



**tBrief** Edition #2

## TRANSPARENCY OF FISHERIES TENURE: Incomplete, unreliable and misleading?



### Key messages:

Fisheries tenure systems – how and why governments allocate rights for fishing – are one of the most critical aspects of sustainable fisheries management. However, in many countries fisheries tenure systems are characterised by secrecy and confidentiality. As a result, people have a limited insights into how tenure systems work, who owns fishing rights, and how the benefits and costs are distributed.

- 1** Quite a broad range of problems have been linked to low levels of transparency in tenure systems, including unfair allocation of rights to commercial companies that directly undermine customary rights of coastal communities; economic concentration; illegal fishing and corruption.
- 2** International agreements have only recently emerged on the need for increased transparency in tenure systems, and there are still unresolved issues relating to what information governments should publish and how.
- 3** Transparency in fisheries tenure is about more than just publishing lists of authorisations and licensed vessels. It is equally important to publicise how these systems work, what are their national objectives, and to what extent these objectives are being met.



Fisheries  
Transparency  
Initiative

## Introduction

Systems of tenure determine who can use which resources, for how long, and under what conditions. In fisheries, it is an extremely complex subject, as there are many different types of tenure systems evident around the world. Systems of tenure are critical in influencing the fisheries sector's social, ecological and economic impacts.

One of the complexities of tenure systems in fisheries is that governments attempt to design them to *meet a range of often conflicting objectives*.

Today, tenure systems are most usually designed to help achieve *sustainable fishing*. This involves limiting the quantities of fish that can be caught, the number of people or vessels that can fish, and the methods of fishing that can be used.

At the same time – and often undermining resource sustainability – tenure systems are also designed to *maximise government incomes, generate jobs, protect the livelihoods of specific groups or communities*, and in many poorer countries, safeguard *food security* as well.

This has given rise to a wide range of strategies, such as giving local communities and indigenous people long-term secure rights, or, at the other extreme, selling short-term licences to those who can pay the most. There are many countries that have also gone down the path of competitive market-based systems for allocating fishing rights, while others have preferred a high degree of state planning and control. Alternatively, there has been quite widespread experimentation with policies of decentralisation and community co-management. Needless to say, all this makes tenure in fisheries highly controversial, and often it is the source of considerable criticism and protest.



