

**THE DANISH
INSTITUTE FOR
HUMAN RIGHTS**

STATE OBLIGATIONS
RELATED TO
INDIGENOUS
PEOPLES' RIGHTS
IN THE CONTEXT
OF SUSTAINABLE
FISHERIES AND
AQUACULTURE



STATE OBLIGATIONS RELATED TO INDIGENOUS PEOPLES' RIGHTS IN THE CONTEXT OF SUSTAINABLE FISHERIES AND AQUACULTURE

Authors: Stefania Errico with input from Birgitte Feiring



Danish Institute for Human Rights



**INDIGENOUS PEOPLES MAJOR GROUP
FOR SUSTAINABLE DEVELOPMENT (IPMG)**

*Amplifying the voices of
Indigenous Peoples*

Indigenous Peoples' Major Group for Sustainable Development (IPMG)

October 2021

e-ISBN: 978-87-7570-057-8

Cover photo: [Vladimir Soares](#) on Unsplash

© 2021 The Danish Institute for Human Rights
Wilders Plads 8K
DK-1403 Copenhagen K
Phone +45 3269 8888
www.humanrights.dk

Provided such reproduction is for non-commercial use, this publication, or parts of it, may be reproduced if author and source are quoted.

At the Danish Institute for Human Rights we aim to make our publications as accessible as possible. We use large font size, short (hyphen-free) lines, left-aligned text and strong contrast for maximum legibility. For further information about accessibility please click www.humanrights.dk/accessibility

CONTENTS

INTRODUCTION AND KEY MESSAGES: INDIGENOUS PEOPLES AND FISHERIES AND AQUACULTURE	4
The Sustainable Development Goals (SDGs)	6
Relevant international standards and guidelines on indigenous peoples and fisheries and aquaculture	7
FOUR MAIN AREAS REQUIRING IMMEDIATE ACTION BY STATES	10
1. Recognizing indigenous peoples' rights to marine resources, territories and land	10
Key steps for implementation	11
Case examples	12
2. Safeguarding the environment of indigenous peoples' territories, including marine and coastal ecosystems	15
Key steps for implementation	18
Case examples	19
3. Protecting and supporting indigenous peoples' livelihoods based on fisheries and aquaculture and ensuring access to decent work	20
Key steps for implementation	22
Case examples	23
4. Ensuring consultation and participation of indigenous peoples in decision-making processes concerning fisheries and aquaculture	25
Key steps for implementation	26
Case examples	27
THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT AS A FRAMEWORK TO FULFIL STATES' OBLIGATIONS IN RELATION TO INDIGENOUS PEOPLES	29
ENDNOTES	31

INTRODUCTION AND KEY MESSAGES: INDIGENOUS PEOPLES AND FISHERIES AND AQUACULTURE

For millennia, the existence of many indigenous peoples across the world has been closely intertwined with the sea; their livelihoods and culture being deeply tied to marine and coastal ecosystems, whether exclusively or partially.

Estimates by the ILO indicate that indigenous peoples are largely reliant on the agricultural sector, which includes agriculture, forestry and fishing, with 55 per cent of the employed indigenous population working in this sector globally, compared to 26.9 per cent of the non-indigenous population.¹ Further estimates highlight the key role that marine resources play for indigenous peoples: coastal indigenous peoples consume globally a total of 2.1 million (1.5 million–2.8 million) metric tonnes of seafood every year, equal to around 2% of global yearly commercial fisheries catch. On average, coastal indigenous peoples' consumption of seafood per capita is 15 times higher than non-indigenous country populations.² Moreover, marine resources are crucial also to the livelihoods and food security of some inland indigenous peoples. For example, salmon that migrate upstream through rivers is a key resource for communities that may live thousands of kilometres inland. In British Columbia, First Nations living more than 400 km upstream on the Skeena River eat an average of 11 kg of salmon per person per year and consume salmon 63 days a year on average, an amount similar to First Nations living on the coast.³

The profound relationship that indigenous peoples have with the environment of their territories has allowed them to acquire and transmit over many generations an extremely accurate knowledge of marine and coastal ecosystems and to develop management practices directed at the sustainable use of the resources of these ecosystems. Growing evidence shows that indigenous peoples possess the knowledge and ability required to successfully conserve and manage biodiverse ecosystems more effectively than governments and at a lower cost, especially where their human rights are respected, protected and fulfilled.⁴ For example, a comparison between on the one hand, marine national parks and co-managed reserves and, on the other, traditionally managed coral reefs in Indonesia and Papua New Guinea, has found that traditional management regimes, none of which involved permanent reef closure, were more effective at conserving reef fish.⁵

Yet, land and ocean grabbing, commodification and overexploitation of marine resources, pollution, criminalization of indigenous peoples' fishing activities,⁶ lack of participation in development and conservation initiatives affecting their territories and disregard for their ways of life, traditional knowledge and management practices, is threatening the survival of indigenous peoples depending on marine and coastal ecosystems throughout the world. Their food security is jeopardized, their cultural practices are disrupted, some communities are pushed into unsustainable practices

when faced with increasing pressure and competition over their territories, and many of them are at risk of further marginalization and exploitation, including becoming victims of exploitive labour practices in the fishing industry, among others.

The impact of climate change on indigenous peoples relying on fisheries and aquaculture

Climate change is adding a further layer of challenges to indigenous peoples' lives and livelihoods.⁷ Indigenous peoples living in coastal areas are, for example, facing increasingly frequent hurricanes and cyclones as well as sea level rise and coral bleaching, which can reduce the ability of ecosystems to provide communities with necessary food and non-food resources, and. In some small island States, particularly in the Pacific, entire territories of certain indigenous peoples are at risk of disappearance as a result of sea level rise. In the Arctic, ice melt and heat waves are disrupting the fishing activities of indigenous communities.⁸ Research conducted on the impact of climate change on the ecosystems of the Guna Yala in Panama revealed increased mortality of coral reefs, drying up of mangroves and erosion of sandy island ecosystems, that adversely affect the biodiversity and traditional management of the islands by the Guna.⁹

The Paris Agreement on Climate Change, in its preamble, states that States should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, including the rights of indigenous peoples. It also stipulates that action aimed at climate change adaptation should be participatory and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems (art. 7 (5)).

All the above risks nullifying States' efforts to realise their commitments under the 2030 Agenda for Sustainable Development and reach the furthest behind first, unless States fully uphold their human rights obligations concerning indigenous peoples' rights.

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), which elaborate upon universal human rights in the specific cultural, historical, social and economic circumstances of indigenous peoples, provide essential guidance in this regard.¹⁰ In this brief, reference is this mainly made to these two instruments.

THE SUSTAINABLE DEVELOPMENT GOALS (SDGS)

The 2030 Agenda for Sustainable Development was adopted in September 2015 at the UN Sustainable Development Summit in New York. It lays down the overall framework for country development policies for the next fifteen years defining seventeen Sustainable Development Goals (SDGs) and 169 targets. The Agenda acknowledges the interlinkages between the three dimensions of sustainable development, i.e., social, economic and environmental, and aims to “realize the human rights of all” (preamble). It places particular emphasis on combating inequalities within and among countries and building ‘peaceful, just and inclusive societies’, with a view to leaving no one behind (paras. 3-4).

The Agenda makes specific reference to indigenous peoples under two of its goals, i.e. SDG 2 to ‘End hunger, achieve food security and improved nutrition and promote sustainable agriculture’ and SDG 4 to ‘Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all’. However, the respect, protection and fulfilment of indigenous peoples’ rights is crucial to the achievement of all the SDGs, which are closely interlinked and should be approached in an integrated fashion. For example, SDG 14 aims to “Conserve and sustainably use the oceans, seas and marine resources for sustainable development” and addresses a number of issues of utmost importance for indigenous peoples, namely:

- By 2020 sustainably manage and protect marine and coastal ecosystems (target 14.2);
- By 2020 end overfishing, illegal, unreported and unregulated fishing and destructive fishing practice (target 14.4);
- By 2020 conserve at least 10 per cent of coastal and marine areas (target 14.5)
- By 2020 prohibit unsustainable fisheries subsidies (target 14.6)
- Provide access for small-scale artisanal fishers to marine resources and markets (target 14.b)

Achieving SDG 14 has implications on the realization of a range of other SDGs, notably SDG 1 (no poverty), SDG 2 (no hunger), SDG 3 (good health and well-being), SDG 5 (gender equality), SDG 8 (decent work and economic growth) and SDG 10 (reduced inequalities).

