



THE DANISH  
INSTITUTE FOR  
HUMAN RIGHTS

IWGIA

# INDIGENOUS PEOPLES' CUSTOMARY FISHING RIGHTS: KEY ISSUES AND INPUT FROM THE EXPERT MEETING ON INDIGENOUS PEOPLES AND FISHERIES, 2023

JUNE 2023

**INDIGENOUS PEOPLES' CUSTOMARY FISHING RIGHTS: KEY ISSUES AND INPUT FROM THE EXPERT MEETING ON INDIGENOUS PEOPLES AND FISHERIES, 2023**

REPORT PREPARED ON THE BASIS OF DESK RESEARCH AND INPUT FROM THE EXPERT MEETING ON INDIGENOUS PEOPLES AND FISHERIES, HELD AT THE MARGINS OF THE 2023 SESSION OF THE UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES

**Author:** Birgitte Feiring (Charapa Consulting)

**ISBN:** 78-87-7570-189-6

**e-ISBN:** 978-87-7570-188-9

**Photo:** Fredrik Ohlander, Unsplash

**Layout:** Hedda Bank

The Danish Institute for Human Rights (DIHR) is Denmark's national human rights institution. Its mandate is to promote and protect human rights and equal treatment in Denmark and abroad.

The report is based on previous publications and cases compiled by the Danish Institute for Human Rights, input from the Expert Meeting organised at the margins of the 2023 Session of the UN Permanent Forum on Indigenous Issues, as well as additional desk research. It was developed and published with financial support from the Swedish International Development Cooperation Agency (Sida) through the project "Sustainable Oceans – Pursuing a human rights-based approach to fisheries and aquaculture".

© 2023 The Danish Institute for Human Rights  
Denmark's National Human Rights Institution  
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 authors 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>BACKGROUND</b>	<b>4</b>
<b>SUMMARY OF KEY MESSAGES AND ENTRY POINTS</b>	<b>6</b>
CORE ELEMENTS OF A HUMAN RIGHTS-BASED APPROACH	7
ENTRY POINTS	8
<b>INDIGENOUS PEOPLES' RIGHTS IN THE FISHERIES SECTOR</b>	<b>9</b>
ELEMENTS OF A HUMAN RIGHTS-BASED FRAMEWORK	9
FISHING AS A CULTURAL RIGHT	10
GOVERNANCE OF TENURE	13
IMPACTS OF INDUSTRIAL FISHING AND AQUACULTURE	16
Overfishing	17
Illegal, unreported and unregulated fishing	18
Industrial aquaculture	19
ACCESS TO MARKETS	20
FISHERIES SUBSIDIES	22
PRESSURE FROM OTHER SECTORS	23
THE RESPONSIBILITY OF BUSINESSES	25
STRATEGIC LITIGATION TO ASSERT TENURE RIGHTS	26
<b>ENVIRONMENT AND CLIMATE</b>	<b>29</b>
THE RIGHT TO A HEALTHY ENVIRONMENT	29
Impact of conservation measures	32
Marine Protected Areas	34
<b>THE GLOBAL BIODIVERSITY FRAMEWORK</b>	<b>36</b>
THE HIGH SEAS TREATY	37
CLIMATE CHANGE	39
<b>CRIMINALISATION AND ATTACKS ON DEFENDERS OF INDIGENOUS PEOPLES' RIGHTS</b>	<b>42</b>
<b>ANNEX: ENTRY POINTS FOR ADVANCING INDIGENOUS PEOPLES' RIGHTS IN THE CONTEXT OF FISHERIES</b>	<b>46</b>
<b>ENDNOTES</b>	<b>48</b>

## BACKGROUND

In recent years, the Danish Institute for Human Rights (DIHR), along with partners such as Arctic Consult, the Indigenous Peoples Major Group for Sustainable Development, the International Work Group for Indigenous Affairs (IWGIA), Prosealand Foundation and the UN Food and Agricultural Organization (FAO), among others, has worked to highlight and address the impacts of human rights on Indigenous Peoples' rights within the fisheries and aquaculture sectors<sup>1</sup>.

A side-event organised during the 2022 Session of the United Nations Permanent Forum on Indigenous Issues (UNPFII) by DIHR, FAO and IWGIA focused on Indigenous Peoples' rights in the context of SDG 14 (life below water) and the blue economy<sup>2</sup>. Speakers<sup>3</sup> highlighted the importance of fish resources for Indigenous Peoples across the globe for food, identity, culture and sustainable livelihoods. However, they also emphasised the struggle for recognition of customary fishing rights in the context of industrial fishing, overfishing, restrictions and discriminatory legislation and policies, unsustainable fishing subsidies, expansion of aquaculture, establishment of protected areas, pollution, extractive industries and climate change.

The UNPFII subsequently included two fisheries-specific recommendations in its 2022 report<sup>4</sup>:

- The year 2022 is the International Year of Artisanal Fisheries and Aquaculture. The Permanent Forum therefore recommends that FAO prepare a study on the impacts of industrial fishing on the rights of indigenous peoples in regard to traditional fishing. The Permanent Forum invites the Organization to share the findings of the said study at the twenty-third session of the Permanent Forum, to be held in 2024 (E/2022/43, para: 57).
- The Permanent Forum recommends that, in the context of the International Year of Artisanal Fisheries and Aquaculture, FAO and ILO conduct a study on the human rights violations suffered by Indigenous Peoples in the fishing sector. The Permanent Forum invites those organizations to present their findings at the annual session of the Permanent Forum to be held in 2024 (E/2022/43, para: 73).

In this context, DIHR and IWGIA convened a hybrid Expert Meeting with technical support from FAO at the margins of the 2023 Session of the UNPFII<sup>5</sup>. The overall objective of the 2023 Expert Meeting was to:

- Examine the impacts of fisheries governance and related policies on the rights of Indigenous Peoples in regard to traditional fishing, to inform the response to the recommendations put forward by the United Nations Permanent Forum on Indigenous Issues.