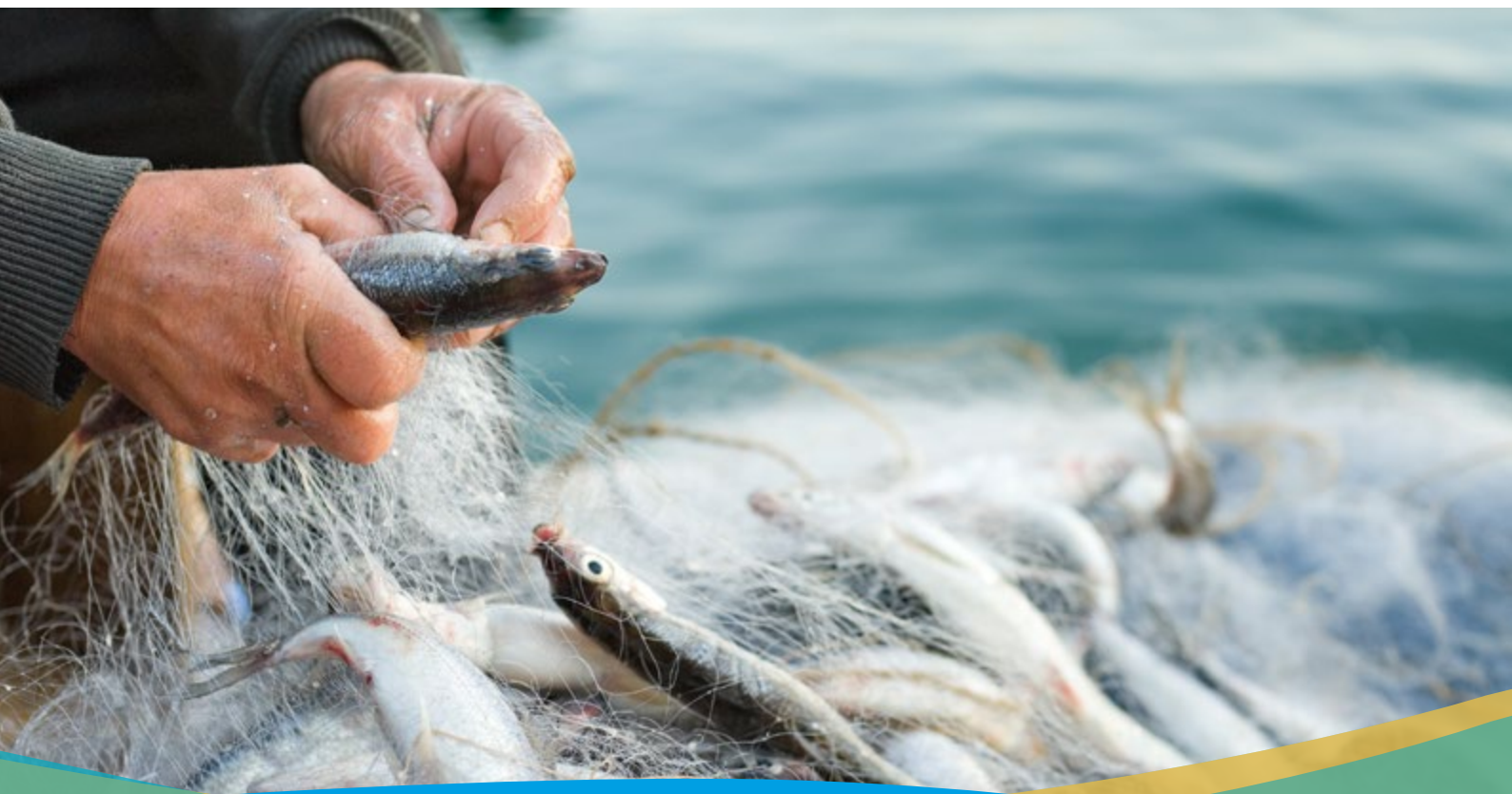
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One element that has received particular attention is the degree to which systems of tenure are transparent. There is now international consensus that responsible and effective tenure systems require high levels of public access to information and broad-based participation in decision-making. There is a significant body of evidence to show that governments in so many countries have failed to improve levels of transparency in their systems of tenure. In fact, some forms of information that would clearly be in the public interest to know, remain protected by confidentiality laws.

1 The Fisheries Transparency Initiative (FITI) is a global multi-stakeholder partnership that seeks to increase transparency and participation in fisheries governance for the benefit of a more sustainable management of marine fisheries.



*In this second tBrief, provided by the Fisheries Transparency Initiative,<sup>1</sup> we summarise the main reasons why transparency in fisheries tenure matters. The subject is not straightforward. For a start, maintaining high levels of transparency may require considerable resources. But more fundamental is that what information needs to be in the public domain and how this information is shared, are open to differing interpretations.*



## 1. How fisheries tenure lacks transparency

To date, there are no global studies on fisheries tenure that would allow us to compare the approaches to transparency adopted by different governments and over time. Moreover, to understand this subject fully, one would have to examine 'proactive transparency', which is what governments choose to publish themselves, and 'reactive transparency', which is how governments respond to requests for information. Several recurring complaints suggest that many governments are not particularly good at either.

Three core aspects of transparency in fisheries tenure are evident, each with their own types, characteristics and challenges:

**Policy-making  
transparency**

*or*

How are tenure rights granted?

**Authorisation  
transparency**

*or*

What information is required?

**Ownership  
transparency**

*or*

Who benefits from the tenure?



