

**THE DANISH  
INSTITUTE FOR  
HUMAN RIGHTS**

THE RIGHTS OF  
INDIGENOUS  
PEOPLES IN THE  
CONTEXT OF  
FISHERIES AND  
AQUACULTURE



# THE RIGHTS OF INDIGENOUS PEOPLES IN THE CONTEXT OF FISHERIES AND AQUACULTURE

Authors: Stefania Errico with input from Birgitte Feiring



Danish Institute for Human Rights



Indigenous Peoples' Major Group for Sustainable  
Development (IPMG)

October 2021

e-ISBN: 978-87-7570-056-1

Cover photo: Ralph Kayden on Unsplash

© 2021 The Danish Institute for Human Rights  
Wilders Plads 8K  
DK-1403 Copenhagen K  
Phone +45 3269 8888  
[www.humanrights.dk](http://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](http://www.humanrights.dk/accessibility)

# CONTENTS

|   |           |
|---|-----------|
| <b>INTRODUCTION</b>   | <b>4</b>  |
| <b>THE RIGHTS OF INDIGENOUS PEOPLES IN THE CONTEXT OF FISHERIES AND AQUACULTURE</b>   | <b>8</b>  |
| The rights to self-determination and development  | 8         |
| The right to land, territories and natural resources  | 11        |
| The rights to enjoy one's culture and to take part in cultural life   | 16        |
| The rights to an adequate standard of living, to work, and to the enjoyment of just and favourable conditions of work   | 20        |
| The rights to consultation, participation and access to information   | 24        |
| The right to a healthy environment  | 27        |
| The right to remedy   | 31        |
| <b>SOME COUNTRY EXAMPLES OF APPLICATION OF THE HUMAN RIGHTS DESCRIBED IN THIS BRIEF</b>   | <b>36</b> |
| The recognition of indigenous peoples' rights to marine territories, marine resources and coastal lands in national legislation                                   | 36        |
| The recognition of indigenous peoples' fishing and navigation rights in bilateral agreements  | 36        |
| The establishment of a coherent and comprehensive legislative framework recognizing indigenous peoples' rights in fisheries and aquaculture                       | 37        |
| The co-management marine areas  | 37        |
| The recognition of indigenous peoples' fishing rights by national courts  | 38        |
| <b>OTHER RELEVANT INTERNATIONAL INSTRUMENTS ON INDIGENOUS PEOPLES AND FISHERIES AND AQUACULTURE</b>   | <b>39</b> |
| The UN Declaration on the Rights of Peasants and other People Working in Rural Areas (UNDROP)   | 39        |
| The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT Guidelines)        | 39        |
| The Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines)                  | 39        |
| 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) | 40        |
| The Principles for Responsible Investment in Agriculture and Food Systems (RAI Principles)  | 40        |
| <b>ENDNOTES</b>   | <b>41</b> |

## INTRODUCTION

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. Yet, the rights of indigenous peoples depending on marine and coastal ecosystems are threatened throughout the world, including by:

- land and ocean grabbing;
- commodification and overexploitation of marine resources;
- pollution;
- criminalization of indigenous peoples' fishing activities;<sup>1</sup>
- lack of participation in development and conservation initiatives affecting their territories;
- disregard for their ways of life, traditional knowledge and management practices; and
- climate change, which adds an additional layer of challenges to indigenous peoples' lives and livelihoods.<sup>2</sup>

The above amounts to a situation in which the food security of many indigenous peoples is jeopardized, and their cultural practices are disrupted. Moreover, 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.

Estimates by the ILO indicate that indigenous peoples are largely reliant on the agricultural sector (including 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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. Indigenous peoples' rights to marine resources, marine territories and coastal land are closely interlinked with a wide range of human rights. The rights examined in this brief are the following:

1. The rights to self-determination and development
2. The right to land, territories and natural resources
3. The rights to enjoy one's culture and to take part in cultural life
4. The rights to an adequate standard of living, to work, and to the enjoyment of just and favourable conditions of work
5. The rights to consultation, participation and access to information
6. The right to a healthy environment
7. The right to remedy

Indigenous peoples' right to equality and non-discrimination is not presented separately because it is a fundamental right that cuts across all the rights that will be described below.

In the present brief, the respect, protection and fulfilment of the above-mentioned rights are discussed in details, as they are particularly crucial to ensuring that indigenous peoples can preserve their cultural integrity and maintain their ways of life, while guaranteeing the sustainable management of marine and coastal ecosystems and resources. It should, however, be recalled that all human rights are indivisible and interdependent. Therefore, also rights other than those explicitly covered in this brief are relevant to fisheries and aquaculture, such as, for example, the rights to life and to health.

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, however, 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.

In this brief, reference is made mainly to provisions in the **UN Declaration on the Rights of Indigenous Peoples (UNDRIP)** and the **ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169)**, on the understanding that these instruments elaborate upon universal human rights in the specific cultural, historical, social and economic circumstances of indigenous peoples.<sup>6</sup> Core international human rights treaties as well as regional human rights instruments will be recalled as appropriate, along with the guidance provided by the related monitoring bodies. Other relevant

international instruments and guidelines, such as the [UN Declaration on the Rights of Peasants and other People Working in Rural Areas](#), the [Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security](#) and the [Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication](#), will be presented in the last section of this brief.

### **Indigenous Peoples' Rights and the 2030 Agenda for Sustainable Development: an integrated framework to claim and monitor the application of indigenous peoples' rights in the context of fisheries and aquaculture**

The [2030 Agenda for Sustainable Development](#) was adopted in September 2015 at the UN Sustainable Development Summit. It lays down the overall framework for country development policies for the next 15 years defining 17 Sustainable Development Goals (SDGs) and 169 targets. It explicitly states that the SDGs aims to “[realize the human rights of all](#)” (preamble) and 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 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).

Human rights provide essential guidance for the implementation of the 2030 Agenda: ensuring their respect, protection and fulfilment is crucial to the achievement of the SDGs. In fact, more than 90% of the SDG targets reflect core international human rights and labour standards.<sup>7</sup> Therefore, the 2030 Agenda, underpinned by human rights, provides an integrated framework to guide holistic fulfilling of States' obligations in relation to indigenous peoples, including in the context of fisheries and aquaculture. Indigenous peoples may build on this framework to claim and monitor the application of their rights. Any action designed and implemented to achieve SDG 14 should be human rights-based, be coordinated with action undertaken under other SDGs, and be guided by the UNDRIP and other relevant human rights instruments, to the extent that it may affect indigenous peoples. Moreover, implementation strategies can build 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. Indigenous peoples should participate in the development, implementation, monitoring and evaluation of such action, including any relevant policy, plan and project.

The [Human Rights Guide to the SDGs](#) provides an overview of the concrete links between the 169 SDG targets and international and regional human rights instruments, international labour standards and key environmental instruments. It includes both ILO Convention No. 169 and UNDRIP, as well as other instruments of key importance for indigenous peoples. 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.