The 2023 Expert Meeting was attended by app. 30 participants in the room and 5 participants online and discussed the following sub-themes, as they relate to Indigenous Peoples' rights:

1. Governance of tenure in fisheries
2. Conservation measures
3. Socio-economic impacts
4. Fisheries subsidies
5. Criminalisation of Indigenous Peoples' fisheries
6. Links to global policy processes and initiatives, including the Global Biodiversity Framework, the advancement of the SSF Guidelines, the UN High Seas Treaty, among others

This report provides an overview of key issues, related to the above sub-themes. It is based on three main sources of information:

- Previous publications of DIHR on Indigenous Peoples' rights and fisheries,<sup>6</sup>
- Cases from across the globe concerning Indigenous Peoples' rights and fisheries, compiled by the Danish Institute for Human Rights,<sup>7</sup>
- Input from the participants of the 2023 Expert Meeting.

It is our hope that this report can inform the participatory preparation of the studies called for by the UNPFII. Moreover, we hope it can contribute to our common understanding of the need and the urgency of addressing the rights of Indigenous Peoples in the context of fisheries. It and inspire further engagement and advocacy for these rights.

## SUMMARY OF KEY MESSAGES AND ENTRY POINTS

Indigenous Peoples have a deep connection with aquatic ecosystems and resources. For fishing-dependent indigenous communities, fishing is not just an occupation and fish is not just a commodity. Fisheries are the basis for – and an integral element of – their cultures, spiritual beliefs, traditional knowledge and food systems. However, the distinct rights of Indigenous Peoples in the context of fisheries are generally not well understood or recognized.

In many countries, colonial and discriminatory legislation and policies are still in force and fail to recognize Indigenous Peoples' customary fishing rights. This situation is reflected in licenses, quota, permits and unsustainable fishing subsidies that favor industrial fishing over small-scale fisheries, and industrial fish farms over traditional management practices. Thereby, Indigenous Peoples are deprived of the fundamental rights to practice their traditional occupations and pursue sustainable use of their resources. This undermines not only their right to food, but also their collective rights to self-determination, to lands, territories and resources and to culture, knowledge and identity, among others. In most cases, Indigenous fishers are not involved in discussions about laws and policies that affect them and, consequently, do not take part in decision-making. This constitutes an ongoing violation of Indigenous Peoples' rights to be consulted, to participate in decision-making and to give or withhold Free, Prior and Informed Consent (FPIC) to measures that affect them.

Where international instruments, national legislation and jurisprudence have recognized Indigenous Peoples' rights in the context of fisheries, these gains are often not implemented or translated into practice on the ground. One factor that undermines the realization of Indigenous Peoples' rights is the lack of coherence between the many conflicting layers of laws and policies that govern the fisheries sector. Sometimes the implementation gap is simply due the lack of political will of those in power or related to economic interests.

In their operations, industrial fishing and aquaculture companies often fail to respect Indigenous Peoples' rights. When their traditional livelihoods are undermined, Indigenous fishers and fish workers are at risk of being exploited in the context of industrial fisheries. In the worst cases, the industrial fishing companies operate with disregard for fundamental labour rights, leading to poverty, disabilities, and deaths.

The impact of discriminatory laws, policies and practices is further aggravated by impacts from other sectors, such as infrastructure, energy, mining and tourism. The transboundary impacts of pollution, climate change and biodiversity loss add to the seriousness of the situation. Indigenous Peoples are facing the challenge of asserting their rights amid an environmental and climate crisis that affects most of the world's aquatic ecosystems and fish stocks. Indigenous Peoples have traditional knowledge that is crucial for the conservation and sustainable use of aquatic resources and ecosystems, but this is often disregarded in legislation and policies. Without partnerships with Indigenous Peoples, the pledge to achieve the Sustainable Development Goals (SDGs) and to leave no one behind will not advance.

In summary, Indigenous Peoples' rights in the context of fisheries are still not well understood or reflected in laws and policies. Consequently, there are numerous examples of Indigenous fishers being criminalized for simply practicing their customary fishing rights. This may be further aggravated if the establishment of Marine Protected Areas and other conservation measures are undertaken without the meaningful participation of Indigenous Peoples, and without the consideration for their traditional knowledge.

## **CORE ELEMENTS OF A HUMAN RIGHTS-BASED APPROACH**

As enshrined in the UN Declaration on the Rights of Indigenous Peoples and numerous other human rights instruments, Indigenous Peoples have the right to self-determination; to lands, territories and resources; to food; to engage freely in their traditional and other economic activities, including fishing; and to be consulted and participate in any decision-making concerning them. States have the primary obligation to respect, protect and fulfill these rights, including in the context of fisheries and aquaculture. The Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines) provide important complementary guidance to improve the governance of tenure in fisheries and secure sustainable small-scale fisheries, in line with the UNDRIP.

Most countries would greatly benefit from a thorough review and alignment of national fisheries legislation and policies with the rights of Indigenous Peoples. This should be done in partnerships with Indigenous Peoples' governance institutions, who must participate in the development, implementation, monitoring and evaluation of policies, plans and projects that affect their aquatic ecosystems and resources. Given Indigenous Peoples' traditional knowledge and enormous contribution to the conservation and sustainable use of biodiversity, they must also be acknowledged as key partners in efforts to combat biodiversity loss and climate change. Moreover, they must be provided with support and resources to strengthen their sustainable fisheries and economies.

There are many encouraging examples of Indigenous Peoples engaging in strategic litigation, negotiations, campaigns, and engagement with international bodies and corporations and to claim and assert their rights. These examples pay testimony to Indigenous Peoples' resilience and inspire further efforts. This highlights the importance of building networks and alliances among fishing-dependent Indigenous communities and providing support to enhance their access to information, training and capacity-building. Moreover, it shows the potential of engaging national judiciary systems and international, regional and national human rights monitoring mechanisms and institutions in the protection of Indigenous Peoples' rights, by generating and providing them with information to address these issues in a comprehensive manner. However, the implementation of successful outcomes of strategic litigation also requires attention, these are rarely implemented expediently.

