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Indigenous rights and coastal fisheries: A framework of livelihoods, rights and equity

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ABSTRACT

The involvement of indigenous peoples in fisheries, and in the management of those fisheries, varies widely around the world, but invariably involves many complex interactions. This paper assesses these interactions using a three-pronged conceptual framework of livelihoods, equity and rights (resource access and management rights, as well as indigenous and aboriginal rights). The framework is applied to examine the experiences of indigenous peoples in Canada and the Philippines regarding access to fishery resources, and participation in fisheries management and policy. These experiences demonstrate the importance of legally recognized rights not only as a key tool in resource management, but also in the pursuit of secure and equitable livelihoods on the part of indigenous peoples. While it is apparent that in some ways, serious mismatches exist between government policy and local livelihood needs, there are also illustrations of positive change in improving the situation of indigenous peoples.

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1. Introduction

The legal recognition of indigenous and/or aboriginal rights in the management of natural resources is typically a key ingredient in overcoming marginalization and improving the well-being of indigenous peoples, particularly those deprived of their land and other resources through processes of colonization and marginalization. Such recognition of rights to traditional lands and resources is considered to facilitate economic opportunity, appropriate development and sustainable livelihoods (Bess, 2001; Jentoft et al., 2003; O'Faircheallaigh, 1998). However, accommodating indigenous rights within existing legal frameworks remains a challenge for various governments, and indeed this is a major concern arising

in many of the world's fisheries (Charles, 2006; Ganter, 1996; Robinson and Mercer, 2000; Wiber and Kennedy, 2001; Wiber and Milley, 2007a,b).

The efforts of indigenous peoples¹ to have their rights recognized, or further developed, arise notably in locations where colonization and dispossession of land and resources prevented the exercising of their right to development that meets their own needs and interests. While there has been some recognition of the rights of indigenous peoples through international conventions and declarations – e.g., the 1989 Convention on indigenous and tribal peoples in independent countries (also known as International Labour Organization or ILO Convention No. 169) and the 2007 United Nations (UN) Declaration on the Rights of Indigenous Peoples – this recognition has not been matched, in many countries of the world, by effective governmental and societal recognition of those rights. This reality has been particularly apparent with respect to fisheries and other natural resources.

Accordingly, this paper examines the realities of indigenous people in relation to indigenous rights, access rights and management rights over fisheries and coastal resources, drawing on experiences of both industrialized and developing countries – specifically the cases of Canada and the Philippines. We focus on two case studies, one in each country, as an empirical means to illustrate real-life phenomena, particularly involving indigenous peoples who are affected in the decision making process in the context of small-scale fisheries and their management.

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¹ For consistency, this paper will use the term “indigenous peoples” throughout. In Section 35 of Canada's 1982 Constitution Act, indigenous peoples are referred to as ‘aboriginal peoples’ while the Philippines, in its 1987 Constitution and the Indigenous Peoples Rights Act of 1997, uses the term indigenous peoples, and/or ‘indigenous cultural communities’ – but see Rood (1998, pp. 139–140). The term “indigenous peoples” has been adopted by a large number of governments, international agencies and, most significantly, a broad movement of self-identified peoples as the best term available to incorporate consideration of their rights into international law (Colchester et al., 2004). We recognize that the word ‘indigenous’ is inclusive rather than exclusive, and that indigenous groups, as part of a constantly changing world, are themselves dynamic in nature (e.g., Hinch and Butler, 2009).

The analysis is based on a conceptual framework focused on three aspects: livelihoods, rights and equity. The framework is used to examine and compare the case studies, which differ in their political, socio-economic and cultural context, but share similarities in the experiences of indigenous peoples seeking to be heard in the decision making process of resource management. We emphasize lessons that can be drawn in relation to the practice and policy of small-scale fisheries management, in relation to the involvement of indigenous peoples. Specifically, the study enhances understanding of how indigenous peoples and fishing communities connect to the policy and legal environment, both from industrialized and developing nation perspectives, and can thereby better secure their role in the development process and in fisheries management.

2. Research process and methodology

Fig. 1 indicates the logical flow of the analysis in this paper. The research process begins with a policy review of various international frameworks related to indigenous peoples' rights, particularly in relation to natural resource use and conservation. This provides the basis for development of the conceptual framework, which is compatible with the characterization of indigenous rights in terms of an increasing emphasis on democratization of natural resources, the participation of indigenous peoples, and a focus on combining poverty alleviation and sustainable resource management. Underpinning the conceptual framework are the overarching themes of livelihoods, rights, and equity – these themes are applied to systematically examine trends in fisheries management within the context of indigenous peoples. Finally, a case study approach is used, drawing on examples from a developed nation (Canada) and a developing country (the Philippines) so as to provide the contrasting perspectives needed for an in-depth understanding of this contemporary phenomenon within its real-life context (see Yin, 2009). Insights from this case study analysis then feed back into the policy sphere through a set of policy-level conclusions.

