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In association with

Banchte Shekha, BRAC, CARITAS, CNRS, CRED, FemCom, GHARONI, Proshika, SDC and SHISUK



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BRAC



CARITAS
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The Legal Background to Community Based Fisheries Management in Bangladesh

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Introduction

This booklet, produced as an output from the Community Based Fisheries Management Project - 2nd Phase (CBFM-2), aims to summarise the legal knowledge and experiences built up and challenges faced during the five years of CBFM-2 implementation.

The project has established community control over 116 water bodies, spread over 48 Upazilas (sub-district) in 22 districts in Bangladesh. With 130 Community Based Organisations (CBOs), formed under this project, the communities were given the responsibility for management of 116 water bodies - government owned fisheries (jalmohals) and privately owned seasonal water bodies- closed beels¹, open beels, river sections and floodplains.

The CBFM-2 project has been managed by the Department of Fisheries in partnership with the WorldFish Center, and 11 implementing NGOs - Banchte Shekha, BRAC, Caritas, CNRS, CRED, GHARONI, Proshika, SDC, SHISUK, and the specialist NGOs FemCom for media communications and BELA for legal support and assistance.



The Legal Framework

Background

In Bangladesh, the legal framework for the management of fisheries developed from two different legal regimes:

- The Doctrine of Public Trust of the ancient Roman Empire in which the Government held certain common properties such as rivers and the seashores in trusteeship for the free and unimpeded use of the general public, and
- English Common Law in which the sovereign could own these resources but could not grant these to private owners if the effect was to interfere with public interest in navigation or fishing.

Under the Permanent Settlement Regulation (PSR) of 1793, Zamindars (landlords) owned and managed flowing rivers, their tributaries, and flood plains containing beels. In 1947 under the State Acquisition and Tenancy (SAT) Act, 1950, the Government took over the rent receiving rights of the landlords as under SAT, public fisheries (jalmohals) became an estate that cannot be retained under private ownership. Most of the public fisheries are owned by the Ministry of Land although the conservation of water bodies and fishes are entrusted with the Ministry of Water Resources, Ministry of Environment and Forest and the Ministry of Fisheries and Livestock.

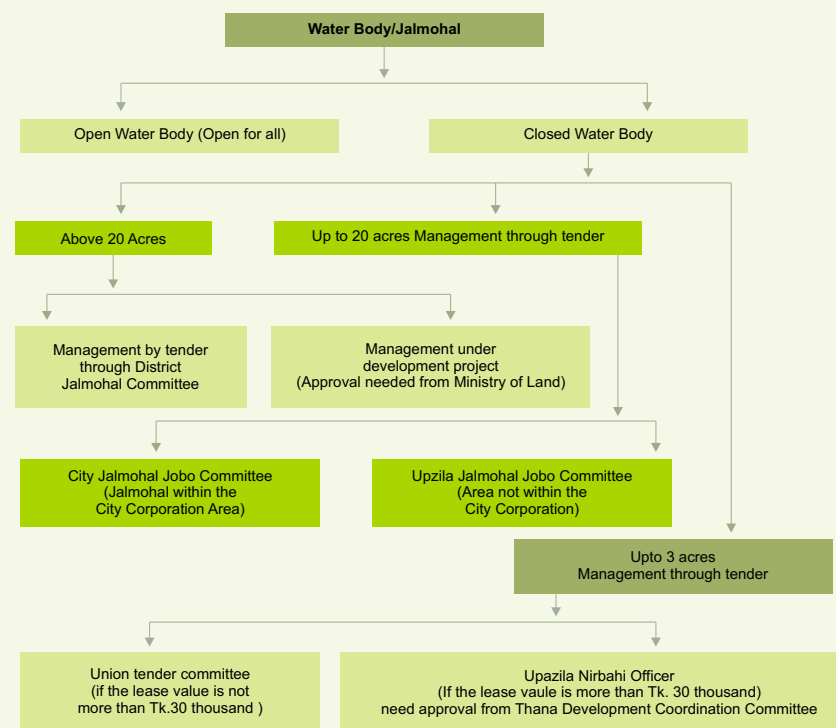
The various laws on fisheries enacted during the colonial period define fisheries as "public"² and "private"³. For management purposes, "fisheries" have also been classified as "open" and "closed" water fisheries in the management guidelines.