As reflected in the UN Guiding Principles on Business and Human Rights, companies have an independent responsibility to respect Indigenous Peoples' rights. There is a long overdue need to establish a focused dialogue with the seafood industry about their responsibility in this regard.

Indigenous Peoples' representative institutions should be supported in bringing their concerns forward and holding governments and companies to account. The underlines the need to generate more accurate data on fisheries-dependent Indigenous Peoples and communities, to build a strong platform for evidence-based advocacy.

## **ENTRY POINTS**

There are concrete opportunities and entry points for furthering Indigenous Peoples' rights within the fisheries and aquaculture sectors. These include:

- Engagement and strategic litigation within the national judiciary system and with national, regional and international human rights monitoring mechanisms, including those with a particular mandate pertaining to Indigenous Peoples' rights, such as the UN Special Rapporteur on the Rights of Indigenous Peoples, the Expert Mechanism on the Rights of Indigenous Peoples and the UN Permanent Forum on Indigenous Issues.
- Engagement with instruments, processes and bodies established to further sustainable fishing, including the SSF Guidelines and Summit, the Committee on Fisheries (COFI) and the High Seas Treaty, on conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction.
- Engagement with processes and mechanisms aimed at reaching the Sustainable Development Goals (SDGs), in particular SDG 2 (food security), SDG 10 (reduced inequalities), and SDG 14 (life below water).
- Engagement with processes and frameworks established to combat climate change and protect biodiversity, including the Global Biodiversity Framework and the 30 x 30 target, which will imply the establishment and expansion of Marine Protected Areas, as well as the Basel, Stockholm and Rotterdam Conventions on persistent organic pollutants, hazardous chemicals and wastes.
- Engagement with the fisheries and aquaculture industries, with a view to raising awareness, fostering dialogue and ensuring compliance with the UN Guiding Principles on Business and Human Rights.

Pursuing these strategic opportunities will require concerted efforts, sustained support and financial resources for training, capacity-building, and networking among Indigenous Peoples.

Annex A contains an overview of potential entry points, as identified by the 2023 Expert Meeting, which can hopefully inspire further engagement.



# INDIGENOUS PEOPLES' RIGHTS IN THE FISHERIES SECTOR

## ELEMENTS OF A HUMAN RIGHTS-BASED FRAMEWORK

Fisheries governance is defined as: “*Formal and informal policies and agreements in place, to manage fisheries through interaction between government and the public, in particular regarding access to and use of fisheries resources*”<sup>8</sup>. In practice, fisheries governance is often equated to the management of fish, with a focus on economic benefits. This clashes with Indigenous Peoples' rights and broader perspective on territories and resources, as well as the economic, social, cultural and spiritual aspects related to fish and fisheries.

Indigenous Peoples' rights in the context of fisheries are enshrined in the **UN Declaration on the Rights of Indigenous Peoples** (UNDRIP) and **ILO Convention No. 169**, which, in turn, are underpinned by the full range of human rights instruments of general application. The UNDRIP and Convention No. 169 recognise the rights of Indigenous Peoples to lands, territories and resources; the right to practise and revitalize their cultural traditions and customs as well their right to engage freely in their traditional and other economic activities. Moreover, they specify the rights to consultation and participation, including free, prior and informed consent (FPIC), whenever decisions, laws, projects or other measures are likely to affect Indigenous Peoples.

Under the UNDRIP and Convention No. 169, Indigenous Peoples have the right to the lands, territories and resources, which they have traditionally owned, occupied or otherwise used or acquired. The concept of territories, covers the total environment of the areas which Indigenous Peoples occupy or otherwise use, including aquatic ecosystems and resources as well as coastal and riverine lands. Moreover, these rights are based on traditional occupation, use and ownership. Hence, in accordance with UNDRIP and ILO Convention No. 169, these rights exist and must be respected, irrespective of whether the State has issued formal titles or otherwise officially recognised Indigenous Peoples' rights.

“The imposition of colonial and crown form of laws flows from the doctrine of discovery<sup>9</sup>. Hence, a non-indigenous worldview is perpetuated across the country and shapes economies and profits. We have inherent rights to the food that our grandparent have lived on. But Canada denies, delays and distracts our rights to traditional foods and food security. Indigenous Peoples live in poverty, as economic opportunities were removed from our communities. Now commercial fish farms are proliferating on our traditional territories. There was never a cost-benefit analysis incorporating the value these resources have for us. Based on UNDRIP, we claim the removal of the fish farms”, Robert Chamberlin, Chairperson, First Nation Wild Salmon Alliance, 2023 Expert Meeting.

Indigenous Peoples' customary rights to land, territories and resources are recognised and reflected in the two main instruments to guide the governance of land, fisheries and sustainable small-scale fisheries:

- The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (the VGGT Guidelines),<sup>10</sup>
- The Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries (the SSF Guidelines).<sup>11</sup>

### **THE SSF GUIDELINES MAKE EXPLICIT REFERENCE TO INDIGENOUS PEOPLES' CUSTOMARY RIGHTS:**

Article 5.4 of the SSF Guidelines stipulates that: *"States should take appropriate measures to identify, record and respect legitimate tenure right holders and their rights. Local norms and practices, as well as customary or otherwise preferential access to fishery resources and land by small-scale fishing communities including indigenous peoples and ethnic minorities, should be recognized, respected and protected in ways that are consistent with international human rights law. The UNDRIP [...] should be taken into account"*.

Moreover, Guiding Principle 6 on consultation and participation requires States to ensure:

*"...active, free, effective, meaningful and informed participation of small-scale fishing communities, including indigenous peoples, taking into account the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in the whole decision-making process related to fishery resources and areas where small-scale fisheries operate as well as adjacent land areas, and taking existing power imbalances between different parties into consideration. This should include feedback and support from those who could be affected by decisions prior to these being taken, and responding to their contributions"*.