## THE RIGHTS OF INDIGENOUS PEOPLES IN THE CONTEXT OF FISHERIES AND AQUACULTURE

### Main 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)
- 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 RIGHTS TO SELF-DETERMINATION AND DEVELOPMENT

The right of indigenous peoples to self-determination is expressly recognized in common article 1 of the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, as well as in UNDRIP. It is also recognized in the African Charter on Human and Peoples' Rights and the American Declaration on the Rights of Indigenous Peoples.<sup>8</sup>

It comprises, among others, the right of indigenous peoples to freely pursue their economic, social and cultural development. It entails the right to autonomy or self-government in matters relating to their internal and local affairs; the recognition of their autonomous indigenous institutions; and the right to participate fully, if they so choose, in the political, economic, social and cultural life of the State. It also encompasses the right of indigenous peoples to be secure in the enjoyment of their own means of subsistence and development. The right to self-determination is closely related to indigenous peoples' right to development, including their right to determine and develop their own priorities and strategies for the development of their territories. The exercise of these rights is indispensable for indigenous peoples' enjoyment of all the other rights described in this brief.

### THE RIGHT TO SELF-DETERMINATION IN UNDRIP: MAIN PROVISIONS

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development (Art. 3, UNDRIP)

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions (Art. 4, UNDRIP)

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State (Art. 5, UNDRIP)



In the context of fisheries and aquaculture, the rights to self-determination and development mean that indigenous peoples should be able to control their territories, including the marine areas comprised in their territories and the associated resources. Their traditional management practices should be recognized and respected along with the authority of their representative institutions to decide upon the sustainable use of these resources.

In Samoa, for example, the constitution, as amended in 1990, recognizes the authority of indigenous chiefs and councils to manage nearshore fisheries so that they can adopt bylaws to regulate fishing in their areas.<sup>9</sup> In Sweden, the Supreme Court has affirmed indigenous peoples' right to manage the rights to hunting and fishing in their territory, based on possession since time immemorial, including the right to lease these rights to others.<sup>10</sup>

The respect for the collective rights of indigenous peoples to self-determination and development goes hand in hand with the respect for the individual rights of all their members, including women, elders, youth and children, whose voices and special needs should be taken into account in decisions concerning the management, allocation and use of marine resources.

Moreover, indigenous peoples' self-determination is also expressed in their 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 national borders.<sup>11</sup> These activities include fishing activities and navigation. This right and the related obligation of States to take effective measures to facilitate cross-border contacts is enshrined in UNDRIP and also contained in ILO Convention No. 169.<sup>12</sup>

### **Self-determination and fisheries and aquaculture in the practice of the UN treaty bodies**

The right to self-determination has been used on various occasions by the UN treaty bodies - the independent bodies charged with monitoring States' application of core international human rights treaties - to address indigenous peoples' rights in the context of fisheries and aquaculture.

For example, the UN Committee on Economic, Social and Cultural Rights (CESCR), referring to indigenous peoples' right to self-determination as well as their rights to equality and non-discrimination, to an adequate standard of living and to take part in cultural life, 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 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.<sup>13</sup>

The Human Rights Committee (HRC) has, for instance, addressed the lack of legislation ensuring fishing rights of indigenous peoples through the lenses of the right to self-determination as well as the rights to equality and non-discrimination and to enjoy one's culture. It has recommended that Norway should enhance the legal framework on indigenous land, fishing and reindeer rights, ensuring in particular that fishing rights are recognized by law. <sup>14</sup>

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.

### **What can you claim?**

Based on the human rights presented in this section, you could claim, for example, the following:

- The recognition of your autonomous decision-making institutions;
- The respect for your management systems;
- The respect for your customary law governing access to and use of the marine territories and resources and the coastal lands that your people has traditionally owned, occupied or otherwise used or acquired;
- The respect for the priorities and strategies for the development of your territory, including marine spaces, established by your people;
- The right to participate in all external decision-making processes that may affect your territory, lives and well-being;
- The respect for the fundamental human rights of all the members of your people, including women, elders, youth and children, in all decisions concerning management, allocation and use of marine resources made by your representative institutions;
- The possibility to maintain and develop cross-border contacts with members of your own people as well as other peoples for the purpose of fishing activities and navigation.

## THE RIGHT TO LAND, TERRITORIES AND NATURAL RESOURCES

### Main 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);
- By 2020 prohibit unsustainable fisheries subsidies (target 14.6);
- Provide access for small-scale artisanal fishers to marine resources and markets (target 14.b).



Marine territories and resources are an integral part of the ways of life, culture, identity and spirituality of many indigenous peoples and their members. Throughout the world, the lack of recognition of indigenous peoples' right to the marine territories, marine resources and coast lands that they have traditionally owned, occupied or otherwise used or acquired remains one of the most frequent violations of the human rights of fishing indigenous communities. These communities are

increasingly challenged by “blue economy” projects, i.e. initiatives related to the use of the marine environment such as commercial aquaculture, tourism, ocean-based energy and extractive industries, 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.<sup>15</sup> 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.<sup>16</sup> In South Africa, for example, the Equality Court ruled that the quota system that was introduced with the national fisheries policy and excluded small-scale fishers from getting quotas, had violated the human rights of these fishers and requested the Minister of Fisheries to restore their access rights to marine resources, among others.<sup>17</sup>

States have an obligation to respect and protect the special relationship that indigenous peoples have with their territories, including marine territories, and ensure that indigenous peoples may maintain and strengthen it. In this connection, States are required to recognize indigenous peoples' right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. This right extends to fishing areas and their resources and entails indigenous peoples' entitlement to control, manage and use them, as expressed, for example, in articles 25 and 26 of UNDRIP. Marine areas may include internal waters, such as fjords, archipelagic waters, the territorial sea and the economic exclusive zone (i.e. the area beyond and adjacent to the territorial sea), in so far as indigenous peoples have traditionally used them.<sup>18</sup>

**KEY PROVISIONS IN UNDRIP AND ILO CONVENTION NO. 169.**

UNDRIP, at article 25, recognizes that “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”.

At article 26, it also recognizes that “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. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned”.

ILO Convention No. 169, at article 13, provides that “governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship”.

Moreover, at article 14, it stipulates that: “1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect. 2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession. 3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.” It also recognizes at article 15 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.

Indigenous peoples have inherent rights to their marine territories, marine resources and coastal lands. These rights must therefore be respected and protected by the State regardless of whether there has been an official recognition by the State through the issuance, for example, of a formal title, a fishing concession or the allocation of special fishing quotas. Yet, to ensure the secure enjoyment of indigenous peoples' right to their marine territories, resources and lands, it is crucial that States:

- legally recognize this right;
- identify and demarcate indigenous territories;
- review fisheries legislation to ensure that it recognizes indigenous fishing rights;
- address the adverse impacts of commercial aquaculture on indigenous peoples' fishing rights;
- address and resolve claims over coastal lands and fishing areas and rights; and
- provide protection from encroachments and forced evictions.

In the Philippines, for instance, the Indigenous Peoples Rights' Act of 1997 recognizes indigenous peoples' right to their ancestral domains, which are defined as comprising lands, inland waters, coastal areas, and the natural resources therein (sec. 3). This right includes, among others the right:

- 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;
- 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;
- 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
- To effective measures by the government to prevent any interference with, alienation and encroachment upon these rights" (sec. 7).

Under the IPRA, certificates of ancestral domains have been issued in favour of indigenous peoples recognizing rights over both land and sea areas.

