

HUMAN RIGHTS-BASED FISHING

A rights-based approach to complement fisheries co-management in Thailand

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Bachelor thesis Environmental Studies
Utrecht University, June 25, 2015
Word count 5985

Abstract

Thailand has established collaborative management (or co-management) policies in its fishery sector with the intention of achieving resource sustainability and stimulating local community participation. However, decades after its implementation, co-management does not experience improvements in sustainability of fisheries and living conditions of fishing communities.

The need for sustainable resource use and alleviating human conditions has led to the application of the rights-based approach (RBA) to natural resource management. A definition of the rights-based approach as in the context of international development was maintained for this study, where the Universal Declaration of Human Rights serves as the international norm promoting human rights. Since the rights-based approach is argued to tackle poverty, insecurity and marginalisation (which are underlying factors of overfishing) at their root cause, it was investigated whether a rights-based approach could fill up the gaps left by co-management in addressing resource sustainability and improving fishing communities' livelihoods in Thailand.

Factors causing the shortfalls of co-management were legally, politically and practically oriented. The opportunities and barriers of a rights-based approach, which were derived from literature concerning international development, were combined with these factors. It was found that some opportunities of an RBA could complement fisheries co-management, for instance its legitimacy in international law. However, a broader notion of the rights-based approach is needed to improve the capability of an RBA to complement fisheries co-management. This broader view does not consider only the state as the principal actor responsible for upholding its citizen's rights, but includes individuals and non-state actors as well. On top of that, the RBA's focus should expand from its traditional focus on civil and political rights to include economic, social and cultural rights.

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1. Introduction

Environmental sustainability affects, and is in turn affected by, the realisation of human rights (Campese et al., 2009, p. 295; Greiber, 2009, p. 5). Since human rights such as the right to food, health and an adequate standard of living are vulnerable to environmental degradation, environmental sustainability is a precondition to the realisation of these rights. For example, decreasing fish stocks undermine fishing communities' rights to food, work and a decent livelihood. Meanwhile, violation of human rights can be a trigger for overexploitation, for instance because small-scale fishing communities are often excluded from decision-making programmes or policies (Greiber, 2009, p. 5; Nayak, Oliveira & Berkes, 2014). Poverty, which can be seen as a violation of economic rights, is common in fishing communities throughout the world and can undermine environmental sustainability because priority is often given to short term solutions rather than long term sustainability goals (Food and Agriculture Organization of the United Nations [FAO], 2009; Nayak et al., 2014).

The need for sustainable resource use and alleviating human conditions has led to the so-called 'rights-based approach' (RBA) to natural resource management. The RBA has been used in the context of international development since the end of the 1990s and rests on "internationally recognised human rights standards and principles, to which governments and donors are obliged to adhere" (Nelson, 2007, p. 2041). It is widely acknowledged that everyone has the right to a decent standard of living (UN General Assembly, 1948). However, basic human rights such as the right to food and decent work are examples of rights recognised by the global community which are easily violated in fishing communities and therefore undermine the governability of fisheries (Allison et al., 2012; Ratner, Åsgård, & Allison, 2014).

Addressing rights as a means to achieve sustainability is not a revolutionary idea. In 1990 already, Elinor Ostrom developed an 'alternative' solution to governing common-pool resources (CPRs), such as grazing lands, forests and fish stocks, which involved addressing community or 'social' property rights. Ostrom argued that cooperative action by communities can solve common dilemmas. This idea contradicts the claim by Hardin (1968) that the only way in which CPRs can be governed sustainably, is by privatisation or central regulation. In fisheries management, 'rights-based fishing' was introduced to address the problem of overfishing (Schnier, 2011). Rights-based fishing involves addressing individual property rights to eliminate the 'race-for-fish' or what is generally known as the 'tragedy of the commons' (Schnier, 2011; Allison et al., 2012). The rights-based approach as used in the context of international development goes well beyond this notion by focussing on human rights as opposed to fishing rights (Allison et al., 2012).

Both individual and social property rights have not succeeded in achieving sustainable development in fishing communities (Allison et al., 2012; Ratner et al., 2014). Besides, Ostrom's community-based resource management is criticised because it does not take into account the institutional and governance contexts (Cox, Arnold & Villamayor Tomás, 2010). Collaborative management, or co-management, combines aspects of state control and community control of common pool resources (Fleishman, 2007). In this strategy for promoting resource sustainability, resource management responsibility is shared between the government, resource users and other stakeholders (Carlsson & Berkes, 2005; Fleishman, 2007). Co-

management has been used to promote the implementation of (property) rights-based fishing (Allison et al., 2012). Thailand has, among other Southeast Asian countries, established co-management policies in its fishery sector (Nielsen et al., 2004; Wilson et al., 2006). Robert S. Pomeroy is one of the early advocates of the implementation of fisheries co-management. From studies among Asian countries, he found that the extent to which co-management arrangements have led to improved resource sustainability and successful community involvement, varies highly (Pomeroy, Katon & Harkes, 2001). Nielsen et al. (2004) add that even though there have been some positive outcomes, there are problems in the actual implementation of co-management policies. On top of that, Allison et al. (2012), Ratner et al. (2014) and Finkbeiner and Basurto (2015) argue that co-management policies have failed in addressing the shortfalls in human rights in fishing communities which manifest as poverty, insecurity and marginalisation. Because of these shortfalls, co-management needs improvement and the rights-based approach could contribute to this.