The Agenda encourages States to conduct regular and inclusive reviews of the progress made drawing on the contributions from indigenous peoples, civil society, the private sector and other stakeholders (para. 79).

The Human Rights Guide to the SDGs developed by the DIHR and available at <https://sdg.humanrights.dk/en> provides an overview of the human rights anchorage of the 17 SDGs by making concrete links between the 169 targets and international and regional human rights instruments, including UNDRIP, international labour

standards, including ILO Convention No. 169, and key environmental instruments. It is a helpful tool to: understand the linkages between the SDGs and human rights, labour standards and environmental treaties and instruments; develop a human rights-based approach to sustainable development programming, implementation, monitoring, evaluation and reporting; and understand the linkages between regional and international human rights instruments and environmental treaties.

Moreover, there are two key instruments that are of particular importance to fisheries and aquaculture. These are the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT Guidelines) and the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines). Both these Guidelines should be understood and applied in light of UNDRIP and ILO Convention No. 169.

Other international standards and guidelines are also relevant, including the UN Declaration on the Rights of Peasants and other People Working in Rural Areas (UNDROP); the Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security (Right to Food Guidelines) and the Principles for Responsible Investment in Agriculture and Food Systems (RAI Principles) (please see dedicated box below for more information).

RELEVANT INTERNATIONAL STANDARDS AND GUIDELINES ON INDIGENOUS PEOPLES AND FISHERIES AND AQUACULTURE

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the UN General Assembly in 2007. It enshrines a widely shared understanding about the rights of indigenous peoples that has been building over decades on a foundation of previously existing sources of international human rights law.¹¹ The ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) is the only international treaty open to ratification that specifically concern indigenous peoples. It was adopted by the International Labour Conference of the ILO in 1989 in cooperation with the United Nations system.¹²

The UN Declaration on the Rights of Peasants and other People Working in Rural Areas (UNDROP) was adopted by the UN General Assembly in 2018 and covers indigenous peoples within its definition of “peasants and other people working in rural areas” (art. 1). It recognizes, among other things, the right of peasants to “have access to, sustainably use and manage land and the water bodies, coastal seas, fisheries, pastures and forests therein, to achieve an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures” (art. 17). UNDROP must be interpreted in light of UNDRIP when applied to indigenous peoples (see preamble, arts 2 (3) and 28).

The Voluntary Guidelines on the Responsible Governance of Tenure of Land,

Fisheries and Forests in the Context of National Food Security (VGGT Guidelines) were adopted by the Committee on World Food Security (CFS) in 2012, after three years of participatory negotiation involving States, civil society organisations, international organisations and the private sector. They aim to provide guidance to improve the governance of tenure of land, fisheries and forests with the overarching goal of achieving food security for all. The VGGT Guidelines contain specific guidance concerning indigenous peoples' land, fisheries and forests and make reference to ILO Convention No. 169 and UNDRIP.¹³

The Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines) are the outcome of a process of consultations undertaken between 2011 and 2013, facilitated by FAO on the basis of a mandate by the Committee on Fisheries (COFI) that endorsed the Guidelines in 2014. The SSF Guidelines represent the first internationally agreed instrument dedicated entirely to the small-scale fisheries sector. They place a particular emphasis on the realization of human rights and on the need to attend to vulnerable and marginalized groups, making explicit references to indigenous peoples and UNDRIP.¹⁴

The Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security (Right to Food Guidelines) were adopted by the FAO Council in 2004 with the objective of providing practical guidance to States in their implementation of the obligation of progressive realization of the right to adequate food, including by facilitating sustainable, non-discriminatory and secure access and utilization of resources such as land, water and fisheries and paying particular attention to the needs of vulnerable groups.¹⁵ The Principles for Responsible Investment in Agriculture and Food Systems (RAI Principles) were approved by the Committee on World Food Security in 2014. They aim to promote responsible investment in agriculture and food systems, including fisheries, that contribute to food security and nutrition, thus supporting the progressive realization of the right to adequate food. They are based on international human rights and make explicit reference to UNDRIP.¹⁶

In this brief, it is suggested that action in four main areas is urgently required. Such action must be in line with international human rights standards, based on the recognition of the right to self-determination of indigenous peoples¹⁷ and the respect for the "aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live".¹⁸ Those four main areas are elaborated in the present document. They are the following:

1. Recognizing indigenous peoples' rights to marine resources, marine territories and coastal lands
2. Safeguarding the environment of indigenous peoples' territories, including marine and coastal ecosystems

3. Protecting and supporting indigenous peoples' livelihoods based on fisheries and aquaculture and ensuring access to decent work
4. Ensuring consultation and participation of indigenous peoples in the formulation, implementation, monitoring and evaluation of legislation, policies and programmes concerning fisheries and aquaculture and other decision-making processes affecting them.

The 2030 Agenda underpinned by human rights obligations, provides States with an integrated rights-based framework to guide holistic fulfilling of States' obligations in relation to indigenous peoples in the context of fisheries and aquaculture. In that endeavour, States can build on the analysis, data and recommendations provided by existing human rights mechanisms.

FOUR MAIN AREAS REQUIRING IMMEDIATE ACTION BY STATES

Linkages with relevant targets under SDG 14

- By 2020 sustainably manage and protect marine and coastal ecosystems (target 14.2);
- Provide access for small-scale artisanal fishers to marine resources and markets (target 14.b)



1. RECOGNIZING INDIGENOUS PEOPLES' RIGHTS TO MARINE RESOURCES, TERRITORIES AND LAND

For indigenous fishing communities, respect for their rights to marine resources, marine territories and land

in coastal and waterfront areas is key to sustain their livelihoods, preserve their cultural integrity and maintain their ways of life. For the purpose of this brief, marine territories and resources are understood to comprise the marine spaces and the associated resources, notably marine living resources, that indigenous peoples have traditionally managed and used according to their customary law and management systems. Land and territorial rights in coastal and waterfront areas are equally important for indigenous fishing communities, as these areas are used to access fishing grounds, store boats, nets and other equipment, undertake post-harvest activities and establish housing. Additionally, in many cases, sea-based activities of indigenous peoples are combined with other occupations, including cultivation, livestock-raising or hunting, which require also access to land and natural resources. The recognition of rights to lands, territories and resources has implications on a wide range of human rights, such as the rights to life, to an adequate standard of living, including adequate housing and food, to work, to enjoy one's culture, to take part in cultural life, and to development, among many others. Moreover, the absence of secure rights facilitates overfishing and reduces incentives for responsible stewardship as customary arrangements governing the access and the sustainable use of resources are not recognized or challenged.¹⁹

Both the SSF Guidelines and the VGGT Guidelines make the respect, protection and fulfilment of legitimate tenure rights, including customary rights to aquatic resources and land, a central aspect of the governance of land and fisheries and sustainable small-scale fisheries.²⁰

UNDRIP recognizes the right of indigenous peoples to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired and refers also to waters, coastal seas and other resources.²¹ It specifies that indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

Similarly, **ILO Convention No. 169** stipulates that States shall recognize indigenous peoples' rights of ownership and possession over the lands which they traditionally occupy as well as the right to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities.²² It furthermore lays down that indigenous peoples have the right to the natural resources pertaining to their lands, including the right to participate in the use, management and conservation of these resources.²³

Under international human rights law, indigenous peoples' right to lands, territories and resources, including marine resources, originates in their traditional occupation and use, according to their customary law. In other words, this right exists and must be respected irrespective of whether or not there has been an official recognition by the State through the issuance, for example, of a formal title. Notwithstanding that, States are expected to take a number of concrete steps to ensure the respect, protection and fulfilment of this right.