The definition of "fishery" was first included in the Protection and Conservation Act, 1950 through an amendment in 1995. As per the 1950 Act as amended in 1995 "fishery" means "any water body, natural or artificial, open or closed, flowing or stagnant (such as river, haor, baor, beel, floodplain, canal etc.) where activities for growing fish, or for conservation, development, demonstration, breeding, exploitation or disposal of fish or of living organisms related to such activities are undertaken, but does not include an artificial aquarium of fish used as a decorative article, pond or tank"⁴.

This definition is inclusive only of what is commonly understood as "inland" fisheries while the Marine Fisheries Ordinance (MFO), 1983 defines "marine" fisheries.

In general, laws on fisheries do not regulate the principles and practices of leasing or physical management of fisheries. The Land Management Manual, 1990 attempted to carry this out however this was completely changed through subsequent administrative decisions.

The current classification of fisheries for leasing and management purposes and their leasing arrangements is as follows:



1. Lake or depressions in the floodplain

2. Section 20(2a) (ii) of the State Acquisition and Tenancy Act, 1950

3. The Private Fisheries Protection Act, 1889

4. Protection and Conservation of Fish Act, 1950, Section 2 (1a)



In general, the policy documents that purport to regulate management of fisheries through leasing prescribe the following:

- Identification of leasing authority
- Requirement of tender
- Details of the tender process
- Pre-qualification of participating parties to tender
- Approval process
- Lease period
- Mode of Appeal
- Amount to be deposited
- Mode for handing over of fishery
- Management Plan (development project)



The 1950 Act has, although enacted to protect "fish", purported to regulate some of the growing concerns for gradual depletion of fishery and fish resources. As such the Act has empowered the Government to make rules regulating the depletion of fisheries by pollution, by trade effluent or otherwise and also the construction of dams, bunds, embankments and other structures that may be harmful to fish⁹.

The Protection and Conservation of Fish Rules, 1985 prohibited the erection of fixed engines in rivers, canals, khals and beels, construction of dams and embankment other than for irrigation, flood control or drainage purposes, destruction of fish by explosives in inland or coastal territorial waters¹⁰ or by poisoning/depleting water¹¹.

Conservation of Fishery

The conservation issues related to fisheries are addressed by the Protection and Conservation Act, 1950 and the Marine Fisheries Ordinance, 1983.

There are as many as five definitions of "fish"⁵. Under the Act of 1950, "fish" has been defined as all cartilaginous, bony fishes, prawn, shrimp, amphibians, tortoises, turtles, crustaceans, molluscs, echinoderms and frogs at all stages in their life history⁶. The Act sets 'protection' and 'conservation' as its prime focus, but neither defines them nor elaborates on promotive measures.

The Protection and Conservation of Fish Act, 1950 that came into force on 29 June, 1950 vide notification No. 5459 dated 22 June, 1950 was enacted to address the following concerns raised by the Agriculture and Industries Department in 1932:

- Prevent depletion of fishing grounds
- Help scientific research into fisheries
- Safeguard the interests of the trade and of fishing communities
- Ensure the maintenance of good order among fishermen
- Ensure sanitary and hygienic conditions in the manufacture and trade of fishery products
- Adopt restrictive measures about forms and dimensions of fish appliances, close times, wasteful and destructive methods of fishing

The Act of 1950 empowers the Government to prohibit:

- Killing or catching of fishes of prescribed species in certain seasons
- Killing or selling of fish of any prescribed species below a minimum size
- All fishing in all waters or in any specified waters for a specified period,
- Destruction of fishes by drying or de-watering of any fishery⁷, and
- Catching, carrying, transporting etc. of fishes below the prescribed size of any prescribed species throughout Bangladesh⁸.



To facilitate the augmentation and production of fish species like Shol, Gazar and Taki the Rules prohibited the catch or destruction of fish fry or parent fish of these species between the 1st April and 31st August. Except for pisciculture, the Rules also prohibited the catching of carps including species like Rui¹², Catla, Mrigal, Kalbasu or Ghania of any size in the waters of rivers, khals etc. at different periods between April to July in different water bodies as specified in the schedule. The sale of carps, Hilsha, Pungus, Silon, Bhola and Ayr below a specified size has also been prohibited at different times of the year.