A rights-based approach is argued to be capable of addressing poverty, insecurity and marginalisation, which are considered root causes of overexploitation by fishing communities (Allison et al., 2012; Ratner et al., 2014). Therefore an RBA could possibly complement the existing co-management policies in Thailand's fisheries. This country has been selected as a case-study because it has been two decades since co-management was introduced in Thailand's fisheries, however it has not been successful. The criteria for 'success' of co-management are resource sustainability and community involvement. This thesis attempts to find out whether a rights-based approach can contribute to the sustainability of Thailand's fisheries by answering the following research question:

To what extent can a rights-based approach complement fisheries co-management in Thailand?

The central research question will be answered using the following sub-questions:

1. *What factors have affected the success of fisheries co-management in Thailand?*
2. *What are the opportunities and barriers of a rights-based approach to natural resource management?*

Multiple studies (Allison et al., 2012; Ratner et al., 2014; Sharma, 2011) support the implementation of a rights-based approach to fisheries management. Nevertheless, the RBA has only to a limited extent been implemented in the conservation field (Greiber, 2009, p. 3). Therefore this study contributes to the literature available on this subject.

When the conditions that have affected the success of existing co-management policies have been defined and it has become clear whether and where the rights-based approach can fill up gaps left by co-management, this study could contribute to improving resource sustainability and livelihoods in fishing communities in Thailand. Since these communities depend heavily on fishing activities for income and employment, it is important that overfishing comes to a halt (Fleishman, 2007). To add, the problems of marginalisation and poverty are not exclusive to Thailand, they are common in fishing communities throughout the world (Nayak et al., 2014).

This thesis is structured as follows. First, the most important concepts of this study will be elaborated on. The used methods for collecting data can be found in chapter three and in chapter four the factors which have affected the success of co-management are listed. Chapter five includes the opportunities and barriers of a rights-based approach to natural resource management. Chapter six combines the results found in chapters four and five to find out whether a rights-based approach can complement Thailand's existing co-management policies. This thesis will end with a discussion of the results and the conclusion.

2. Conceptual framework

The central question and its two sub-questions contain concepts which need explanation. In this chapter fisheries co-management and the factors which have affected its success, and the rights-based approach and its opportunities and barriers will be elaborated on. This will clarify the definitions that are maintained for this study.

2.1 Fisheries co-management

A first concept to clarify is co-management. Co-management, or collaborative management, combines aspects of state and community control of common pool resources to promote resource sustainability and participation of resource users (Fleishman, 2007). In this study, co-management is defined as “a system of cooperative governance of resources in which resource management responsibility is shared between government, resource users and other stakeholders” (Allison et al., 2012, p. 17). Nielsen et al. (2004) add that fisheries co-management can be viewed as “a set of institutional and organisational arrangements . . . which define the cooperation among the fisheries administration and relevant fishing communities” (p. 154).

In co-management power and responsibility are shared between stakeholders, in particular the government and the resource users (Carlsson & Berkes, 2005, p. 66). The main role of the government is to create an enabling legal and political environment for co-management institutions (Fleishman, 2007). The community is responsible for establishing arrangements which are culturally and socially appropriate, monitoring and enforcing the system (Fleishman, 2007). The roles that the government and the community play in co-management can differ according to situations. In figure 2.1 (Sen & Nielsen, 1996) the five roles a government can take can be seen, ranging from instructive, where there is only limited exchange of information between government and resource users, to informative, where the government delegates authority to user groups. Finkbeiner and Basurto (2015) argue that not any type of co-management is capable of addressing issues which small-scale fishing communities are facing.

