some cases)

Bangladesh

Land rights issues

- a. **Newly accreted land (lands not more than 20 years old):** This according to the policy is bestowed upon the forest department for afforestation. If anyone starts living in these lands (only desperate ones dare so considering the harsh living condition) or extracts resources from it, s/he is regarded as an encroacher as per law.
However, after 20 years, 50% of this land is notified as reserve forest and the remaining 50% goes to the land ministry as public land which then can be distributed to the people as per the regulations.
When a private land is eroded by river or sea and later on accreted, it goes under the jurisdiction of the forest department or the land ministry. It then can be leased out to individuals who might not necessarily be the previous land owner. In this process, hereditary rights over land is often lost. For example, in Mirashwarai (Chittagong), after the construction of the Dam under the Muhuri project, huge land has been recovered which was previously eroded. This land has been grabbed by local elites and influential by disregarding the hereditary land rights of many families.
- b. **Reserved and notified forest:** This is also public land but classified as reserved forest under the jurisdiction of the forest department. No land rights in this area are given to anyone. However, there are examples of people living in such areas (i.e. Nijhum Dwip National Park, Char Kukri Mukri Wildlife sanctuary) is evident. Even, local government unit (Union parishad) exist in these areas. This leads to conflict of interest regarding land rights between the community and forest department and conflict of jurisdiction between the forest department and the local government division. These inhabitants are often settled in these lands by the land grabbers and local elites and in return they give them share of the crop produced by them. These inhabitants are alleged of encroaching and denuding forest lands for agriculture.
- c. **Embankment/coastal Polders:** Bangladesh Water Development Board (BWDB) built coastal embankment polders to protect agricultural lands from surges and salinity ingress. These polders and adjacent public land comes under the jurisdiction of BWDB. Many landless and displaced (due to erosion, surges and other social reasons) people took refuge in these lands and have

settled there. They are regarded as illegal settlers. However, not very often these people are evacuated from these lands.

- d. **Khash land**: Khash land is public land including plain land, rivers, estuary, canal, wetlands, mudflats, beach, sand dunes etc. According to the policy and acts, these lands are required to be leased amongst the landless and marginal portion of the population in terms of asset and income. In practice, local influential and elites take the chance through corruption. Leasing is not transferrable but often it is transferred informally. Often the lease holder appoints a farmer to cultivate the land; the farmer who cultivates the land gets only a share of the produced crop. In other cases the land is subleased off the record by the lease holder.

Canals, wetlands, beach and other common pool resource lands are not to be leased to individual or private vested groups according to the law and policy. But these are often found out to be leased out in favor of individuals for agricultural, fisheries and industrial purposes; this caused loss for dependent resource user communities.

Leasing out canals has caused both freshwater crisis for agriculture and water logging in many areas of South west coast (Satkhira, Khulna, Bagerhat etc). Leasing out beaches and sand dunes for building hotels and shipyards has posed threat to coastal ecosystems and communities in the south east coast (Chittagong and Cox's Bazar).

- e. **Private land**: Private land owners have the full land right over there lands except anything that may harm the environment (i.e. cutting hills is banned, extracting sand and clay is governed by management rules and acts etc).

Resource right issues

Non-timber forest products (NTFP): Forest department issues seasonal permits for NTFP collection (usually for 2 months) from the reserved forest including the Sundarbans. Other than that, revenue from the gate pass issued for tourists is also considered as NTFP revenue. For selected protected areas inside the reserved forest (Sundarbans wildlife sanctuaries, Chuanti and Fashiakhali wildlife sanctuaries etc), this revenue is to be shared with the community through co-management committees (CMCs). This mechanism is absent for some protected areas in the coast i.e. Nijhum Dwip National Park, Char Kukri Mukri Wildlife Sanctuary, Kuakata National Park, Inani National Park, Teknaf Wildlife Sanctuary etc where substantial conflict of interest exists between the forest department and the community.

Outside the legal extraction of resources, forest dependent community members extract resources illegally subject to law enforcement by the forest department and the coast guard.

There also is some restriction on the resource extraction in the ecologically critical areas (ECAs) including the 10 Km buffer outside the Sundarbans, Saint Martin's Island, Teknaf Peninsula, Sonadia Island and Cox's Bazar Sea Beach. But the associated rights and its limits are not clearly defined in the Environmental Conservation Act and any management of the ECAs is factually absent.

Fish catch: License for mechanized and non-mechanized boats and trawlers is given by the department of fisheries (DOF); this license is often enjoyed by the rich men in fisheries business and not by the fisher community. The fishers sell their labor to the boat owners who also bear fuel, net and other related costs; fishers do not get share of the fish catch. They are bound to give all the caught fish to the license holder/financer. This fish is often underpriced and miscalculated to exploit and discriminate with the fishers. There is no monitoring system to ensure their rights.

Inside Sundarbans, fish catch permit is given by the forest department (FD). Fry and shrimp PL collection is banned throughout the coast. But huge number of marginal people collect and sell shrimp PL for their livelihoods.

Timber: Under the social forestry rules, selected beneficiaries of from the communities can plant and look after trees and plants inside the reserved forest area. Timber from these plantations is shared with the community once the full rotation period of trees (for felling) is complete.

Coastal Space: Coastal space is a common public property. There has been cases of leasing out spaces for Hotels and ship yards restricting access for the public. Sometimes it opens opportunities for local communities for livelihoods in tourism (working as tourist guides and selling local products etc). For the inhabitants who do not have stake in tourism business lose their rights in this space without any return. Public right over coastal space is often sacrificed for individual or company profit. Such allocations are not based on local level consultation with the community and citizens.

Such cases are found in Cox's Bazar, Chittagong and Patuakhali Districts for example. Construction of hotels in the Cox's Bazar ECA has in some cases caused erosion and pollution in the beaches.