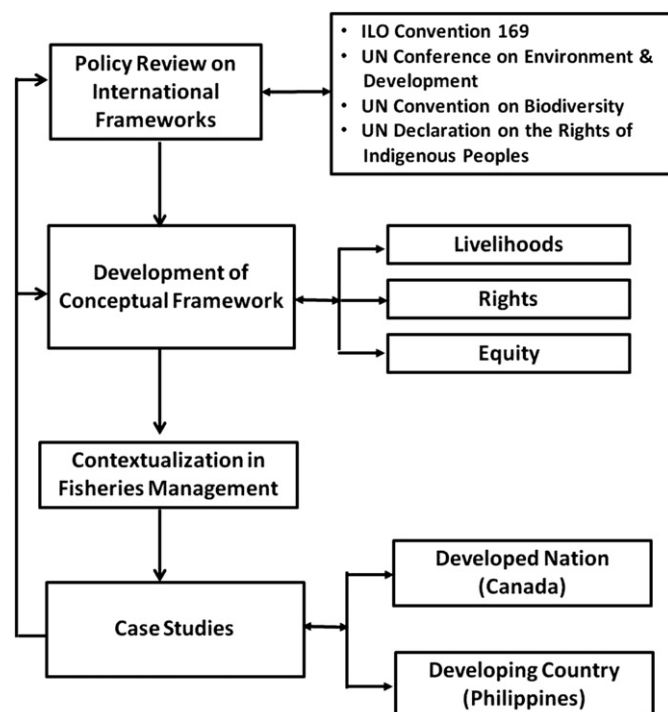


Fig. 1. Research process: policy analysis, conceptual framework, and case studies.

Examination of the three-way interaction between indigenous peoples, natural resources and economic development will be undertaken here within a framework of three key goals: livelihoods, rights and equity (see Table 1). First, analysis of livelihoods (Chambers and Conway, 1992) addresses aspects of employment, together with environmental and social well-being, emphasizing the importance of human capabilities and 'assets', including physical capital, financial capital, natural capital, human capital, and social capital. In our context, the focus is on livelihoods of the community and of indigenous peoples. Indeed, the commonly-utilized sustainable livelihoods approach supports positive change through suitable conservation-compatible community development (Allison and Horemans, 2006; Arciaga et al., 2002; CBCRM Resource Center et al., 2003; Charles et al., 2007; Ferrer and Nozawa, 1997; Graham et al., 2006; Kearney et al., 2007; Rivera and Newkirk, 1997).

Second, the framework links together three forms of rights which seem to be of critical importance with respect to the connections of indigenous peoples and natural resources: (i) secure rights to access, use and manage natural resources; (ii) social, economic and human rights, which interact with resource-related rights (Charles, 2009, 2011); and (iii) indigenous and aboriginal rights, which may be directly related to or functionally independent of the other rights. These forms of rights are all receiving growing attention in the governance of natural resources.

Certainly, resource-related rights are recognized as a fundamental factor in the sustainability of livelihoods, not only governing use of the resources and involvement in decisions relating to that use (Chambers and Conway, 1992; Food and Agriculture Organization, 2007, p. 6), but fundamentally reflecting imperatives in terms of relationships among people (specifically resource users) and between people and society. This may also bring social, economic and other human rights into the picture, considerations increasingly recognized in the fishery sector. At the same time, indigenous/aboriginal rights, where they arise, often have land and other natural resources at their core, reflecting the reality of distinct peoples and their right to determine their own development according to their culture, priorities, and customary laws (UN Declaration on the Rights of Indigenous Peoples, 2007).

The third main component of our analytical framework is that of equity. As a goal, equity arises in various forms – such as intergenerational equity, gender equity, etc. (Chambers, 1997). Its importance has been highlighted by Colchester et al. (2004), who suggest that in the quest of indigenous peoples for self-determination, the securing of ownership, control and access to their lands, territories, and natural resources needs to be accompanied by suitably equitable arrangements. Equity can arise in natural resource management through issues of empowerment and participation in the implementation of resource management, and as a desired outcome, rooted in the ideals of social justice (Pomeroy and Rivera-Guieb, 2006). There is thus a strong

Table 1
Conceptual framework on indigenous rights and coastal fisheries.

Components	Key considerations
Livelihoods	<ul style="list-style-type: none"> ■ Addresses employment plus environmental and social well-being ■ Emphasizes importance of human capabilities and livelihood assets
Rights	<ul style="list-style-type: none"> ■ Includes human, social, physical, financial and natural capital ■ Secure rights to access, use and management ■ Linking resource-related rights to broader human-rights ■ Indigenous or aboriginal rights
Equity	<ul style="list-style-type: none"> ■ Intergenerational equity ■ Gender equity ■ Equity in community participation

interaction in natural resource sectors between rights and equity; policies that shape resource use and management rights can play a major role in promoting and improving the equity of resource distribution. Ferrer and Nozawa (1997) also emphasized that such rights approaches can draw on the innate capacity of people to understand and act on their own problems.

The above three themes – of rights, livelihoods and equity – all relate to the policies and institutions that determine people's access to resources, livelihood options and strategies, and ultimately, the outcome of those strategies in terms of both the ability to make a living, and the willingness to invest in conserving the natural resource base. However, policy rhetoric in support of such directions may not be matched by actual practice, notably when laws and institutions are unable to address the culture, problems, interests, and aspirations of the poor (Mayo-Anda, 2001). Addressing governance therefore remains a key challenge for both poverty reduction and responsible fisheries (Allison and Horemans, 2006).

To this end, it is useful to explore the linkages between governance and rights. Consider, for example, how rights over natural resource management decision making relate to the popular local-level governance mechanism of community-based resource management. The latter is seen to provide a vehicle, where appropriate, to bring into the decision-making process those living in communities most directly connected to the natural resource, so that they share in the benefits (and the costs) of those decisions (Pomeroy and Rivera-Guieb, 2006). Indeed, Rivera-Guieb et al. (2004) consider community-based management as a mechanism to address issues of social injustice that are associated with unequal resource access and gaps in benefits-sharing from resource use.