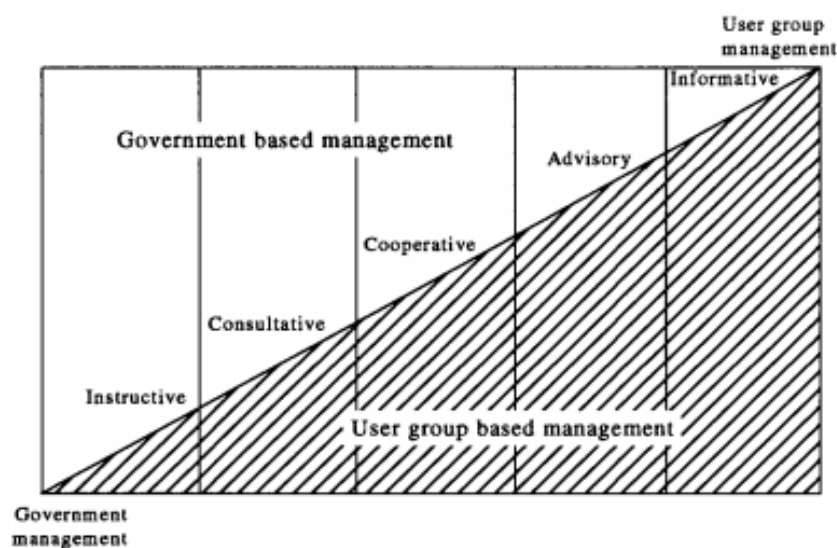


Figure 2.1 Spectrum of co-management arrangements. Reprinted from “Fisheries co-management: A comparative analysis”, by S. Sen and J. R. Nielsen, 1996, *Marine Policy*, 20(5), p. 407. Copyright 1996 by Elsevier Science Ltd.

2.2 Factors affecting the success of co-management

The first sub-question deals with the factors which have affected the success Thailand's fisheries co-management. In co-management, two parties share responsibility of resources: the government and the resource users. Since the government is responsible for providing "an enabling legal and political environment" (Fleishman, 2007), factors affecting the success of co-management can be legally or politically oriented. Wilson, Nielsen and Degnbol (2003) also found that factors affecting the success of co-management of natural resources could be found in these categories.

As for the legal factors, Pomeroy et al. (2001) state that co-management "cannot work effectively in a vacuum where there are no supportive policies and legislation . . . Policies and legislation need to spell out jurisdiction and control, provide legitimacy to property rights and decision-making arrangements, and clarify the rights and responsibilities of partners" (p. 14). In other words, if no supportive legislation for co-management is available and community management is not legally recognised, this will negatively affect the success of co-management policies.

Political factors concern the power structure and power sharing in the co-management arrangement (Pomeroy et al., 2001). Since co-management was designed to increase community involvement in the resource management process, the government should be prepared to devolve management responsibilities to the community level (Allison et al., 2012).

A third category of factors affecting the success of co-management can be found within the community and is named 'practical' factors. Fleishman (2007) argues that the resource using community is responsible for establishing a system which is culturally and socially appropriate. Besides, communities are involved in monitoring and building capacity to resolve resource-related conflicts, which are practical factors.

2.3 The rights-based approach

2.3.1 Relevance

It has already been mentioned that poverty, insecurity and marginalisation are issues faced by fishing communities in Thailand (Allison et al., 2012; Ratner et al., 2014). In figure 2.1 these three issues and factors influencing them can be seen. Poverty, insecurity and marginalisation are "interrelated and overlapping conditions" (Allison et al., 2012, p. 19). This is shown in the figure by the interface between the circles. Allison et al. (2012) explain this interrelatedness of poverty, insecurity and marginalisation: poor people tend to be more vulnerable because they lack assets to recover from, for instance, environmental disasters. In turn, people that are vulnerable because of their exposure to environmental risks, can easily become impoverished. Marginalisation can result from and increase poverty, because on the one hand, poor people lacking assets such as education can become marginalised in political processes and, on the other hand, marginalisation can increase poverty because people are excluded from rights or opportunities available to others.

Furthermore, it is shown in figure 2.1 that marginalisation results from exclusion from rights and opportunities that are available to others and insecurity is fostered by exposure to physical risks such as uncertain production systems (which can be decreasing fish stocks). Insecure rights of access to resources are another cause of insecurity and in addition foster overexploitation because it is not clear who will experience the benefits from conservation (Greiber, 2009, p. 64). Marginalisation calls for overexploitation because it "reduces the

incentives to comply with the law and promotes indifference to such compliance” (Greiber, 2009, p. 71). Finally, poverty is seen as a cause of fish stock exploitation because short term solutions are often given priority over long term sustainability goals (Nayak et al., 2014). Therefore overexploitation is fostered by poverty, but also contributing to deeper poverty (Nayak et al., 2014). To sum up, poverty, insecurity and marginalisation are root causes of overexploitation, however they are affected by overexploitation at the same time.

Allison et al. (2012) and Ratner et al. (2014) state that the rights-based approach is capable of addressing the factors poverty, marginalisation and insecurity. Therefore the rights-based approach could serve as an adequate tool for promoting fisheries sustainability and the livelihoods of fishing communities. When looking at figure 2.1, it can be argued that marginalisation resulting from fishing communities’ exclusion from services calls for the right to non-discrimination. On top of that, economic rights address poverty and rights to possession focus on the insecure access rights that underlie insecurity (Allison, 2011).

