LEGAL PLURALISM AND THE GOVERNABILITY OF FISHERIES AND COASTAL SYSTEMS[1]

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1. Introduction

This article discusses how interactive governance and legal pluralism may mutually benefit each other, particularly in highlighting factors that help inhibit and enhance the governability of fisheries and coastal systems. Governability is here understood as "the overall capacity for governance of any societal entity or system" (Kooiman 2008: 173). Governance, on the other hand, is basically seen as an interactive and collaborative process involving government, markets and civil society, the latter also in a proactive role.

Zips and Weilenmann observe that "governance and legal pluralism belong to separate academic idioms" (Zips and Weilenmann 2011: 7) A reason for this is perhaps that, whereas governance theory has evolved from a government (largely state)[2] centric perspective and the idea of government failure, the legal pluralism

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[2] Government is here seen as the institution that administers public policy, and exercises executive, political and sovereign power through regulatory orders within a state. The concepts of government and state will, in this paper, be used interchangeably if nothing else is specified.

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perspective has largely emerged "from below", i.e. from the level of the local community. Still, at closer inspection there is considerable common ground between the two analytical perspectives, most prominently in their similar insistence on the need to look beyond state for governance mechanisms and actions. The move "from government to governance," and the involvement of non-government stakeholders in governance, as noted by Heere, leads to a more "heterogeneous state" (Heere 2004). It also results in a more complex and "hybrid" legal system (Santos 2006). The fallacy of regarding the state as the only governor is juxtaposed by the argument that "the longstanding vision of uniform and monopolistic law that governs a community is obsolete" (Tamanaha 2008: 409). This is an opinion that most scholars working in the field of interactive governance would support.

With the concept of interactive governance, Kooiman (2003; see also Kooiman et al. 2005) stresses the complexity, diversity, dynamics, and scale of social and ecological systems. Legal pluralism is obviously one of several causes and outcomes of these traits. A study of multiple normative orders, legal pluralism asks questions about what norms and rules exist in particular situations, how they connect and add up, what social values underpin them, and what mechanisms are working to reconcile legal differences that may exist at temporal and spatial scales (cf. Griffiths 1986; Pimentel 2010). A particular concern is the mutual influence of state and local law and the degree to which one has hegemony over the other (Guillet 1998; Tamanaha 2008). Similarly, interactive governance theory is concerned with ways to recognize and reconcile inconsistencies and conflicts between different governance norms and principles, and to identify potential for enhancing governability where this is essential for solving important ecological and societal problems, such as overfishing and marine ecosystem degradation (Kooiman and Jentoft 2009). Legal pluralism would here be seen to involve a potential hindrance but also an opportunity, which may provide governors with a toolbox to govern better. For this reason, interactive governance would be particularly interested in governing institutions that are hybrid, flexible and adaptive (Kickert 2001).

In what follows, I start out by comparing the two perspectives; how do they relate to each other, what overlaps exist, how can they be of mutual benefit? The subsequent sections present the essential features of interactive governance, stressing the need to distinguish between interactive governance as an empirical phenomenon, a normative theory, and an analytical perspective. Interactive governance as an analytical perspective is emphasized in section four, which gives

an introduction into its particular conceptual framework, and suggests how it may be applied in the context of legal pluralism.

2. Comparing perspectives

Analytical perspectives such as interactive governance and legal pluralism are ways of searching and seeing. They are places to start from and maps to navigate by. They make things stand out, they sharpen our vision, and they help us see the trees for the forest. Franz von Benda-Beckmann makes this case when he states that "thinking in terms of legal pluralism can help in providing better insight into the complexities around law and rights" (F. von Benda-Beckmann 2001: 54) The same thing can be said about interactive governance. Still, analytical perspectives are also "prejudgments", as Gadamer coined it; they come with a lens that highlights some issues while leaving others out of focus. Needless to say, this is true of both legal pluralism and interactive governance. Therefore, it is important to be aware of the bias that comes with a particular perspective (cf. Gadamer 2003: 269).