For indigenous communities, in particular, this approach involves achieving a certain level of empowerment (Rowlands, 1995), e.g., through institutions established to facilitate participation and secure rights (Jentoft, 2005), in a manner that moves beyond routine consultation to a real sharing of decision-making power (Binkley et al., 2006). Empowerment of communities to exercise management control over resources and institutions – adding clear management rights to access and use rights (Charles, 2001) – thus enhances livelihoods and aids in securing sustainable use of resources (IIRR, 1998). More than simply opening up decision making, good governance principles indicate that this should also include processes that lead people to perceive themselves as able and entitled to occupy decision making space. It should be noted as well that broad involvement of the community in resource management decision making has tended, in a variety of circumstances, to reinforce compliance with management strategies and regulations (Pomeroy and Rivera-Guieb, 2006).

Related to this is the role (or potential role, if not currently incorporated) of indigenous management, customary traditions and institutions within natural resource management more generally, as well as the need for support from the State for associated community management institutions and conservation measures. In addition, there is a need for recognition by the State that traditional ecological knowledge and values can contribute toward both cultural survival and sustainability of resources – while ensuring an understanding of and respect for the nature and role of such knowledge (e.g., Mauro and Hardison, 2000; Wohling, 2009).

The conceptual framework described here, namely the interplay of livelihoods, rights and equity, will be applied in Sections 3 and 4 to assess the interaction of indigenous peoples and resource management. We seek insights into the interplay of livelihoods, rights and equity, by focusing on the fishery sector, comparing developing-nation and developed-nation perspectives. Specifically, we look at the experiences of indigenous peoples in the developed nation context of Mi'kmaq communities on Canada's Atlantic coast,

and the developing nation context of the Tagbanua of Coron Island, Palawan, in the Philippines. Section 5 synthesizes these experiences, addressing: the interaction of rights and livelihoods, the role of management rights, links to development and poverty alleviation, and the importance of partnerships incorporating a human/indigenous rights agenda. We explore the commonalities of the indigenous peoples involved, as well as the diversity of approaches, outcomes, challenges, and lessons learned in their efforts to assert their rights, and secure sustainable livelihoods on their own terms.

3. Case studies

3.1. The Mi'kmaq of Atlantic Canada

The Mi'kmaq indigenous people in the Atlantic region of Canada have always been highly dependent on natural resources. They define their relationship with the environment through the concept of *Netukulimk*, a Mi'kmaq term that relates to making a livelihood from the land (Barsh, 2002), through resource management and harvesting which does not jeopardize the integrity, diversity, or productivity of the environment (Berneshawi, 1997; Doyle-Bedwell and Cohen, 2001).

From a livelihoods perspective, fishing was historically among the essential seasonal activities of the Mi'kmaq (Notzke, 1994), playing a unique role in many communities, with the catch being divided between food, ceremonial, and commercial purposes (Stiegman, 2006). Pursuit of livelihoods through annual migrations of the Mi'kmaq between fishing and hunting grounds led to a set of rules placed on harvesting practices, including frequency and season of harvest, areas of harvesting and who does the harvesting.

With respect to rights, traditionally management rights relating to decision making over natural resources were not vested in a hierarchical leadership but rather were made through a consensus of all members of the community (Milley and Charles, 2001; Young and Metallic, 1999) – although these practices have been highly stressed as a result of government policy and practices. The impacts of those policies and practices were reflected as well in Canada's First Nations – as aboriginal communities have become known through governmental terminology – largely losing their access rights to the resources on which they traditionally depended for their life and livelihoods (Kerans and Kearney, 2006). A passive exclusion of First Nations from mainstream economic activity was accompanied by strong governmental limitations on access to the fishery (as well as forestry and other resources) and thereby little direct economic benefit (Wiber and Milley, 2007a).

This in turn has had equity impacts, with the majority of the Mi'kmaq earning much lower incomes than regional and national averages (Coates, 2000). Exacerbating this has been the reality that while First Nations are provided with various social services and programs (including housing, education and health), this is done in a manner that has kept these communities well below Canada's accepted national standards.

Improvements to resource access have come about over the past two decades through the avenue of aboriginal rights, as a result of decisions of the Supreme Court of Canada. In 1992, the *Sparrow decision*² confirmed the treaty rights of aboriginal people to fish for

² With the *Sparrow decision*, the Canadian government through the Department of Fisheries and Ocean (DFO) instituted the Aboriginal Fisheries Strategy (AFS), thus providing financial support for employment and economic development available to Mi'kmaq First Nations. While this has generated employment in the communities, the agreement between the government and the First Nations diminished the authority of Mi'kmaq leaders over harvesting activities and further moved away from their traditional system of community-based management (Milley and Charles, 2001).

food, social and ceremonial purposes. While this guarantees the First Nations food fishery in law, very limited funds and fishing access were put on the negotiating table for such fisheries by the Canadian government's Department of Fisheries and Oceans (DFO), following the Sparrow decision (Stiegman, 2006). Furthermore, this food fishery is so narrowly defined (notably excluding commercial sale of fish) that its contribution to the livelihoods of First Nations in Atlantic Canada was greatly limited (CLCN, 2009).

There was, therefore, considerable interest in historical evidence demonstrating that there had been aboriginal involvement in commercial fishing since colonial days. This involvement diminished greatly, however, with the introduction of government-imposed access restrictions in the late 1960s and the 1970s, excluding most indigenous people from the commercial fishery, and leaving a significant undercurrent of resentment (Gough, 2007, p. 400).