Salt and Shrimp: Salt and Shrimp cultivation in public lands has caused loss of mangroves and adjacent freshwater dependent agriculture and fishery. Second largest mangrove of the country (Chokoria Sundarban, Cox's Bazar) and associate ecosystem services has been lost due to this reason.

Relevant policy, act, rules etc.

- National Land Use Policy 2001
- Bangladesh Forest Policy 1994 amended in 2002
- National Environment Policy 1992
- Environmental Conservation Act 2010
- Environmentally Critical Area Rules (Draft)
- THE SAIRAT MAHALS (MANAGEMENT) ORDINANCE, 1959
- Balu Mohal and Mati Management Rules, 2011 (Sand and Soil Management Rules)
- Sand and Soil Law-2010
- Salt Mohal Management Policy
- Social Forestry Rules
- Co-management committee gazette notifications
- Draft Rules for Protected Areas under the wildlife conservation act

Relevant projects and initiatives

- Strengthening Access to Land and Property Rights to all Citizens of Bangladesh (July 2011-June 2015) (Ministry of Land)
- Coastal Land Zoning Project (July 2006- December 2011) (Ministry of Land)
- Char Development and Settlement Project Phase IV (2011-17) (Phases I-III completed by 2010)(Multi Agency-ongoing; supported by Netherlands)
- Coastal Afforestation Project (Forest Department)
- Coastal Greenbelt Project (Forest Department)
- Sundarbans Environment and Livelihoods Security (SEALS) Project (EU-Forest department-ongoing)
- Nishorgo Support Project (USAID-forest department-completed)

- Integrated Protected Area Co-management (IPAC) Project (USAID-forest department-completed)
- Climate Resilient Environment and Livelihoods (CREL) project (USAID-Wincrock-ongoing)
- Community Based Adaptation to Climate Change through Coastal Afforestation project (UNDP-Forest department-ongoing)
- Community based adaptation in the Ecologically Critical Area (Department of Environment-UNDP-ongoing)
- Coastal and Wetland Biodiversity Management Project (UNDP & Department of Environment-completed)
- Regional Fisheries and Livestock development component of Agricultural support project (ongoing-Danida)

This has been prepared in consultation with the NCB Members.

Title	Comments on coastal property rights and resource tenure issues in Bangladesh
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India

Inputs of National Coordinator MFF (India) for the strategy to include Property and Tenure Rights issues

The need to preserve and where necessary revive the systems and mechanisms by which the property rights and resource tenures of traditional coastal communities are maintained has been acknowledged as being key to the long-term coastal environmental security. This is so as these systems/mechanisms play the mediating role between population changes (and in many cases significant migration) and changes in coastal land use and its related and sometimes long-term environmental outcomes of the area in discussion.

The discourse in India on these issues dates back to 1980's and not surprisingly its initial focus was on inland areas that have been brought under protection and

dominated by the ethnic local communities (tribals). Since early 2000 and particularly after the Tsunami of 2004, these issues have been discussed in greater detail with reference to coastal communities. It is noteworthy that these issues have been covered under the CRZ (Coastal Regulation Zone) Notification of 1991 and further elaborated in the revised Notification of 2010. It is worth mentioning that this CRZ notification/Act is the only one that mentions the customary rights of fishing communities to coastal land. However the act fell short of in ways to establish these rights. Further the act was more protective in nature. Additionally, its interpretation and implementation has been very weak or completely absent.

The State Marine Fishing Regulatory Acts were more regulatory in nature with a focus more on production than on management (a more recent focus). Here again its implementation are not encouraging.

It is in my opinion that to understand the current challenges that the country faces, it is necessary to examine at least over the last five decades the history of fishery and related development along the coasts (both intricately connected and with implications on the rights to local communities). The fishing communities prior to independence, practised fishing for their subsistence and almost exclusively using traditional fish crafts and gears. While they did not have legal documents over their coastal land, their traditional rights were not questioned. With the onset of modernization programmes introduced by the Government of India across the country there has been a significant change in these traditional crafts and gears and also introducing high end mechanised boats leading to greater fish harvest.

There has been a phenomenal growth in marine fisheries in India during the last five decades, both in terms of quantity and quality. From a low of 373 000 tonnes (1947 to 1948) the marine fish production stood at around 2 778 000 tonnes between 2004 - 2005. This is entirely attributable to technological improvements made to fishing craft, the introduction of new fishing technologies, an increase in fishing efforts and the extension of fishing into relatively deeper regions.

It would be fair to say that currently the conflicts over fish resources are largely between categories of fishers (based on type of boat and gear and their targeted catch) and the failure of the State to regulate or achieve consensus on sharing of marine resources between these categories. However, the conflict over the coastal space is mostly between the traditional fishing communities with that of new interest groups viewing the coast as areas of development. With increasing in these conflicts, it is not rare to see communities being displaced from coastal areas or being displaced in the names of port development, hospitality industry or to meet the increasing power demands (building of nuclear reactors and other power plants).

I am attaching a couple of PDF documents that discuss these issues in detail.

The publication by Sudarshan Rodriguez (2010) titled *Claims for Survival: Coastal Land Rights of Fishing Communities* is a recent detailed critical analysis based on completed studies on coastal landuse by fishing communities and looks at the legal provisions for their rights.

The publication 'Coastal regulation zone rules in coastal panchayats (villages) of Kerala, India vis-a` -vis socio-economic impacts from the recently introduced peoples' participatory program for local self-governance and sustainable development' is an example from one Indian state one of how people led self governance can make change at the ground level.

Also attached is another publication on Kerala state looking at Sustainable coastal management

The attached UNDP document is a status report on landrights and ownership in state of Orissa and the issues on coast is also dealt in this document.