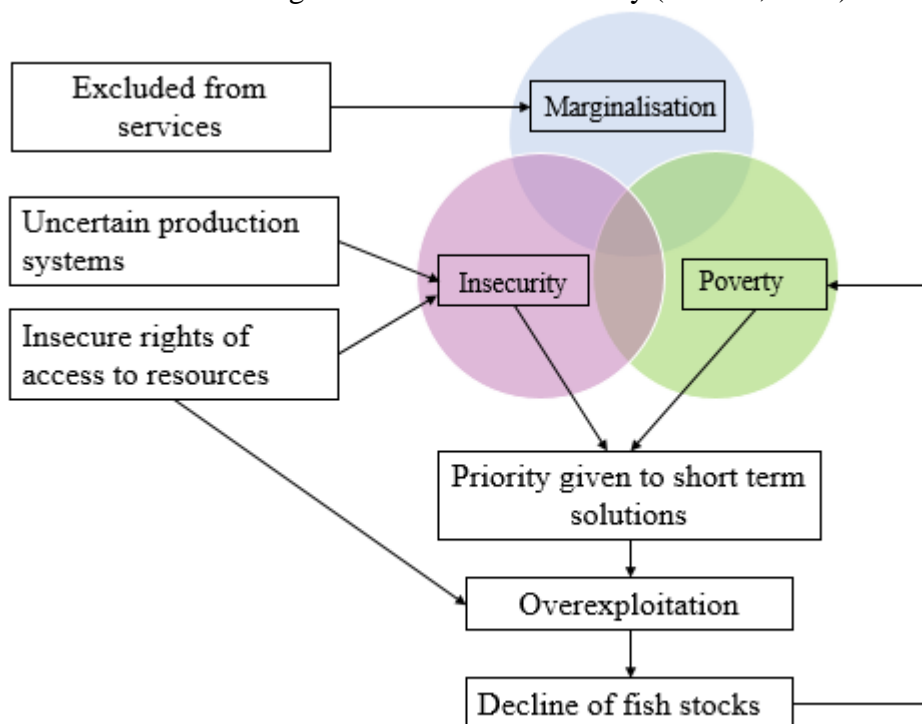


Figure 2.2 Poverty, insecurity and marginalisation: causes and consequences

2.3.2 Definition

Since this study is centred around the rights-based approach, this concept needs clarification. Initially used in international development policies, the rights-based approach argues that “human rights are integral to development outcomes, as international human rights norms highlight the . . . essential components of the human side of development that economic indicators fail to capture” (Ratner et al., 2014, p. 120). In its application to natural resource management, the RBA draws attention to “the institutions and power structures that determine resource allocation and access, as essential contributions to livelihoods and wellbeing” (Ratner et al., 2014, p. 120). For this study, a definition of the RBA as “a framework for the pursuit of

human development that is normatively based on, and operationally directed to, the development of capacities to realize human rights” will be maintained (Sharma, 2011, p. 44).

Important concepts within the right-based approach are ‘rights holders’ and ‘duty-bearers’ (Sharma, 2011; Allison et al., 2012; Ratner et al., 2014), where duty-bearers are obliged to uphold the basic human rights of rights holders. In this study the rights holders are the fishing communities. Duty-bearers are often governments, but can also be private entities or civil society organisations (OXFAM Novib, 2013-2014).

The Universal Declaration of Human Rights has served as the international norm promoting civil and political rights (Offenheiser & Holcombe, 2003). These include rights such as the right to life, liberty, property, freedom of expression and political participation (Allison, 2011). Issues such as poverty and social injustice are addressed by economic, social and cultural (ESC) rights. ESC rights include rights to work, education, health, adequate food, clothing, housing and development (Allison, 2011). ESC rights and civil and political rights are interdependent. Poverty and lack of food, for instance, are economic rights which can be caused by violations in civil and political rights (Allison, 2011).

2.4 Opportunities and barriers of a rights-based approach

The opportunities and barriers of a rights-based approach are a final returning component in this study. Several authors found legally, politically and practically oriented opportunities and barriers of a rights-based approach (Offenheiser & Holcombe, 2003; Cornwall & Nyamu-Musembi, 2004). Therefore, the opportunities and barriers of a rights-based approach to natural resource management have been looked for in these three categories. On top of that, since the factors affecting the success of co-management were also legally, politically and practically oriented, this makes them easier to compare and to find out whether a rights-based approach can complement co-management.

Legal opportunities and barriers of a rights-based approach focus on whether a rights-based approach can be enforced through national and international institutions. Existing regulations can promote or inhibit the implementation of a rights-based approach (Ratner et al., 2014). Opportunities and barriers which are politically oriented are concerned with the distribution of power between rights holders and duty-bearers (Sharma, 2011). Practical opportunities and barriers arise with the actual implementation of a rights-based approach.

3. Methodology

3.1 Finding factors affecting the success of co-management

Legal factors affecting the success of fisheries co-management in Thailand have been found in Thai law. Relevant laws were concerned with fisheries specifically or the management of natural resources more generally. In the selected laws it was looked for words such as ‘co-management’, ‘collaborative management’, ‘community’, ‘decentralisation’ and ‘local’ to find out whether there is legal basis for co-management in Thailand.