Key steps for implementation

1. Identify and provide legal recognition to indigenous peoples' right to lands, territories and resources, including marine spaces and associated resources, with due respect to customs, traditions and tenure systems of the indigenous peoples concerned.²⁴

For example, States should review national legislation, notably fisheries legislation, to ensure that it recognizes indigenous peoples' fishing rights.²⁵ In addition, they should review the allocation of public fisheries to ensure that it respects the traditional fishing rights of indigenous peoples and should provide for the participation of indigenous peoples in decision-making processes concerning such allocation to avoid adverse impacts on their rights.²⁶ The SSF Guidelines also recommends that States should, where appropriate, grant preferential access of small-scale fisheries to fish in waters under national jurisdiction and should establish exclusive zones for small-scale fisheries.²⁷

2. Establish, in cooperation with indigenous peoples, a fair, independent, impartial, open and transparent process to resolve claims and recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including fisheries resources and fishing areas, where due recognition is given to indigenous peoples' laws, traditions, customs and tenure systems;²⁸

For example, States should address and resolve claims over coastal lands and fishing areas and rights, and provide protection from encroachments and forced evictions.

3. Provide redress, including restitution or, when this is not possible, just, fair and equitable compensation, for the marine territories, coastal lands, and related resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their

free, prior and informed consent, including as a result of illegal fishing by third parties.²⁹ Just and fair redress is due whenever indigenous peoples are deprived of their means of subsistence and development, including fishing activities and navigation rights.³⁰

4. Recognize equal rights to indigenous men and women and pay particular attention to the rights and needs of indigenous women in respect of access to coastal lands and fisheries resources;³¹
5. Take effective measures to prevent any action which has the aim or effect of dispossessing them of their lands, territories or resources, prevent any unauthorised intrusion upon or use, and establish adequate penalties for these offences.³²

For example, the SSF Guidelines recommend that States should have effective monitoring and enforcement mechanisms to deter, prevent and eliminate all forms of illegal and/or destructive fishing practices having a negative effect on marine and inland ecosystems.³³

6. Ensure that no relocation of indigenous peoples from their lands or territories takes place without their free, prior and informed consent;³⁴
7. Consult indigenous peoples through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, including fishing areas and fishing resources, such as blue economy projects.³⁵

For example, States should consult indigenous peoples in relation to commercial aquaculture and prevent and address the adverse impacts of commercial aquaculture on their fishing rights.

8. Protect indigenous peoples from abuses by business enterprises and ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction indigenous peoples affected have access to effective remedy.³⁶ In discharging their obligation to protect, States should consider, for example, imposing criminal or administrative sanctions and penalties, as appropriate, where business activities result in abuses of rights or where a failure to act with due diligence to mitigate risks allows such infringements to occur; revoke business licences and subsidies, if and to the extent necessary, from offenders; and revise relevant tax codes, public procurement contracts, export credits and other forms of State support, privileges and advantages in case of human rights violations, thus aligning business incentives with human rights responsibilities.³⁷

Case examples

Transboundary marine activities of indigenous peoples

Mostly, indigenous peoples engage in small-scale fisheries activities that take place within the jurisdiction of the coastal State, in maritime zones within 12 nautical miles from the baselines.³⁸ Nevertheless, there are instances in which indigenous peoples rely on marine resources situated in the territorial sea or the exclusive economic zone (EEZ) of another State. In some of these cases, bilateral agreements on maritime boundaries that are entered into by the concerned States have included provisions concerning indigenous peoples' fishing rights and navigation. For example, the Treaty between Australia and Papua New Guinea, entered into force in 1985, recognizes indigenous offshore rights to fish in favour of Torres Strait Islander people and establishes a protected zone to safeguard their fishing and free movement rights.³⁹ However, these cases are not frequent.⁴⁰

A case concerning the exercise of traditional fishing activities by indigenous peoples beyond the jurisdiction of the coastal State was brought to the attention of the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR), the body charged with the supervision of the implementation of ILO Convention No. 169, among others. The case concerned the traditional fishing rights of the Raizal people of Colombia, which had allegedly been adversely affected by the decision of the International Court of Justice (ICJ) on the delimitation of the maritime border between Colombia and Nicaragua of 2012. It was complained that the delimitation of the maritime borders was made without the consultation and the participation of the people concerned and resulted in severe losses of livelihoods because some Raizal people's traditional fishing territories were considered to be part of the Nicaraguan sea as a result of the ICJ's decision.⁴¹ As a result, Colombia has filed an objection with the ICJ asking for the recognition of Raizal people's customary fishing rights.⁴²

UNDRIP provides that indigenous peoples have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.⁴³ A similar provision is contained in ILO Convention no. 169.⁴⁴

Indigenous peoples' rights in fisheries and aquaculture in the practice of the UN Treaty Bodies

The UN Treaty Bodies have examined indigenous peoples' rights in fisheries and aquaculture in some occasions referring to the provisions in the core international human rights treaties concerning the principles of equality and non-discrimination, the right to self-determination, the right to property, the right to enjoy one's culture, and the right to remedy, among others.

The UN Committee on the Elimination of Racial Discrimination (CERD) has, for instance, addressed the issue of marine and coastal rights of the Maori indigenous people in New Zealand, requesting the State to review its legislation to ensure the respect and protection of Maori's rights to the land and resources they traditionally own or use, and their access to places of cultural and traditional significance, including the recognition of their customary interests in the common marine and coastal area.⁴⁵ In a similar vein, the Human Rights Committee (HRC) has requested Norway to strengthen its legal framework to recognize Sami indigenous people's right to land and resources, including fishing rights.⁴⁶ The CERD has also requested Norway to review the fisheries legislation and ensure that it fully recognizes the Sami fishing rights based on immemorial usage and local customs.⁴⁷ In addition, the CERD has called upon the Russian Federation to remove any discriminatory restrictions on indigenous fisheries, including the imposition of restrictions on how to practise fishing, such as the prohibition to use nets, which are not imposed on commercial or recreational fishing.⁴⁸

In turn, the UN Committee on Economic, Social and Cultural Rights (CESCR) has examined the impact that infrastructure projects and incursions into Sami 's lands have caused on their way of life and traditional livelihoods, including fishing. The CESCR has consequently urged Finland to, among others, act upon instances of infringement on the rights of the Sami in order to maintain their culture, way of life and traditional livelihoods and has recommended that the State should assess the impact of existing laws on these rights and enact the necessary amendments. The State should also strengthen the legal and procedural guarantees for obtaining the free, prior and informed consent of the Sami in line with international standards.⁴⁹ A broader overview of the recommendations formulated by UN Treaty Bodies and other international human rights monitoring mechanisms concerning indigenous peoples' rights in fisheries and aquaculture can be accessed through the "**SDG – Human Rights Data Explorer**", a tool developed by the DIHR to explore human rights recommendations and their connections to the 2030 Development Agenda. The recommendations can be browsed by the Goals and targets of the 2030 Agenda, country or region, and rights-holder groups. It is available at <https://sdgdata.humanrights.dk/en/explorer>.

Providing a coherent and comprehensive legislative framework recognizing indigenous peoples' rights in fisheries and aquaculture.