**Indigenous peoples' right to marine territories, resources and coastal land in the practice of the ILO's supervisory bodies.**

The ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) is a body of 20 independent experts charged with supervising the application of international labour standards, including ILO Convention No. 169. The CEACR has, for example, examined the impact of Norway's Marine Resources Act on indigenous Sami peoples' fishing rights. It has emphasized that indigenous peoples' fishing rights must be specifically safeguarded, in conformity with article 15 of Convention No. 169, which recognizes indigenous peoples' right to the natural resources pertaining to their territories. It has also invited the State to provide information on the measures taken, with the participation of the Sami and whenever appropriate, to ensure that traditional fishing activities are strengthened and promoted, in line with article 23 of ILO Convention No. 169, which addresses indigenous peoples' traditional activities, including fishing.<sup>19</sup>

The CEACR has also addressed a case concerning the exercise of traditional fishing activities by indigenous peoples beyond the jurisdiction of the coastal State. 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.<sup>20</sup> As a result, Colombia has filed an objection with the ICJ asking for the recognition of Raizal people's customary fishing rights.<sup>21</sup>

### **What can you claim?**

Based on the human rights presented in this section, you could claim, for example, the following:

- The legal recognition of the right to the marine territories, resources and coastal lands that your people have traditionally owned, occupied or otherwise used or acquired, in accordance with your customs, traditions and tenure systems, and the reflection of this recognition in national fisheries legislation and policy;
- The review of State's allocation of public fishery resources to ensure that it respects the traditional fishing rights of your people and the participation in decision-making processes concerning such allocation to avoid adverse impacts on their rights;
- The prohibition of forced relocation from the marine territories and the coastal lands that your people have traditionally owned, occupied or otherwise used or acquired, without the free, prior and informed consent of your people;
- The availability of and accessibility to a fair, independent, impartial, open and transparent process to resolve claims and recognize and adjudicate the rights of your peoples to marine territories, marine resources and coastal lands, where due recognition is given to indigenous peoples' laws, traditions, customs and tenure systems;
- Reparation, including restitution, for any loss of your traditional marine territories, marine resources and coastal land, as well as just and fair redress for any loss of your means of subsistence;
- Protection from dispossession and unauthorised intrusion upon or use of the territory of your people, including illegal fishing by third parties, as well as protection from abuses by business enterprises, including through State's imposition of criminal or administrative sanctions and penalties, such as the revocation of business licences and subsidies;
- The consultation of your people through its own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting your fishing areas and fishing activities, such as blue economy projects, including commercial aquaculture, tourism, ocean-based energy and extractive industries.

## THE RIGHTS TO ENJOY ONE'S CULTURE AND TO TAKE PART IN CULTURAL LIFE

### Main 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)
- By 2020 prohibit unsustainable fisheries subsidies (target 14.6)
- Provide access for small-scale artisanal fishers to marine resources and markets (target 14.b).



Marine territories, marine resources and land in coastal and waterfront areas as well as the associated economic activities, like fishing, practiced by indigenous fishing communities form a core part of the manifestations of their culture. They are therefore protected under the human rights to enjoy one's culture and to take part in cultural life. These rights are recognized in the International Covenant on Civil and Political Rights, at article 27, and in the International

Covenant on Economic, Social and Cultural Rights, at article 15. International human rights instruments specifically addressing indigenous peoples' rights also recognize them. For example, UNDRIP recognizes indigenous peoples' right to their cultures, including the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, among others.<sup>22</sup> It also recognizes their 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.<sup>23</sup> Moreover, the Convention on Biological Diversity (CBD) stipulates 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".<sup>24</sup>

### KEY PROVISIONS IN UNDRIP AND ILO CONVENTION NO. 169.

UNDRIP, at article 15 (1), affirms that "1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information."

ILO Convention No. 169, at article 2, lays down that "1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity. 2. Such action shall include 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.”

Culture encompasses all manifestations of human existence, including ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives.<sup>25</sup> The UN Committee on Economic, Social and Cultural Rights, has clarified that in the case of indigenous peoples, cultural life has a strong communal dimension which is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. It has thus emphasized that “indigenous peoples’ cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity”.<sup>26</sup> Likewise, the UN Human Rights Committee has explained that traditional activities such as fishing must be protected as manifestation of culture.<sup>27</sup>

In light of the above, restrictions on indigenous peoples’ access to and use of the marine territories, marine resources and the coastal lands that they have traditionally occupied or used are, as a general rule, not admitted, unless the impact of such restrictions on their culture and ways of life is limited and the people concerned had the opportunity to participate in the decision-making process related to these measures and will continue to benefit from their traditional economy.<sup>28</sup> Any restriction should be reasonable and have an objective justification.<sup>29</sup>

### **Cultural life and fisheries: the decision of the UN Human Rights Committee in the case *Apirana Mahuika v New Zealand***

The case ***Apirana Mahuika v New Zealand***<sup>30</sup> concerned Apirana Mahuika and 18 other individuals, belonging to the Maori people and representing seven distinct tribes (Iwi), who claimed that New Zealand had violated their rights to self-determination, to equality and non-discrimination, to enjoy one's culture, to equality before the law, and to freedom of thought, conscience and religion, because of the restrictions imposed on their fishing rights.

In their complaint before the UN Human Rights Committee, they referred to the Treaty of Waitangi, signed in 1840 by the Maori and the British Crown Treaty of Waitangi, which affirmed, among others, the rights of the Maori to control tribal fisheries. In the second article of the Treaty, the Crown guarantees to Maori: "The full exclusive and undisturbed possession of their lands, forests, fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession [..]". Until the introduction of the Quota Management System<sup>31</sup> in the 1980s, however, there was no attempt to determine the extent of the fisheries. In 1987, the Maori tribes filed an application with the High Court of New Zealand, claiming that the implementation of the quota system would affect their tribal Treaty rights contrary to section 88(2) of the Fisheries Act, and obtained interim injunctions against the Government. Section 88 (2) of the Fisheries Act provides "that nothing in this Act shall affect any Maori fishing rights".

In 1988, the Government started negotiations with Maori which resulted in the introduction of the Maori Fisheries Act in 1989. The Act provided for the immediate transfer of 10% of all quota to a Maori Fisheries Commission which would administer the resource on behalf of the tribes. This allowed the introduction of the quota system to go ahead as scheduled. Then, further negotiations between the Government and the Maori people led in 1992 to the signing of a Memorandum of Understanding. According to the Memorandum, the Government would provide Maori with funds required to purchase 50% of the major New Zealand fishing company, Sealords, which owned 26% of the then available quota. In return, Maori would withdraw all pending litigation and support the repeal of section 88 (2) of the Fisheries Act as well as an amendment to the Treaty of Waitangi Act 1975, to exclude from the Waitangi Tribunal's jurisdiction claims relating to commercial fishing. It was also agreed that 20% of quota issued for new species brought within the Quota Management System would be allocated to the Maori Fisheries Commission, and Maori would be able to participate in "any relevant statutory fishing management and enhancement policy bodies." In addition, in relation to non-commercial fisheries, it was agreed that regulations would be made, after consultation with Maori, recognizing and providing for customary food gathering and the special relationship between Maori and places of customary food gathering importance.

The Maori negotiators sought a mandate from Maori for the deal outlined in the memorandum of understanding. The Maori negotiators' report showed that 50 iwi comprising 208,681 Maori, supported the settlement. On the basis of this report, the Government was satisfied that a mandate for a settlement had been given and on 23 September 1992, a Deed of Settlement was executed by the New Zealand Government and Maori representatives.

According to Apirana Mahuika and the other authors of the complaint filed before the UN Human Rights Committee, the contents of the Memorandum of Understanding were not always adequately disclosed or explained to tribes and sub-tribes. In some cases, therefore, informed decision-making on the proposals contained in the Memorandum of understanding was seriously inhibited. Moreover, a number of signatories did not possess the authority to sign on behalf of the tribes, and tribes claiming major commercial fisheries resources were not among the signatories.