Notably, not only do analytical perspectives make us look at things in a certain way; they also compel us to see one thing at a time. This can be illustrated with the famous image of the young and the old woman in one and the same sketch; we are not capable of seeing both women simultaneously. Even so, what makes this image particularly interesting is the fact that we know that it is possible to identify both of them if we switch between perspectives. Without that knowledge, once we have identified one of the women, we will be inclined to stop looking for the other, and we will have missed something very essential. This is what academic disciplines tend to do and why cross-disciplinarity is such a rare occurrence. The specificity and boundaries that comes with disciplines induces us to stay put within one perspective and make us believe that we have seen it all. Clearly, in fisheries and coastal governance, a limitation of governability is hidden here. It is an area of research that requires the perspectives of several disciplines; yet the extent of cross-fertilization between disciplines is remarkably low (Buanes and Jentoft 2009). This seems to be true for the crossing between governance theory and legal pluralism as well. Bavinck's work on fisheries and coastal management in South India is an exception here (Bavinck 2001, 2005). However, each perspective lacks a specific disciplinary identity, but draw on insights and methodologies from several academic disciplines such as anthropology, sociology, law and political science (F. von Benda-Beckmann 2002). In that way interactive governance and

legal pluralism are both transdisciplinary.

Together, interactive governance and legal pluralism present a richer picture and a more nuanced set of policy options for fisheries governance. As far as interactive governance is concerned, it is essential to recognize the fact that multiple normative orders, be they formal or informal, exist in the real world. Consequently, governors must learn to deal with norms and principles that differ and are sometimes in conflict. For legal pluralism, a governance perspective may help to bridge theory and research with policy recommendations and implications. Interactive governance may help to answer the question of what it would take to bring the insights of legal pluralism into the governance process in a way that has real consequences for decision-making and outcomes.

Both perspectives share the observation that the state is not, and in this day and age cannot possibly be, the only governor; that one should not underestimate the fact that markets and civil society are also governing (and legal) systems in their own right with a collective capacity for societal governance (Donaue and Zechhauser 2011; Kooiman 2003; Offe 2009). They are not passive recipients of rules and regulations but are often involved in shaping them. Just think of a business corporation, an interest organization or a religious institution (Berman 2007; Blacket 2001). Not only are they active in influencing the rules that the state in the next instance is imposing on them, people who work within such systems are also themselves subjugated to rules that have been internally generated. They are indeed plural legal systems in themselves. Thus, legal pluralism aligns well with interactive governance thinking. Legislation is, after all, an act of governance, which results from a course of action that involves state as well as non-state actors.

Governments cannot expect citizen support if the law contradicts perceptions of fairness prevalent within society as a whole. How popular perceptions of justice originate and become the law of the community or the land is therefore an interesting research issue within both legal pluralism and interactive governance. One should not expect such a process to be smooth. Why are they in some instances different from community to community and from community to state? And how do they score relative to each other with regard to good governance indicators such as effectiveness, transparency and accountability? These are all relevant research questions whether one commences in interactive governance theory or in legal pluralism.

Interactive governance is the younger perspective of the two. However, it is a broader perspective, at least when we think of legal pluralism as a governance perspective, which it also is. This does not imply that interactive governance has nothing to gain from legal pluralism or that the need for learning only goes in one direction; quite the contrary. It goes without saying that interactive governance theory has to assume a sharp focus on legal orders, that they are essential to understanding the complexity of governance challenges, and that they may help augment governability, for instance as far as poverty alleviation is concerned (Meinzen-Dick 2009; Jentoft and Eide 2011). Think here of the role of tenure and resource rights and the role they play in securing people's livelihoods. It is important not to be oblivious to the possibility that legal pluralism may complicate governability in some instances, as when rival stakeholders claim competing rights by referring to different legal norms (Meinzen-Dick and Pradhan 2002). The need to recognize legal pluralism in particular social and ecological contexts as conditions for governability is consistent with the general argument that both perspectives are advancing. This overlap stems from the fact that the two analytical perspectives often apply to similar research settings. As far as fisheries and coasts are concerned, one cannot assess their governability without focusing on the role of law, be it statutory or customary and how they are linked. Omitting legal pluralism from empirical investigation of fisheries governance would clearly be a mistake. The same is true for governors, who need to be equally sensitized to this phenomenon as those who do research. Once the existence of legal pluralism has been discerned, it must be taken into account when governing institutions are designed. As Kraan argues with reference to small-scale fisheries governance in the case of Ghana, "creating institutions in a top-down way to improve natural resource management is doomed to fail if these institutions are not embedded in local dynamics with plural normative orders" (Kraan 2009: 293).