## ◆ Authorisation transparency: Fishing agreements and vessel registries

Despite the quite diverse ways in which governments authorise the rights to fish, in simple terms, a vessel seeking to catch fish at sea is requesting a licence from a national authority. These are usually granted for a short term, covering a year, a fishing season, or even just a number of days (for example, in the case of tuna fishing in the waters of the Pacific Island states).

One of the most well publicised issues on tenure transparency involves the authorisations to fish given to large-scale industrial fishing vessels. This has long been a particular problem in developing countries, where a substantial amount of fishing is undertaken by foreign companies, and can directly impact the availability of fish for local small-scale fisheries. Governments of both coastal and fishing nations have regularly entered into agreements that allow for fishing opportunities with hardly any publicity and therefore virtually no opportunity for wider public scrutiny. This used to be a characteristic of the fishing agreements between the European Union (EU) and developing countries. However, over the years a number of positive changes have occurred, and now the contracts of these agreements are shared widely, as are copies of related scientific and social impact studies. Still, many similar agreements involving other countries are protected by confidentiality agreements.

While these bilateral agreements have been criticised over many years, there has also been growing awareness that governments of coastal states have often withheld information on which specific companies have received permissions to fish. Some governments have comprehensive databases that are kept up to date (for example, the United Kingdom<sup>2</sup>). But many countries provide aggregate information only, and there are a surprising number of countries where this information is not published at all. Even where governments do have comprehensive databases, various reports show that these are not always perfect: vessel names are entered incorrectly, the characteristics of the vessels are wrong and sometimes vessels that are known to have a licence are not included.<sup>3</sup>

### Authorisation transparency

or  
What information  
is required?

2 Available at: <https://www.gov.uk/topic/planning-development/marine-licences>

3 Skerritt, D., Arthur, R., Pearce, J., Carpenter, G. and Aranda, M. (2019), 'Study On Ownership and Exclusive Rights of Fisheries Means of Production', European Commission



The reasons for not publishing information on licensed vessels are not entirely clear. It may be due to a lack of resources for creating and maintaining public databases.<sup>4</sup> Also, there might be a perception that such data is not widely requested, so it is not something that authorities prioritise.<sup>5</sup> However, there is a great deal of suspicion that in some countries, the decision to keep this information hidden is made to avert public scrutiny, including potentially concealing corruption. As a report by Interpol into fishing in Africa described,

**...information regarding the number of licenses granted by governments and sold to foreign or nationally flagged commercial fishing boats is very difficult to obtain, even for other parts of the government, as it is considered confidential... Information on the location and means of contacting vessel registries, beneficial owners and the terms and conditions of their fishing licenses is often not accessible to investigators or other analysts. This makes it even more difficult for patrol assets or for the general public to have a clear idea at any given time on who is allowed to fish and under which conditions, where the ships are registered, and who are the operators. Transparency is therefore dependent not only on the availability of information, but also on the timely sharing of this information, its quality, its accessibility and accuracy.**<sup>6</sup>

What is also noteworthy from this report is that in some countries, government agencies are failing to share information on fishing authorisations with each other – not just with the public. In 2019 the newly established Kenya Coast Guard seized two Chinese vessels for fishing illegally in Kenya's Exclusive Economic Zone. Later it was found that the Kenyan Fishing Authority had issued a licence to both fishing vessels through a joint venture agreement with a Kenyan company. Also, the Kenya Ports Authority had cleared both vessels for being seaworthy.<sup>7</sup>

4 For example, in West Africa, a publicly available regional dashboard funded by the World Bank was due to go online in 2017, but has yet to be completed, with the Bank's implementation report citing difficulties over ongoing commitment by states to share this information; see 'Completion Report of the First Phase of West Africa Regional Fisheries Program Project', available at: <http://documents.worldbank.org/curated/en/671791496156189517/Africa-First-Phase-of-West-Africa-Regional-Fisheries-Program-Project>

5 Despite high initial momentum in establishing such databases, it is also clear that public authorities often struggle afterwards to maintain these over time.