The UNDRIP and the SSF Guidelines provide a strong framework for joined-up efforts to realise Indigenous Peoples' rights in the context of fisheries. However, the distinct rights of Indigenous Peoples in the context of fisheries are generally not well understood or reflected in laws and policies, and core provisions remain unimplemented.

### **FISHING AS A CULTURAL RIGHT**

Indigenous Peoples across the globe depend on fishing for their livelihoods, food security and nutrition, and contribute to the sustainable management of coastal and marine ecosystems. Moreover, seas, rivers and living marine and freshwater resources are closely connected to the identities, spiritual beliefs, specialised knowledge systems and cultural practices of fishing communities.

Participants at the 2023 Expert Meeting shared evidence of their rich culture and deep connection with aquatic ecosystems and living aquatic resources, including by sharing songs dedicated to specific fish species and to reaching out to the spirit world for guidance and hope.

*“Fishing is an important part of many Indigenous cultures. It is not only a source of food and livelihood, it is also a way of life, a cultural expression, the subject of transgenerational knowledge and science, and most importantly it is an expression of the deep spiritual link between Indigenous Peoples and water. Water is more than just a commodity. Indigenous worldviews and their respectful approach when “borrowing” from water ecosystems have a lot to teach to the world on sustainable management of natural resources, including fishing”, Francisco Cali Tzay, UN Special Rapporteur on the Rights of Indigenous Peoples, 2023 Expert Meeting.*

*“Fish are not just fish. They are part of our relations, our ancestors relied on these. We must look at the whole environment, including land-based environments, to ensure a healthy environment for fish. This depends on our traditional knowledge. We must protect our traditional knowledge-holders so they are not exploited”, Chief Ken Paul, Wolastoquey Nation, 2023 Expert Meeting.*

Yet, Indigenous Peoples' ways of life, traditional knowledge and management practices, as well as their contribution to sustainable management and use of aquatic ecosystems is often overlooked and disregarded. Thereby, their food security is jeopardized and their cultural practices are disrupted. Some communities are pushed into unsustainable practices when faced with increasing pressure and competition over their territories.<sup>12</sup>

*“We are the only Indigenous fishers of Lake Turkana. Everything, from birth to marriage to death is related to the waters. There is a special relationship between our community and the waters we live by. Since colonial time, our land has been categorised as trust land, meaning the government holds the land in trust for the communities”, Christiana, Louwa, Elmolo people, Kenya, International Planning Committee on Food Sovereignty, 2023 Expert Meeting.*

In particular, the importance of customary fishing rights for the **right to enjoy one's culture** has been emphasised by national courts and jurisprudence, as well as international and regional human rights monitoring bodies. This core human right is enshrined in the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; UNDRIP; ILO Convention No. 169, among others.

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 their

right to the lands, territories and resources. The Committee has 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>13</sup> Likewise, the UN Human Rights Committee has explained that traditional activities such as fishing must be protected as a manifestation of culture<sup>14</sup>.

In light of the above, restrictions on Indigenous Peoples’ access to and use of the aquatic territories and resources and the coastal and riverine lands that they have traditionally occupied or used would, as a general rule, not be permitted under international human rights law, unless the impact of such restrictions on their culture and ways of life is limited and the people concerned had the opportunity to meaningfully participate, as rights-holders and through their representative institutions, in the decision-making process related to these measures and will continue to benefit from their traditional economy. Any restriction should be reasonable and have an objective justification<sup>15</sup>.

This link between culture and fisheries is strongly reflected in a number of cases brought forward by Indigenous Peoples to national courts and international human rights monitoring mechanisms.

### **NEW ZEALAND, MAORI**

The UN Human Rights Committee (HRC) highlighted that for New Zealand to comply with article 27 [on the right to enjoy one’s culture] of the International Covenant on Civil and Political Rights, measures affecting the economic activities of the Māori 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.<sup>16</sup>

### **FINLAND, SÁMI**

Fishing is generally recognised as a constitutional Sámi right in Finland. However, after the Finnish state implemented fishing licenses to protect vulnerable fish stocks of salmon and trout, without distinguishing between indigenous and non-indigenous peoples, Sámi people had to compete with tourists for these permits. In this context, several Sámi persons were prosecuted for exercising their customary fishing rights. In 2022, the Supreme Court of Finland ruled in two cases related to 1) Sámi fishing outside the seasonally accepted period and 2) fishing without a legally required permit.<sup>17</sup>

In the first case, the relevant Decree regulating fishing rights, did not specify exemptions for the Sámi people. The court found that the right to fishing was not absolute, as a complete depletion of the species would prevent fishing in the future. Hence, Sámi fishing rights could, in principle, be restricted, provided that the *“restrictions were proportionate to the benefit sought.”* However, the court found that the *“extension of the fishing restriction to Sámi fishing with stationary nets in a season especially important to them was not proportionate in view of the state of the salmon*

*stock at that time.*" The Supreme Court also found that the fishing restrictions placed on persons who do not have fishing rights that are protected under the Constitution and article 27 of the ICCPR (i.e. non-indigenous fishers) should be increased before limiting the rights of the Sámi.

In the other case, the Supreme Court had to determine whether fishing without a permit constituted an offense when the perpetrator was Sámi and had a right to fish protected under the Constitution of Finland and international human rights treaties. The Court determined that the pursuit of traditional fishing is a form of Sámi cultural heritage. It further determined that the provisions infringed the Sámi rights because the number of fishing permits available was limited, and the local Sámi people, despite their constitutionally protected right to fish, were not given preference when the permits were awarded.

## GOVERNANCE OF TENURE

FAO reports on some progress in the implementation of the SSF Guidelines at various levels, including through the development of regional and national actions plans. *"However, Indigenous Peoples' participation and voices are still lagging behind"*, Nicole Franz, FAO, 2023 Expert Meeting.