This situation remained until 1999, when a second major Supreme Court of Canada decision, the *Marshall decision* (R.V. *Marshall* S.C.R. 1999), recognized indigenous peoples' historic right to and involvement in commercial fishing in the Atlantic Canadian fisheries, through treaties signed by the First Nations with the (British) Crown in 1760 and 1761. The *Marshall decision* has led to significantly increased involvement of Mi'kmaq First Nations in commercial fishing activities. However, this did not take place without some conflict. Notably, in and around Esgehoopetitj, also known as Burnt Church First Nation, in Miramichi Bay, New Brunswick, the *Marshall decision* led to confrontation and even violence between some indigenous people, non-native people, and the Federal Government. This and other First Nations that asserted their treaty rights by entering the commercial fishery were initially faced with strong opposition, including having their fishing gears destroyed (by some non-natives) or confiscated (by government).

In this paper, we focus specifically on the experiences in building a commercial fishery presence of two other Mi'kmaq First Nations – Lennox Island and Abegweit, located in the island province of Prince Edward Island (PEI), within the Gulf of St. Lawrence. Following the *Marshall decision*, these communities – jointly through the Mi'kmaq Confederacy of PEI (MCPEI) – developed a plan for their involvement in the commercial fishery.

As for other First Nations in the region, and in contrast to non-native components of the commercial fishery, access rights are in the form of communal (rather than individual) fishing licences, through agreements with the Federal Government (Graham et al., 2006). Being communal in nature, a community can manage these commercial licences not only in the interests of those who are fishing, but also to provide benefits distributed across all members of the community – this is the approach taken by the First Nations of PEI, highlighting the importance placed on linking aboriginal and fishery rights with the equity goal described in the previous section.

The communities have protected their rights in the fishery, through an organizational structure established in each community to ensure their control over the fishery – so agreed-upon management objectives could not be compromised by individual band members nor by non-native interests outside the community. In each of the PEI First Nation communities, the Band Council, through its fisheries sub-committee, appoints community committee members, reviews policy documents and fishery plans, and approves operational procedures and work plans.

The livelihood goal is also considered fundamental to the PEI First Nations, with their fisheries management plans oriented toward sustainable employment and broad-based economic benefits, in order to allow band members to become productive in harvesting, fish handling, and marketing (Charles et al., 2007). Through this route, the economic well-being of the community is

improved, reducing dependence on social security programs (Wiber and Milley, 2007a), and the operation of the fisheries seeks to generate enough revenue to meet the cost of fishing, to meet the personal needs of the fishers, and to provide sufficient surplus to cover the management costs incurred by the community.

Overall, then, there has been some progress for the Mi'kmaq in Atlantic Canada, and in particular for the PEI First Nations, in ensuring legally-entrenched use rights in the commercial fishery, following the *Marshall decision*. For the PEI First Nations, there has also developed a livelihoods-oriented approach to their fishery involvement, with strong equity considerations.

These successes must be contrasted, however, with the reality of considerably less progress in achieving government recognition of First Nation *management rights* in the fishery. While many First Nations communities have gained experience in fisheries management, and have made considerable efforts to develop their own management plans, this has been under the ground rules established by the DFO, leaving the Federal Government's continuing hold over fishery management rights as a continuing cause for concern (Milley and Charles, 2001; Wiber et al., 2009). Certainly, the question of scale (e.g., Wohling, 2009) is important here. There are few fisheries so local in nature that they could be managed solely by a single First Nation, and indeed many fisheries are carried out over spatial domains considerably larger than the fishing area of one First Nation. Thus, the mechanism of co-management, as is typically the case, will depend on the context. This may vary from a large degree of indigenous decision making authority for local (e.g., sedentary) resources, to the involvement of multiple First Nations sharing decision making with government, and other stakeholders, for fisheries taking place over more extensive areas. Even in the latter case, however, First Nations can successfully manage their own fishing activity, as is not uncommon in many community-based fisheries.

3.2. The Tagbanua of Coron Island, Palawan, the Philippines

Indigenous peoples comprise about 20% of the population of the Philippines, or 12 to 15 million inhabitants, counted among the diverse cultural systems that build on the archipelagic nature of the Philippines – with its more than 100 ethno-linguistic groups that have retained their traditional or customary systems to various degrees (DENR-PAWB et al., 2002). Santos (2005, pp. 24–25) describes the local-level pre-colonial economics of these peoples as geared for social use and for fulfilling certain kinship obligations, with resource production that was decentralized and not predicated on exchange. The family as a unit had to take charge of their own needs, meeting the requirements of family members' patterns of consumption. Thus, there was no need to create relations of either dependence or exploitation.

Prior to the coming of Spain, the Philippines and its maritime trade economy comprised communities dispersed along estuaries of rivers and coastal shores, and the national history was made up of a complex of local histories (Nadeau, 2002). However, the introduction of the Regalian Doctrine into the Philippine legal system by the Spanish colonizers essentially converted most, if not all, of the indigenous peoples to squatters in lands that they traditionally owned and possessed by virtue of native title already vested in them (Lynch, 2005; Mayo-Anda et al., 2006). Eventually, the Spanish and American colonization left widespread socio-economic problems, with wealth in the hands of a small ruling class, which claimed and exploited the lands often belonging to indigenous peoples.