6 Interpol (2014), 'Study on fisheries crime in the West African coastal region'.

7 Atieno, W. (2019), 'Coast guard in unchartered waters over seized vessels', *Business Daily Africa*, 18 June 2019.

### Authorisation transparency

or  
What information  
is required?

## ◆ Ownership transparency: Charter arrangements, joint ventures and quota trading

Publishing lists of authorisations and licensed vessels is only one part of the story. Fishing vessels are not always owned by those companies or individuals who obtain an authorisation to fish from national authorities. For example, fishing vessels can operate through **charter arrangements** or **joint ventures**. These arrangements may be encouraged, particularly in developing countries, to ensure national stakeholders benefit from commercial fishing (often dominated by foreign capital and vessels), and to increase the opportunity for the transfer of fishing capacity and technology. However, information on this is often not made public, such as the names of national shareholders in joint ventures, or those responsible for chartering foreign vessels. A recent review of tenure in fisheries in Ghana highlighted, for example, that national fisheries law prohibits exclusive foreign ownership of companies receiving licences for industrial trawl fishing. Yet, investigative research discovered that Chinese companies directly own 60 of the 72 licensed trawlers, and make use of local partners to set up shell companies.<sup>8</sup>

Public information on the owners of fishing rights has become a particular problem where tenure systems are privatised and rights are allowed to be traded on an open market. This happens where a government sets a Total Allowable Catch limit and grants long-term individual **quotas** (or catch shares) to people or companies. Such rights can then be sold, swapped or leased. The early pioneers of this system for quota management have been New Zealand and Iceland, although now this type of tenure system is used in a substantial number of fisheries worldwide. Yet markets in fishing quotas are weakly regulated in many countries, and information on the trading of quotas is not always collated or shared widely. This means it can be virtually impossible for the general public to find information on who are the beneficiaries of fishing quotas, which is compounded by the fact that transactions for quotas may occur frequently. In 2018, research by the New Economics Foundation in 12 EU member states found that in eight of them there were no public registries of fishing quota ownership. Similarly, a study by the European Commission in 2019 described that in three countries surveyed, information on companies that own quotas was only available for a fee; in one country, Germany, information on tenure rights-holders is classified as confidential and the fishing authorities did not respond to requests for information.<sup>9</sup>

Confidentiality laws on fishing quota ownership also exist in several states in the United States. It is difficult to find another natural resource where those owning the rights to exploit it are given such anonymity.



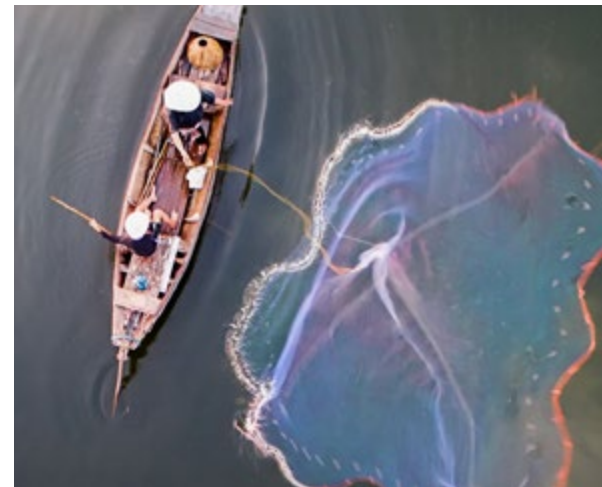
8 Environmental Justice Foundation and Hen Mpoano (2019), 'Stolen at sea. How illegal ,saiko' fishing is fuelling the collapse of Ghana's fisheries'.