3. Explaining interactive governance

Similar to legal pluralism (cf. Rouland 1994; Woodman 1999), governance comes with several definitions. Fundamental is the perception of governance as a conscious, collaborative, deliberative and goal-oriented steering process involving both public and private actors, often organized in a formal partnership arrangement (cf. for definitions see, for example, Ansell and Gash 2007; Stoker 1998; Offe 2009). Kooiman's idea of "interactive governance" is:

> the whole of public as well as private interaction taken to solve

societal problems and create societal opportunities. It includes the formulation and application of principles guiding those interactions and care for institutions that enable them (Kooiman 2003: 4).

The prominence of interaction in Kooiman's definition highlights communication, negotiation, and exchange. It also implies a focus on process as well as institutional design beyond the realm of the state. This is also how legal pluralism, as expressed by Zips and Weilenmann, sees it:

> While it may be overstating the case to claim that governance and legal pluralism are two sides of the coin, the very fact of a particular constellation of legal pluralism brings about pressure to employ a set or network of institutions, actors and practices different from (state) government (Zips and Weilenmann 2011: 7-8)

From both perspectives, it is essential to discern what the rules are, and where, when and how they apply in real settings and institutions, and who gains or loses because of them. It is also equally as important to assess how institutions, within which rules play an essential part, come about, and how they shape (restrict or enable) social interaction and collective action (Ostrom 1993). The dynamic aspects of rules are as relevant as their static dimensions, and there is no implicit assumption neither within interactive governance nor legal pluralism that arrangements, rules, procedures and outcomes are necessarily socially just (Kooiman 2003; F. von Benda-Beckmann 2001; Pimentel 2010). Rather, the justice implications of both are essential research issues.

As a partnership, governance typically involves sharing power, but not necessarily in an equal or equitable manner. How power is actually distributed may determine whether a social and ecological system is governable or not (Jentoft 2007b). Some management functions may be delegated to stakeholder organizations through a co-management arrangement, such as with fisher associations or multi-stakeholder organizations (Wilson et al. 2003). In other instances, stakeholder organizations play a more reactive and advisory role, as with the Regional Management Councils in the case of European Union fisheries (Long 2010; Linke et al. 2011). The balance between 'state-centred' and 'society-centred' governance may vary and, as Pierre and Peters argue, it therefore makes more sense to think of the two as forming a continuum rather than a dichotomy (Pierre and Peters 2000).

Moving from government to more capable governance (Rhodes 1996; Kooiman 2003) by including stakeholders in societal steering is essentially thought of as a means of enhancing governability; it is expected to provide more legitimate and effective governing by forming a more committed and responsible stakeholder community and a broader knowledge base. In fisheries and coastal management, for instance, it is assumed to induce more compliance to harvest regulations (cf. Jagers et al. 2012).

Interactive governance theory does not think of governance as a necessarily formal mechanism – which is consistent with what legal pluralism argues when emphasizing the importance of both state and non-state law ('living law'). In the same vein as legal pluralism, governance can be unofficial and tacit. Neither must governance be "good" (as defined by the World Bank - see Kjær 2004). Despite the common assumption, there is no guarantee that a move from government to governance will enhance governability. In fact, the outcome might be the opposite. As governance in the co- and self-governing modes blurs the distinction between the subject (governor) and object (those that governing target, governance risks being captured by powerful stakeholders who take the opportunity "to usurp genuinely public tasks" or to engage in "outright corrupt practices" (Offe 2009: 553). Therefore, we must investigate the conditions under which governability increases or falters. Many of those conditions are likely to be highly contextual, suggesting that there is no single governance formula for all situations. This is also the idea behind the concept of "adaptive governance" (Folke et al. 2005), i.e. a less uniform and standardised form of governance, although the aim is one that is more tailored to particular circumstances and more sensitive and reactive to change.