Pakistan

Comments on the Outline for the Draft Strategy - Property Rights and Resource Tenure Issues

We highly appreciate the efforts of Mangroves for Future (MFF) programme for initiating the work for formulation of strategy for proper rights and resource tenure issues. As we are aware of the fact that natural resources present in area are when subjected to use/exploitation, it leads to emergence of a number of conflicts. These vary in nature from property rights in the form of establishment of ownership to resource tenure in the shape of longevity of use. Coastal areas of Balochistan are rich in natural resources ranging from fish, mangrove to shrimp etc. These resources are being exploited both for consumptive and non-consumptive uses. It is here that conflicts/issues related to property and resource tenure rights are encountered. As pointed out by Andrew Wyatt, Balochistan coastal zone is also replete with such issues/conflicts related to ownership and further use of resources.

As far as Balochistan coast is concerned, issues of property right and resource tenure falls in all these categories identified in the strategy outline i.e. land, water, fisheries, space, tourism, forests and tree seed collection. Some of these are briefly highlighted here:

1. Mangrove Forests:

On Balochistan coast mangrove forests at most of areas are considered as government property and are protected by the Balochistan Forest and Wildlife Department. Use of mangrove forests is also regulated by the Government. However, unlike other inland forests, where forests have been declared as State or Protected by invoking the laws prevalent in different parts of the province, mangrove forests have not brought under one of the above mentioned categories. This has created problems over the use of forests by local communities for fodder, fuel wood and timber. Bringing the mangrove forests under one of the Government ownership categories helps in clearly defining the rights and privileges of different tribes and communities living in close surroundings of these forests. Due to ambiguity in the pattern of resource use, local communities members especially those communities having livestock are always at conflict with the Balochistan Forest and wildlife Department.

A similar conflict over the use of mangrove has also been observed between the coastal communities and nomads. Such issues pop up when nomadic people with their livestock come in the coastal areas and try to arrange fodder from the nearby forests. These types of issues are also results of the unclear rights for resource use. The nomads, while passing through the area understand, like other areas of province where they can graze and use the pasture while en route, they apply the same over here, which is resisted by the resident communities, who think that they carry the exclusive use right.

In Balochistan, however, the tribal set up and communal ownership of lands along the coast has to some extent helped in clarifying the property rights and tenure related issues. However, the flow of benefits here needs to be investigated to see whether poor in these communities is getting the same flow of benefits like other members or otherwise.

Besides the fodder, fuel wood and timber, in recent years, the collection of mangrove seeds has also emerge as bone of contention. BFWD as Government regulating agency is sure that it is her prerogative to collect and dispose of seeds as she deems fit. However, local communities claim that for years they are collecting the seeds and therefore they have got the right for collection

2. Land:

Land ownership in coastal areas of the province is pretty much clear. Lands are most private owned except in some cases where communal ownership also prevails. In case of private ownership, the rights of owner for the use and further subletting etc are very much clear. In some areas, where communal ownership of land is prevalent, although rights are clear for individual use of the property still the cases for subletting, management related to land are not very clear. In case of communal ownership, the tribes have got traditional system for making decision. In such system the decision made become binding and all the tribe members have to abide by the same. Here is it also important to point that in communal land ownership system; most of the times the tribal head has got the prerogative for making any decision regarding land and its use.

However, an important issue regarding the land and its tenure issue has been recently noted in one of the coastal areas of the province. Where individuals outside the community purchased a piece of land and developed it for the ecotourism by constructing tourist huts. This created issues for the local community, as the women now cannot freely roam around in the village because of the presence of outsiders. A conflict situation has emerged in the area, which has not been resolved yet.

3. Water:

Water in coastal areas of Balochistan is a very precious resource. As far as water rights are concerned, like other areas of the province, these are very much clear. In Balochistan water rights at the community or individual level are clear. At the community level, mostly water rights are decided on the watershed/catchments basis, while at the individual level, these are mostly related to the land where water source is located. In coastal areas of the province, where sweet/potable water is in very short supply, water, in most of the cases, is provided by the concerned Government agencies both for drinking and sanitation purposes. Construction of dams in the coastal areas of the province is in progress, the water from these would be distributed according to the land ownership in the catchments and downstream populations.

4. Eco-tourism:

Ecotourism is emerging as one of the important source of livelihoods in the coastal areas of the province. Although recently the security situation prevailing in the province has discouraged the flow of tourists in the province, still a large number of picnickers visit coastal areas during holidays. For ecotourism there are no defined rights for the site use. Besides the individuals coming for ecotourism are slowly emerging as nuisance for the other fellow users in the area. In the absence of properly defined rights for ecotourism, it is going to create conflict in near future. This area needs further exploration and work.

The strategy for property rights and resource tenure may take into account the above mentioned points. It is further suggested that as in Pakistan no such works have been conducted on the property rights and resource tenure in the coastal areas, therefore, it would be much more appropriate if a small study is conducted on this aspect which will also bring some other aspects into limelight.

A Summary of Property Rights and Resource Tenure Issues in Coastal Areas of Pakistan

Some of the relevant issues to be addressed in the proposed strategy framework are briefly described as follows:

1. Trans-boundary issues

Trans-boundary issues exist in fisheries sector along coastal areas of Pakistan bordering with India. With un-demarcated territorial boundaries in the coastal waters there have been number of incidences of fishers getting stranded in alien territory and getting arrested. In some cases, the fishers that trespass these territories have remained in prisons for years on both the sides with their families suffering severely. Sometimes, exchange release of fishers also occurs between the two countries.