Given this historical reality, the present section focuses on relatively recent experiences on the island of Coron in the northern part

of Palawan, which is home to the Tagbanua. As for the Canadian example, livelihoods, rights and equity are the driving factors here.

With respect to livelihoods, in addition to the major activity of rice farming, most Tagbanua families are also engaged in subsistence fishing using hook-and-line, spears, and nets, with these fishing activities based on those of pre-colonial times. The sustainability of livelihoods draws, for example, on knowledge of sacred areas where fishing is not allowed, together with the use of seasonal harvesting methods (Nozawa and Lavides, 2005). Thus current traditional fishing practices within the ancestral waters of the Tagbanua are practiced within the context of sacred marine areas or *panya'an* (similar to fish sanctuaries). Other related taboos and customary laws, as ordered by their elders or *mama-epet* within their natural environment, involve their *amlaran* (sacred areas on land) and the *awuyuk* (sacred lakes) which are believed to be inhabited by the *panlalabyut* or giant human-like octopuses (Dalabajan, 2001).

Until the mid-20th century, little changed in the lives of the Tagbanua, who have a relatively low population and a subsistence economy based on kinship and mutual sharing of the means of production, defined through communal rather than individual ownership of resources. However, during the 1970s, and remarkably in parallel with the impacts of Canada's fishery licencing practices, the municipal government of the region made a similar disenfranchising move, seizing all the clan caves to raise taxes for the municipal treasury and classifying these as government property, which was then auctioned off to tourist resort developers and owners. Then in the mid-1980s, the decline of fisheries in the Visayas region and some parts of Luzon led to encroachment on fisheries of the Tagbanua, forcing them to leave the adjacent island of Delian and eventually moving upland in Coron Island.

These two actions reflected challenges to indigenous tenurial rights, as well as to fishery access rights, both impacting on livelihoods. While in Canada, related challenges led to Supreme Court cases, the response of the Tagbanuas lay in institutional development and use of policy and regulatory avenues. First came the establishment of the Tagbanua Foundation of Coron Island (TFCI) in 1985. A key success, in 1990, was a Community Forest Stewardship Agreement (CFSA) with the Department of Environment and Natural Resources (DENR), covering the islands of Coron and Delian Island. This was awarded to the Tagbanuas on a communal basis, to extract logs over 7748 ha, on the condition that they protect the forest from illegal activities, and led to their regaining control of their terrestrial ancestral domain. Subsequently, other Tagbanuas in the Calamianes Islands³ began building community organizations to secure their tenurial rights.

The success on land was significant, but the tribe argues, "*Walang saysay ang lupa kung wala ang dagat*" (The land is meaningless without the sea) (Rimban, 1998). Realizing that the CFSA is limited only to land ownership, the Tagbanua identified an opportunity to reclaim their traditional fishing grounds through the Strategic Environmental Plan for Palawan (Republic Act 7611), which expands the definition of ancestral domain to include coastal zones and other submerged areas.

The initiatives of the Tagbanua were affected by a number of interacting legislative and regulatory measures by the national government during the 1990s (Capistrano, 2010). These included a process for recognizing and awarding a Certificate of Ancestral Domain Claims (CADC), a land tenure instrument issued to

recognize the claims of indigenous peoples on land, resources, and rights within a defined territory. Three years later, an Administrative Order provided guidelines for the management of these claims and for formulating an Ancestral Domain Management Plan (ADMP). The Tagbanuas viewed this as an enabling policy to codify their customary laws, belief, and practices (Dalabajan, 2001; c.f., Capistrano, 2010), and sought the assistance of non-governmental organizations to assist them in mapping their ancestral territory, conducting biological resource assessment and livelihood development. Then, in 1997, the Indigenous Peoples Rights Act (IPRA) or Republic Act or R.A. 8371 which establishes a comprehensive framework of protecting indigenous peoples' rights, was passed; this is believed to mark the first time in Asia that a national government legally recognized indigenous peoples' territorial rights (Lynch, 2005, p. 404). Such legal safeguard protects the rights in providing preferential treatment to indigenous peoples as a necessary measure of social justice and equity in the Philippines (Mayo-Anda et al., 2006). IPRA defines the indigenous concept of ownership as basically one that is private but communal, and that cannot be disposed of or sold, a definition that covers ancestral domains and sustainable traditional resource rights.

Closely following the passage of the IPRA, in 1998, DENR approved the Ancestral Domain Claim of the Tagbanuas covering 22,284 ha – which includes the entire island and a portion of the seas surrounding it. The success of this claim gives substance to the definition of 'ancestral waters' embodied in the IPRA (Mayo-Anda et al., 2006). This is also a landmark case in the Philippines that recognizes the rights of indigenous peoples to their ancestral lands and waters, and their rights to self-governance in keeping with indigenous culture, traditions and institutions. This process illustrated clearly how indigenous rights, resource use rights and management rights all interact together.

The Tagbanuas proceeded to develop a management plan that incorporates their indigenous knowledge systems and practices, and customary laws, moving to an Ancestral Domain Sustainable Development and Protection Plan that will harmonize the objectives of both the ancestral domain title and protected areas. This engages the Tagbanuas and participating NGOs, and acts as a platform for others, such as migrant fishers, municipal government and the national government (Lorenzo and Dalabajan, 2002), reflecting a linkage of secure access rights and management rights of the indigenous peoples directly to the creation and maintenance of secure (and equitable) livelihoods.