Apart from in Thailand, fisheries co-management has been established in several other Southeast Asian countries, such as Malaysia, the Philippines and Vietnam. Since co-management is not a ‘new’ phenomenon in these countries, there have been studies evaluating the success of co-management in Southeast Asian countries’ fisheries. Political and practical factors affecting co-management’s success that derived from these studies were classified to their categories according to the definitions given in the conceptual framework.

3.2 Finding opportunities and barriers of a rights-based approach

A literature study has identified opportunities and barriers for implementing a rights-based approach to natural resource management. Since literature concerning the implementation of a rights-based approach to natural resource management is scarce, opportunities and barriers of an RBA have been found in literature concerning international development studies, because in this sector the RBA has been used since the 1990s already (Nelson, 2007).

The identified opportunities and barriers were classified to the categories legal, political or practical according to their definitions as maintained in the conceptual framework.

3.3 Rights-based approach complementing co-management?

The factors which have negatively affected the success of co-management and the opportunities of a rights-based approach were combined in chapter 6. It was examined whether the opportunities of a rights-based approach could address the factors affecting the success of co-management and when this was not the case, what barriers inhibited this process. Both the factors affecting the success of co-management and the opportunities and barriers of an RBA were found in the categories legal, political and practical so no redefinition was needed to combine them. Legal opportunities were combined with legal factors affecting the success of co-management, political opportunities with political factors, etc. However the possibility of a political opportunity addressing a legal or political factor was not excluded.

4. Factors affecting the success of fisheries co-management in Thailand

In this chapter the factors which have affected the success of fisheries co-management in Thailand will be elaborated on. The factors are divided in the categories legal, political and practical.

4.1 Legal

The Fisheries Act is Thailand's principal legislative instrument for dealing with fisheries (Rojanasaeng, 2008, p. 40). The Department of Fisheries (DOF) is the government agency responsible for managing fisheries and grants fishing rights (Johnson, 2002). In the Fisheries Act issues such as decentralisation and community participation are not addressed (Fisheries Act, 1948). Therefore co-management is not specifically provided under fisheries legislation (Rojanasaeng, 2008, p. 40). However, the Enhancement and Conservation of National Environmental Quality Act (1992) does recognise the role of the community in managing natural resources. Section 6 of this act states that public participation and co-operation with the government can enhance environmental quality, however this act does not go into fisheries management specifically.

The National Economic and Social Development Plans are guidelines for economic and social policies (National Economic and Social Development Board [NESDB], 2012-2016). The current plan affirms the need for sustainable development and includes guidelines concerning fishing communities by saying that "communities should participate in the management of local coastal zones for sustainable development" (NESBD, 2012-2016, p. 119). However, these guidelines are not legally binding.

It can be said that co-management of fisheries is to a limited extent binding in Thai law. On top of that, Fleishman (2007) adds that Thailand lacks the capacity to enforce its laws and regulations. This has to do with supportive administrative structures for co-management (Pomeroy et al., 2001). Even though decentralisation has been gaining support by the Thai government, there remains little certainty of rights and responsibilities (Wilson et al., 2006). Local resource ownership is accepted to some extent, however exclusive and secure rights are not found in Thailand.

4.2 Political

Political factors which have affected the success of co-management have to do with power distribution. Co-management is based on the assumption that the government is willing to share power with local communities. However, as Fleishman (2007) argues, the Thai government is not always willing to devolve power and responsibilities to fishing communities. Johnson (2002) adds that the Thai state is highly resistant to power devolution because this would challenge its authority. Inequity in power balance between the government and the local community is shown by dominance of the government and its unwillingness to form an equal partnership with communities. This can limit participation by the local community in the process of co-management (Fleishman, 2007; Greiber, 2009, p. 71).

Another political factor which has affected the success of co-management has to do with the distribution of rights to fishing access. In the introduction it has briefly been mentioned that co-management is used to promote rights-based fishing. Rights-based fishing restricts fishing access to certain (groups of) people (Allison et al., 2012). The government decides who can use

the resource and who owns it and this creates winners and losers (Pomeroy et al., 2001). Finkbeiner and Basurto (2015) argue that small-scale fisheries are often marginalised and excluded from policy processes. According to Greiber (2009), marginalisation reduces “incentives to comply with the law and promotes indifference to such compliance” (p. 71). Therefore marginalised groups of people might not be interested enough to take action in environmental protection and could therefore negatively affect the success of co-management.

4.3 Practical

Practical factors affecting the success of co-management can arise with the actual implementation of co-management policies by the community. A first practical factor consists of exclusion as a result of the community’s interest in excluding outsiders (Fleishman, 2007, Rojanasaeng, 2008, p. 215). Excluding outsiders on the one hand strengthens the sense of interdependence within the community and can therefore lead to better collaboration, however, resource-dependent people that are excluded suffer from co-management (Rojanasaeng, 2008, p. 275).