Legislation governing fisheries and aquaculture often do not reflect indigenous peoples' rights and is scarcely coordinated with other relevant pieces of legislation. There is thus often the need to harmonize national laws to ensure that indigenous peoples' rights are adequately incorporated also in sectoral legislation. In 2019, the provincial government of British Columbia passed the Declaration on the Rights of Indigenous Peoples Act (Declaration Act) with a view to advancing reconciliation and addressing the legacy and harms of colonialism on Indigenous peoples.⁵⁰ The Declaration Act sets out a process to align the laws of British Columbia

to UNDRIP, in consultation and cooperation with indigenous peoples. In particular, the government is requested to prepare and implement an action plan to achieve the objectives of UNDRIP, which is currently under consultation.⁵¹ The draft Action Plan contains a dedicated section to the recognition of First Nations' rights to own, use, develop and control lands and resources within their territories in British Columbia and also refers, among others, to the development of strategies to protect and revitalize British Columbia's wild salmon populations, wild salmon being the most prevalent traditional food of British Columbia First Nations.⁵²

2. SAFEGUARDING THE ENVIRONMENT OF INDIGENOUS PEOPLES' TERRITORIES, INCLUDING MARINE AND COASTAL ECOSYSTEMS

Linkages with relevant targets under SDG 14

- By 2020 sustainably manage and protect marine and coastal ecosystems (target 14.2);
- By 2020 end overfishing, illegal, unreported and unregulated fishing and destructive fishing practice (target 14.4);
- By 2020 conserve at least 10 per cent of coastal and marine areas (target 14.5)



All human rights depend on a healthy biosphere.⁵³ This is particularly true for indigenous peoples, whose existence is closely linked to the health of the environment of their territories. The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Service has estimated that two thirds of the ocean realm is experiencing adverse impacts, including

acidification, deoxygenation and a loss of sea ice, and the global biomass of large predatory fish targeted by fisheries has fallen by two thirds over the past hundred years.⁵⁴ Commercial aquaculture also is having negative effects on biodiversity. Commercial aquaculture focuses mainly on 25 species, including salmon, carps, pangasius, tilapias, clams and shrimps, and the continuous spill of these non-native breed species into freshwaters or oceans disrupts local and regional ecosystems. Thus, for example, in the Pacific, indigenous fishers in Chile and British Columbia have seen their fishing stocks depleted as a result of large-scale corporate salmon aquaculture.⁵⁵ A study conducted by the DIHR revealed that salmon aquaculture in Chile contributes to industrial waste on beaches, waters, and the seabed; the use of chemicals and antibiotics that are not safe for humans nor for other marine species; alterations of the seabed; frequent salmon escapes; massive dumping of dead salmon into the sea; damage to marine mammals; pollution of freshwater areas; and other types of perceived pollution, which affects the well-being of local communities as well as their cultural practices.⁵⁶ Likewise, adverse impacts of commercial shrimp farming have been documented. In Bangladesh, for example, shrimp aquaculture has caused mangrove destruction, sedimentation, saltwater interruption, loss of biodiversity and contamination.⁵⁷ Similar impacts have been observed in other parts of the world, including the Mekong Delta.⁵⁸ The decline in nature's diversity and abundance during the past 50 years has been unprecedented in human history.⁵⁹

Indigenous peoples play a central role in the conservation and sustainable management of marine and coastal ecosystems as well as their restoration.⁶⁰ Yet, their role, including the importance of their traditional knowledge and management practices, are often dismissed by decision-makers. Not only are they adversely affected by overfishing, pollution, and the expansion of oceans-based "blue economy" initiatives, including commercial aquaculture, tourism, ocean-based energy and extractive industries; they are also negatively impacted by marine conservation initiatives which are often designed and implemented without their consultation and participation, with negative repercussions on the sustainability of their livelihoods and ways of life and, ultimately, on the health of the ecosystems on which they depend.

The Bastimentos Island National Marine Park in Panama, for instance, is considered to be an example of negative experience with marine protected areas (MPAs). The Park was established in 1988 without consulting local communities, including the Ngöbe indigenous people, and did not take into account the needs of local communities. The latter have thus not benefited from the establishment of the Park and have suffered from the restrictions imposed on their traditional activities.⁶¹ Marine resources in the area are reportedly threatened, particularly by tourism, including as a result of the increase in demand for seafood by restaurants and hotels and the development of touristic activities in the areas. Local authorities acknowledge that local communities are the “strength” of conservation efforts and indigenous peoples’ rights are important for the conservation of biodiversity, but dialogue with local communities continue to be limited.⁶² Yet, experience has shown that indigenous peoples possess the knowledge and ability required to successfully conserve and manage biodiverse ecosystems more effectively than governments and at a lower cost, especially where their human rights are respected, protected and fulfilled.⁶³ Various cases of community-led MPAs involving indigenous peoples and building on their customary marine tenure systems, are found, for example, in Oceania. In Samoa, for instance, the constitution was amended in 1990 to recognize the authority of chiefs and councils, including the right to manage nearshore fisheries so that they can now adopt bylaws to regulate fishing in their areas.⁶⁴ In Chile, the Rapa Nui Marine Park, one of the world’s largest MPA, has been established after consultation with the concerned indigenous peoples and is managed by a Council comprising six representatives of the Rapa Nui people and five representatives of the State.⁶⁵ Moreover, the national legislation provides for the creation of Marine Coastal Spaces of Indigenous Peoples (Espacio Marino Costero de los Pueblos Originarios).⁶⁶ To provide an additional illustration, in British Columbia, fishery closures declared under indigenous law allowed for the recovery of Dungeness crab (*Cancer magister*).⁶⁷

UNDRIP recognizes that indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources and that States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.⁶⁸

ILO Convention No. 169 also stipulates that Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.⁶⁹

States' human rights obligations on indigenous peoples and other international obligations

States' discharge of their human rights obligation concerning indigenous peoples, including those related to their right to a healthy environment, is also relevant to the fulfilment of other obligations.

Under the 1982 United Nations Convention on the Law of the Sea (UNCLOS), for example, States have an obligation to conserve and manage living resources, including through international cooperation, in order to avoid over-exploitation.⁷⁰

In the case of migratory fish stocks, the 1995 United Nations Fish Stocks Agreement (UNFSA) provides that in establishing the conservation and management of straddling and highly migratory fish stocks within areas under national jurisdiction, the coastal states must, inter alia, "take into account the interests of artisanal and subsistence fishers". In addition, the UNFSA establishes a duty to cooperate in the conservation and management of these fish stocks, providing that States shall take into account the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fish workers, as well as indigenous peoples in developing States.⁷¹

Furthermore, the Convention on Biological Diversity (CBD) establishes that States shall: develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programmes; and integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.⁷² It also stipulates that States shall cooperate for the conservation and sustainable use of biological diversity⁷³ and shall "respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices".⁷⁴

The governance of global ocean commons and indigenous peoples

Discussions on the best approach to the governance of global ocean commons, that is to say the areas beyond national jurisdiction consisting of the deep seabed and the water column above it, are currently undergoing at the UN with a view to adopting an agreement under the United Nations Convention on the Law of the Sea on "the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction".⁷⁵

Global ocean commons represent 64% of the global ocean and 46% of Earth's surface.⁷⁶ They are relevant to indigenous peoples, given the number of migratory and straddling species on which they rely and have sustainably managed for generations. At the same time, their traditional knowledge is also important for the management of the ocean commons, considering the interconnectedness of marine areas, including coastal seas. Moreover, since some species, such as salmon, migrate upstream through rivers, indigenous communities living inland who rely on them, have also a role to play in the governance of global ocean commons. Yet, indigenous peoples have generally been underrepresented in the debate about the governance of the ocean commons.⁷⁷

The latest draft of the agreement currently being negotiated⁷⁸ contains some references to indigenous peoples, including, among others,

- the recognition that States' efforts should be guided, among others, by the use of the traditional knowledge of indigenous peoples;
- the obligation of States to ensure that traditional knowledge associated with marine genetic resources in areas beyond national jurisdiction that is held by indigenous peoples is only accessed with the prior and informed consent or approval and involvement of the indigenous peoples concerned; and
- the requirement that proposals concerning the establishment of area-based management tools, including marine protected areas, indicate also specific human activities in the area, including uses by indigenous peoples and local communities in adjacent coastal States, and that indigenous peoples be invited to submit views on the merits of the proposal and any other relevant information, including information based on their traditional knowledge.

Key steps for implementation

1. Recognize in relevant laws and policies the role that indigenous fishing communities play in the restoration, conservation, protection and management of aquatic and coastal ecosystems and respect and protect their traditional knowledge, practices and institutions;⁷⁹

For example, States should recognize the autonomous decision-making institutions of indigenous peoples and respect their management systems and customary law governing access to and use of the marine territories and resources and the coastal lands that they have traditionally owned, occupied or otherwise used or acquired.