The Human Rights Committee examined the case with reference to article 27 of the International Covenant on Civil and Political Rights, which recognizes the right to enjoy one's culture. The Committee considered that the **use and control of fisheries is an essential element of the culture of the Maori people** and is therefore protected under the right to enjoy one's culture. It clarified that such right does not only protect traditional means of livelihood, but allows also for adaptation of those means to the modern way of life and ensuing technology. The Committee emphasized that the enjoyment of the right to one's own culture may require positive legal measures of protection by the State as well as measures to ensure the effective participation of members of concerned communities in decisions which affect them. It has also underscored that **"the acceptability of measures that affect or interfere with the culturally significant economic activities of a minority depends on whether the members of the minority in question have had the opportunity to participate in the decision-making process in relation to these measures and whether they will continue to benefit from their traditional economy"**.<sup>32</sup> The Committee also underlined that in order to comply with article 27 of the International Covenant on Civil and Political Rights, measures affecting the economic activities of Maori must be carried out in a way that the authors continue to enjoy their culture, and profess and practice their religion in community with other members of their group.

### What can you claim?

Based on the human rights presented in this section, you could claim, for example, the following:

- The protection of your rights to control, access and use the marine territories, marine resources and coastal lands that are related to the practice of activities of cultural significance to your people, including fishing activities;
- The adoption of positive measures by the State to protect and ensure that your people can continue to practice fishing and other livelihood activities related to the use of marine territories, marine resources and coastal lands that are an integral part of the cultural life and identity of your people, including when practised using modern technology;
- The participation, through your own representative institutions, in any decision-making process that may entail an interference or a restriction to your people's fishing activities or other traditional activities related to the use of marine territories, marine resources and coastal lands that are an integral part of its cultural life and identity;
- The rejection by the State of any project or initiative whose impact on the fishing activities and rights of your people is such that it may jeopardize its ways of life and produce a significant impact on its culture.

## THE RIGHTS TO AN ADEQUATE STANDARD OF LIVING, TO WORK, AND TO THE ENJOYMENT OF JUST AND FAVOURABLE CONDITIONS OF WORK

### Main 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)



Fisheries and aquaculture form the basis of the livelihood of many indigenous peoples across the globe, whether they engage in these activities as independent workers or as employees, in the formal or informal economy. For independent workers, not only are rights to marine territories and resources crucial to their occupations, but also the right to land in coastal and waterfront

areas is key, as these areas are used to access fishing grounds, store boats, nets and other equipment and undertake post-harvest activities. The enjoyment of an adequate standard of living depends on the access to these territories and resources, including adequate housing and food of the members of indigenous fishing communities, as well as their right to work, including the right to the opportunity to gain their living by work which is freely chosen or accepted. Indigenous peoples'

rights to an adequate standard of living and to work are recognized in articles 11 and 6 of the International Covenant on Economic, Social and Cultural Rights. These rights are also enshrined in UNDRIP, which provides, among others, that indigenous peoples have the right to engage freely in all their traditional and other economic activities and to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.<sup>33</sup> ILO Convention No. 169 furthermore stipulates that States shall recognize rural and community-based industries, and subsistence economy and traditional activities of indigenous peoples, including, fishing, as important factors in the maintenance of their cultures and in their economic self-reliance and development. States shall, with the participation of indigenous peoples, ensure that these activities are strengthened and promoted.

For indigenous people working as paid labourers in the fishing industry, the right to the enjoyment of just and favourable conditions of work is vital, because their labour rights are often violated, also due to discrimination.<sup>34</sup> For example, Miskito divers in Honduras face precarious working conditions, including the lack of occupational safety measures, which result in high numbers of divers who are victims of accidents due to underwater fishing.<sup>35</sup> 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 (cayuqueros) or divers.<sup>36</sup> Furthermore, forced labour and human trafficking in the fisheries sector remain severe problems.<sup>37</sup> Indigenous peoples' right to the enjoyment of just and favourable conditions of work is recognized, for example, in article 7 of the International Covenant on Economic, Social and Cultural Rights, as well as in article 17 of UNDRIP and article 20 of ILO Convention No. 169.

#### **KEY PROVISIONS IN UNDRIP AND ILO CONVENTION NO. 169.**

UNDRIP, at article 20, declares that "1. Indigenous peoples have the right to their systems or institutions, 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. 2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress." It also indicates at article 21 that "1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security. 2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities."

Furthermore, UNDRIP, at article 17, also affirms that "1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law. 2. States shall in consultation and

cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.”

ILO Convention No. 169 stipulates, at article 23, that “1., rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, 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 these people and whenever appropriate, ensure that these activities are strengthened and promoted. 2. Upon the request of the 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.”

ILO Convention No. 169 also lays down, at article 20, that “1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general. 2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers [...]”.

### **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 the right of indigenous peoples 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.<sup>38</sup>

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.<sup>39</sup>

For a broader overview of relevant labour standards, including those addressing forced labour and child labour, see [www.ilo.org/normlex](http://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.<sup>40</sup>

### **What can you claim?**

Based on the human rights presented in this section, you could claim, for example, the following:

- The adoption of measures, in consultation with your people, to support and promote their traditional occupations in fishing and aquaculture;
- The removal of discriminatory restrictions affecting your people's ability to practice fishing activities, including the prohibition to use nets or modern equipment or other restrictions to obtain fishing authorizations;
- The adoption of special measures to ensure that the members of your people have access without discrimination to the material goods and services required to carry out their occupations in fishing and aquaculture, 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;
- The review of 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;
- The review of fisheries subsidies, with the participation of indigenous peoples, to assess the impact on their livelihoods;
- The adoption of measures to ensure that men and women members of your people have 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;

- The extension of social protection coverage to indigenous workers in fisheries and aquaculture.

## THE RIGHTS TO CONSULTATION, PARTICIPATION AND ACCESS TO INFORMATION

### Main 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)



Indigenous peoples are generally marginalized in decision-making related to fisheries and aquaculture, including the adoption of legislation regulating those sectors and the design and approval of blue economy projects. However, the impacts on their lives and livelihoods are

enormous. This also implies that indigenous peoples are prevented from contributing to the design of effective and sustainable interventions. The rights of indigenous peoples to participation, consultation and access to information are recognized in articles 25 and 19 of the International Covenant on Civil and Political Rights as well as in UNDRIP and ILO Convention No. 169, which both contain dedicated provisions on this matter, including the principle of free, prior and informed consent. Although there is no one model for the implementation of the participation and consultation of indigenous peoples, the respect for their rights implies the fulfilment of certain minimum requirements as illustrated in the box below.

### KEY PROVISIONS IN UNDRIP AND ILO CONVENTION NO. 169.

UNDRIP, at article 18, recognizes that “indigenous peoples 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”. It also affirms, at article 19, 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”. It further declares, at article 32, 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”.

ILO Convention No. 169 stipulates, at article 6, 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". 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". 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". Moreover, 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". Among other things, the Convention stipulates, at article 7, that indigenous peoples shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly. It also lays down at article 2 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".