Finally, exclusion can take place within the fishing community. Since participation in co-management processes is often dominated by so-called ‘community elites’, who are mostly older, richer and better educated men, these elites are more likely to experience the benefits gained from co-management (Fleishman, 2007; Rojanasaeng, 2008, p. 190). Marginalised people do not benefit as much from co-management as the community elites (Carlsson & Berkes, 2005; Fleishman, 2007).

4.4 Overview

Table 4.1 summarises the legal, political and practical factors which have affected the success of co-management of Thailand’s fisheries.

Factors affecting the success of co-management of Thailand’s fisheries	
Legal	Co-management to a limited extent legally binding
	Thailand lacks capacity of enforcing laws and regulation
	Little certainty of rights and responsibilities
Political	Government not always willing to devolve power to communities
	Distribution of rights by government excludes people
Practical	Community’s interest in excluding outsiders
	Marginalisation within the community

Table 4.1 Factors affecting the success of co-management of Thailand’s fisheries

5. Opportunities and barriers of a rights-based approach

This chapter lists legal, political and practical opportunities and barriers for implementing a rights-based approach to natural resource management. At the end of this chapter, table 5.1 summarises them.

5.1 Opportunities

5.1.1 Legal opportunities

The main advantage of a rights-based approach over other development strategies, is its legitimacy in international law. The RBA is based on an internationally agreed set of norms, which is backed by international law (Nelson, 2007). Civil and political rights such as the freedom of expression and political participation can be defended through national and international legal instruments (Allison, 2011; Ratner et al., 2014). This provides a stronger basis for citizens to hold their states accountable for their duties (Cornwall & Nyamu-Musembi, 2004). Since rights are based on legal obligations, the RBA is a different and potentially more powerful approach to development (Allison, 2011).

5.1.2 Political opportunities

Because human rights are grounded in international law, they are more political. Nelson (2007) contrasts human rights to another strategy for development, the Millennium Development Goals. He argues that rights belong to (groups of) people, whereas goals belong to “states and the international organisations in which they are negotiated” (p. 2045). Because rights belong to people, they imply duties. These duties give the rights-based approach its political significance by demanding accountability of duty-bearers (Cornwall & Nyamu-Musembi, 2004; Nelson, 2007).

By demanding accountability, human rights expose “the hidden priorities and structures behind violations” (Offenheiser & Holcombe, 2003, p. 275). That is, the RBA calls for attention to the root causes of poverty and social exclusion, where other approaches aim for progress of the symptoms of poverty (Nelson, 2007). Davis and Ruddle (2012) add that the RBA is capable of changing decision-making processes which are at the heart of poverty, insecurity and marginalisation. Oxfam, a large non-governmental organisation which applies the RBA in their attempt to fight solutions to poverty, contrasts the rights-based approach to the so-called ‘needs-based’ approach, which means that the organisation does not provide for people, but “works to resolve the power inequalities that hold people back from providing for themselves (OXFAM Novib, 2013-2014, p. 11). This is referred to as capacity building.

5.1.3 Practical opportunities

A practical advantage of the RBA is that it makes use of legislation that is already in place, however it is underutilised (Allison, 2011). This means that actors do not need to get used to new legal and policy frameworks and no expensive reform programmes are needed (Allison, 2011).

Apart from providing a useful frame, Offenheiser and Holcombe (2003) argue that a human rights framework can contribute to naming the inequalities in power relations and structures which cause social inequity and injustice. Since the people affected by social exclusion know firsthand what institutional obstacles prevent them from providing for themselves, the rights-based approach envisions the poor as actors with the potential to “shape

their own destiny and defines poverty as social exclusion that prevents such action” (Offenheiser & Holcombe, 2003, p. 271).

5.2 Barriers

5.2.1 Legal barriers

Under international law, economic, social and cultural (ESC) rights are not legally adjudicative (Offenheiser & Holcombe, 2003). ESC rights are generally dependent upon domestic welfare systems, without any dedicated international judicial machinery (Allison, 2011). Nelson (2007) argues that ESC rights theoretically have the same legal authority as political and civil rights, however, there have been difficulties in enforcing state compliance with ESC rights, which has limited the use of ESC rights in shaping social policy. Because ESC rights and civil and political rights are interdependent, ESC rights can be addressed through political and civil rights. Poverty and lack of food, for instance, are violations of economic rights which can be caused by violations in civil and political rights (Allison, 2011). When the economic right to food has political origins, this right can be addressed through political and civil rights which are judicially more powerful (Allison, 2011).