2. Adopt measures, in collaboration with the indigenous peoples concerned, to ensure the conservation and protection of the environment of their territories, including through tailored assistance programmes and the realization of participatory impact assessments of planned projects that may affect them;⁸⁰
3. Consult indigenous peoples through their own representative institutions in order to obtain their free and informed consent prior to the approval of marine conservation initiatives affecting their territories, and ensure their participation in the implementation and monitoring of such initiatives as well as their rights

to control and manage their territories and participate in the benefits of these initiatives;⁸¹ and

4. Consult indigenous peoples and promote their participation in the design and implementation of initiatives directed at the conservation and sustainable management of marine and coastal biodiversity, including straddling and highly migratory fish stocks, taking into account their traditional knowledge and practices, as well as climate change mitigation and adaptation plans and programmes.⁸²

Case examples

Co-management of marine areas

Gwaii Haanas National Marine Conservation Area Reserve in Canada is a Heritage Site of the Haida Nation and a protected marine area under the National Marine Conservation Areas Act. It is managed by joint management boards that comprise equal numbers of representatives from both the Haida Nation and the Canadian federal government. Under the law, the Government has ultimate decision-making power, but in practice co-management of the area has prevailed. Discussions about co-management arrangements and power-sharing between indigenous peoples and the Government are also emerging in the current process of establishing a network of marine protected areas in the Northern Shelf Bioregion. The process, which is still ongoing, is co-led by the Federal Government, the Province of British Columbia and 17 First Nations. Indigenous peoples are providing their principles, ethics and values into the network design and governance.⁸³

3. PROTECTING AND SUPPORTING INDIGENOUS PEOPLES' LIVELIHOODS BASED ON FISHERIES AND AQUACULTURE AND ENSURING ACCESS TO DECENT WORK

Linkages with relevant targets under SDG 14

- By 2020 end overfishing, illegal, unreported and unregulated fishing and destructive fishing practice (target 14.4);
- By 2020 prohibit unsustainable fisheries subsidies (target 14.6)
- Provide access for small-scale artisanal fishers to marine resources and markets (target 14.b)



The livelihoods of many indigenous peoples across the globe rely exclusively or partially on access to fisheries and are increasingly challenged by blue ocean projects, including commercial aquaculture, and land and ocean grabbing. In Chile, for example, the expansion of the salmon industry has been made possible by the fact that the State has allowed companies

to base their operations in areas that were traditionally used by indigenous communities.⁸⁴ In addition, the operations of the industry, by adversely affecting marine and coastal ecosystems, have negatively impacted their livelihoods.⁸⁵ On the other hand, the current system of commercial fishing licences and quotas have often meant in practice the dispossession of indigenous fishing communities whose traditional fishing rights have not been recognized and who may face various restrictions to obtain fishing authorizations and practicing fishing, including, for instance, the prohibition to use nets or modern equipment.⁸⁶

Faced with increasing pressures, including dispossessions, depletion of coastal fish stocks, marine pollution and climate change, many indigenous fishers are forced to attempt long-distance fishing, despite lacking the equipment necessary to protect themselves against unpredictable weather conditions.⁸⁷ In some cases, they may be obliged to alter their sustainable practices and engage in overfishing to sustain their families. They may also seek employment with larger industrial operations, where their rights may be violated, also due to discrimination.⁸⁸ For example, Miskito divers in Honduras face precarious working conditions, including the lack of occupational safety measures, with the result that the number of divers who are victims of accidents due to underwater fishing is increasing.⁸⁹ Cases of indigenous child labour in the fishing industry are also known. Early studies indicated that in Honduras more than 70 per cent of indigenous children from the Miskito communities worked in the fishing sector as boatmen (cayqueros) or divers. Many children suffered from the impacts of decompressions, including disabilities and death, because diving is made without any protection. Moreover, reportedly, the majority of children start consuming alcohol and drugs to face the work load.⁹⁰ Furthermore, forced labour and human trafficking in the fisheries sector remain severe problems.⁹¹

UNDRIP recognizes the right of indigenous peoples to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.⁹² It proclaims that indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining and social security. It also recognizes that indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.⁹³

ILO Convention No. 169 stipulates that Governments shall: adopt, in cooperation with indigenous peoples, special measures to ensure their effective protection with regard to recruitment and conditions of employment; do everything possible to prevent any discrimination between workers belonging to indigenous peoples and other workers; and extend progressively social security schemes to cover indigenous peoples.⁹⁴ The Convention also provides that handicrafts, rural and community-based industries, and subsistence economy and traditional activities of indigenous peoples, including fishing, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of indigenous peoples and whenever appropriate, ensure that these activities are strengthened and promoted. In addition, the Convention lays down that, upon the request of the indigenous peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.⁹⁵

Indigenous peoples' access to fishing occupations without discrimination and the protection of their labour rights: key international labour standards in a snapshot.

The ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) is one of the ILO fundamental Conventions. It aims at eliminating discrimination and promoting equality of opportunity and treatment in both employment and occupation. It covers also indigenous peoples' traditional occupations, including fishing, and protects their right to engage without discrimination in these occupations. In this regard, it requires States, for example, to promote and ensure access to the material goods and services required to carry out an occupation, such as secure access to land and resources, without discrimination.⁹⁶

The ILO Work in Fishing Convention, 2007 (No. 188) aims to ensure that fishers have decent conditions of work on board fishing vessels with regard to: minimum requirements for work on board, including minimum age; conditions of service; accommodation and food; occupational safety and health protection; medical care and social security. The Convention applies to all fishers and all fishing vessels

engaged in commercial fishing operations. Subsistence fishing and recreational fishing are excluded from the scope of application of the Convention.⁹⁷

For a broader overview of relevant labour standards, including those addressing forced labour and child labour, see www.ilo.org/normlex

The IMO/FAO/ILO Safety Recommendations for Decked Fishing Vessels of Less than 12 metres in Length and Undecked Fishing Vessels provide guidelines to competent authorities for the design, construction, equipment and training of the crews of small fishing vessels, as well as operational safety. They cover a wide range of topics, including: construction, watertight integrity and equipment; stability and associated seaworthiness; machinery and electrical installations; fire protection and fire-fighting; protection of the crew; life-saving appliances; emergency procedures and safety training; radio communications; navigational equipment; crew accommodation; and manning, training and competence.⁹⁸

Key steps for implementation

1. Adopt measures, in consultation with the indigenous peoples concerned, to support and promote their occupation in fishing and aquaculture, and ensure that they can engage in these activities without discrimination.

For example, States should remove discriminatory restrictions affecting indigenous fishing communities' ability to practice fishing activities. They should also ensure that indigenous peoples have access without discrimination to the material goods and services required to carry out these occupations, such as secure access to marine resources and coastal lands, as well as credit facilities, insurance schemes, access to markets and relevant trainings, among others.⁹⁹ In this connection, States should review the system of commercial fishing licences and quotas and the related legislation to ensure that indigenous peoples' fishing rights are respected and their fishing activities are not undermined by discriminatory treatments in the access to their traditional means of subsistence. Fisheries subsidies should also be reviewed to assess the impact on indigenous peoples' livelihoods. The SSF Guidelines also recommends that States pursue inclusive, non-discriminatory and sound economic policies for the use of marine, freshwater and land areas in order to permit small-scale fishing communities and other food producers, particularly women, to earn a fair return from their labour, capital and management, and encourage conservation and sustainable management of natural resources.¹⁰⁰

2. Ensure indigenous men and women's access to decent work in fisheries and aquaculture, including by: addressing any discrimination they may face in recruitment and working conditions; guaranteeing occupational safety and health in accordance with international and national standards; preventing and tackling cases of forced labour and child labour; ensuring indigenous workers' right to freedom of association; and strengthening labour inspection services to ensure compliance with international and national labour law.¹⁰¹

For example, flag States should ensure compliance with international and national labour standards on board vessels flying their flag to prevent forced labour and child labour and ensure decent working conditions. Likewise, port States should be able to address situations of forced labour affecting indigenous peoples. Awareness-raising materials on the risks of trafficking and forced labour should be made available in indigenous languages. States should also take measures in consultation with indigenous peoples to prevent debt-bondage of indigenous women, men and children in the fishing industry.