9 Carpenter, G. and Kleinjans, R. (2018), 'Who gets to fish? The allocation of fishing opportunities in EU member states', New Economic Foundation

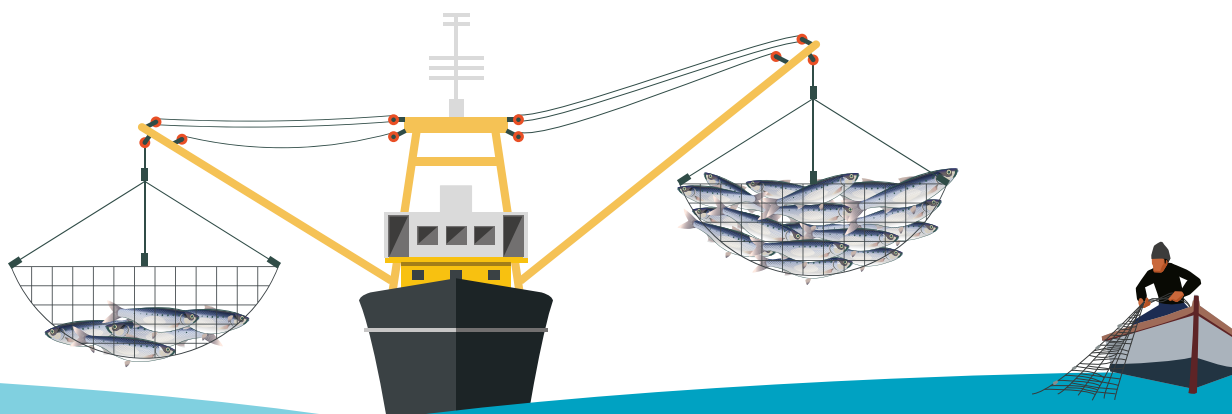
**Ownership  
transparency**  
or  
Who benefits from  
the tenure?

## ● Policy-making transparency

Above and beyond ‘who gets to fish’, another characteristic of fisheries tenure is the lack of published documentation on laws, policies and processes that determine tenure systems, including the objectives of these systems. In many contexts, rules and procedures for rights allocations are often difficult to find. There is no clarity on what a government’s objectives are, and licensing decisions are still made by a small number of people, or are simply left to the discretion of a national fisheries Director or Minister. A particular issue that seems to be common in many contexts lies with how national or regional authorities establish limits on fishing intensity. Many authorities get guidance from scientific research, but regularly this is ignored and allocations of fishing opportunities end up being well above a precautionary limit. For example, in recent years there have been growing calls for the European Commission to reveal more information about how Total Allowable Catches (TACs) are decided for fish stocks. The decision-making process has been conducted behind closed doors, involving negotiations between ministers from members states. Many organisations have complained that the outcome of these meetings has usually resulted in TACs being above what scientists have recommended, and there have been allegations that corporate lobbying has undermined the process. The non-governmental organisation (NGO) Client Earth submitted a formal complaint regarding the lack of transparency in this process. This was favourably reviewed by the EU’s Ombudsperson, who recommended that the European Commission publishes documentation on how decisions on annual fishing restrictions are made, including where scientific advice has been ignored.<sup>10</sup>



<sup>10</sup> The recommendation of the EU’s Ombudsperson on the complaint brought by Client Earth can be read here: <https://www.ombudsman.europa.eu/en/recommendation/en/120761>





## 2. Four reasons why transparency in fisheries tenure matters!

It is difficult to think of any good reason why responsible governments should keep the public in the dark about how they control and manage marine resources, and about who ends up with the rights to fish. Here we highlight the four main arguments in favour of transparency that are evident in publications and international campaigns.

<sup>11</sup> A recent publication by the United Nations Office on Drugs and Crime, *Rotten Fish – A Guide on Addressing Corruption in the Fisheries Sector* (2019), highlights a number of risk scenarios and provides guidance on the use of anti-corruption techniques to prevent and combat fisheries crime.

### 1 Protecting the rights of coastal communities:

As is clearly evident in some of the confidential bilateral fisheries agreements, national authorities that fail to share information on fishing authorisations often undermine or give away rights to fish resources held by coastal communities and small-scale fisheries. Unfortunately, this is made worse by the fact that for thousands of fishers worldwide their customary rights are not always codified in laws, and systems of justice to protect these rights are insufficient. The way in which confidential agreements deny fishers their longstanding rights is similar to the processes that lead to land grabbing. This has given rise to global campaigns for improved transparency to prevent 'ocean grabbing' as well.