Likewise, advances in recognition of Indigenous Peoples' rights in some countries, are not sufficiently translated into changes in the fisheries sector.

Fisheries governance can provide for centralized management (entirely state-controlled) as well as various degrees of co-management, including full devolution. Indigenous Peoples' rights could potentially be considered in co-management arrangements. However, it is only 20% of SSF catch that is governed by co-management arrangements, and many such arrangements remain non-implemented.

Numerous states fail to uphold Indigenous Peoples' rights to aquatic territories and resources, as fisheries authorities seem to assume that, if not reflected in national fisheries legislation or administrative provisions, these rights do not exist. Therefore, the current system of commercial fishing licences and quotas often implies the dispossession of Indigenous communities who, for instance, face restrictions to obtain fishing permits and prohibition to use nets or modern equipment.

A forthcoming report by a group of researchers highlights the importance of the language used in National Constitutions, as these are the fundamental principles that govern a country, and they require substantial political, social, and bureaucratic effort to change. The researchers found six ways in which National Constitutions address marine tenure, customary rights, and governments' rights to marine areas and resources. This gives an indication of the variety of challenges Indigenous Peoples will face when advocating for recognition of their rights in Constitutions and, subsequently, in laws.<sup>18</sup>



A recent report by the FAO, Duke University and World Fish concludes that “*State policies have often failed to protect indigenous fishers' tenure rights, who have as a result experienced loss of rights to access, harvest and manage resources, thus threatening the survival of their culture and way of life. Attempts to correct colonial legacies have prompted some states to take measures distinguishing indigenous fishers from non-indigenous small-scale fisheries, and to legally recognize indigenous rights to land and water. Although six countries [...] reported fisheries laws that acknowledge distinct rights for indigenous fishers, these laws are rarely implemented; yet their existence creates leverage for indigenous fishers*”<sup>19</sup>

The failure to uphold Indigenous Peoples' customary fishing rights is a violation of their fundamental right to practice their traditional occupation as fishers, as enshrined in UNDRIP, ILO Convention Nos. 111 and 169 and numerous other human rights instruments.<sup>20</sup> Moreover, this leads to further violations of their rights to self-determination, culture, identity, food, traditional knowledge and to lands, territories and resources, among others.

Land and territorial rights in coastal, riverine and waterfront areas are equally important for Indigenous fishing communities, as these areas are used to access fishing grounds, store boats, nets and other equipment, undertake post-harvest activities and establish housing. Additionally, in many cases, fisheries are combined with other occupations, including cultivation and shifting cultivation, livestock-raising or hunting and gathering, which require access to land and natural resources<sup>21</sup>.

“If Indigenous Peoples were given the opportunity to fully enjoy their rights enshrined in international law and spelled out in the UN Declaration on the Rights of Indigenous Peoples, in particular their right to lands, territories and natural resources, and their right to self-determination over these lands, we would not need to be gathered here today discussing the survival crisis of their traditional, artisanal or other indigenous fishing practices. As long as Indigenous Peoples are prevented from managing their own resources, with their own system of fisheries governance, they will continue to suffer the effects of racism and systemic discrimination when they seek to engage in national government’s fisheries policies, and continue to disproportionately suffer from the effects of climate change on their fishing activities”, Francisco Cali Tzay, UN Special Rapporteur on the Rights of Indigenous Peoples, 2023 Expert Meeting.

The situation faced by Indigenous fishers across the globe indicates an urgent need for a comprehensive and coherent approach and concerted efforts to ensuring Indigenous Peoples’ rights in the context of fisheries, based on the UNDRIP and the ILO human rights instruments that underpin it. Importantly, Indigenous Peoples’ rights to be consulted, participate in decision-making and give or withhold their Free, Prior and Informed Consent (FPIC) must be fully realized and fulfilled in such processes.

*“Often we are not allowed to participate directly and freely in processes that affect us. Our participation too often depends on the generosity of states. However, the people who make the rules are not fishers. How can they make decisions on behalf of Indigenous Peoples? Every move we have made has come through struggle. There is resilience among Indigenous Peoples to overcome colonial bias”, Ken Paul, Wolastoqey Nation, 2023 Expert Meeting.*

The FAO Committee on Fisheries (COFI) is currently considering the proposal to establish a Sub-Committee on Fisheries Management. Once approved, this could be an important space to discuss Indigenous Peoples’ rights to fisheries with governments and observers<sup>22</sup>.

In Canada, the Department of Fisheries and Oceans has an Integrated Fisheries Management Planning process where First Nation rights-holders sit at a table with License Holders to determine an allowable commercially catch for every species of fish. This brings rights-holders to the same level of a privileged license holder<sup>23</sup>.

The Arctic Council provides an interesting model for Indigenous Peoples’ participation, which could be a structure for inspiration and replication in other contexts,<sup>24</sup> Beyond the eight member states, the Council has six organizations representing Arctic Indigenous Peoples with the status as “Permanent Participants”. This category was created to provide a means for active participation of the Arctic Indigenous Peoples within the Council. The Permanent Participants have full consultation rights in connection with the Council’s negotiations and decisions that allow them to make valuable contributions to the Council’s activities in all areas. The Inuit Circumpolar Conference (ICC) has defined eight Protocols, which gives the directives that are needed to move towards equitable and ethical engagement of Inuit and our Indigenous Knowledge.