### **Implementing the right to consultation of indigenous peoples: minimum requirements**

Consultations with indigenous peoples should, at a minimum:

1. Be undertaken with the representative institutions of indigenous peoples;
2. Allow indigenous peoples to engage their own decision-making processes;
3. Ensure that indigenous peoples have all relevant information in a language and form fully understood by them;
4. 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;
5. Be undertaken in a manner that is acceptable to all parties;
6. Be directed at obtaining their consent;
7. Provide access to effective remedies in case of violations of procedural and substantive rights involved in the procedure of consultation and/or its outcome; and
8. Allow for the regular evaluation, with the participation of indigenous peoples, of the operation of the consultation mechanism, with a view to improving their functioning and making the necessary adjustments.<sup>41</sup>

Whereas any process of consultation with indigenous peoples shall be aimed at achieving their free, prior and informed consent, obtaining indigenous peoples' consent is required in a number of cases, such as, for example, in the case of measures involving their relocation,<sup>42</sup> the storage or disposal of hazardous materials in indigenous peoples' lands or territories,<sup>43</sup> and in the case of a significant, direct impact on indigenous peoples' lives or territories.<sup>44</sup>

### **What can you claim?**

Based on the human rights presented in this section, you could claim, for example, the following:

- The establishment of mechanisms for the participation of your people 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 the creation of mechanisms for their consultation before the adoption of measures such as tourism development, extractive industries, energy development, climate change and nature conservation or the adoption of regulations governing fisheries and aquaculture;
- The recognition and support for your people's traditional decision-making institutions, including through financial and other support, and the promotion of measures that allow the expression of the voices of indigenous women and youth;
- The availability and accessibility of effective remedies in the case of violations of procedural and substantive rights involved in the procedure of consultation and/or its outcome;
- The regular and participatory evaluation of the consultation mechanisms available, with a view to improving their functioning and making the necessary adjustments;
- The provision of sufficient financial and other resources so that the mechanisms created to allow indigenous peoples' participation can fulfil their functions and the establishment of procedures to allow these mechanisms to submit proposals by indigenous peoples about legislative and other measures concerning the management of marine areas to the competent authorities.

## THE RIGHT TO A HEALTHY ENVIRONMENT

### Main 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.<sup>45</sup> 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.<sup>46</sup> 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.<sup>47</sup> 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.<sup>48</sup>

### KEY PROVISIONS IN UNDRIP AND ILO CONVENTION NO. 169.

UNDRIP, at article 29, 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. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination. 2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent. 3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.”

ILO Convention No. 169 stipulates, at article 7, that “Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the

environment of the territories they inhabit.” It also provides that “Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.”

Indigenous peoples play a central role in the conservation and sustainable management of marine and coastal ecosystems as well as their restoration.<sup>49</sup> Yet, their role, including the importance of their traditional knowledge and management practices, are often dismissed by decision-makers. Indigenous peoples are adversely affected by overfishing, pollution, and the expansion of oceans-based “blue economy” initiatives, including commercial aquaculture, tourism, ocean-based energy and extractive industries. Moreover, they are also negatively impacted by marine conservation initiatives that are 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. Yet, 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.<sup>50</sup> A number of studies have shown that positive outcomes for both well-being and conservation come from cases where indigenous peoples and local communities play a central role, such as when they have substantial influence over decision making or when local institutions regulating tenure form a recognized part of governance. In contrast, when interventions are controlled by external organizations and involve strategies to change local practices and supersede customary institutions, they tend to result in relatively ineffective conservation at the same time as producing negative social outcomes.<sup>51</sup> 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.<sup>52</sup>

The right to “a clean, healthy and sustainable environment” has been recognized as a human right by the UN Human Rights Council in 2021.<sup>53</sup> It had already been enshrined in the African Charter on Human and Peoples’ Rights<sup>54</sup> and the Additional Protocol to the American Convention on Human Rights, among other instruments.<sup>55</sup> UNDRIP also recognizes indigenous peoples’ right to a healthy environment at article 29. Likewise, ILO Convention No. 169 calls upon States to protect and preserve the environment of indigenous territories in co-operation with the peoples concerned.<sup>56</sup> It also stipulates that States shall ensure that studies are carried out, in co-operation with indigenous peoples, to assess the social, spiritual, cultural and environmental impact on them of planned development activities.<sup>57</sup>

### **The interrelationship between indigenous peoples' rights to marine territories, marine resources and coastal land and a healthy environment: some considerations by the Inter-American Court of Human Rights**

The Interamerican Court of Human Rights has issued an advisory opinion on human rights and the environment with a view to clarifying States' human rights obligations.<sup>58</sup> In that context, the Court has highlighted the following points concerning indigenous peoples:

“Specifically, in cases concerning the territorial rights of indigenous and tribal peoples, the Court has referred to the relationship between a healthy environment and the protection of human rights, considering that these peoples' right to collective ownership is linked to the protection of, and access to, the resources to be found in their territories, because those natural resources are necessary for the very survival, development and continuity of their way of life. The Court has also recognized the close links that exist between the right to a dignified life and the protection of ancestral territory and natural resources. In this regard, the Court has determined that, because indigenous and tribal peoples are in a situation of special vulnerability, **States must take positive measures to ensure that the members of these peoples have access to a dignified life – which includes the protection of their close relationship with the land – and to their life project, in both its individual and collective dimension.** The Court has also emphasized that the lack of access to the corresponding territories and natural resources may expose indigenous communities to precarious and subhuman living conditions and increased vulnerability to disease and epidemics, and subject them to situations of extreme neglect that may result in various violations of their human rights in addition to causing them suffering and undermining the preservation of their way of life, customs and language”.<sup>59</sup>

The Court has also emphasized that “several fundamental rights require, as a necessary precondition for their enjoyment, a minimum environmental quality, and are profoundly affected by the degradation of natural resources”.<sup>60</sup>

In addition, the Court has clarified that “an environmental impact assessment constitutes a safeguard to ensure that the restrictions imposed on indigenous or tribal peoples in relation to the right to ownership of their lands, owing to the issue of concessions within their territory, do not entail a denial of their survival as a people. The purpose of such assessments is not merely to have an objective measurement of the possible impact on the land and peoples, but also to ensure that the members of these peoples are aware of the possible risks, including the environmental and health risks, so that they can evaluate, in full knowledge and voluntarily, whether or not to accept the proposed development or investment plan”.<sup>61</sup> “The connection between the territory and the natural resources that have been used traditionally and that are necessary for the physical and cultural survival of these peoples and for the development and continuity of their world view must be protected to ensure that they can continue their traditional way of life and that their cultural identity, social structure, economic system, and distinctive customs, beliefs and traditions are respected, guaranteed and protected by States”.<sup>62</sup>

### **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.<sup>63</sup> 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.<sup>64</sup> 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.<sup>65</sup>

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)).

### **What can you claim?**

Based on the human rights presented in this section, you could claim, for example, the following:

- The recognition in relevant laws and policies of the role that your people play in the restoration, conservation, protection and management of aquatic and coastal ecosystems and the respect and protection of their traditional knowledge and management practices, including customary norms governing the access to and the use of the marine territories and resources and the coastal lands that they have traditionally owned, occupied or otherwise used or acquired;
- The realization of assessment studies, with the participation of your people, to ascertain the social, spiritual, cultural and environmental impacts of initiatives which may affect them;
- The adoption measures, in collaboration with your people, to ensure the conservation and protection of the environment of their territories, including through tailored assistance programmes;

- The consultation of your 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 their participation in the implementation and monitoring of such initiatives as well as the recognition of their rights to control and manage their territories and participate in the benefits of these initiatives;
- The consultation of your people and their involvement 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, as well as climate change mitigation and adaptation plans and programmes, taking into account their traditional knowledge and practices.