2. Competing uses

The classic example of this issue is leasing of coastal islands along the Karachi coast to Dubai-based investors for building multistory residential complexes giving rise to protests by the local fisherfolks who have been traditionally using these islands for drying of their fish and establishing temporary hutments during fishing season. In other cases, Defence Authorities have established Officers' Clubs preventing access of local fisherfolks to the nearby creeks for fishing or navigate through them. Previously, these creeks have been traditional fishing grounds of the displaced fisherfolks.

The competing use of freshwater through upstream diversion for irrigation and power generation has led reduction in freshwater flows into the Indus Delta. This has led to the displacement of farmers cultivating red rice on mudflats due to increasing salinity and sea ingress, decrease in fish productivity, scarcity of drinking water in coastal areas and increasing poverty of coastal populace. The freshwater flows into the Indus Delta have been a matter of interprovincial disharmony and debate on sharing of water resources. Often, the decision-making processes fail take into account the concerns of coastal communities and negative impacts of such decisions upon them. Most recently, a top level decision has been made to develop a Dubai style mega city, namely Zulfiqarabad in coastal areas of Sindh province ignoring the social and ecological aspects of such a development.

3. Dominance of vested interests.

Lack of property rights has encouraged control of creeks by sea lords who employ harmful fishing nets and tools to over-exploit available fisheries resources negatively affecting artisanal fisheries due to reduction of fish stocks. In some cases, conflicts have been witnessed when fishing trawlers from Sindh province have entered into coastal waters of Balochistan province for fishing. As per constitution and local legislation, every citizen enjoys freedom of movement, residence throughout the country.

Camel grazing by sea nomads is another conflicting issue within and between coastal communities and forestry departments managing mangrove resources. The proposed property and resource tenure regimes should therefore clearly define incentives for various stakeholders engaged in participatory management of coastal resources.

Pollution from sewage flows from urban and industrial areas into coastal waters is another issue to be looked; as such an open dumping of pollutants has negative impacts on livelihoods of fishers using such waters. Could property rights be defined to address such issues?

4. Jurisdictional issues

This is in the case shrimp trawling in coastal waters of Pakistan wherein licensing to fish in state owned territorial waters is regulated by federal agencies but a lack of monitoring reportedly leads to such trawlers encroaching in provincial territorial jurisdictions.

5. Coastal spaces

In Pakistan, the coastal spaces, islands, beaches, mangroves forests, sea turtle nesting grounds are largely owned by the government agencies with jurisdictional overlaps. The communities living in these areas do not have legally owned rights over resources in these areas and are at the mercy of decisions of the respective government agencies, and often victims of ex-parte decisions made by policy makers and planners for development of such areas.

While it is the issues of property rights and resource tenure are widespread and complex in most of MFF countries, the proposed strategy should take into account the dominating conventional resource governance regimes while suggest the options to address such issues. For example, when we talk about co-management of coastal resources, there would be a need to suggest the ways and means to guarantee the mutual benefits for both the local communities and the government.

The implementation strategy shall consider sensitizing key coastal managers to these issues and identify clearly the benefits of formalized property rights and resource tenure arrangements. A useful option would be to create models for demonstration and learning within MFF countries.

Some of the prevalent issues specific to coastal area of Pakistan have been indicated above. However, an in-depth assessment of such issues may be required. A structured questionnaire for such an assessment may be a useful tool.

Finally, the definition of property rights (page 2 of the document) needs to be broadened to include other resources, such as fisheries, water, wildlife rather than restricting it to land only.

List of Laws Pertaining to Sindh Province

INTERNATIONAL LAWS:
MARPOL 73/78
United Nations Convention on the Law of the Sea (UNCLOS)

Convention on Biodiversity (CBD)
Convention on Wetlands of International Importance Especially as Waterfowl Habitat (RAMSAR CONVENTION)
Conventional on International Trade in Endangered Species of Wild Flora and Fauna (CITES)
The Indus Water Treaty, 1960
FEDERAL LAWS:
The Pakistan Environmental Protection Act, 1997
The West Pakistan Fisheries Ordinance, 1961
Exclusive Fishing Zone (Regulation of Fishing) Act, 1975 (amended, 1993)
Deep Sea Fishing Policy, 1995 (Amended in 2001)
Territorial Waters and Maritime Zones Act, 1976
Cutting of trees prohibition Act, 1992
Pollution Charge for Industry rules, 2001
Pakistan Maritime Shipping Act, 1974
Pakistan Environmental Protection Act 1997
Maritime Security Act, 1994
Pakistan Merchant Shipping Ordinance, 2001
Indus River System Authority Act, 1992
The Indus Water Accord , 1991
The Karachi Port Trust Ordinance, 1994
Karachi Fisheries Harbor Authority Ordinance, 1984

PROVINCIAL LAWS, SINDH
Sindh Fisheries Ordinance, 1980
Coastal Development Authority Sindh Act No. XXVII, 1994
Notification, 5th Dec. 1995 (ban on harmful nets by Govt. of Sindh)
Sindh Fisheries Amendment Act, 2010 and 2011
Sindh Wildlife Act 1972
Forest Act, 1927 (Sindh Forest Act)

List of Laws Pertaining to Balochistan Province

INTERNATIONAL LAWS:
MARPOL 73/78
United Nations Convention on the Law of the Sea (UNCLOS)
Convention on Biodiversity (CBD)
Convention on Wetlands of International Importance Especially as Waterfowl Habitat (RAMSAR CONVENTION)
Conventional on International Trade in Endangered Species of Wild Flora and Fauna (CITES)
FEDERAL LAWS:
The Pakistan Environmental Protection Act, 1997

The West Pakistan Fisheries Ordinance, 1961
Exclusive Fishing Zone (Regulation of Fishing) Act, 1975 (amended, 1993)
Deep Sea Fishing Policy, 1995 (Amended in 2001)
Territorial Waters and Maritime Zones Act, 1976
Cutting of trees prohibition Act, 1992
Ports Act 1908
Pollution Charge for Industry rules, 2001
Pakistan Maritime Shipping Act, 1974
Maritime Security Act, 1994
PROVINCIAL LAWS, BALUCHISTAN
Baluchistan Sea Fisheries Ordinance 1971
Baluchistan Sea Fisheries(Amendment) Act, 1971,1986 and 1992
Baluchistan Coastal Development Authority Act No. _ 1998 (amended 2003)
Gwadar Development Authority 2000
Balochistan Local Government Act 2001 (amended 2009)
Balochistan Wildlife Ordinance 1974
Forest Act, 1927

Seychelles

Comments from Lindy Bastienne

Kindly find some comments from Denis attached and in below email.