These are:

- 'Nothing About Us Without Us' – Always Engage with Inuit
- Recognize Indigenous Knowledge in its Own Right
- Practice Good Governance
- Communication with Intent
- Exercising Accountability - Building Trust
- Building Meaningful Partnerships
- Information, Data Sharing, Ownership and Permissions
- Equitably Fund Inuit Representation and Knowledge<sup>25</sup>

## IMPACTS OF INDUSTRIAL FISHING AND AQUACULTURE

Most Indigenous Peoples are involved in small-scale fisheries (SSF). For example, FAO estimates that over 30 million coastal Indigenous Peoples live in the Arctic and the South Pacific.<sup>26</sup> As small-scale artisanal fishers, they are competing with industrial fishers in an unequal fight over scarce resources. Habitat degradation, overfishing and illegal, unreported, and unregulated fishing (IUU) are other core challenges related to industrial fisheries that compromise the very basis of the ecosystems on which Indigenous Peoples' fisheries depend.<sup>27</sup>

There is no systematic or comprehensive information available about the impacts of industrial fishing and aquaculture on Indigenous Peoples' rights. However, some information about Indigenous Peoples has been extrapolated from general studies of small-scale fishers, and it can be assumed that the general impacts of industrial fisheries and aquaculture on SSF are also impacting them.

## INDIGENOUS PEOPLES ARE MAINLY SMALL-SCALE FISHERS

Most legal and policy frameworks<sup>28</sup> distinguish between industrial and small-scale (artisanal) fisheries. **Industrial fisheries** are large-scale commercial operations that use mechanized boats, trawlers or purse seines. The vessels are often equipped with advanced technology such as sonar and satellite tracking systems. Industrial fisheries typically target high-value species and are owned and managed by large corporations or governments.

In contrast, **small-scale fisheries** are typically operated by individuals or small communities who use traditional or low-tech fishing methods, such as handlines, traps or small boats.<sup>29</sup> These fisheries often target a variety of species and have a lower impact on the environment. SSF produce 40% of the global fisheries but account for 90% of the people working in capture fisheries value chains and provide employment and livelihoods to millions of people.<sup>30</sup> Fish caught by small-scale fisheries are often sold locally and at an affordable price and provide an irreplaceable source of highly nutritious food and is critical in maintaining food security and good health. Additionally, large numbers of people engage in fishing as a seasonal or part-time activity and in difficult periods, such as during droughts and agriculture failure. For these people, access to marine fisheries plays an important role as a 'labour buffer'<sup>31</sup>.



*“Most indigenous fisheries are small-scale and artisanal, but not all small-scale fisheries are indigenous, We need to distinguish Indigenous Peoples’ fisheries, and be clear about the set of rights that are particularly applicable to Indigenous Peoples”, Jadder Lewis, Land is Life, 2023 Expert Meeting.*

## Overfishing

With regard to **overfishing**, FAO notes a continued reduction of the global fishing fleet size since 2015. However, reductions in fleet size alone do not necessarily guarantee more sustainable outcomes since changes in fishing efficiency can offset the sustainability gains of fleet reductions. Therefore, FAO concludes that more needs to be done to minimize overcapacity and ensure sustainability in fishing operations<sup>32</sup>.

*“Artisanal fisheries in Indigenous communities in the Central American region is open, practiced all year round, and everybody participates. However, overfishing, IUU fishing and the introduction of new species and technologies put our food security at risk. In Guna Yala, industrial fishing vessels come and fish illegally, close to our islands. Others have introduced tilapia farming, and the tilapia escape into our rivers. The ecosystems deteriorate and we are losing biodiversity. We want Guna Yala to be an area for sustainable management. Therefore, we are going to delimit our marine territory, to avoid that the industrial fishing vessels empty our sea”, Arcadio Castillo, Alianza de Pescadores Artesanales Indígenas de Centroamérica, 2023 Expert Meeting.*

## YUKON-KUSKOKWIM REGION, ALASKA

*“Factory trawlers scrape the ocean floor. They take everything, take millions of pounds in bycatch, and kill the Pacific Ocean. Indigenous tribes in Alaska are suing over this”, Chief Gary Harrison, Nay’dini’aa Na’ Kayax’ and Chairman of Chickaloon Village Traditional Council, 2023 Expert Meeting.*

The Association of Village Council Presidents (AVCP) and Tanana Chiefs Conference (TCC), on behalf of nearly a hundred Tribes and communities have filed a lawsuit against the National Marine Fisheries Service (NMFS), seeking to re-examine groundfish catch limits for the Bering Sea and Aleutian Islands.

The lawsuit alleges that when NMFS recently adopted groundfish catch limits for 2023-2024, the agency unlawfully relied on outdated environmental studies (from more than a decade ago) and failed to consider monumental ecosystem-wide changes that have occurred over the last two decades. Alaska is facing a historic salmon crisis and subsistence fishing in the Yukon and Kuskokwim regions of the state has been severely restricted for over a decade while the pollock trawl fishery continues to catch thousands of Chinook and chum salmon as bycatch each year. Meanwhile, radical ecosystem changes have negatively affected conditions for Chinook and chum salmon rearing in the ocean. The federal government’s current fisheries management decisions prioritize maximizing groundfish catch over protecting the subsistence rights of Alaska Native peoples who are deeply impacted by those decisions<sup>33</sup>.

## ITELMEN, RUSSIA

In a case from Russia, the indigenous Itelmen claim that their right to fish has been undermined by commercial fishing companies, and unfavourable legislation that allows for fishing quotas that undermine their right to fish.<sup>34</sup>

### Illegal, unreported and unregulated fishing

According to FAO, **illegal, unreported and unregulated fishing** (IUU) remains one of the greatest threats to marine ecosystems, as it undermines efforts to sustainably manage fisheries and conserve biodiversity. IUU fishing takes advantage of corrupt administrations and exploits weak management regimes. IUU is found in all types and dimensions of fisheries and occurs both on the high seas and within national jurisdiction. It concerns all aspects and stages of capture and utilization of fish and is sometimes associated with organized crime.<sup>35</sup>

A study of the impacts of IUU fishing and overfishing by industrial vessels on the socio-economic situation of small-scale fishing communities in Ghana revealed declining incomes and living conditions for small-scale fishers and fish workers; high levels of employment and income insecurity; lack of access to social security, adequate sanitation and clean water; food insecurity, and; poor school completion rates, among others<sup>36</sup>.