5.2.2 Political barriers

Human rights have predominantly been state-centred. In the past, the nation-state was dominant and was seen as capable of protecting their public’s rights. However, in a time of globalisation rights are also violated by non-state actors (corporations, financial institutions and third-party states) which operate beyond national borders (Offenheiser & Holcombe, 2003). When the nation-state will continue to be seen as the one accountable to its population, this will “shield other actors from responsibility” (Offenheiser & Holcombe, 2003, p. 275). Therefore, human rights need to be moved “beyond the state-centric paradigm” (Offenheiser & Holcombe, 2003, p. 274). This will make it possible to hold the most influential non-state actors accountable for their role in sustaining poverty. Cornwall and Nyamu-Musembi (2004) confirm that the realisation of human rights should be seen as a responsibility of the international community.

Nelson (2007) adds another political barriers of a rights-based approach. He argues that an RBA involves systemic change, which on the one hand increases sustainability, however on the other hand, no improvements can be achieved without this systemic change. This makes quick impacts impossible.

5.2.3 Practical barriers

The practical barrier of a rights-based approach is that some think of human rights as a western construct (Allison, 2011). The western notions of rights and freedoms may not be shared by countries in other parts of the world, particularly not by states violating their public’s rights (Allison, 2011). Offenheiser and Holcombe (2003) argue that human rights should be rights that are not granted by an authority, but given by people to themselves. Rights are supposed to be inherent to people’s own conception of human dignity and become binding on those who accept them (Offenheiser & Holcombe, 2003). However, basis human rights such as the right to food and housing, which are the rights most relevant to natural resource management, are seen as universal and fundamental freedoms recognised by the international community. Allison (2011) argues that states who fail in addressing basis human rights in their legislation and policy implementation are “in contravention of universally agreed rights, to which they are usually signatories” (p. 105). Therefore these states should be held to account.

5.3 Overview

Table 5.1 shows the legal, political and practical opportunities and barriers of a rights-based approach to natural resource management.

Opportunities and barriers of a rights-based approach to natural resource management	
Opportunities	
Legal	Civil and political rights have legitimacy in international law
Political	Demands accountability of duty-bearers
	Tackles poverty at its root causes/capacity building
Practical	Framework already exists
	People affected by poverty know what causes this inequality
Barriers	
Legal	Economic, social and cultural rights are not legally adjudicative
Political	Too state-centred in a time of globalisation
	Systemic change makes quick impacts impossible
Practical	Human rights are culturally constructed

Table 5.1 Opportunities and barriers of a rights-based approach to natural resource management

6. Rights-based approach to co-management?

In this chapter the results from the previous two chapters are combined to find out whether a rights-based approach can complement Thailand's fisheries co-management.

6.1 Rights-based approach to legal factors

To begin with, co-management has possibly left gaps in addressing resource sustainability and improving people's livelihoods because it is only to a limited extent binding in Thai law. As Pomeroy et al. (2001) argue, absence of laws for decentralisation can negatively affect the success of co-management. A rights-based approach can possibly tackle this problem by its legitimacy in international law. The fact that Thailand has voted in favour of the Universal Declaration of Human Rights increases legitimacy on the national level as well.

The second legal factor which has been identified is Thailand's lack of capacity to enforce laws and regulation. This factor is difficult to address by the rights-based approach because it is caused by Thailand's lack of resources to fulfil its role (Fleishman, 2007). However, a rights-based approach contributes to strengthening capacities, not only so that rights holders can make their claims, but possibly also to make duty-bearers meet their obligations.

A rights-based approach has the ability to create more certainty of rights and responsibilities, which is the third legal factor affecting co-management's success. This is because human rights imply duties, which demand accountability of duty-bearers (Cornwall & Nyamu-Musembi, 2004; Nelson, 2007). When fishing communities' rights are violated because the Thai government does not comply with its duties, the rights-based approach can clarify its rights and responsibilities.

6.2 Rights-based approach to political factors

The first political factor which has affected the success of co-management is the Thai government's unwillingness to devolve power to local communities. An RBA could contribute to tackling this issue because political participation is a political right, which can be addressed through international legal instruments (Allison, 2011; Ratner et al., 2014).

It is uncertain whether exclusion caused by distribution of rights by the Thai government can be addressed by the RBA. When fishers are excluded from resource access, this can harm their right to food and work. These rights, however, are economic rights, which are not legally adjudicative (Allison, 2011). However, in this case violation of economic rights has political origins and can therefore be addressed by political rights which are more powerful (Allison, 2011).

6.3 Rights-based approach to practical factors

Exclusion caused by the community's interest in excluding outsiders and marginalisation within the community are difficult to address using the rights-based approach. This is because human rights are state-centred, where the nation state is seen as the one responsible for fulfilling the rights of its citizens. In this way, the communities and individuals within these communities, are shielded from responsibility (Offenheiser & Holcombe, 2003). To solve this problem, Offenheiser and Holcombe (2003) argue that human rights should be moved "beyond the state-centric paradigm" (p. 274). In this way, non-state actors but also individual citizens and communities can be held responsible for their role in respecting or even fulfilling other's rights.