4. Empirical and normative aspects of interactive governance

As can be said about legal pluralism, we need to distinguish between interactive governance as: a) an empirical phenomenon, b) a normative theory, and c) an analytical perspective (cf. Pierre and Peters 2000: 24). In the first instance (a), the issue is whether interactive governance as defined here is actually occurring, whether the blurring of traditional boundaries between government and the private sector is really happening; where, when, and how. Is it really true that the traditional role of the state is changing from a governing state to "an enabling state" (Pierre and Peters 2000: 12)? Interactive governance is not necessarily a recent phenomenon. Neither does it have to be the true and only representation of

how societal sectors are steered. This is ultimately an empirical question. A comparative study of fisheries governance systems in Europe showed a lot of variation among countries with regard to government-industry interaction (Hoof 2005; Mikalsen and Jentoft 2008). In some countries, fisheries governance is indeed structured according to an interactive model, where user-organizations have an active role in regulatory decision-making and where considerable governance functions are delegated to the sector. This is done in harmony with a legislative framework which defines the mandates, rights and responsibilities that user-organizations have in the governance system. In Spain, for instance, this occurs where regions are granted considerable autonomy, and where local fisher organizations, the *cofradias*, are part of the overall formal governance system. In other countries, as in Scandinavia, consultative arrangements between government and industry are common. The role of Producer Organizations in the fisheries of many European countries is another case in point.

In the second instance (b), as a normative theory, interactive governance argues that the move from government to governance is a progressive one; governing should indeed become (even) more interactive and participatory than it currently is. In fisheries, many argue that the current governance system led by government is too top-down in many cases, and that is a reason why it so often fails (Gray 2005). This is because central government does not have the capacity and the contextual knowledge it needs to govern effectively. It must therefore involve stakeholders in decision-making and in power-sharing. Several arguments are put forward in support of such a shift.

First, as already indicated, the move from government to (interactive) governance has potential functional merits. According to Jessop "... the state gives up part of its capacity for top-down authoritative decision making in exchange for influence over economic agents and more effective overall economic performance" (Jessop 1998: 36), in other words a governability achievement. It may also make governance more effective as it broadens the information base and makes governors more sensitive to the specificities of local contexts. A more interactive and cooperative form of governance should make governing systems able to employ a broader set of tools, and make governors capable of dealing with both macro and micro issues. The same argument would apply to legal processes. This is also why in most instances government is a multi-scale legislative system.

Then there is the issue of legitimacy and trust, which is a prerequisite for governability and hence the effectiveness of governing systems. There are, of

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course, many ways to make people abide by rules, repression being one (Held 1987). Governing would, however, be less costly if people were to follow rules voluntarily. This is more likely to happen if people are allowed to see why rules sometimes are necessary. Opening governing systems to broader participation would thus facilitate the transparency and experiential learning that would enable people to do that. Moreover, participation is, as Sen argues, also about social justice (Sen 2009). People who have stakes in the outcome have a right to be recognized, and direct involvement of stakeholders in the process is a way to do so. The causal chain is therefore that justice is good for legitimacy, which fosters compliance and ultimately governability.

Finally, it could be argued that interactive governance has intrinsic value in so far as it institutes a more democratic form of governance. This is true regardless of whether interactive governance is living up to all its promises. As with democracy, interactive governance comes with the risk of abuse. It may, as already mentioned, be corrupted by power (Jentoft 2007b). However, the remedy is hardly to abandon democracy, but to make it work better. Accommodating for legal pluralism may be one of the remedies (Jentoft et al. 2009). This means ensuring that legal norms and orders that are "out there" are represented "in here" when decisions pertaining to, for instance, fisheries and coastal management are deliberated and decided on. If legal norms are too tacit to be expressed and integrated directly, they can be represented indirectly by involving those who know about them. Co-management would only provide the beginning of the answer of how to do this. The solution must also be found in the details of the organizational set-up (see Pinkerton 2003); for instance who gets to become represented and how, and therefore whose normative orders are recognized. If the diversity of legal norms is to be taken into consideration, representation must be structured to ensure that the legal pluralism that exist and are relevant for decision-making in particular instances are at the table. It is also therefore reasonable to assume that the legitimacy of co-management would largely depend on its contextualization and its ability to learn and adapt (Armitage et al. 2008). For this, co-management must also pay as much attention to communicative processes as to institutional and legal design.