Unfortunately, however, some other legislation relating to natural resource management conflicts with IPRA. While there are attempts to harmonize IPRA with this other legislation, overlaps and conflicts of certain national laws with IPRA are widely experienced by indigenous peoples. This arises, for example, with the aggressive implementation of the 1995 Philippine Mining Law, the 1975 Revised Forestry Code or Presidential Decree 705, and other DENR administrative orders related to the management and utilization of natural resources in protected areas, in relation to the indigenous peoples for whom these areas form part of their ancestral domains. At present, corporate mining applications and operations, forestry management practices and illegal logging, and militarization, among others, exhibit conflicts with the IPRA, and with National Integrated Protected Areas System (NIPAS) Act⁴ in areas within the declared protected areas and ancestral domains of the indigenous peoples.

³ The Calamianes Islands are a group of 160 islands off the northern side of mainland Palawan province. It is composed of four municipalities: Busuanga, Coron, Culion, and Linapacan.

⁴ NIPAS Act provides the legal framework for the establishment and management of protected areas in the Philippines.

4. Results and discussion

The above analysis of experiences of the Mi'kmaq of PEI and the Tagbanuas of Coron Island has been built around a three-pronged analytical framework of rights (including indigenous rights, as well as rights over access, use and management of natural resources), security of livelihoods and achievement of equitable outcomes (see Table 2). The framework proved useful in highlighting and analyzing a variety of key issues arising in the connections of indigenous peoples and natural resources, for each of the two case studies. There would seem to be a rich basis on which to examine both the differences and the commonalities relating to these key issues, and overall, to the experiences of these two indigenous peoples. In this section, we take a comparative approach to seek some common principles for understanding and supporting the role of indigenous peoples in using and managing their natural resources.

4.1. Linking rights and livelihoods

The experiences described in this paper relate to the extent to which recognition of indigenous rights to fishery resources has occurred, the extent to which a variety of access rights arrangements have succeeded in empowering indigenous peoples to pursue livelihoods from which they were previously barred or deprived, and the extent to which there has been suitable development of institutions to implement management rights, facilitating participation in fishery decision making through co-management.

Looking at the linkages between livelihoods and rights, the degree of resource access by communities is an essential ingredient influencing whether and how assets and activities are enabled or hindered by policies, institutions and processes. Specifically, suitable indigenous rights and/or other access rights facilitate the development of social and human capital in fisheries-dependent communities, by maintaining or enhancing the natural assets used by those communities, and by supporting the development of appropriate policy and institutional environments (Allison and Ellis, 2001; Capistrano, 2010). These in turn represent some of the key aspects providing support for livelihood improvements.

There remain a variety of imperfections – particularly in the Canadian context described above – implying that this is a continuing struggle to achieve collective indigenous aspirations for social, economic, cultural, and ecological well-being. This

struggle inextricably links the pursuit of indigenous rights and fishing rights with the valuing of secure livelihoods. The Tagbanuas reflect their aspirations in the words: “*para mapanatili ang aming pamumuhay*” (for us to sustain our life), focusing on maintaining both a “source of livelihood” and a “way of life” (Fabros, 2005).

The advances of the Tagbanua reflect success in achieving a strongly rights-based approach through legal recognition of indigenous rights and subsequent implementation efforts. For the Mi'kmaq, the Marshall decision's recognition of indigenous rights to commercial fishing is seen as a critical step toward dismantling dependency and achieving agency (Davis and Jentoft, 2001) but despite positive legal cases, there are still considerable gaps in recognition of rights with respect to using and managing fisheries, as well as other natural resources. Legally securing entitlements to natural assets is a key route to empowerment, but represents a challenge for indigenous peoples globally, particularly in marine settings, where historical tenure may be less documented than in terrestrial systems.

The empowerment of indigenous peoples comes also through mechanisms for their participation in decision making, and from the building of social capital and capacity – within government as well as within indigenous communities. This proved crucial for the Mi'kmaq in PEI, where programs of assistance to community members to learn fishing techniques, and processes for local planning and implementation of fishery activity, were both key initiatives. This necessarily involves linkages with institutions (such as the Mi'kmaq Confederacy of PEI) that mediate and support access of indigenous peoples to assets, technologies, and markets, as well as development processes more broadly.

4.2. The role of management rights

For both the Mi'kmaq and the Tagbanua, the focus of efforts to secure indigenous rights to fishery resources was initially on use and access rights. Although such rights are clearly crucial, and deserve early attention, a key element of the linkage of livelihoods and rights lies in ensuring the ‘space’ of indigenous peoples to participate in decision making processes relating to fisheries and other natural resources. Management rights are important for both livelihood security and management effectiveness, ensuring that indigenous people have an essential role in deciding how the resources are managed, and are thereby able to ‘tune’ management to fit their particular circumstances (e.g., traditional and cultural practices, and livelihood-related goals).

Table 2
Comparison of indigenous fishery experiences: Canada and the Philippines.