## THE RIGHT TO REMEDY

### Main 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)
- By 2020 prohibit unsustainable fisheries subsidies (target 14.6)
- Provide access for small-scale artisanal fishers to marine resources and markets (target 14.b)



States' obligations to respect, protect and implement human rights also entails the duty to provide effective remedies in the case of violation of these rights. The right to remedy includes the right to:

- Equal and effective access to justice;
- Adequate, effective and prompt reparation or redress for harm suffered; and
- Access to relevant information concerning violations and reparation mechanisms.<sup>66</sup>

UNDRIP, for example, provides that States shall provide effective mechanisms for prevention of, and redress for any action which has the aim or effect of dispossessing indigenous peoples of their lands, territories or resources. These include the marine territories and the associated resources, as well as the coastal lands that the concerned peoples have traditionally owned, occupied or otherwise used or acquired.<sup>67</sup> UNDRIP also specifies that in the event that indigenous peoples' lands, territories or resources have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent, the peoples concerned have the right to redress by means which can include restitution or, when this is not possible, just, fair and equitable compensation. Such compensation shall take the form of lands, territories and resources equal in quality size and legal status or of monetary compensation or other appropriate redress, unless the people concerned agree to

other types of compensation.<sup>68</sup> In addition, UNDRIP recognizes that indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress. Those means of subsistence and development include indigenous peoples' traditional occupations related to the use of marine territories and marine resources, including fishing. Remedies must also be available in case of violation of labour rights, including cases of discrimination with respect to recruitment or working conditions, violence and harassment, among others.<sup>69</sup> It is fundamental that available mechanisms for redress allow indigenous peoples' access also in a collective manner and take into account indigenous peoples' customary laws and practices.

The Inter-American human rights monitoring bodies, for example, have considered that indigenous peoples' collective capacity to act, through their freely chosen representatives, to report violations of their rights before the competent administrative and judicial bodies is a pre-condition to their securing effective State compliance with human rights obligations.<sup>70</sup> Concerning the types of reparations to be accorded, which are both collective and individual in nature, they have ordered, for example, the restitution of indigenous territories in cases involving dispossession. Only if there are concrete and justified reasons that make it impossible for States to provide restitution, they have held that indigenous peoples must receive a compensation, primarily oriented by the meaning and value that lost land has for the peoples concerned. Such compensation should consist in the provision of alternative lands in sufficient extension and quality or, if the indigenous people so decide, a compensatory indemnity may be granted in money or in kind.<sup>71</sup> Concerning situations involving the violation of labour rights in the fishing industry, among other types of reparation recognized in favour of the victims, the Inter-American Court has indicated that the State shall adopt measures to ensure adequate regulation, inspection and supervision of the activities undertaken by industrial fishing companies.<sup>72</sup>

### **The right to remedy and human rights abuses by business enterprises**

The UN Guiding Principles on Business and Human Rights establishes that States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when abuses by business enterprises occur within their territory and/or jurisdiction those affected have access to effective remedy.<sup>73</sup>

The UN Working Group on the issue of human rights and transnational corporations and other business enterprises has clarified that some **additional measures may be required to ensure non-discrimination against indigenous peoples in the judicial sphere** through the identification and removal of obstacles to equal access, including in the use of indigenous languages and the recognition of indigenous peoples' customary laws, traditions and practices in judicial proceedings.

Concerning non-judicial mechanisms, the Working Group has highlighted that **national human rights institutions (NHRIs) or ombudsman offices have an important role to play** in addressing the grievances of indigenous peoples regarding business-related human rights abuses, in particular those relating to the exploitation



of natural resources. Those mechanisms should be granted adequate human, financial and technical resources (including training and expertise in business-related impacts) and their capacity to monitor effectively human rights impacts on indigenous peoples, including those arising from business, should be increased. They should be mandated to investigate complaints; verify the accuracy of information submitted by the parties, including, where necessary, by undertaking site visits; reach a determination as to whether rights have been violated; and make their decisions public. The mechanisms should be further mandated to make recommendations beyond a particular case, such as encouraging changes in State or corporate policies. They should be mandated to follow up on their decisions and States should carry out awareness-raising campaigns among indigenous peoples for these remedies. Lastly, the mechanisms should be required to take guidance from the Guiding Principles on Business and Human Rights when investigating individual complaints relating to business-related impacts on the rights of indigenous peoples.

As far as grievance mechanisms established by business enterprises are concerned, the Working Group underscored that the development of such mechanisms cannot be separated from the broader dialogue and engagement with indigenous communities. Good practices in this context suggest that those mechanisms: should be developed in the context of a consultation process with the indigenous community; specific attention should be paid to ensuring accessibility, responsiveness and local ownership of the mechanism; Capacity-building should be undertaken to develop the relevant legal knowledge and skills and the grievance log should be accessible to the parties, ensuring a basic starting principle in favour of transparency, but with due regard for the protection of victims in cases where reprisals or pressure are likely. Lastly, to ensure the independence and legitimacy of grievance mechanisms, any periodic review of the mechanism should incorporate feedback from indigenous communities.<sup>74</sup>

### **The role of National Human Rights Institutions**

NHRIs play an important role in investigating and addressing violations of indigenous peoples' rights in fisheries and aquaculture. For example, in Chile the Instituto Nacional de Derechos Humanos (INDH) has carried out investigations and research on the human rights impacts of the fisheries and aquaculture sectors since 2015. This has mainly consisted of mapping of socio-environmental conflicts in 2015, followed by an observation mission to Chiloé island in the southern region of Los Lagos in 2016 to investigate the impacts of the salmon farming industry.

The mapping of socio-environmental conflicts identified five local conflicts related to the fisheries and aquaculture sectors. The mapping found that other industries like mining, forestry and energy have negative impact on the oceans, namely by polluting seas and negatively affecting biodiversity and marine resources.

INDH identified several root causes related to the socio-environmental conflicts,

including:

- Lack of an appropriate regulatory framework for the protection of human rights in the context of extraction and development activities;
- Poor public awareness among citizens on how to defend themselves against human rights violations; and
- Overexploitation of fishery and aquaculture resources, threatening marine biodiversity;

Concerning the observation mission of 2016 to Chiloé island, the INDH conducted this mission after nine tons of dead salmon were dumped into the sea by salmon farming companies. This generated high level of pollution and allegedly contributed to the aggravation of the red tide, a harmful algae bloom, which lasted for three months and caused a serious socio-environmental crisis.

During the mission, the INDH team received information and complaints that the situation had resulted in several human rights impacts, including:

- The right to live in a healthy environment was affected by the salmon farming industry due to the use of antibiotics and dumping of waste, increasing fish mortality rates.
- The right to work and other labour rights were affected. With the arrival of the salmon farming industry, economic activity in the island of Chiloé focused on this sector to the detriment of other activities. Salmon farm workers faced a number of problems, including: temporary contracts that failed to provide protection and access to social security; unemployment for several months a year; employees dismissed for being pregnant; union leaders persecuted; and pollution of oceans, affecting artisanal fishers' ability to catch fish.
- The right to food was negatively impacted by the red tide, which affected fishing activities and the collection of seaweed and shellfish, which are basic foods in Chiloé. Also, the lack of jobs and income affected many families' access to food.
- The right to health was impacted, as the red tide caused poisoning of some individuals. In addition, transport workers had to move decomposing fish while exposed to toxic chemicals.
- Cultural rights were affected. For example, the inhabitants of Chiloé, the Chilotes, could not cook their traditional food, and the Huilliche indigenous people could not carry out their traditional subsistence activities. In addition, the Huilliche attribute a healing and purification power to the sea; therefore, the pollution of the sea also affected their spiritual beliefs and customs.