3. Extend social protection coverage to indigenous workers in fisheries and aquaculture;¹⁰²
4. Ensure that indigenous peoples may set and pursue their own priorities for development and can access basic services, including health, education, water and sanitation, without discrimination and in line with international human rights law.¹⁰³

Case examples

The recognition of indigenous peoples' fishing rights by national courts

Traditional fishing rights of indigenous peoples have been upheld by a number of national courts across the globe. Some examples include the following: On 23 January 2020, the Swedish Supreme Court delivered its decision on the Girjas Case (Case No.: T 853-18) concerning indigenous Sámi peoples' right to manage hunting and fishing within the areas traditionally used and occupied by the Girjas Sámi village. In its decision, the Court found that the Girjas community retained the sole right to manage the rights to hunting and fishing in this area based on possession since time immemorial, including the right to lease these rights to others.¹⁰⁴

On 30 April 2018, the Malindi High Court of Kenya decided upon a case concerning the impact of the ongoing Lamu port planning and construction process on the local communities, including fishers and indigenous communities, who have for generations depended upon and sustainably managed their land and marine natural resources (Petition 22 of 2012 Mohamed Ali Baadi and Others vs the AG and others). The High Court affirmed the communities' grievances regarding the Lamu Port project's lack of public participation, lack of environmental assessment and management plans, and failure to recognize and take into account the fisher community's traditional fishing rights. It also affirmed citizens' rights to protection of their cultural identity and to a clean and healthy environment and ordered the payment of compensations for the fishers affected.¹⁰⁵

On 7 August 2013, the High Court of Australia unanimously held that successive Commonwealth and Queensland legislation, which prohibited taking fish and other aquatic life for commercial purposes without a licence, did not extinguish the native title right of certain island communities in the Torres Strait to take resources from

defined areas of water. The Court confirmed native title rights to the inter-tidal zone bordering Aboriginal land in the Northern Territories which gives the Aboriginal people exclusive access to these tidal waters and implies that they have the power to decide who enter these waters on up to eighty percent of the Northern Territory's coast.¹⁰⁶

4. ENSURING CONSULTATION AND PARTICIPATION OF INDIGENOUS PEOPLES IN DECISION-MAKING PROCESSES CONCERNING FISHERIES AND AQUACULTURE

Linkages with relevant targets under SDG 14

- By 2020 end overfishing, illegal, unreported and unregulated fishing and destructive fishing practice (target 14.4);
- By 2020 prohibit unsustainable fisheries subsidies (target 14.6)
- Provide access for small-scale artisanal fishers to marine resources and markets (target 14.b)



Indigenous peoples are generally marginalized in decision-making related to fisheries and aquaculture, although the impacts on their lives and livelihoods are enormous and they can greatly contribute to the design of effective and sustainable interventions.

UNDRIP recognizes that indigenous peoples have the right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.¹⁰⁷ They have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.¹⁰⁸ UNDRIP also affirms that States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.¹⁰⁹ It further indicates that States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.¹¹⁰

ILO Convention No. 169 stipulates that States shall consult indigenous peoples, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly.¹¹¹ The consultations shall be undertaken in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.¹¹² States shall also establish means for the full development of indigenous peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.¹¹³ In addition, the Convention provides that States shall establish means by which indigenous peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies

and programmes which concern them.¹¹⁴ Among other things, indigenous peoples shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.¹¹⁵ The Convention also lays down that States have the responsibility for developing, with the participation of indigenous peoples, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity, including measures for: (a) ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population; (b) promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions; (c) assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.¹¹⁶

Key steps for implementation

1. Establish mechanisms for the participation of indigenous peoples in decision-making concerning fisheries and aquaculture as well as other areas that may affect their lives and livelihoods relying on marine and coastal ecosystems, as well as mechanisms for their consultation before the adoption of measures that may affect them, such as tourism development, extractive industries, energy development, climate change and nature conservation.¹¹⁷ Consultations should, at a minimum: be undertaken with the representative institutions of indigenous peoples; allow indigenous peoples to engage their own decision-making processes; ensure that indigenous peoples have all relevant information in a language and form fully understood by them; permit the expression of the viewpoints of indigenous peoples in a timely manner and based on their full understanding of the issues involved, so that they may be able to affect the outcome and a consensus could be achieved; be undertaken in a manner that is acceptable to all parties; and be directed at obtaining their consent.¹¹⁸ Indigenous peoples' free, prior and informed consent is a requirement in a number of cases, such as, for example, in the case of measures involving their relocation, among others.¹¹⁹
2. Recognize and support indigenous peoples' traditional decision-making institutions, including through financial and other support, and promote the adoption of measures that allow the expression of the voices of indigenous women and youth;¹²⁰
3. Ensure that indigenous peoples have access to effective remedies in case of violations of procedural and substantive rights involved in the procedure of consultation and/or its outcome;¹²¹

4. Regularly evaluate, with the participation of indigenous peoples, the operation of the consultation mechanisms, with a view to improving their functioning and making the necessary adjustments;¹²²
5. Ensure that the mechanisms created to allow indigenous peoples' participation have the means necessary for the proper fulfilment of their functions, including financial resources, and allow for the proposal by indigenous peoples of legislative and other measures to the competent authorities, among others. ¹²³

Case examples

Guaranteeing indigenous peoples' rights and ensuring sustainable fisheries: the case of the Tagbanua people in the Philippines

The Tagbanua people live in Central and Northern Palawan, in the Philippines. They hold ancient traditions related to the sea and conservation practices, including the establishment of fish sanctuaries and the regulation of fishing activities.

The community based in Coron island has since the 1970s struggled to defend its territory in the face of pressures and encroachments from tourist resort developers, real estate agents and migrants from neighbouring provinces practising illegal fishing. In the 1990s they were able to apply for a Certificate of Ancestral Domain Claims (CADC), recognizing them preferential rights to exploit, manage and protect their ancestral territory, which was granted to them in 1998 and comprised 22,284 ha including the entire island and a portion of the seas surrounding it. The recognition of Tagbanuas' rights was then strengthened by the adoption of the Indigenous Peoples' Rights Act (IPRA) of 1997. In 2002, the CADC of the Tagbanua people was thus converted into a Certificate of Ancestral Domain Title (CADT), a legal title formally recognizing the rights of possession of the Tagbanua people over their ancestral domains, identified and delineated in accordance with IPRA.¹²⁴

IPRA¹²⁵ defines ancestral domains as comprising lands, inland waters, coastal areas, and the natural resources therein (sec. 3). It recognizes indigenous peoples' rights of ownership and possession to their ancestral domains, including the right, among others, to "develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains

and to receive just and fair compensation for any damages which they may sustain as a result of the project; and the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights" (sec. 7). IPRA also recognizes the right of indigenous peoples to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through procedures determined by them as well as to maintain and develop their own indigenous political structures (sec. 16).

Reportedly, the recognition of the CADT has allowed the Tagbanua people to confront the local government and propose their own plans for the management of their territory, including controlling the number of tourists who enter the various lakes and beaches and protecting the fragile habitat of the area, the marine sanctuaries, and other areas that the Tagbanuas consider as sacred sites.¹²⁶

THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT AS A FRAMEWORK TO FULFIL STATES' OBLIGATIONS IN RELATION TO INDIGENOUS PEOPLES

The 2030 Agenda for Sustainable Development and its 17 SDGs are grounded on and thus closely linked to human rights. In fact, more than 90% of the SDG targets reflect core international human rights and labour standards.¹²⁷ Human rights are interdependent and interrelated, and so are the SDGs, which also require integrated action for their full achievement. Human rights provide essential guidance for the implementation of the Sustainable Development Agenda: ensuring their respect, protection and fulfilment is crucial to the achievement of the SDGs. In turn, the Agenda may provide States with an integrated framework to guide holistic fulfilling of States' obligations in relation to indigenous peoples in the context of fisheries and aquaculture, building on the analysis, data and recommendations provided by existing human rights mechanisms, including UN treaty bodies and Special Procedures, the Universal Period Review, ILO's supervisory bodies and national human rights mechanisms.