It would be naïve to assume that more interactive governance is always better, and that blurring the boundaries between government, civil society and markets is necessarily a good thing. Each system has distinct roles, functions and capacities. There is something that only each of them can do. For instance, the state cannot (and should not) replace what a family does, or a business enterprise cannot perform the roles of the former two. At the same time, there are also things that

non-state governors cannot do. For example, we need a government when customary law breaks down or fails to deliver on crucial issues. Still, these boundaries are not written in stone; things are constantly moving on the borders between these governing systems. How we look at these boundary issues largely depends on where we start – from a situation where government is largely absent or from a situation where it is omnipresent. Interactive governance theorists commence primarily from the latter situation, where the hierarchical, command and control governing approach of the state is perceived to have inherent governability limitations that interactive governance may compensate for. Interactive governance shares with other governance schools the search for new alternatives to the functioning of the state and its changing borders with other societal systems, such as those of the market and civil society. There is, for instance, the case of Public Management (Eliassen and Kooiman 1987). Later the so-called New Public Management (Christensen and Lægreid 2002; Pollitt and Bouckaert 2011) became a dominant idea, and most recently the concept of Public Governance has emerged (Osborne 2010). Each of these governance schools has its own particular emphases on the normative and empirical features of public and private functions and their boundary traffic. For instance, New Public Management is predominantly concerned with movement along the state-market axis, and is normatively arguing for outsourcing of public functions, such as privatization. It is a champion of "a unilateral infusion of corporate-sector values and objectives into the public sector and public-service production and delivery" (Peters and Pierre 1998: 234).

Legal pluralism theorists, on the other hand, often start from the observation that colonial powers have super-imposed their own legal systems on situations already governed by indigenous, informal, or unofficial law, as in the case of India, Indonesia and in countries of Africa (Hooker 1975; Merry 1988). Many empirical studies of legal pluralism have therefore emerged in those countries. One can easily imagine situations and spheres of life where society needs to be protected against government intervention (and governments from markets, which is the criticism often being raised against New Public Management, and vice versa, which is central to neo-liberal economics). In fisheries, it has been argued that communities in many instances are better left alone to handle their collective choice issues (Anderson 1987; Pinkerton 1987). Communities do not necessarily operate in a legal vacuum or anarchy even if the government is absent. Instead, they work according to rules that they have developed and are able to enforce themselves – thereby contributing to legal pluralism and governability. Bavinck's study of the 'Panchayat' system in South India is a case in point (Bavinck 2001).

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Thus, government interference is not necessarily enhancing governability but may well lead to the contrary like when reducing the capacity of local people to manage their fishery by their own initiatives, values and norms, because government techniques tend to deskill locals (Wiber and Milley 2007). Therefore interactive governance raises "the question of the relation between state intervention and societal autonomy" (Offe 2009: 555), and the essentials of creating a truly mutually constructive governing interaction.

In the third instance (c), given that in reality governance is less hierarchical, more interactive and institutionally hybrid than we often tend to believe, and that a move towards more interaction should be supported for reasons given above, we need a conceptual framework by which we can analyse interactive governance both as a reality and as a potential governability enhancement. It is perhaps primarily as an analytical perspective that interactive governance theory may have something to offer legal pluralism. What this entails conceptually is summarized below.