I have also compiled several other comments / feedback into the below paragraphs; I hope they can be useful for revising the strategy:

“The issues of property rights and resource tenure, as this document states, is very much tied up (in the Seychelles context) with local laws and far less with socially accepted concepts of entitlement. Resource tenure however is a far more complex issue here as with respect to maritime areas there is a general right of free access except in Protected Areas, while on land even 'State Land' is treated as being privately owned.

The document wants to set up a global strategy to incorporate these issues into MFF projects, based on lessons learned from previous and current projects, which is a laudable goal but we fear is going to be somewhat difficult to achieve.

While the document lists competition between tourism and property rights or tenure it does not really give any examples, this is probably the most relevant issue in the coastal context in Seychelles with public access to the beach and places of natural beauty being a very real issue as tourism concerns purchase more and more coastal land and effectively block public access to these areas. However, there is no 'right of access law' in Seychelles and so this proposed strategy is going to have to look at influencing the development of local legislation which brings the role of MFF much more into the political arena, which may be an option but may not be the desired route.

The issue of access to marine resources is also a fraught one in Seychelles: the 'Open Access' policy with respect to fishing has already caused declines in near-

shore fish stocks and fisheries legislation does not attempt to address private subsistence fishing practices. Industrial scale exploitation is covered by governmental legislation and parastatal organisations but these appear to focus more on financial profitability than any real attempt at governance of resource usage and the associated impacts. Again to enter this arena is to enter the political bull ring.

There are also discussions that established National Parks (marine parks areas) are more interested in money-making than the conservation interest”

Sri Lanka

Introduction

It is interesting that the Mangroves for the Future Programme (MFF) seeks to embark on an initiative directed at ‘property rights’ in the management of coastal ecosystems in Sri Lanka as a part of a programme encompassing all the other MFF member countries. However, it is difficult to get an idea of the core principles that would drive the intervention. In ecosystems one significant functional principle is the transition from competition to cooperation (mutualism) as these complex systems make adjustments within a pulsing paradigm of overarching environmental change processes. In the complex social-ecological systems that we are dealing with the parallel process of institutional change, specifically balanced law enforcement, that favours equitable sharing of resources, as opposed to competition (arguably leading to the tragedy of the commons) is evident. This is an area of intellectual discourse which is supported by a massive literature with clear insights (e.g. Ostrom).

The document captioned “Developing a strategy to address coastal property rights and resource tenure issues for MFF Phase 3 - Outline of the draft strategy for input into concept note” provides an opportunity to ensure that Sri Lanka is not lumped together with other member countries without respecting country-specific diversity. We are already aware of the ecosystem consequences of MFF having ignored country-specific diversity when it initially promoted mangrove planting as ‘bioshields’ in Sri Lanka in 2006 (see IUCN Sri Lanka 2011). The resulting chronic disasters are clearly evident today. It is assumed that MFF (Regional Body) has learnt a lesson from the unintended consequences of indiscriminate generalizations pertaining to coastal ecosystems across regions. A comparable situation must be deliberately avoided in regard to the ‘strategy to address property rights’. Implicitly, ‘strategy’ is understood to mean prioritization of problems and issues stemming therefrom. Such priorities can only be country-specific.

Sri Lanka NSAP – summary regarding property rights

The approach being considered is heartening since it is stated that *‘In order for the strategy to be well-grounded, it would be helpful to have an NCB-or expert-provided summary of key property rights and resource issues’*. Thereby it has the potential to provide information that could be useful to policy in individual countries since it promises to recognize regional diversity in regard to connotation of ‘property rights’. The expected summary is already available in the Sri Lanka NSAP (IUCN Sri Lanka 2009). Concerns regarding property rights are already included in the Sri Lanka’s *“The National Strategy and Action Plan”* (IUCN Sri Lanka 2009). The NSAP based on national consensus addresses aspects of the problem of property and tenure rights as it pertains to Sri Lanka. It is expected that the framework that is being developed by Philip Hirsch shall fully incorporate the concerns embodied in Sri Lanka’s NSAP. Two subsequent documents, again based on national consensus, the mangrove colloquium report (IUCN 2010) and the colloquium report on barrier-built estuaries and lagoons (Samarakoon and Samarawickreme 2012 – IUCN 2012) address some

property rights problems more specifically. Overall the conceptualization of 'property rights' for Sri Lanka's coastal ecosystems is firmly anchored to safeguarding the common pool/common property rights attributes. Of course, it would be highly desirable to have the relevant summary in the Sri Lanka NSAP updated by the NCB.

Sri Lanka's position regarding 'property rights'

Sri Lanka took the position in the NSAP, following several national technical consultations (which included the legal consultant to the Coastal Conservation Department), and guided by the technical literature as embodied, as an example, in the assessment by Meizen-Dick et al. (1997) that *"The widespread trend to privatize resources and to confer formal ownership of land, water or trees, which has been promoted as improving economic efficiency and reducing transaction costs, too often cuts off marginal users, and particularly restricted women's rights to resources. More flexible tenure arrangements are more likely to accommodate the needs of multiple users of resources"*. In Sri Lanka's post-conflict development context any measures stemming from property rights studies/interventions that may cut off segments of marginalized coastal resource users would be a fundamental violation of the national interest as it relates to peacebuilding and reconciliation.