Components	Mi'kmaq of Prince Edward Island	Tagbanua of Coron Island
Livelihood	Established organizational structure with mutually-agreed management objectives Fisheries development plans oriented toward providing sustainable employment Fishing rights (licences) are communal; benefits are distributed among its members Relationship of people to their environment connects livelihoods and natural resources	Established an organization of different indigenous peoples to secure tenurial rights Subsistence economy based on kinship and mutual sharing of production Communal ownership of fishery resources and other resources, e.g., forests Natural resources are considered sacred and to be protected, within customary laws
Rights	Historical indigenous Mi'kmaq rights to commercial fishing are recognized through treaty rights and the Marshall decision, as well as implicitly in the Canadian Constitution (Section 35) Access rights are in the form of communal licences held by indigenous communities Management rights, i.e., for involvement in fishery management, are very restricted	The Indigenous Peoples Rights Act (1997) protects rights to the use of resources in ancestral domains, and the Philippine Constitution (1987) recognizes rights to economic, social, and cultural well-being Community organizations developed to secure community access to resources The Ancestral Domain Management Plan protects tenure of indigenous peoples, but rights to fisheries conflict with other laws related to natural resource management
Equity	Limited fishing access provided by the State, and limited capacity building, restrict equity in distribution of resource access	Continued external manipulation, interference, and coercion prevent achievement of equity, despite provision of some preferential treatment as a result of poverty and underdevelopment

There is another benefit to management rights, reflected in the abundant evidence worldwide that fishing people, when their rights are respected and they are treated as equal partners with the State in resource management decision-making, have better incentives to act as stewards of fishery resources. Thus, in seeking to support the processes by which indigenous peoples link their fisheries and other natural wealth with their livelihoods, the State could do well to ensure effective management rights, with indigenous peoples treated as full participants in all levels of decision-making and management (Mauro and Hardison, 2000).

Despite these beneficial aspects of significant management rights, their elaboration with respect to aboriginal communities has tended to lag considerably, particularly for the Mi'kmaq, as previously noted (Milley and Charles, 2001). While Mi'kmaq First Nations engaged in the commercial fishery manage their own operations through fishery management plans, and take part in co-management processes as defined by the Federal Department of Fisheries and Oceans, management rights remain quite limited relative both to the self-government aspirations of indigenous peoples, and to the fishery governance benefits such rights could provide.

4.3. *Linking development, poverty and equity*

Development can be seen as both a right and an obligation in itself, reflecting a human rights perspective, and closely connecting development with issues of poverty and inequality (Borras, 2008, p. 146). Clearly poverty alleviation demands that indigenous communities participate in and benefit from economic development. The initiatives of indigenous peoples move beyond a 'basic needs' approach to a rights-based approach where solutions to poverty are judged on the extent to which they give appropriate responses needed by the marginalized group, to overcome the inequitable structures, uneven development patterns and constraints imposed by ruling elites that lead to poverty (Singh and Strickland, 1994). Indeed, manifestations of poverty are deeply rooted in the unequal access to or control over productive resources (i.e., in relation to use rights and management rights) as well as in the distribution of wealth created in production. Thus, policies that shape resource use rights can play a major role in promoting and improving the equity of resource distribution.

Notably, in fisheries, a rights-based approach is linked with poverty alleviation and equity, with the Food and Agriculture Organization (FAO) of the United Nations (2007, p. 6) noting that such an approach "would also address the broader human rights of fishers to an adequate livelihood and would therefore include poverty-reduction criteria as a key component of decisions over equitable allocation of rights."

There are also linkages of social, economic, and human rights to fisheries management, since the latter affects the capability of individuals and communities to access resources and to have input into their management (Charles, 2008, 2011). At the heart of fisheries management, access to both assets and activities is enabled or hindered by policies, institutions and processes including social relations, markets and organizations. Consequently, poverty reduction and livelihood improvement are envisaged to rely on the development of social and human capital in fisheries-dependent communities, by maintaining or enhancing the natural assets used by those communities, and by supporting development of appropriate policy and institutional environments (Allison and Horemans, 2006).

However, it should be noted that even the term 'development' itself has acquired a negative connotation for some (and even if preceded by the term 'sustainable'), based on the history indigenous peoples have had with negative experiences of development

projects, policies and programs. In fact, mainstream development has been referred to as a root cause of problems among indigenous peoples, as in Tauli-Corpuz's (2005) critique of the Millennium Development Goals (MDG).

The key weakness of the MDG is that they do not question the mainstream development paradigm, nor do they address the economic, political, social and cultural structural causes of poverty ... The path of incurring more debts, engaging in more aggressive extraction of mineral resources, oil or gas in indigenous peoples' territories, or further liberalizing imports to the detriment of traditional livelihoods, in all probability, would not alleviate poverty among indigenous peoples.

It is also widely accepted that holding secure use rights and management rights to natural resources can strengthen the assets available to communities so that they are able to withstand shocks and reduce vulnerability (two key aspects of community resilience) as well as becoming better able to influence policies in their favor. This requires not only suitable legal and institutional frameworks, but also local capacity and institutional development, to produce the social capital needed to secure and enhance access to resources (Vera et al., 2007). The experiences of the Mi'kmaq and the Tagbanua described in this paper reflect these challenges of empowerment, participation and the building of suitable capacity and institutions. Part of this challenge involves fending off threats to rights, as well as taking on a strong role as partners in participatory planning and management. While our focus has been on fisheries, this latter point is certainly as applicable to the involvement of indigenous communities in decision making on and sharing of economic benefits from, other marine resources, such as oil and gas.

4.4. *Partnerships based on respect and recognition of rights*

There can be no effective and long-term resolution with regard to indigenous rights over natural resources if there is no respect between the parties involved. This implies the need for an open and respectful dialog between governments and the relevant communities, with particular attention to community needs and values (Wiber and Milley, 2007b). This also calls for a development agenda that aims to form partnerships among stakeholders on socio-economic development issues. Such an agenda is based on strengthening human rights; an over-arching human-rights based framework can enhance the ability of government fisheries departments to support fishing communities and indigenous peoples in meeting their aspirations and their role in sustaining the contribution of fisheries to the wider economy (FAO, 2008, p. 15). Undoubtedly, resource rights vested in communities are among the most potent vehicles at hand in creating those community qualities that are crucial for sustaining the resource, and, hence, the viability of the communities themselves (Jentoft, 2000).