5. Applying interactive governance theory to legal pluralism

Interactive governance is developed into a comprehensive conceptual framework by Kooiman (2003) and later applied by Kooiman et al. (2005) for fisheries. The framework is richer than what is possible to depict and explain in a short article like this; the following thus concentrates on aspects that are most relevant from a legal pluralism perspective.

a) *Governance systems*. Interactive governance operates with a two system model: a system-to-be-governed and a governing system, between which there is interaction that may take various "modes" (Figure 1). In fisheries, the system-to-be-governed is partly natural and partly social – comprising ecosystems, natural resources in those ecosystems, as well as various different categories of resource users and their institutions. The governing system, on the other hand, consists of institutions and steering mechanisms, among which legal rules play a prominent part. Interactive governance emphasizes that there are limitations as to how governable these systems are, and that it is essential to understand these limits, where they sit, and how they can possibly be overcome (Jentoft 2007a). Are they, as Mayntz mentions, due to "an implementation problem" or a "knowledge problem within the governing system" or a "motivation problem" at the receiving end of the governing interventions (Mayntz 1994: 13), i.e. within the system-to-be-governed? The governing system does not always possess the capacity to

govern or lacks the inclination to do so because the system-to-be- governed is likely too complex, already self-governable or because those who inhabit it reject external (state) intervention (Bavinck 1998; Mahon 2008).

According to interactive governance theory, these limits are, as figure 1 illustrates, related to four key properties that are common to both systems. They tend to be characterized by (i) *diversity*, and thus, there is no single formula for addressing governability; and any measure would need to be tailored to context. The normative order is obviously also part of that specific context, and any governability analysis would naturally need to detect and describe whatever normative orders exist and how individuals need to adapt to them. Legal pluralism does after all stem from sociological pluralism (Rouland 1994). This pluralism may cause problems for people who must learn to live with it. For instance, a fisher who has to move out of and into legal systems that apply to the different communities and fishing grounds as he migrates with the fish has an information problem. How is he supposed to know about them? What if he breaks rules unknowingly?

(ii) *Complexity* refers to the way system components are linked, such as in trophic chains or social networks. Complexities may of course also be of a legal nature. Not only are activities such as fishing, aquaculture, transport, tourism etc. competing for space and resources in the coastal zone; they are also subject to separate legal measures that are often poorly harmonized, in direct conflict, and thus turning coastal zone management into more of a legal battleground than it needs to be (cf. for example Cicin-Sain and Knecht 1998; Buanes and Jentoft 2005; Sanchirico et al. 2010; Wiber and Recchia 2010). The governability of coastal zones will clearly gain from cross-sector legal coordination and harmonization. This is also what Integrated Coastal Zone Management and Marine Spatial Planning attempt to do (cf. for example Cicin-Sain and Knecht 1998; Douvere and Ehler 2009)

(iii) *Dynamics*. In the world of fisheries, targets of governance are constantly moving. Similarly the legislation that underpins governance is not stable, as noted generally by K. von Benda-Beckmann (2001: 20): "There is no legal system that does not change at all." Thus dynamics is a key governability aspect both as a problem and a solution. The governability problem is heightened by the fact that the system-to-be-governed and the governing system are changing at a different pace and the governing system tends to lag behind. Fisheries resources may therefore be depleted before legislative authorities are able to respond. This can be

exemplified by the so-called "roving bandits" problem – those fleets that move around the world fishing out unregulated fish stocks and are gone the moment national governments are ready to intervene (Berkes et al. 2006). The need for adaptive governance as a governability enhancement measure is therefore pretty obvious but perhaps not fully attainable for the simple reason that law is not meant to be unstable or flexible, and that legal reform is cumbersome and takes time.

Finally, there is the issue of (iv) *scale*. The governability challenge is not only that legal systems are diverse, inherently complex and often unstable, but also that they exist at different levels, as with state and community law which may or may not be in conflict (Tamanaha 2008). How are fishing people to respond if local rules are in conflict with national legislation (Gezelius 2002)? This is a problem for both the governing system and the system-to-be-governed. For the governing system it is likely to generate low compliance and high transaction costs. For the fisher it represents a dilemma. Whether he chooses to abide by local or state law, he will be a law-breaker. This issue is addressed in the fisheries management literature as well as in the legal pluralism literature. When Vanderlinden talks about the individual as the "converging point" of legal pluralism, he seems to be thinking about this dilemma (Vanderlinden 1989: 151). Similarly, when Ambler (2001: 41) raises the question whether "it is possible to balance the intended universalism of statutory law with the particularism of customary law," he is alluding to the same.