Additionally the Sri Lanka's approach as reflected in the NSAP agrees with human rights based fisheries governance, since fish is the main contributor of animal protein in food security in the diet of coastal communities dependent directly and indirectly on coastal ecosystems for livelihood. They also rank among the poorest. In this regard I quote Allison et al. (2012) *"In the last twenty years, policy prescriptions for addressing the global crisis in fisheries have centered on strengthening fisheries governance through clarifying exclusive individual or community rights of access to fishery resources. With a focus on small-scale developing-country fisheries in particular, we argue that basing the case for fishery governance reform on assumed economic incentives for resource stewardship is insufficient when there are other sources of insecurity in people's lives that are unrelated to the state of fishery resources. We argue that more secure, less vulnerable fishers make more effective and motivated fishery managers in the context of participatory or rights-based fisheries governance, and we further suggest that insecurity among fishers living in poverty can be most effectively addressed by social and political development that invokes the existing legal framework supporting the Universal Declaration of Human Rights. This perspective goes well beyond the widely advocated notion of 'rights-based fishing' and aligns what fishery sector analysts call the 'rights-based approach' with the same terminology used in the context of international development. Embedding the fisheries governance challenge within a broader perspective of human rights enhances the chances of achieving both human development and resource sustainability outcomes in small-scale fisheries of developing countries."*

MFF foundation concept: coastal ecosystems as developmental infrastructure

Sri Lanka's NSAP was prepared based on the conviction that MFF was fully committed to its foundation concept, Viz. efficient management of coastal ecosystems as development infrastructure. National consensus for the NSAP was developed on the participants' understanding that MFF could positively contribute toward strengthening the capacity of the (then) Coastal Conservation Department (CCD) and associated agencies such as the Central Environmental Agency (CEA) and the Department of Fisheries and Aquatic Resources (DFAR) towards more effective law enforcement to safeguard public goods and services provided by coastal ecosystems. This was based on the recognition, among others, that Sri Lanka's coastal ecosystems that are directly and indirectly connected with aspects of food security (fisheries), and coastal risk possesses attributes (fundamentally geomorphological) only partially share attributes with the other participating countries

with expanding seafront deltas on which mangroves dominate. In Sri Lanka's micro-tidal, semi-enclosed environment where mangroves exist, expansion of the vegetation forces shrinkage/degradation of the aquatic habitat that supports fisheries, and aggravates impacts of flash floods. Therefore system-wide management is imperative within which 'various connotations of property rights' must find their place in a manner that neither contradict the sustainable sharing of common pool resources, nor decreases coastal resilience. A fundamental question arises.

Hirsch's framework for property rights includes many aspects that are relevant such as questions pertaining to 'what, where, how' across the MFF region. Therefore it is important to ask a 'why' question. Why has MFF shifted position from 'management of coastal ecosystems as development infrastructure' toward an intervention that seeks to identify generalizations pertaining to 'property rights' without any reference to 'sustainable management of coastal ecosystem-based public goods and services'. This distinction is very significant institutionally since the outcomes would differ:

- focusing simply on property rights may produce inferences that could legally strengthen the manner in which natural resources *'that belong to the many may be transferred toward ownership by the few'* in the name of economic efficiency.
- Focusing on coastal ecosystems as development infrastructure would lead to inferences that are connected to governance based on the *'use rights of the many being safeguarded from expropriation by the few'* in the name of developmental legitimacy.

Short-term versus long-term interventions

Significant divergence has occurred between the adoption of Sri Lanka's NSAP and the manner in which MFF-1 and MFF-2 priorities have shifted since then. This suggests that MFF (Regional Body) proceeds along its own priorities (oriented toward acquisition of funding for successive phases based on outcomes of small grant projects: short-term activities). Such short-term projects cannot be conducive toward management of structure and functioning of coastal ecosystems that have to draw on a knowledge and planning base of different dimensions. While they may or may not be in harmony with national priorities.

- It is understood that the proposed property rights intervention by MFF shall proceed from national consensus based findings embodied in the existing documents.

This is implicit since the MFF intervention is funded by funds received from outside of Sri Lanka for which MFF/IUCN Sri Lanka cannot be held accountable. The NSC is the sole filtering mechanism available to ensure that the intervention is in harmony with the national interest. This is a concern that has been already addressed in a memorandum already discussed at the NSC. In this context new interventions on property rights must be anchored in existing national consensus, and adequate governance mechanisms that include all stakeholders in the diverse coastal ecosystems in Sri Lanka in a site-specific manner. This is indispensable since MFF is oriented toward promoting ICM, and ICM becomes **meaningful and fair** when it is implemented in keeping with site-specific governance requirements.

Extract from Sri Lanka's NSAP

Table 1. Extract from the NSAP (IUCN 2009). Selected policies, actions/outputs in relation to programme of work and relations to property and tenure rights .

The extracts of policies and actions from the NSAP acquire greater meaning in the context of the total texts where trends of coastal resource use trends were examined at national workshops and consultations with experts and stakeholders workshops.

This was particularly the case with the colloquia on mangroves, and barrier-built estuaries and lagoons.

Selected policies:

Policy 6: Switchover from open-access fishing in the MCZ, bays, estuaries and lagoons to ‘closed fishing’ based on a combination of licensing and tenure rights supported by meaningful interventions for co-management and alternative employment for those excluded (...).

Policy 9: Progressively zone and demarcate all coastal land with goal of enrolling coastal communities who are losing economic opportunities in ‘traditional practices’, to benefit from new opportunities based on community tenure rights to common property resources (CPRs).