5. Bangladesh Fisheries Development Corporation Act, 1973, The fish and fisheries Products (Inspection and Quality Control) Ordinance, 1983, The Marine Fisheries Ordinance, 1983, The private Fisheries Protection Act, 1889 and The Protection and Conservation of Fish Act, 1950.

6. Protection and Conservation of Fish Act, 1950, Section 2 (1)

7. Protection and Conservation of Fish Act, 1950, Section 3 (3)

8. Protection and Conservation of Fish Act, 1950, Section 4

9. Protection and Conservation of Fish Act, 1950, Section 3 (3)

10. Protection and Conservation of Fish Rules, 1985, Rule 5

11. Protection and Conservation of Fish Rules, 1985, Rule 6

12. Shol = *Channa striata*, Gazar = *Channa marulius*, Taki = *Channa punctatus*, Rui = *Labeo rohita*, Katla = *Catla catla*, Mrigal = *Cirrhinus mrigala*, Kalbasu = *Labeo calbasu*, Ghania = *Labeo gonius*, Hilsha = *Tenulosa ilisa / Hilsa ilisa*, Pungus = *Pangasius pangasius*, Silon = *Silonia silonia*, Bhola = *Barilius bola*, Ayr = *Mystus aor*

Lessons Learnt In CBFM-2



As stated earlier, the Act does not define "conservation". It has no provision relating ownership or management of fisheries to their physical possession. Also there is no mention of management of fisheries through community participation or through the actual fishermen's community or NGOs. There is no definition of "fishermen" in any of the legal or policy documents of Bangladesh. This Act also fails to recognize the concept of "fish sanctuary" as a conservation approach.

The National Fish Policy, 1998 calls for production based management of open water fisheries as opposed to leasing. The Policy commits to promote involvement of poor and traditional fisherfolk in the management and conservation of both open and closed water bodies although it does not mention community based management as an approach. The National Fish Policy, 1998 explicitly recognizes the concept of sanctuary as a mode of fish conservation.

The other management concerns relating to fisheries as identified in the policy are the use of harmful devices, pesticides, pollution from both point and non-point sources, unregulated and over fishing and so on.

The two basic legal documents on which CBFM-2 is premised include the Memorandum of Understanding (MoU) signed between the Ministry of Land and Ministry of Fisheries and Livestock and also the Memorandum of Agreement (MoA) between the Department of Fisheries, WorldFish Center (the then ICLARM) and the partners NGOs.