For example, the first area of urgent action identified in this brief involves coordinated and systematic action across a number of SDGs and targets, as shown below with relation to SDG14. A broader overview, is available at: <https://sdg.humanrights.dk/en> and can be applied also to the other areas of interventions discussed in this brief.¹²⁸



14.2 By 2020, sustainably manage and protect marine and coastal ecosystems to avoid significant adverse impacts, including by strengthening their resilience, and take action for their restoration in order to achieve healthy and productive oceans.

Indicators

14.2.1 Number of countries using ecosystem-based approaches to managing marine areas

UNDRIP, art. 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard. UNDRIP, art. 26.1 and 26.2

	<p>Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.</p>
<p>14.b Provide access for small-scale artisanal fishers to marine resources and markets.</p> <p>Indicators</p> <p>14.b.1 Degree of application of a legal/ regulatory/ policy/institutional framework which recognizes and protects access rights for small-scale fisheries</p>	<p>UNDRIP, art. 26.1 and 26.2</p> <p>Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.</p>

Thus, any action designed and implemented to achieve Goal 14, i.e. conserve and sustainably use the oceans, seas and marine resources, should be human rights-based, be coordinated with action undertaken under other SDGs, and be guided by the UN Declaration on the Rights of Indigenous Peoples and other relevant human rights instruments, to the extent that it may affect indigenous peoples. Indigenous peoples should participate in the development, implementation, monitoring and evaluation of such action, including any relevant policy, plan and project.

ENDNOTES

- 1 ILO, Implementing the ILO Indigenous and Tribal Peoples Convention No. 169: Towards an inclusive, sustainable and just future (Geneva, 2019).
- 2 Cisneros-Montemayor AM, Pauly D, Weatherdon LV, Ota Y (2016) A Global Estimate of Seafood Consumption by Coastal Indigenous Peoples. PLoS ONE 11(12)
- 3 Vierros M.K et al., “Considering Indigenous Peoples and local communities in governance of the global ocean commons” in Marine Policy 119 (2020).
- 4 David R. Boyd and Stephanie Keene, Policy Brief No. 1 Human rights-based approaches to conserving biodiversity: equitable, effective and imperative, 2021.
- 5 Forest Peoples Programme, the International Indigenous Forum on Biodiversity and the Secretariat of the Convention on Biological Diversity, Local Biodiversity Outlooks. Indigenous Peoples' and Local Communities' Contributions to the Implementation of the Strategic Plan for Biodiversity 2011-2020. A complement to the fourth edition of the Global Biodiversity Outlook (Moreton-in-Marsh, England, 2016). According to estimates, indigenous peoples' territories encompass approximately 80 per cent of the planet's biodiversity. See UN, State of the World's Indigenous Peoples: Rights to Lands, Territories and Resources (NY 2021).
- 6 See, for example, IWGIA, The Indigenous World 2021 (Copenhagen 2021), discussing the case of the Ainu people of Japan.
- 7 FAO, Impacts of climate change on fisheries and aquaculture, 2018
- 8 UNPFII, Indigenous peoples and climate change, E/C.19/2021/5, 2021.
- 9 FPP 2016 supra.
- 10 UN Doc. A/HRC/9/9, 2008; ILO, Understanding the Indigenous and Tribal Peoples Convention - Handbook for ILO Tripartite Constituents (Geneva, 2013).
- 11 UN Doc. A/HRC/9/9, 2008. For more information, see <https://www.ohchr.org/EN/Issues/IPeoples/Pages/E-learningIP.aspx> and further below in this brief.
- 12 For more information, see <https://www.ilo.org/global/topics/indigenous-tribal/toolbox/lang--en/index.htm> and further below in this brief.
- 13 For more information, see <http://www.fao.org/tenure/voluntary-guidelines/en/>
- 14 For more information, see <http://www.fao.org/voluntary-guidelines-small-scale-fisheries/en/>
- 15 For more information, see <http://www.fao.org/3/y7937e/y7937e00.htm>
- 16 For more information, see <http://www.fao.org/cfs/policy-products/rai/en/>
- 17 UNDRIP, arts 3 and 4.
- 18 ILO Convention No. 169, preamble.
- 19 Basu I. (ed.). Small-scale Fishing in Central American Indigenous People: Governance, Tenure and Sustainable Management of Marine Resources, (International Collective in Support of Fish-workers, India, 2016).
- 20 See, for example, SFF, guideline 5.3 ff and VGGT, Part 3.
- 21 UNDRIP, arts 25 and 26.
- 22 ILO Convention No. 169, art. 14.
- 23 ILO Convention No. 169, art. 15.

- 24 See UNDRIP, art. 26; ILO Convention No. 169, art. 14.
- 25 See, for example, CERD/C/NOR/CO/21-22, 2015, and CERD/C/FRA/CO/20-21, 2015.
- 26 See, for example, VGGT, guideline 8.7
- 27 See SSF, guideline 5.7
- 28 See UNDRIP, art. 27; ILO Convention No. 169, art. 14.
- 29 See UNDRIP, art. 28
- 30 See UNDRIP, art. 20.
- 31 See UNDRIP, arts. 22 and 44; ILO Convention No. 169, art. 3.
- 32 See UNDRIP, art. ILO Convention No. 169, art. 18.
- 33 See SSF, Guideline no. 5.16.
- 34 See UNDRIP, art. 10; ILO Convention No. 169, art. 16.
- 35 See UNDRIP, art. 32; ILO Convention No. 169, arts. 6 and 15.
- 36 See UN Guiding Principles on Business and Human Rights. See also CESCR, General Comment no. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, UN Doc. E/C.12/GC/24, 2017.
- 37 See CESCR, General Comment no. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, UN Doc. E/C.12/GC/24, 2017, para. 15.
- 38 See the 1982 United Nations Convention on the Law of the Sea (UNCLOS).
- 39 See UNPFII, Report on indigenous fishing rights in the seas with case studies from Australia and Norway, E/C.19/2010/2 8 January 2010
- 40 Allen, Bankes and Ravna (eds), *The Rights of Indigenous Peoples in Marine Areas* (Chicago: Hart Publishing, 2019).
- 41 Observation (CEACR) - adopted 2014, published 104th ILC session (2015) - Indigenous and Tribal Peoples Convention, 1989 (No. 169) - Colombia (Ratification: 1991)
- 42 Márquez Pérez A.I. (2020). Balancing between geopolitical conflicts, ethnic struggles and sustainable development in Old Providence & Santa Catalina, Colombia In: Kerezi, V., Pietruszka, D.K., & Chuenpagdee, R. (Eds.) *Blue Justice For Small-Scale Fisheries: A Global Scan*. TBTI Global Publication Series, St. John's, NL, Canada
- 43 UNDRIP Art. 36
- 44 UNDRIP Art. 32
- 45 CERD/C/NZL/CO/21-22
- 46 CCPR/C/NOR/CO/7
- 47 CERD/C/NOR/CO/21-22
- 48 CERD/C/RUS/CO/23-24
- 49 E/C.12/FIN/CO/7, 2021.
- 50 See <https://www2.gov.bc.ca/gov/content/governments/indigenous-people/new-relationship/united-nations-declaration-on-the-rights-of-indigenous-peoples>
- 51 For more details, see <https://engage.gov.bc.ca/declaration/>
- 52 See Harrisson et al. Considering Indigenous Peoples and local communities in governance of the global ocean commons, in *Marine Policy* 119 2020.
- 53 UN Doc. A/75/161.