Policy 10: Promote participation of coastal communities in development decisions based on their own economic interests, and sharing of coastal resources by way of political advocacy and lobbying, without becoming dependent on political and corporate patronage that fragments coastal ecosystems.

Policy 14: All interventions that seek to mitigate hazards must be accountable for long-term consequences and receive certification by the CDM (Center for Disaster Management) and local authorities so that ‘risk’ will not be increased as an unintended consequence (negative externality).

Selected Actions/Outcomes:

8.4. Formulate a process to license fishing, closing access to the MCZ (marine coastal zone) and transferring collective property rights to coastal fishers, despite interventions that have resulted in vast increase in coastal fishing effort through post-tsunami relief and rehabilitation
8.5. Establish land use zoning, collective property rights to tidal flats and investment in infrastructure to develop coastal aquaculture by way of P-P partnerships, in keeping with corporate social responsibility
10.1. Implement land titling and other property rights programmes that would prevent expropriation of coastal common property resources (CPRs) now belonging to the state (i.e. public property)
10.2. Establish a legal assistance entity to enable public interest litigation to safeguard common property resources and to prevent land expropriation
10.3. Support land surveys to identify and demarcate common property resources for inclusion in the Finalized Village Plans (FVPs)
10.4. Train coastal communities to prepare bankable business plans for sustainable development of coastal resources, where long term lease of common property land resources (CPR) would be their equity contribution (<i>this was intended to include beaches for tourism</i>).
11.2. Raise awareness at coastal community level to reveal the consequences of weak law enforcement, and of the steps to be taken individually and collectively to safeguard against negative externalities on coastal ecosystems. This should lead to: - public interest litigation leading to development of case law - prevention of land expropriation - public attention on livelihoods
12.1. Land reforms and collective property rights to tidal flats (<i>and CPRs</i>) for coastal aquaculture

References

1. Meizen-Dick R.S., Brown L.R., Feldstein H.S. et al. 1997. Gender and Property Rights Overview. *World Development*, 25(8), 1299-1302.
2. Allison, Edward. H., Blake D Ratner, Björn Åsgård, Rolf Willmann, Robert Pomeroy, John Kurien. 2012 Rights-based fisheries governance: from fishing

rights to human rights. Fish and Fisheries Volume 13, Issue 1, pages 14–29, March 2012 (initially published online 2011).

Thailand

Comments from Thailand

Coastal property rights and resource tenure: a review of issues

Due to the complex and delicate issues, the NCB Thailand suggested that full NCB meeting should be convened to discuss and provide input to this. Under the cabinet resolution and Forest Reserve Act, made it difficult for the NCB from government sectors to adopt the strategy at this stage without the full consultation and inputs from all relevance stakeholders. The feedback from NCB from NGO sector shown that the issues are very important and challenging for MFF's implementation. There are several organizations involved and many research on land tenure and community rights were conducted.

The office of Law Reform suggested MFF to look through these documents which available from <http://www.e-rightsandlaw.net/index/?p=291>

From the link above there is a key document called "Draft Strategy for Land Management: Land Tenure, Land Preservation for Allocation and Land Preservation for Common Use", it was prepared by Thailand Development Research Institute (TDRI). It was designed to be used by the National Land Policy Committee for land tenure planning. (2008)

Coastal property rights and resource tenure: a review of MFF experience

From MFF experience in Thailand;

Lessons learned from MFF projects on community rights and land tenure could reviewed and extracted from all three MFF large projects and one Medium Project.

[Ecosystem-based integrated coastal resource management through multi-stakeholder participation in Southern Thailand](#)

[Reversing environmental damage through community focused sustainable livelihoods in Ban Don Bay, Surat Thani Province, Southern Thailand](#)

[Evaluating and improving the management effectiveness of Thailand's marine and coastal protected areas](#)

[Strengthening the Community-based Coastal Resources Management Network through Community-based Learning Centers in Six Sub-districts of Trat Province, Thailand](#)

In case of the completed small grants, the issues of community rights, equitable access are exist. There are many community groups who are able to manage their own resource with support from DMCR such as Kapoe Conservation Group in Ranong. From the field experience, many communities desired for the community forest concept. However, for the fishery resources, it is more complex because it involve Department of Fishery, Department of National Parks, Wildlife and Plants Conservation and Department of Marine.

For example, in 2012, SGF grantee in Tong Tom Yai, Chumporn, received a request letter from Department of Marine to relocate community who live along the coastline out as their houses were constructed in the public property (the SGF project in Chumporn,

<http://www.mangrovesforthefuture.org/grants/small-grant-facilities/thailand/strengthening-conservation-of-mangroves-and-other-marine-and-coastal-resources-at-thong-toam-yai-bay/>)

Implementing the strategy

The following agencies are responsible/involve/engage in the issues;

National

- Law Reform Commission of Thailand
- MONRE (DNP,DMCR,RFD,ONEP)

- Department of Lands
- National Land Committee
- Office of Land Reform
- TDRI
- Law Reform Assembly
- Sustainable Development Foundation
- RECOFTC

Regional Initiative

- Rights and Resources Initiative

Extraction from key reference documents (Download Link <http://www.sendspace.com/file/20a9wg>)

English version

1. MPAs in Thailand (2010) by Ravadee P, and Jonathan Shott from SDF

Marine and Coastal Resources Management Act (Draft)¹

The draft law enshrines the right of local communities to manage their own marine and coastal resources, either through some form of local organization or by establishing a co-management arrangement with local government representatives. It also provides for zoning of areas into preservation, conservation, restoration or development zones for the utilization of marine and coastal resources. The draft Act provides for the creation of a marine and coastal resources fund, created at both national and provincial levels.