### 2 Fighting illegal fishing:

A widely publicised reason for increasing transparency in fisheries tenure systems concerns the global fight against illegal fishing. Publishing fishing authorisations, providing details on the terms and conditions of fishing licences, including information on the vessel characteristics and their ownership, have been seen as valuable contributions to helping authorities improve detection and sanctions against fishing vessels and companies that engage in criminal activities. For example, in Senegal and The Gambia, research by Greenpeace on fishing authorisations found that licences to foreign fishing vessels included fraudulent information on many of the vessels' gross tonnage. This is why some very large vessels were given permits to fish in zones reserved for smaller, less ecologically destructive vessels.

### 3 Preventing corruption:

Although receiving less global attention than illegal fishing, there is increasing awareness that confidentiality in fisheries tenure systems may be both a cause and effect of corruption. Problems include bribery and conflicts of interests, where fisheries access is dependent on the payment of illicit cash or favours, or where authorities grant fishing rights to political elites or themselves.<sup>11</sup> There are also several examples of where government income from licences and fishing fees has been embezzled. A recent example of alleged corruption in fisheries tenure is in Namibia, where a whistleblower provided evidence of substantial irregularities, including potentially millions of dollars in bribes, in the transfer of fishing rights between government officials and an Icelandic multinational fishing company.

### 4 Scrutinising policy coherence:

Gaining access to information on fishing authorisations and the allocation of fishing rights is critical in understanding the extent to which governments are succeeding in meeting fisheries policies. One vivid example comes from scrutinising fishing rights allocations with rates of overfishing. By concealing information on who gets to fish, it may be extremely difficult for members of the public to understand problems of overfishing and resource depletion. Similarly, there is growing concern in many countries that the benefits from the fisheries sector are being concentrated among a relatively small number of companies and individuals. This seems to be a chronic problem where quotas are being traded, and is similarly problematic where rights to fish are selectively given to politically important people.

### 3. Obligations on governments over transparency in fisheries tenure

So what must governments do when it comes to transparency in fisheries tenure? After all, governments have the fundamental obligation to manage common resources, such as fish, on behalf of its people.

Despite being a key instrument in fisheries management, for a long time there has been no international agreement on how governments ought to collate and share information on tenure systems. This uncertainty was addressed to some extent in the *Voluntary Guidelines on the Responsible Governance of Tenure on Land, Fisheries and Forests in the context of National Food Security* produced by the Food and Agriculture Organization (FAO). These were endorsed by the World Committee on Food Security in 2012, and have been regularly referenced in other international agreements and initiatives. Public access to information is one of several key principles of these guidelines.

The importance of transparency in tenure is also a priority in the FAO's *Voluntary Guidelines on Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication*, which were endorsed in 2014. Transparency of tenure is also detailed in the United Nations Declaration on the *Rights of Peasants and other People Working in Rural Areas*, finalised in 2018.

If we summarise the texts relevant to transparency on tenure in these three documents, then governments have the following **four main obligations**:



Fisheries Tenure Arrangements



Foreign Fishing Access Agreements

To establish recording systems on tenure, including spatial information showing clearly what rights have been assigned to private companies and communities, which includes customary rights for indigenous peoples, as well as information on any transactions in tenure rights.

1

To ensure recording systems on tenure are free for anyone to access and that they contain information that is easy to comprehend.

2

To publish details on how tenure in fisheries is administered, including which authorities are responsible for these decisions and what criteria are used, and actively to disseminate this at the community level, with information shared in particular with women, the poor and vulnerable groups.

3

To respect free, prior and informed consent by tenure rights-holders before agreements are made that may negatively impact on their tenure rights and access to fisheries.