Annual IUU landings are estimated at 26 million tons globally, equivalent to one-in-five wild-caught fish, with a net annual cost of between \$10 and \$23 billion<sup>37</sup>. Given the scale of these figures, a broad range of IUU fishing countermeasures have been put in place over the past two decades. These include the FAO International Plan of Action, the Port State Measures aimed at regulating landings and transshipment of fish from foreign-flagged vessels, a range of monitoring, control and surveillance (MCS) measures established by regional fisheries management organisations (RFMOs), as well as international trade-based measure, such as cargo documentation, voluntary vessel registries, country report cards and private consumer-directed product labelling schemes<sup>38</sup>.

While such countermeasures are crucial for ending IUU fishing by industrial fleets, the consequences for small-scale fisheries are often overlooked, as SSF do not commonly fall under reporting regimes or government regulatory frameworks aimed at industrial and other large-scale fisheries.

Song and Scholtens argue that *“the conflation of “illegal,” “unreported” and “unregulated” into “IUU” erases the distinction between small-scale and industrial fleets, and also inadequately discriminates between the distinct illegal, unregulated and/or unreported activities”*. For example, SSF governed through customary rules may be considered “illegal”, thereby disregarding the diversity, legitimacy and sustainability of SSF practices and their governing systems<sup>39</sup>. Moreover, as IUU fishing is increasingly approached as “organized crime,” there is a risk of inappropriately targeting SSF at times violently, resulting in growing criminalization of small-scale fishers<sup>40</sup>. The tendency of criminalisation of Indigenous small-scale fishers is evidenced in the last section of this publication.

## TAGAERI AND TAROMENANE, ECUADOR

In 2011, the Committee on the Elimination of Racial Discrimination (CERD) expressed concerns by the lack of appropriate measures to protect the Indigenous Peoples living in voluntary isolation or initial contact in the Ecuadorian Amazon forest. The Committee is concerned by the particular vulnerability of the Tagaeri and Taromenane peoples owing to logging, fishing and illegal hunting in their territories, which jeopardizes their health and their physical and cultural survival<sup>41</sup>

### Industrial aquaculture

**Aquaculture** (aquatic animal production) has grown significantly over the last decades (from 10.9 million tons in 1990 to 82.1 million tons in 2020) and is forecast to grow another 14 percent by 2030. As pointed out by FAO, it is vital that *“this growth goes hand in hand with safeguarding ecosystems, reducing pollution, protecting biodiversity and ensuring social equity”*<sup>42</sup>. There is no doubt that, in many parts of the world, the expansion of industrial aquaculture has had a profound and adverse impact on Indigenous Peoples’ fisheries, as illustrated by the following cases:

## KWAKWAKA’WAKW, CANADA

In British Columbia, indigenous fishers have seen their fishing stocks depleted as a result of large-scale corporate salmon aquaculture. The Kwakwaka’wakw people, for example, are protesting against commercial salmon farms, which are infecting wild salmon with Piscine orthoreovirus (PRV) and sea lice. populations. The Kwakwaka’wakw people depend on salmon for their livelihood.<sup>43</sup>

## CHILE, MAPUCHES HUILICHE, KAWÉSQAR AND YAGÁN

In May 2016, the death of thousands of tons of salmon, and the consequent dumping of some of these into the ocean, generated a so-called “red tide” in Chile. The proliferation of red tide led to a preventive closure of the coastline and the declaration of a health alert over the consumption of shellfish. This ignited a mobilization amongst the Mapuche Huilliche who were not able to carry out their traditional subsistence activities because of the crisis. The Huilliche attribute a healing and purification power to the sea. Therefore, the pollution of the sea also affected their spiritual beliefs and customs. In 2021, a study undertaken by the Chilean and Danish Institutes for Human Rights revealed that salmon aquaculture in Chile contributes to industrial waste on beaches, waters and the seabed; use of chemicals and antibiotics that are not safe for humans nor for 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. All of these affect the well-being and hinders the cultural practices of coastal Indigenous Peoples. By the end of 2021, representatives of Mapuches Huilliche, Kawésqar and Yagán Indigenous Peoples, summoned the Chilean State to the Inter-American Court of Human Rights, arguing that the expansion of the salmon farming industry has exerted pressure over the ecosystems and indigenous territories.<sup>44</sup>

## CANADA – FIRST NATION WILD SALMON ALLIANCE

According to Robert Chamberlin, chairperson of the First Nation Wild Salmon Alliance (FNWSA), fish farming has serious detrimental impact on the health and abundance of wild Pacific salmon.<sup>45</sup> For over a decade, the FNWSA appealed to Norwegian salmon farming companies to leave Indigenous territories, and representatives travelled to Norway to engage with the companies.

In 2020, the Canadian government decided to phase out open salmon farming around Discovery Islands in British Columbia. Officially, 102 of 203 Indigenous Tribes in the province actively supported the phase-out. In 2021, three Norwegian aquaculture companies launched a lawsuit against the Canadian government, to stop the phasing out of salmon farming. The court upheld the Norwegian companies' claim that the government's decision to phase out the open facilities was unreasonable. Nonetheless, in February 2023, the Canadian government announced a decision not to renew licences of 15 salmon aquaculture sites in the Discovery Islands. The Government recognised that the Pacific salmon have significant cultural, social, and ecological importance to First Nations and British Columbians, and are in serious, long-time decline, with many stocks on the verge of collapse.<sup>46</sup>

FNWSA members view the Discovery Islands decision as a means to protect dwindling wild salmon stocks. However, moving forward from this decision, the Federal Government began a Fish Farm Transition Planning Process, which contains provisions that could allow for a "dressed up" version of the fish farm industry, which would 'progressively minimize' fish farm/wild salmon interaction. According to Robert Chamberlin, this is an insufficient goal as the Cohen Commission report on Fraser River Sockeye<sup>47</sup> stated there is a real risk of irreversible harm from Fish Farm disease and Pathogens (Robert Chamberlin, chairperson of the First Nation Wild Salmon Alliance, 2023 Expert Meeting).