Marine and Coastal Protected Areas in Thailand

Under Thai Policy and Legislation	
Marine National Parks	26
Forest Parks (in a coastal location)	6
Non-hunting Areas (in a coastal location)	4
Wildlife Sanctuaries or Wildlife Conservation Areas (at least partly located in a coastal province)	17
Important Plant Areas (in marine and coastal areas)	12
Important Bird Areas (in marine and coastal areas)	10
Under International Agreements and Conventions	
Biosphere Reserves	1
Ramsar Sites	11 (5 coastal)
World Heritage Sites	5 (3 cultural, 2 natural, none coastal)
ASEAN Heritage Parks	4 (2 coastal) with a further 2 coastal Sites proposed

2. Building Firm Foundations for Climate Change Adaptation in Bang Chan Sub-district_Jonathan Shott

3. Land Management Strategy_TDRI_English Summary

4. Coastal resources in danger_Jonathan Shott_English: Highlight issues from Urbanization, industrial development and tourism in the context of coastal management and livelihood.

¹ MPAs in Thailand (2010)

Thai Documents

1. Study of the degradation of NR in Southern Thailand
2. Tax Act_2012
3. REDD in sustainable forest management_RECOFTC
4. Property right in land management
5. People version of Coastal and Marine Management Act_2012
6. Land Management Strategy_TDRI_Full Thai
7. Land Bank_Civil Society Propose Act
8. Draft Justice Fund Act
9. Draft Coastal Marine Management Act 2012
10. Comparison of Fishery Act between 1940 and current

Vietnam

Comments from Andrew Wyatt

I have long thought that it is an important issue. I dare say that issues of uncertainty and conflict (and vested interests) are present in numerous forms through much of the mangrove areas of Vietnam including where we are working now. Some examples I have observed involve:

1. Conflict during resettlement of mangrove dwelling households/communities where households have claimed traditional rights which are not recognised by the state, and hence are resettled without compensation. One well known, but undocumented example of this happened during the World Bank supported Coastal Reforestation Program in Soc Trang. There are numerous households/communities throughout the Mekong Delta that are targeted for resettlement, but government budgetary constraints and some foot dragging on the part of commune governments who either have vested interests in the mangroves themselves or wish to avoid conflict, has stalled the process in many areas including Ben Tre.

2. In some cases, the formal designations of land use/rights outside of the coastal sea dyke are contested or lack clarity within government agencies. For example, there are hamlet size communities living outside the sea dyke in Ben Tre (Ba Tri) where households have had land use rights prior to the demarcation of the sea dyke. Because of the size of the community, there have been no resources to resettle them and the District and Commune government has submitted a request to officially designate the community as a hamlet so as to free up funds for local infrastructure, school, clinic, etc. To date there has been no approval because of the lack of clarity about whether the province has the authority to make an exception to regulations that require resettlement of households living outside of the sea dyke. The lack of investment in such a community has numerous potential environmental and socio-economic impacts.

3. The draft strategy mentions tourism development as a source of conflict. While I haven't seen examples of community conflict arising out of tourism development in a coastal context here, it is an area that is rife with vested interests involving investors who are government insiders that often have the capacity to influence land use plans and zoning with negative impacts on coastal ecosystems. We hear of this in Ben Tre, and I have encountered this situation in Ninh Thuan province with the ITB project I am involved with there - not a mangrove but a MPA. I hear it is a problem in Kien Giang, and I dare say if you look under the surface at the tourism developments in Can Gio and around Halong Bay, the issue will be present.

4. Our current co-management research in Ben Tre, Tra Vinh and Tien Giang has highlighted some interesting issues arising out of the formal resource rights (exclusionary rights) that are provided to individual households in exchange for forest protection duties in special use mangrove forests and protected forests. One of our findings has been that the household forest protection contracts are facing numerous challenges complicated by changing government regulations and support programs, like the ending of program 661. Tighter regulations over time have reduced household benefits from thinning and harvesting, the end of 661 dried up household compensation, and this is leading to increased breaches of contract because of low benefits and incentives. In some cases, like in Tien Giang, longer leases of 20 years were issued to provide incentive to invest, but this has resulted in households claiming a traditional right that is informally recognised within the community. This is a growing problem for government regulators now because if a household breaches a contract (65% of contracts are in breach in a commune we investigated in Tien Giang), it is almost impossible for the government to withdraw the contract and to reallocate it to another household because there is a sense that the previous household still has a traditional right to the land because of their investments. Newer modified contracts in Ben Tre (now also 20 years) that we have reviewed now recognise the 'private' investments of households and allows them to harvest these privately planted trees. I think this has complicated the issue even more in a case of breached contract. In other cases, like the Tra Vinh case we investigated, we have seen the reverse where new forest protection contracts were issued for mangroves where the community has already planted their own mangroves but which is not recognised by the contracts which has led to dispute over the rights of the households to harvest 'their' trees.

5. Resource leases such as the household forest protection contracts in areas where mangrove-shrimp investment is allowed, and household clam culture leases (not used in Mekong Delta) such as that in Nam Dinh where MCD is working are also rife with vested interests, again government insiders, who capture the economic benefits of the leaseholds. The Nam Dinh clam culture case was a classic case of the types of conflict that arise when the government attempts to impose control through a leasehold arrangement. My last evaluation of MCD's work in Nam Dinh revealed that vested interests are still present in the clam culture leases, though the open conflict is no longer present. This issue has been very difficult for MCD to address. It has a potential negative impact on the development effectiveness of interventions designed to increase coastal incomes of the poor in order to take the pressure of the mangroves and inshore fishery, but because of elite capture, development interventions fail in their objectives. This is a potential outcome in our own MCC investments in mangrove-polyculture support. Including the requirement to provide some information/analysis on resource rights and owners, and measures to avoid elite capture in an SGF proposal could help address this situation.

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