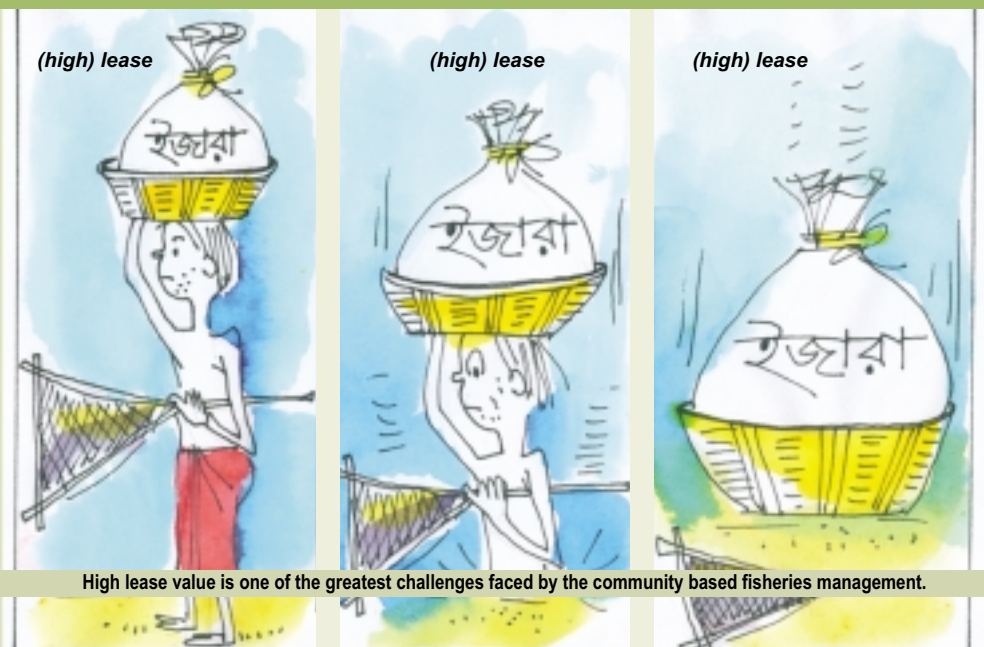
These agreements virtually required the Ministry of Land to hand over the designated water bodies to Ministry of Fisheries and Livestock (MoFL) for managing them through NGOs in a community based management approach for ten years beginning in 2001. The CBFM-2 arrangements that the NGOs followed involved the participation of concerned Deputy Commissioners, District Fisheries Officers, Upazilla Fisheries Officers - all having their statutory responsibility regarding the management of fisheries. The NGOs, with support and guidance from local authorities, formed various community management committees with representation of local poor fishermen and drew up management plans for specific water bodies. Most of the community management groups are registered as cooperatives either under the Cooperatives Societies Act, 2001 or as groups under the Voluntary Social Welfare (Registration and Control) Ordinance, 1961.

Although the official arrangement with the MoFL, the WorldFish Center and the NGOs comes to an end in March 2007, these community groups shall continue managing the water bodies in the CBFM approach for another five years, i.e., up to 2011. As

such, the sanctuaries managed under the CBFM-2 project are expected to be managed as such till 2011 although no explicit legal recognition exists for the sanctuaries.

During the implementation phase, various CBFM-2 components faced the following challenges requiring legal interventions:

- Unclear demarcation of water bodies
- Cancellation of CBFM-2 lease arrangements by local administration
- Delayed handing over of possession of water bodies due to suits filed by previous lessees
- Delayed access to CBFM-2 water bodies due to pending cases
- Pollution
- Demands by persons claiming to have competing rights as riparian fishermen over CBFM-2 water bodies
- The legality of leasing out open water bodies under CBFM-2
- The legal status of MoUs signed between two ministries as opposed to regular lease agreements executed in the name of the President
- Absence of an executive order (gazette notification) giving legality to CBFM-2 agreements
- The requirement for payment of taxes to the government
- The sub-lease of CBFM-2 water bodies by community management groups
- Criminal cases



It should be added that most of these legal challenges were settled successfully in favour of the CBOs through the actions of project staff (WorldFish Center and DoF), partner NGOs and local administrations with the assistance of legal representation by BELA.

At the close of the CBFM project, the following issues may pose legal challenges for the community groups expected to manage the water bodies without institutional presence of the CBFM project and its partner NGOs:

- Lack of legal recognition of management approaches like CBFM (challenges from vested interest quarters)
- Lack of institutional support from public agencies
- Lack of coordination between the statutory agencies
- Administrative hierarchy amongst public agencies
- Absence of legal recognition of the CBFM

management plans

- Absence of legal recognition of fish sanctuary
- Unclear legal status of community groups yet to register under law
- Inadequate fund/alternative income generation facilities
- High lease value
- Conflicting claims of the vested interest corners over water bodies, fish resources
- Absence of provision for continuous legal support
- Pollution
- Criminal offences



In Nandinar beel, Rangpur district where CBFM-2 partner BRAC works, the distillery effluent from a nearby factory was polluting the beel and its fisheries resources. The local the Community Based Organisation (CBO) formed under the CBFM-2 project, came forward. In collaboration with the local govt. officials from the Department of Fisheries (DoF), BRAC, the project's legal assistance provider BELA, the media communication partner FemCom and the local Parliament Member, the CBO has been able to stop this pollution



"The ongoing court cases (usually filed by influential leasee) deprive government of the lease money."