b) *Governance orders*. Interactive governance also distinguishes three "orders" of governance, between which there are linkages and interactions. i) The first order is about the decision-making that occurs routinely on a day-to-day basis. There are rules and guidelines for the procedures regarding how these actions should occur, but they are also supposed to be consistent with norms and principles at a higher order. In fisheries, for instance, these are harvesting and processing rules related to where, how, when, and how much to fish and how to secure a good quality product. Since such rules are predominantly about technical matters which require a lot of specialized expertise, they lend themselves for delegation to administrators and practitioners who, once the basic principles and institutional framework are established, have the normative foundation and guidelines they need for implementing their functions.

ii) The second order concerns institutions. Institutions are about norms and rules that are inscribed in their role composition (Scott 2001). Hence they are legal systems in their own right. In his above quoted definition of interactive governance, Kooiman talks about caring for those institutions that enable "the

formulation and application of principles guiding those interactions" (Kooiman 2003: 4). Notably, interactive governance emphasises not only the problem-solving capacity of institutions but also their "opportunity creation". They facilitate, they make things possible, they empower.

Governance systems are typically complex networks of institutions, often in the shape of formal organizations with their own distinct boundaries, structures, cultures and mandates. Both within the governing system as well as in the system-to-be-governed, there is a diversity and fluidity of organizations. The fisheries industry is no exception to this rule. Understanding governability in this sector will therefore require in-depth analysis of these multi-scale organizational networks (Fanning et al. 2007). As a whole these institutional networks embody a legal pluralism, which often confronts members with conflicting values, norms, directives and mandates, thus easily leading to role conflict and normative confusion. In other words, understanding how legal pluralism works within institutional networks and organizational designs is essential for revealing the limitations and opportunities of governability.

iii) The third order ("meta order") governance is about the governing of governance, i.e. those values, images and principles that underpin governance at lower orders and which are essential for understanding what directions governance takes; which goals are prioritized, why certain tools are preferred to others, what criteria constitute good governance and why. Interactive governance argues that these questions are not outside or prior to governance, but central to it. They should therefore be subject to a similar interactive process as that which occurs at lower orders. From a normative perspective, they should be brought out in the open, deliberated and decided upon rather than playing a shadow role (Kooiman and Jentoft 2009).

Constructive communication requires that stakeholders know which position people come from when they argue about concerns that are important in the process and why certain things are left out. Schattschneider's perception of organization as the "mobilization of bias", i.e. that it is inherent to organizations that some issues and concerns are included and some are excluded (Schattschneider 1960), also applies to governance institutions, including those whose responsibility it is to uphold the law. It is essential for any governability assessment to investigate how and why certain values, images and principles are codified as law while others are not, which would inevitably involve the analysis of power and culture. It is, as Bavinck (2005) argues, important to recognize that not all conflicts among stakeholder

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groups are about interests. They are often about disparate ethics, values, and worldviews, and how to best include these issues in terms of constitutional and operational rules that governors negotiate. How stakeholders argue when they negotiate these rules would therefore be of special interest. Do they for instance invoke state or customary law, or perhaps universal governance principles? In fisheries and coastal governance there is an increasing influence of principles that are negotiated at a global level. The Food and Agriculture Organization of the United Nations' Code of Conduct for Responsible Fisheries (FAO 1995) is meant to inspire and inform governing institutions on how to promote more ecologically and socially sustainable and just fishing practices.

There is also a trend where fishing rights are perceived not just as a management tool but also as a human rights issue, given the way fishing rights interfere in social relations and people's ability and opportunity to sustain their livelihoods (Allison et al. 2012). This also raises the issue of universal versus local perceptions of justice, and how human rights are recognized principles within customary law. From an interactive governance perspective, meta-order governance of local, indigenous law requires a similar critical assessment as that instituted by the state. As K. von Benda-Beckmann maintains:

> Taking legal pluralism seriously, taking local law seriously, is not the same as endorsing every rule, or even any rule at all... To take it seriously means to acknowledge that it is there, that it affects people's behaviour, and that it also affects the way legislation is implemented. (K. von Benda-Beckmann 2001: 40)