After concluding the mission, the INDH issued several recommendations to the Chilean government to ensure that sustainable development policies respect human rights, cultural rights and local ways of life. INDH called on the government to ensure that companies on the island of Chiloé respect human rights and abstain from infringing the law, namely by establishing a regulatory framework that obliges companies to exercise due diligence in their operations, as well as address, mitigate and remedy the negative impacts they cause.<sup>75</sup>

**What can you claim?**

Based on the human rights presented in this section, you could claim, for example, the following:

- The adoption of measures to prevent the violation of the rights described in this brief, including special measures whenever needed;
- The existence of judicial, administrative or other mechanisms that are accessible and ensure effective remedies in case of violations of your rights, whether those violations are perpetrated by the State or by third parties, including business enterprises. Such mechanisms should permit indigenous peoples to lodge complaints also in a collective manner, through their freely chosen representatives, and should take into account indigenous peoples' customary laws and practices;
- The provision of legal aid or interpretation in judicial and other proceedings, whenever needed;
- The provision of reparation for violations of your collective and individual rights, including restitution or, when this is not possible, just, fair and equitable compensation;
- Awareness-raising about indigenous peoples' rights and the mechanisms available to prevent and seek redress for their violation.

## SOME COUNTRY EXAMPLES OF APPLICATION OF THE HUMAN RIGHTS DESCRIBED IN THIS BRIEF

### THE RECOGNITION OF INDIGENOUS PEOPLES' RIGHTS TO MARINE TERRITORIES, MARINE RESOURCES AND COASTAL LANDS IN NATIONAL LEGISLATION

In Nicaragua, the “Ley del Régimen de Propiedad Comunal de los Pueblos Indígenas y Comunidades Étnicas de Las Regiones Autónomas de La Costa Atlántica de Nicaragua Y de los Rios Bocay, Coco, Indio y Maíz” of 2003 (Law No.4457) recognizes indigenous peoples’ right to marine resources used for artisanal and community-based fishing within three miles from the shoreline and twenty-five miles around the adjacent keys and islands.<sup>76</sup>

In Chile, the Law No. 20249 of 2008 provides for the creation of Marine Coastal Spaces of Indigenous Peoples (Espacio Marino Costero de los Pueblos Originarios). Such spaces are established on the basis of the recognition of the customary rights of indigenous communities to marine areas and are managed by indigenous communities or indigenous associations.<sup>77</sup>

In the Philippines, the Indigenous Peoples’ Rights Act of 1997 recognizes indigenous peoples’ rights to their ‘ancestral domains’, including inland waters and coastal areas, and the natural resources therein.<sup>78</sup>

### THE RECOGNITION OF INDIGENOUS PEOPLES’ FISHING AND NAVIGATION RIGHTS IN BILATERAL AGREEMENTS

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.<sup>79</sup> 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.<sup>80</sup> However, these cases are not frequent.<sup>81</sup>

## THE ESTABLISHMENT OF 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.<sup>82</sup> 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.<sup>83</sup> 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.<sup>84</sup>

## THE CO-MANAGEMENT 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.<sup>85</sup>

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.<sup>86</sup>

## 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 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.<sup>87</sup>

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.<sup>88</sup>

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.<sup>89</sup>

## OTHER RELEVANT INTERNATIONAL INSTRUMENTS ON INDIGENOUS PEOPLES AND FISHERIES AND AQUACULTURE

### **THE UN DECLARATION ON THE RIGHTS OF PEASANTS AND OTHER PEOPLE WORKING IN RURAL AREAS (UNDROP)**

The UN Declaration on the Rights of Peasants and other People Working in Rural Areas (UNDROP)<sup>90</sup> 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)**

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT Guidelines)<sup>91</sup> 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.<sup>92</sup>

### **THE VOLUNTARY GUIDELINES FOR SECURING SUSTAINABLE SMALL-SCALE FISHERIES IN THE CONTEXT OF FOOD SECURITY AND POVERTY ERADICATION (SSF GUIDELINES)**

The Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines)<sup>93</sup> 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.<sup>94</sup>

## **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)**

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)<sup>95</sup> 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.<sup>96</sup>

## **THE PRINCIPLES FOR RESPONSIBLE INVESTMENT IN AGRICULTURE AND FOOD SYSTEMS (RAI PRINCIPLES)**

The Principles for Responsible Investment in Agriculture and Food Systems (RAI Principles)<sup>97</sup> 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.<sup>98</sup>



## ENDNOTES

- 1 See, for example, IWGIA, *The Indigenous World 2021* (Copenhagen 2021), discussing the case of the Ainu people of Japan.
- 2 FAO, *Impacts of climate change on fisheries and aquaculture*, 2018
- 3 ILO, *Implementing the ILO Indigenous and Tribal Peoples Convention No. 169: Towards an inclusive, sustainable and just future* (Geneva, 2019).
- 4 Cisneros-Montemayor AM, Pauly D, Weatherdon LV, Ota Y (2016) A Global Estimate of Seafood Consumption by Coastal Indigenous Peoples. *PLoS ONE* 11(12)
- 5 Vierros M.K et al., “Considering Indigenous Peoples and local communities in governance of the global ocean commons” in *Marine Policy* 119 (2020).
- 6 UN Doc. A/HRC/9/9, 2008; ILO, *Understanding the Indigenous and Tribal Peoples Convention - Handbook for ILO Tripartite Constituents* (Geneva, 2013).
- 7 DIHR, *Human Rights and the 2030 Agenda for Sustainable Development Lessons Learned and Next Steps*, 2018.
- 8 See articles 20 and 21 of the African Charter on Human and Peoples' Rights; and article III of the American Declaration on the Rights of Indigenous Peoples.
- 9 Bana N.C et al. “Indigenous peoples' rights and marine protected areas” in *Marine Policy* 87 (2018).
- 10 See IWGIA, *The Indigenous World*, 2021.
- 11 See EMRIP, *Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: indigenous peoples and the right to self-determination*, UN Doc. A/HRC/48/75, 2021, para. 16.
- 12 See, respectively, articles 36 and 32.
- 13 E/C.12/FIN/CO/7, 2021.
- 14 CCPR/C/NOR/CO/7, 2018.
- 15 See DIHR, *Sector-Wide Impact Assessment. The salmon industry and human rights in Chile* (2021).
- 16 See, for example, ERD/C/RUS/CO/23-24, 2017.
- 17 See further in DIHR, *Enhancing Accountability for Small-Scale Fishers Using Human Rights Monitoring to Guide Effective Implementation of SDG Target 14.B*, 2021.
- 18 In this sense, see, for example, Enyew E.L “International Human Rights Law and the Rights of Indigenous Peoples in Relation to Marine Space and Resources”, in Allen S, Bankes N. and Ravna O. (eds) *The Rights of Indigenous Peoples in Marine Areas* (Hart Publishing, Oxford, 2019).
- 19 Direct Request (CEACR) - adopted 2014, published 104th ILC session (2015) - Indigenous and Tribal Peoples Convention, 1989 (No. 169) - Norway
- 20 Observation (CEACR) - adopted 2014, published 104th ILC session (2015) - Indigenous and Tribal Peoples Convention, 1989 (No. 169) - Colombia
- 21 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