4



## 4. Some unresolved issues remain...

Although these requirements establish a sound basis for responsible governance of tenure in terms of sharing information with the public, there are unresolved issues. Let's have a look at two prominent examples:

- ▶ One relates to the **level of details** required. For instance, should public databases on tenure rights-holders capture personal information about everyone who has a right to fish? What range of information is required? Indeed, it is ambiguous whether public records should include financial information as well, such as how much individuals and companies have paid for access to fish resources. However, this type of information could be extremely important in some situations, particularly where there are concerns about highly favourable licensing agreements for fishing companies, and where there are concerns about bribery and embezzlement.
- ▶ Another example concerns that these landmark agreements do not specify the need for national authorities to collate and share information on the **beneficial ownership** of fishing companies and vessels. This information has become a priority in the fisheries sector for various civil society organisations as well as for multilateral organisations, including the Organisation for Economic Co-operation and Development (OECD), the United Nations and the World Bank. But it is still unresolved whether this information should be proactively published by authorities, or shared with third parties only under certain circumstances.



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The Fisheries Transparency Initiative (FiTI) is based on these guidelines and recommendations. It provides

for the first time a comprehensive overview of what public authorities need to publish online. Regarding fisheries tenure, the FiTI addresses these issues as well, but tries to balance comprehensive information with practical considerations. Thus, while the FiTI requires quite detailed information on tenure arrangements for commercial fishing companies, it provides more general information on small-scale fisheries and recreational fishing.



## 5. How should governments approach transparency reforms?

Contributing to sustainable fisheries through a system of tenure remains a key priority in many coastal states. But frustration with a lack of openness on fisheries tenure systems can still be found throughout the world. Operational challenges, such as lack of resources, lack of public demands or the complexity of this subject, can only serve so far as an excuse.

For governments that are developing reforms to remedy this situation, it is important to remember that transparency in itself has rarely brought simple solutions to complex challenges. This was a key message in our first tBrief. The value of publishing information comes from how people are able to use that data. In other words, transparency is not simply about publishing raw data, but about providing information that enables people to understand and scrutinise the actions and decisions of those in authority. We should therefore be wary of thinking that increasing public access to licensed vessel lists, quota ownership databases, or bilateral fisheries agreements will bring immediate positive changes to problems such as insecure tenure for coastal communities, unsustainable fishing or economic concentration.

This is why policy-making transparency is a critical aspect for tenure systems. Governments should approach transparency in tenure by being clear on the objectives of a given tenure system, with evidence that they are working towards realising these objectives.

Furthermore, we encourage reflection on how transparency in tenure is approached. If the debate is framed too narrowly, for example solely as a tool to tackle illegal fishing, transparency reforms may lead to public access to licensed vessels lists only.



Timing is also of critical importance; the demands made for more transparency over bilateral fisheries agreements are not simply that the contracts are published, but that the proposed agreements are shared widely for scrutiny before any agreement takes place. This is stressed in the Voluntary Guidelines through the human rights principle of free, prior, informed, consent. Emphasising this aspect further, the FAO's Code of Conduct for Responsible Fisheries already stated 25 years ago (!) that publishing information is essential to *'facilitate consultation and the effective participation of industry, fishworkers, environmental and other interested organizations in decision-making with respect to development of laws and policies related to fisheries management...'*

These aspects were influential in the design of the FiTI. While the FiTI requires governments to publish a range of information on how tenure systems work, who gets to fish and under what conditions, the FiTI also requires governments to work with other stakeholders to improve knowledge over time on the ecological, social and economic effects of tenure decisions. This must be guided by national priorities and circumstances, and it must be joined with opportunities for deliberation and participation.



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## Outlook

A recurring theme in this tBrief dedicated to fisheries tenure has been the issue of beneficial ownership of vessels and fishing authorisations. Poor levels of public information on tenure are not only due to operational aspects but also because of prevailing attitudes or even national laws on confidentiality of commercially sensitive information. This issue seems to make fisheries a unique sector; it is difficult to find another example of a public good where tenure rights-holders are explicitly protected by confidentiality laws. Our third edition of the tBrief series will, therefore, look at this particular aspect in more detail.