Recognition of rights may enhance opportunities for indigenous peoples, provided that the social capital is present to secure access to resources and eventually enhance those resources, and that other stakeholders including the State provide an enabling environment within which indigenous peoples can access resources and eventually become equal partners in participatory resource governance. The latter implies a need for greater respect within fisheries management for indigenous management approaches and institutions, including customary traditions and conservation measures of indigenous peoples.

Policies that facilitate the integration of economic activity with social concerns, cultural priorities, legal rights, and effective governance systems seem best able to adhere to sustainability principles (Dodson and Smith, 2003; Whitford and Ruhanen, 2010). However, policies need to draw upon indigenous diversity and in

a consistent, collaborative, coordinated and integrative manner, to provide the mechanisms to facilitate long-term sustainable development.

As noted earlier, in the case of Canada's Marshall decision (and reflected in experiences elsewhere as well, such as the Boldt decision in the United States), the official recognition of indigenous rights to fishery resources can produce considerable instability and conflict in the short term. However, it is notable that over time, there has been a significant improvement in interactions between native and non-native communities in Atlantic Canada, relative not only to periods of conflict but also to the historical situation. This positive outcome or 'side benefit' may or may not occur elsewhere, but in this case, it has included an important recognition of common interests, particularly relating to livelihoods (c.f., Jentoft, 2005).

In Canada's Atlantic region, Coates (2000, p. 203) notes that while current government structures, and in particular the current Indian Act arrangements, hold little promise to deal with the economic and social challenges of indigenous peoples, reconciliation between indigenous and non-native communities may be a primary means to lasting solutions. Valuing indigenous and community norms can be a key avenue in this regard, enhancing the social capital that should be mobilized for local governance to be effective (Kearney et al., 2007; Mayo-Anda, 2001). The experience of the PEI First Nations indicates that progress is being made to these ends. However, improvements in the policies that protect or strengthen indigenous peoples' claims on resources would help to move more effectively in these directions.

In the Philippines, the diversity of legal options available to the Tagbanua allowed them to shape the terms of encounter, thereby enhancing their ability to manage their ancestral domain. Along with the support of various NGOs, this created an enabling environment that bridges the shift in management of the resources. However, a key challenge lies in the financial obstacles faced by indigenous peoples in securing their rights, with even the cost of land and water surveys being borne by the communities. Consequently, there is a need for a conscious effort by the State to recognize that it is itself part of the problem, and to provide assistance in building the knowledge and skills of the local governments to implement suitable laws related to indigenous people, and to engage in suitable conflict resolution.

5. Conclusion

This paper has explored how a three-pronged conceptual lens of livelihoods, rights and equity can aid in analyzing issues relating to indigenous peoples' access to and decision-making over natural resources, notably in the fishery sector and with a focus on indigenous rights. By examining experiences of the Mi'kmaq in Canada and the Tagbanua in the Philippines, we saw that the conceptual lens was equally applicable in both industrialized and developing situations.

The experiences examined here are in keeping with related literature, in indicating that the pursuit of indigenous rights (and self-determination) is a key element in securing control, access and management decision making capabilities of indigenous peoples over their territories and natural resources (such as fisheries). The livelihoods lens and a rights-based perspective (including rights through community-based resource management) both recognize the potential of local peoples to act as stewards of the resources on which they depend. Support for this by governments may assist in 'bridging the gap', so that indigenous peoples are firmly at the center of development processes, with the capacity to manage their natural resources and ensure sustainable livelihoods.

The experiences of the Mi'kmaq and the Tagbanua indicate that, despite large differences in the political, social, cultural, and

economic context, there are various common problems faced, such as a frequent mismatch between formal governmental policy frameworks and local practice. Indigenous peoples dependent on resources for their livelihood also can be vulnerable to outside usurpation of their access rights, and the impacts of such losses can be great, given their social, cultural, and spiritual dependence on traditional terrestrial- and marine-based resources. These factors have meant that the path toward sustainable livelihoods and recognition of indigenous rights and resource-based rights has proven challenging, and not yet fully resolved.

Nevertheless, the evidence – perhaps most notably for the Tagbanua but also to some extent for the Mi'kmaq – indicates that the linkage of livelihoods to rights and equity can be a powerful vehicle for empowerment in which clearly acknowledged rights of indigenous peoples to the resource base facilitates implementation of their own vision of sustainable livelihoods, based on their own priorities and values, local conditions, resources and knowledge base. Thus a strategy of secure and equitable rights and livelihoods, emerging from local experience, insights and reflection, reflects a robust policy approach, one that helps to build resilience of indigenous communities.

Within a coastal and fishery context, this strategy has implications elsewhere in the world, indicating the benefits of increased involvement of indigenous peoples in resource management decision-making, suitable respect and support from governments, and – based on the experiences discussed here – suitably strong relationships between indigenous peoples and non-natives. Indeed, the strengthening of such relationships, notably in the context of resource governance, can complement a focus on linking sustainable livelihoods with secure and equitable use and management rights. Such linkages are meaningful for indigenous peoples and place-based non-native groups alike, with the potential to produce mutually-beneficial enhanced health and resilience of coastal communities. Accordingly, this may represent a key ingredient in moving into the future, building bridges over the troubled waters of the past.

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