6.4 Overview

Table 6.1 is an overview of the factors that have affected the success of co-management of Thailand's fisheries and whether they can be tackled by the rights-based approach. The relevant opportunities and barriers are mentioned as well.

Factors affecting the success of co-management		Can factor be tackled by the RBA?	What are the relevant opportunities/barriers of a rights-based approach?
<i>Legal</i>	Co-management to a limited extent legally binding	Yes	Civil and political rights have legitimacy in international law (<i>legal opportunity</i>)
	Thailand lacks capacity of enforcing laws and regulation	Maybe	Tackles poverty at its root causes/capacity building (<i>political opportunity</i>)
	Little certainty of rights and responsibilities	Yes	Demands accountability of duty-bearers (<i>political opportunity</i>)
<i>Political</i>	Government not always willing to devolve power to communities	Yes	Civil and political rights have legitimacy in international law (<i>legal opportunity</i>)
	Distribution of rights by government excludes people	Maybe	Economic, social and cultural rights are not legally adjudicative (<i>legal barrier</i>); Civil and political rights have legitimacy in international law (<i>legal opportunity</i>)
<i>Practical</i>	Community's interest in excluding outsiders	Maybe	Too state-centred in a time of globalisation (<i>political barrier</i>)
	Marginalisation within the community	Maybe	Too state-centred in a time of globalisation (<i>political barrier</i>)

Table 6.1 A rights-based approach to the factors affecting the success of co-management

7. Discussion

This study argues that co-management of Thailand's fisheries has not achieved the intended improvements in resource sustainability and local participation. Multiple studies on the success of co-management found similar results (Pomeroy et al., 2001; Fleishman, 2007). However these studies have not identified practical alternatives for improving co-management. Instead, they identified conditions under which co-management can be most successfully implemented (Pomeroy et al., 2001; Fleishman, 2007).

Similar to this study, Allison et al. (2012) and Ratner et al. (2014) focussed on a rights-based approach to fisheries management. These studies state that human rights are a powerful tool in promoting social development and improving governance of fisheries. Allison et al. (2012) and Ratner et al. (2014) however, have not examined the possibility of combining the rights-based approach with existing policies.

Naturally, this study has its constraints. By focussing on legal, political and practical factors affecting the success of co-management, factors that do not belong to these categories are left out. These factors could for instance include the migratory or highly mobile nature of fish and the lack of natural barriers (Pomeroy et al., 2001; Wilson et al., 2006; Fleishman, 2007). Another factor that can limit co-management's success can be overfishing caused by commercial fishers using destructive fishing techniques such as trawling.

One might question the relevance of focussing on small-scale fishing communities in combatting overfishing. Overfishing is not solely caused by small-scale fishing communities that do not have enough interest in nature conservation. Large-scale commercial fishers also pose a threat to the environment (Wilson et al., 2006; Fleishman, 2007). However, it should be recognised that small-scale fishers are the majority of the fisher society in Thailand (Fleishman, 2007) and the world (Nayak et al., 2014).

8. Conclusion

Thailand's current co-management policy has turned out to be incapable of addressing the human rights violations that are existent within Thai fishing communities. Therefore this study has researched whether the rights-based approach, which is argued to tackle poverty, insecurity and marginalisation at their root cause, can contribute to Thailand's fisheries co-management. This has been done using the following research question:

To what extent can a rights-based approach complement fisheries co-management in Thailand?

The factors which have affected the success of co-management in Thailand's fishery sector were legally, politically and practically oriented. It was found that some of these factors could or could potentially be tackled by opportunities of a rights-based approach. For instance, co-management's limited legitimacy in Thai law has negatively affected its success, however, a rights-based approach can contribute to solving this issue by its legitimacy on the international level. In addition, the government's unwillingness to devolve power to the local level can be addressed by the human right to political participation and therefore improve co-management practices.

However, not all factors that have affected the success of co-management of Thailand's fisheries can be addressed by the rights-based approach. The RBA's focus on the state as the most important duty-bearer and the fact that economic, social and cultural rights are not legally adjudicative were among the barriers to blame for this. Offenheiser and Holcombe (2003) strive for a broader notion of human rights, so that non-state actors can also be held accountable for violating other people's rights. This would increase the ability of a rights-based approach to address issues co-management is facing. On top of that, the traditional focus on civil and political rights should expand to include economic, social and cultural rights as well. This will make it easier to address issues such as poverty and hunger. Amnesty International and Human Rights Watch are organisations that already include ESC rights in their definition of human rights (Nelson, 2007).

To conclude, the rights-based approach can, to some extent, complement existing co-management policies in addressing overfishing and improving livelihoods. However, the identified barriers of a rights-based approach have limited its ability to complement fisheries co-management. A broader notion of human rights can be more successful in complementing co-management policies and addressing the underlying causes of poverty, insecurity and marginalisation in fishing communities.

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