Recommendations

Initiatives like CBFM require the following legal and policy interventions to ensure sustainability:

- Appropriate legal and institutional arrangements to translate policy commitments for the upliftment of poor fishermen and their involvement in management of fisheries into reality .
- Well defined management laws, rules and appropriate legal framework for public water bodies to include and recognize concepts like CBFM .
- Long term commitment to management practices like CBFM and the avoidance of frequent policy changes relating to fisheries management through leasing .
- Clearer definition of traditional fishermen and their right of access to water bodies and to the decision making process for their management.
- Realistic level of payments for fishermen (lease values and other legal requirements including taxation).
- Capacity building of the participating fisher folk and community support.
- Legal recognition of sanctuary and other sustainable fishing practices introduced through innovative programmes like CBFM.
- Mandatory and well defined management plans to arrest the loss of fishery and other aquatic resources with clear monitoring mechanisms (in case of commercial leasing out).
- Avoidance of conflicting roles of different government offices in fisheries management.
- Clear and strengthened role and jurisdiction of the MoFL, Department of Fisheries in dealing with water bodies designated for CBFM and similar projects.
- Implementation of laws on pollutions and conservation of fisheries.

Fish And Fisheries Management.

LAWS, RULES, POLICIES AND CONVENTIONS

Laws

The Constitution of the People's Republic of Bangladesh
Bangladesh Fisheries Development Corporation Act, 1973
Bangladesh Water and Power Development Board Order, 1972
Bengal Tenancy Act, 1885
Environment Court Act, 2000
The Acquisition of Waste Land Act, 1950
The Agricultural Pest Ordinance, 1962
The Agricultural Pesticides Ordinance, 1971
The Agriculture and Sanitary Improvement Act, 1920
The Canals Act, 1864
The Chittagong Port Authority Ordinance, 1976
The Coast Guard Act, 1994
The Culturable Waste Land (Utilization) Ordinance, 1959
The Dhaka City Corporation Ordinance, 1983
The Embankment and Drainage Act, 1952
The Environment Conservation Act, 1995
The Factories Act, 1965
The Fish and Fish Products (Inspection and Quality Control) Ordinance, 1983
The Fisheries Research Institute Ordinance, 1984
The Forest Act, 1927
The Government Fisheries (Protection) Ordinance, 1959
The Inland Shipping Ordinance, 1976
The Inland Water Transport Authority Ordinance, 1958
The Irrigation Act, 1876
The Land Reform Board Act, 1989
The Land Reforms Ordinance, 1984
The Local Government (Union Parishads) Ordinance, 1983
The Marine Fisheries Ordinance, 1983
The Mongla Port Authority Ordinance, 1976
The Non-Agricultural Tenancy Act, 1947
The Open Space Protection Act, 2000
The Paurashava Ordinance, 1977
The Penal Code, 1860
The Private Fisheries Protection Act, 1889
The Protection and Conservation of Fish Act, 1950
The Shrimp Cultivation Taxation Act, 1992
The State Acquisition and Tenancy Act, 1950
The Tanks Improvement Act, 1939
The Territorial Water and Maritime Zones Act, 1974
The Water Supply and Sewerage Authority Act, 1996

Rules

- Environmental Conservation Rules, 1977
- Marine Fisheries Rules, 1983
- Permanent Settlement Regulation, 1793
- Territorial Water and Maritime Zones Rules, 1977
- The Fish and Fish Products (Inspection and Quality Control) Rules, 1997
- The Protection and Conservation of Fish Rules, 1985
- The Shrimp Cultivation Taxation Rules, 1993



Policies

- Environment Policy, 1992
- Export Policy, 1997-2002
- Fifth Five Year Plan, 1997-2002
- Industrial Policy, 1991
- Land Management Manual, 1990
- Land Use Policy, 2001
- National Environment Management Action Plan, 1995
- National Fish Policy, 1998
- New Agricultural Extension Policy, 1996
- Water Policy, 1999
- Public Water Body Management Policy, 2005
- And various circulars

Conventions

- Convention for the Prevention of Pollution of the Sea by Oil 1954
- Convention on the law of the Sea 1982
- The Convention on Biological Diversity, 1992
- The Convention on Wetlands of International Importance especially as Waterfowl Habitat, 1971