Still, contrary to the role of the analyst, it is the role of governors to make value judgements, i.e. either to endorse or reject such rules. But when they do so, interactive governance argues that they need to be explicit with regard to why they choose one over the other, i.e. what meta-governance criteria they are using.

c) *Shifting perspectives*. The system-to-be-governed can also be seen as a governing system in itself. Think for instance of a marine protected area (MPA). Those who inhabit the area to be protected may already have their own governing system of roles, rules, and routines when the government decides to establish an MPA (Jentoft et al. 2007). In this case, we see one governing (legal) system being imposed on another governing system (cf. Pospisil 1971: 125 who talks "about different legal levels that are superimposed one upon the other"). It is also well established through ethnographic research that fisheries communities may have

their own governing capacity, and therefore be in no urgent need of exocratic governance, i.e. governing by some external authority like the state. Instead they have the capacity to operate according to principles, norms and rules that are self-generated, often spontaneously, but not always informally. Again, Bavinck's study of the Panchayat system in South India is a case in point (Bavinck 2001). Social researchers should look at indigenous legal systems critically; they may be far from perfect, neither from a functional nor a justice perspective, as K. von Benda-Beckmann suggests above. Indeed, they may suffer from some of the same deficiencies as state law, including the inability to be sufficiently adaptive to changing circumstances.

The governing system, as that of the state, is not only imposing the law on the system-to-be-governed, be it a community or an industry; it also works according to the rule of law itself, and must be assessed as a system-to-be- governed. An issue here is the classic question of "who governs the governors?" Who are those people? How did they come to occupy their positions? What are the norms and rules that they follow, and how are they instituted in the first place? The same applies to governing interactions (cf. Figure 1), i.e. the ways in which the governing system and the system-to-be-governed communicate with each other. Interactive governance argues that in many instances, the "co"- mode (like in co-management) is a well-suited mechanism for assisting such communication, but co-management arrangements are also legal systems; they work according to rules that determine how stakeholders should be represented and how decision-making shall take place. For co-management, we need to examine what the legal norms are and how consistent and flexible they are. It may well be true that local law is "ad hoc pragmatic and free to achieve quick and inexpensive resolutions," as Guillet (1998: 65-66) describes for the evolution of water property rights in north-western Spain, but we may be better served if we make this a proposition a matter of empirical research when applied in other settings.

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System properties
a) Diversity
b) Complexity
c) Dynamics
d) Scale

**System-
to-be-
governed**

**Governing
interaction**

**Governing
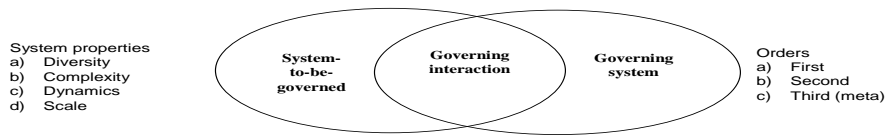system**

Orders
a) First
b) Second
c) Third (meta)

Figure 1. Interactive governance systems model

6. Conclusion

When exploring the limits of governability of fisheries and coastal systems, which is needed in order to understand why governance mechanisms often fail and what can be done to prevent it, legal pluralism is an issue that stands out. Is legal pluralism part of the problem or the solution – or both? Interactive governance provides a conceptual framework for such an analysis. It is notably not the only way to investigate governance and legal pluralism, but this is one worth exploring. Specifically, the task would be to search for the diversity, complexity, dynamics and scale of normative orders in their particular contexts, trying to understand how these properties of the governing system, the system-to-be-governed and the governing interactions limit or enhance governability.

Assessing legal pluralism for the sake of understanding (analytical) and enhancing (normative) governability would involve the investigation of the normative orders that are operative in these systems, as well as their linkages and the interactions surrounding them. This calls for comprehensive assessment. Interactive governance offers an array of hypotheses and concepts that are detailed, tested in the literature, and ready to be applied in new settings, including those where legal pluralism plays a role. But the reverse is also true. The legal pluralism discourse has much to offer interactive governance in helping to phrase sharp research questions of relevance to governability.

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