- 54 See IPBES/7/10/Add.1.
- 55 TNI, The Global Ocean Grab, 2014, https://www.tni.org/files/download/the_global_ocean_grab.pdf
- 56 See DIHR, Sector-Wide Impact Assessment. The salmon industry and human rights in Chile (2021).
- 57 See Shahriar A., Dhrubo B., Md Sazzad H. "Environmental Impacts of Commercial Shrimp Farming in Coastal Zone of Bangladesh and Approaches for Sustainable Management" in Int J Environ Sci Nat Res. 2019; 20(3): 556038.
- 58 See, for example, <https://psmag.com/environment/the-environmental-impacts-of-shrimp-farming-in-vietnam>
- 59 A/75/161, para. 14.
- 60 On the restoration, see, for example, Frid A. et al. Rapid recovery of Dungeness crab within spatial fishery closures declared under indigenous law in British Columbia, in Global Ecology and Conservation 6: 2016, 48-57. On the other hand, in some case sustainable management by indigenous communities has declined because of the effects of colonization and marginalization of Indigenous peoples. See Bana N.C et al. "Indigenous peoples' rights and marine protected areas" in Marine Policy 87 (2018).
- 61 Bana N.C et al. "Indigenous peoples' rights and marine protected areas" in Marine Policy 87 (2018).
- 62 International Collective in Support of Fishworkers (ICSF), Estudio Regional sobre las Dimensiones Sociales en el Manejo de Áreas Marinas Protegidas: Casos en Costa Rica, Nicaragua, Honduras y Panamá, 2012, p. 105
- 63 David R. Boyd and Stephanie Keene, Policy Brief No. 1 Human rights-based approaches to conserving biodiversity: equitable, effective and imperative, 2021.
- 64 Bana N.C et al. "Indigenous peoples' rights and marine protected areas" in Marine Policy 87 (2018).
- 65 See <https://mma.gob.cl/se-establece-en-rapa-nui-el-area-marina-protegida-mas-grande-de-america-latina/>
- 66 For more information, see <https://www.subpesca.cl/portal/616/w3-propertyvalue-50834.html>
- 67 Frid A. et al. Rapid recovery of Dungeness crab within spatial fishery closures declared under indigenous law in British Columbia, in Global Ecology and Conservation 6: 2016, 48-57
- 68 UNDRIP, art. 29.
- 69 ILO Convention No. 169, art. 7.
- 70 See, for example, UNCLOS, art. 61 ff.
- 71 See UNFSA, art. 24.
- 72 CBD, art. 6
- 73 CBD, art. 5.
- 74 CBD, art. 8 (j)
- 75 For more information, see <https://www.un.org/bbnj/>
- 76 Vierros M.K et al, "Considering Indigenous Peoples and local communities in governance of the global ocean commons", in Marine Policy 119 (2020).
- 77 Ibid.
- 78 A/CONF.232/2020/3

- 79 See, for example, UNDRIP, arts.18, 20, 23, 31; ILO Convention No. 169, arts. 2(2) (b); 5 and 8; SSF, guideline 5.5; CBD, art. 8 (j).
- 80 UNDRIP, arts. 29 and 32; ILO Convention No. 169, art. 7
- 81 See UNDRIP, arts. 32, 26 and 23. ILO Convention No. 169, arts. 7 and 15.
- 82 See notes above.
- 83 See Watson, M.S. "Comparing the Marine Protected Area Network Planning Process in British Columbia, Canada and New Zealand – Planning for cooperative partnerships with Indigenous communities", in Marine Policy 125 (2021); Bana N.C et al. "Indigenous peoples' rights and marine protected areas" in Marine Policy 87 (2018).
- 84 See DIHR, Sector-Wide Impact Assessment. The salmon industry and human rights in Chile (2021).
- 85 Ibid.
- 86 See, for example, ERD/C/RUS/CO/23-24, 2017.
- 87 UN Doc. A/HRC/40/56, para. 46.
- 88 UN Doc. A/HRC/40/56, para. 46.
- 89 CERD/C/HND/CO/6-8, 2019. See also the decision of the Inter-American Court of Human Rights on the case Buzos Miskitos v. Honduras, serie C/432, 31 August 2021.
- 90 ILO, Trabajo infantil y pueblos indígenas. El caso Honduras, 2007.
- 91 For an overview, see <https://www.ilo.org/global/topics/forced-labour/policy-areas/fisheries/lang--en/index.htm>
- 92 UNDRIP, art. 20.
- 93 UNDRIP, art. 17.
- 94 ILO Convention No. 169, arts. 20 and 24.
- 95 ILO Convention No. 169, art. 23.
- 96 For more information on ILO Convention No. 111, see www.ilo.org/normlex and ILO, Eliminating discrimination against indigenous and tribal peoples in employment and occupation. A guide to ILO Convention No. 111, 2007.
- 97 For more information on ILO Convention No. 188, see www.ilo.org/normlex and ILO, Decent working conditions, safety and social protection: Work in Fishing Convention No. 188 and Recommendation No. 199, 2007.
- 98 For more information, see https://www.ilo.org/sector/Resources/publications/WCMS_216664/lang--en/index.htm
- 99 See UNDRIP, arts 20; ILO Convention No. 169, art. 23; ILO Convention No. 111; SSF Guideline 6.4, among others.
- 100 See SSF, guideline no. 6.7.
- 101 UNDRIP, art. 17; ILO Convention No. 169, art. 20. See also ILO Conventions No. 138; 182 and 29. SFF, guideline no. 6.6, 6.12 and 6.13
- 102 On the extension of social protection to indigenous peoples, see in general Errico, S. Social Protection for Indigenous Peoples (ILO, Geneva 2018).
- 103 UNDRIP, art. 32; ILO Convention No. 169, art. 7. SSF Guideline 6.2 ff
- 104 See IWGIA, The Indigenous World, 2021.
- 105 See <https://naturaljustice.org/one-year-after-landmark-judgment-on-lamu-port-violations-construction-continues-unabated/>
- 106 See <https://igssf.icsf.net/en/page/1046-Judgments.html>

- 107 UNDRIP, art. 5.
- 108 UNDRIP, art. 18.
- 109 UNDRIP, art. 19.
- 110 UNDRIP, art. 32 (2).
- 111 ILO Convention No. 169, art. 6.1 (a).
- 112 ILO Convention No. 169, art. 6.2.
- 113 ILO Convention No. 169, art. 6.1 (c).
- 114 ILO Convention No. 169, art. 6.1 (b).
- 115 ILO Convention No. 169, art. 7.
- 116 ILO Convention No. 169, art. 2.
- 117 See UNDRIP, arts 19 and 32;
- 118 See ILO Convention No. 169, art. 6 and the guidance provided by the ILO's supervisory bodies, including the ILO Committee of Experts on Conventions and Recommendations (CEACR)'s general and individual observations on Convention No. 169 available at www.ilo.org/normlex as well as the decisions made by the ILO Tripartite Committees on representations concerning alleged violations of the Convention, which are available at https://www.ilo.org/dyn/normlex/en/f?p=1000:50010:::NO:50010:P50010_ARTICLE_NO:24 . See also the thematic report of the UN Special Rapporteur on the rights of indigenous peoples on the duty to consult, UN Doc. A/HRC/12/34, 2009, and EMRIP's advice no. 11 on free, prior and informed consent, UN Doc. A/HRC/39/62, 2018.
- 119 See UNDRIP, art. 10; ILO Convention No. 169, art. 16.
- 120 See UNDRIP, arts 5, 18; 19, and 44; ILO Convention No. 169, arts. 3, 4, 5 and 6.
- 121 See UNDRIP, arts 8 and 40; ILO Convention No. 169, art. 12.
- 122 See CEACR, General Observation on the Indigenous and Tribal Peoples Convention, 1989 (No. 169), adopted 2008, published 98th ILC session (2009).
- 123 See ILO Convention No. 169, art. 33.
- 124 Capistrano, R.C.G. "Reclaiming the ancestral waters of indigenous peoples in the Philippines: The Tagbanua experience with fishing rights and indigenous rights", in Marine Policy 34 (2010) 453–460.
- 125 <https://www.officialgazette.gov.ph/1997/10/29/republic-act-no-8371/>
- 126 Capistrano, R.C.G. "Reclaiming the ancestral waters of indigenous peoples in the Philippines: The Tagbanua experience with fishing rights and indigenous rights", in Marine Policy 34 (2010) 453–460.
- 127 DIHR, Human Rights and the 2030 Agenda for Sustainable Development Lessons Learned and Next Steps, 2018.
- 128 For additional guidance, see Human Rights and the 2030 Agenda for Sustainable Development Lessons Learned and Next Steps, 2018; DIHR, Enhancing Accountability for Small-Scale Fishers Using Human Rights Monitoring to Guide Effective Implementation of SDG Target 14.B, 2021

THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