- 22 See UNDRIP, arts 15 and 31.
- 23 See UNDRIP, art. 25.
- 24 CBD, art. 8 (j)
- 25 CESCR, *General comment No. 21: Right of everyone to take part in cultural life* (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/GC/21, 2009.
- 26 *Ibid.*, paras 13 and 36.
- 27 HRC, General comment No. 23: The rights of minorities (Art. 27), UN Doc. CCPR/C/21/Rev.1/Add.5, 1994.
- 28 See, for example, *Ilmari Lansman v Finland*, UN Doc. CCPR/C/52/D/511/1992, 1994, paras. 9.4ff; and *Apirana Mahuika v New Zealand*, UN Doc. CCPR/C/70/D/547/1993, 2000, para. 9.5.
- 29 See, for example, *Sandra Lovelace v. Canada*, U.N. Doc. CCPR/C/13/D/24/1977, 1981, para. 16.
- 30 *Apirana Mahuika v New Zealand*, UN Doc. CCPR/C/70/D/547/1993, 2000.
- 31 The System allocates permanent, transferable, property rights in quota for each commercial species within the system.
- 32 *Ibid.*, para. 9.5.
- 33 See UNDRIP, arts 20 and 21.
- 34 UN Doc. A/HRC/40/56, para. 46.
- 35 CERD/C/HND/CO/6-8, 2019. See also the decision of the Inter-American Court of Human Rights on the case *Buzos Miskitos (Lemoth Morris y otros) vs Honduras*, serie C/432, 31 August 2021.
- 36 ILO, *Trabajo infantil y pueblos indígenas. El caso Honduras*, 2007.
- 37 For an overview, see <https://www.ilo.org/global/topics/forced-labour/policy-areas/fisheries/lang--en/index.htm>
- 38 For more information on ILO Convention No. 111, see [www.ilo.org/normlex](http://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.
- 39 For more information on ILO Convention No. 188, see [www.ilo.org/normlex](http://www.ilo.org/normlex) and ILO, *Decent working conditions, safety and social protection: Work in Fishing Convention No. 188 and Recommendation No. 199*, 2007.
- 40 For more information, see [https://www.ilo.org/sector/Resources/publications/WCMS\\_216664/lang--en/index.htm](https://www.ilo.org/sector/Resources/publications/WCMS_216664/lang--en/index.htm)
- 41 See 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](http://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](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.
- 42 See UNDRIP, art. 10; ILO Convention No. 169, art. 16.
- 43 See UNDRIP, art. 29.
- 44 See UN A/HRC/12/34; A/HRC/39/62; Errico S. "Control over Natural Resources and Protection of the Environment of Indigenous Territories", in M. Weller and J. Hohmann (eds) *The UN Declaration on the Rights of Indigenous Peoples. A Commentary*, Oxford University Press, 2018.

- 45 UN Doc. A/75/161.
- 46 See IPBES/7/10/Add.1.
- 47 TNI, The Global Ocean Grab, 2014, [https://www.tni.org/files/download/the\\_global\\_ocean\\_grab.pdf](https://www.tni.org/files/download/the_global_ocean_grab.pdf)
- 48 See DIHR, Sector-Wide Impact Assessment. The salmon industry and human rights in Chile (2021).
- 49 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).
- 50 David R. Boyd and Stephanie Keene, Policy Brief No. 1 Human rights-based approaches to conserving biodiversity: equitable, effective and imperative, 2021.
- 51 Dawson, N. M. "The role of Indigenous peoples and local communities in effective and equitable conservation", in *Ecology and Society* 26 (3):19.
- 52 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).
- 53 See Res. 48/13, 2021.
- 54 See article 24.
- 55 See article 11.
- 56 See ILO Convention No. 169, art. 7
- 57 See ILO Convention No. 169, art. 7
- 58 See IACtHR, Advisory Opinion oc-23/17, 15 November 2017, requested by the republic of Colombia.
- 59 Ibid, para. 48.
- 60 Ibid, para. 49.
- 61 Ibid. para. 156.
- 62 Ili, para. 169.
- 63 FAO, Impacts of climate change on fisheries and aquaculture, 2018
- 64 UNPFII, Indigenous peoples and climate change, E/C.19/2021/5, 2021.
- 65 FPP 2016 *supra*.
- 66 See, for example, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly's resolution 60/147, 16 December 2005.
- 67 UNDRIP, art. 8.
- 68 UNDRIP, art. 28
- 69 For specific guidance, see ILO, General Survey on the Fundamental Conventions: Giving Globalization a Human Face, 2012, para 884 et seq.
- 70 See, for example, Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System, OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, para. 372

- 71 Ibid, para. 377.
- 72 See IACtHR, *Buzos Miskitos (Lemoth Morris y otros) vs Honduras*, Serie C 432, 31 August 2021.
- 73 See Guiding Principle no. 25.
- 74 UN Doc. A/68/279, 2013.
- 75 See DIHR Enhancing Accountability for Small-Scale Fishers Using Human Rights Monitoring to Guide Effective Implementation of SDG Target 14.B, 2021, which also contains other examples of interventions by NHRIs from different countries.
- 76 See article 33 of Law no. 4457 of 2003.
- 77 For more information, see <https://www.subpesca.cl/portal/616/w3-propertyvalue-50834.html>
- 78 <https://www.officialgazette.gov.ph/1997/10/29/republic-act-no-8371/>
- 79 See the 1982 United Nations Convention on the Law of the Sea (UNCLOS).
- 80 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
- 81 Allen, Bankes and Ravna (eds), *The Rights of Indigenous Peoples in Marine Areas* (Chicago: Hart Publishing, 2019).
- 82 See <https://www2.gov.bc.ca/gov/content/governments/indigenous-people/new-relationship/united-nations-declaration-on-the-rights-of-indigenous-peoples>
- 83 For more details, see <https://engage.gov.bc.ca/declaration/>
- 84 See Harrisson et al. Considering Indigenous Peoples and local communities in governance of the global ocean commons, in *Marine Policy* 119 2020.
- 85 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).
- 86 See <https://mma.gob.cl/se-establece-en-rapa-nui-el-area-marina-protegida-mas-grande-de-america-latina/>
- 87 See <https://naturaljustice.org/one-year-after-landmark-judgment-on-lamu-port-violations-construction-continues-unabated/>
- 88 See <https://igssf.icsf.net/en/page/1046-Judgments.html>
- 89 See IWGIA, *The Indigenous World*, 2021.
- 90 <https://undocs.org/A/C.3/73/L.30>
- 91 <https://www.fao.org/tenure/voluntary-guidelines/en/>
- 92 For more information, see <http://www.fao.org/tenure/voluntary-guidelines/en/>
- 93 <https://www.fao.org/voluntary-guidelines-small-scale-fisheries/en/>
- 94 For more information, see <http://www.fao.org/voluntary-guidelines-small-scale-fisheries/en/>
- 95 <https://www.fao.org/right-to-food/guidelines/en/>
- 96 For more information, see <http://www.fao.org/3/y7937e/y7937e00.htm>
- 97 <https://www.fao.org/policy-support/tools-and-publications/resources-details/en/c/422954/>
- 98 For more information, see <http://www.fao.org/cfs/policy-products/rai/en/>

**THE DANISH  
INSTITUTE FOR  
HUMAN RIGHTS**