## ACCESS TO MARKETS

Sustainable development in Indigenous small-scale fisheries involves not only securing access to marine resources, but also enhancing their access to markets. Market access secures the livelihood of fishers, processors and mongers by generating income, while also serving as a mechanism of distribution of cheap animal protein within the community and in adjacent local and regional areas. Market access for Indigenous fishers is therefore essential in securing the right to an adequate standard of living and establishing the economic basis for self-determined development, and also contributes to the food security of the population as a whole.<sup>48</sup>

Securing access to markets for small-scale fishers and decent work in fish processing and markets also has gender implications. Within fisheries' value chains, many women are employed in markets and processing. Therefore, improved access to markets can help fulfill women's rights to work; free choice of employment; just and favorable conditions of work; non-discrimination; and an adequate standard of living, including the rights to adequate food, clothing and housing, among others<sup>49</sup>. However, the

market dynamics do not favor small-scale fishers who often face severe challenges in accessing markets in fair conditions.

*“The fishing industry has instrumentalized artisanal fisheries to avoid risks in their investments. They wait in the harbours to buy the fish. Before, we fished from sailboats. Now, the market requires us to come quickly, in motorized boats. Before, we did not have to buy fuel. Now, 85% of the fishers have debts with the 5-6 big companies that market the products. The fishers end up fishing for the intermediaries, who charge 20-30 % interest rates. There are no formal credit opportunities for Indigenous fishers, and the need for funding is not understood”, Jadder Lewis, Land is Life, 2023 Expert Meeting.*

*“When we fish for lobster, the earning does not allow us to buy protection equipment for the fishers. There should be a standard pricing for lobster. Now, it only has a high value when it is sold outside the territory”, Arcadio Castillo, Alianza de Pescadores Artesanales Indígenas de Centroamérica. 2023 Expert Meeting.*

Some Indigenous Peoples are organising, to scale-up commercial fishing activities as the economic basis for self-determined development.

*“In Nunavut, the Nunavut Fisheries and Marine Training Consortium<sup>50</sup> provides training in all facets of the marine industry. This is important because we need Inuit with the recognized credentials to be able to participate fully and positive in this economy. Moreover, Inuit have been active and have bought their own vessels to participate in the commercial fishing industry. This is in accordance with the Nunavut Land Claims Agreement Article 15.3.7, which calls for Inuit to have access to fish quotas in adjacent waters as a means to achieve economic independence<sup>51</sup>”, Aluki Kotierk, Member of the UNPFII and President of Nunavut Tunngavik Incorporated, 2023 Expert Meeting.*

SDG target 14.b aims to *“provide access of small-scale artisanal fishers to marine resources and markets”*. It is directly supported by the SSF Guidelines, that underscore that *“States should facilitate access to local, national, regional and international markets and promote equitable and non-discriminatory trade for small-scale fisheries products”* (chapter 7.6). Moreover, the SSF Guidelines have a chapter dedicated to social development, empowerment and decent work (chapter 6) and a chapter on gender equality (chapter 8).

Progress under SDG target 14.b is measured as *“progress by countries in the degree of application of a legal/regulatory/policy/institutional framework which recognizes and protects access rights for small-scale fisheries”* (indicator 14.B.1). Indicator 14.b.1 is composed with three variables that aim to capture:

1. Appropriate legal, regulatory and policy frameworks.
2. Specific initiatives to support small-scale fishers in line with the implementation of the SSF Guidelines.
3. Participation by small-scale fishers' organisations in relevant processes<sup>52</sup>.

National monitoring data on indicator 14.b.1. is gathered from FAO member countries through three questions integrated within the Questionnaire on the Implementation of the Code of Conduct for Responsible Fisheries (CCRF), which is circulated by FAO every two years. FAO collates national monitoring data into a global dataset, which can

be downloaded from the UN indicators database.<sup>53</sup> The data is based on States' self-assessment. Countries are also encouraged to carry out participatory processes leading up to the reporting.

The 2020 dataset builds on 128 reports with 50 countries giving themselves a positive performance rating reporting high or very high implementation, and only 10 countries reporting low or very low implementation. In its 2021 publication, DIHR concludes that *"contrasting the positive self-assessment of States with the problematic situation in the small-scale fisheries sector in many countries, it appears that the data related to indicator 14.b.1 [...] alone is not enough to guide the needed change within the sector. It is therefore relevant to look at ways to complement and further strengthen the ongoing monitoring efforts"*.<sup>54</sup> Hence, enhancing Indigenous Peoples' participation in the processes to advance and monitor the progress under SDG target 14.b would be very important.

## FISHERIES SUBSIDIES

A forthcoming study by the Danish Institute for Human Rights<sup>55</sup>, examines the human rights impacts of fisheries subsidies. Such subsidies are economic policy tools, used by governments to benefit the fishing industry. During the era of industrialisation of fisheries in the 20<sup>th</sup> century, governments targeted fisheries subsidies to modernise and strengthen their domestic fishing sectors, respond to economic crises, and, in some cases, manage environmental issues. 85% of global fisheries subsidies are allocated to large industrial fleets. This means that small-scale fishers that are competing for the same aquatic resources find themselves disadvantaged and forced to spend increasing efforts, as catch size decrease. A 2018 study found that production in 54% of high-seas fishing grounds would have been unprofitable without subsidies. For Indigenous communities who depend on small-scale fisheries, the subsidised overfishing of decreasing marine resources can impact their rights to adequate food, health, adequate standard of living and culture, among others.

*"Fish subsidies constitute a double edge sword. We rely on subsidies to develop our own economies, but others also receive subsidies to fish in our distant waters, and they benefit much more than us. Indigenous Peoples need to be part of the debate on use of subsidies, for these to improve conditions locally. We need to educate our Indigenous Peoples on how to be more selective in the partners they deal with. Prepare them to get out of their comfort zones and learn ways to deal with foreigners and foreign systems that often are not consistent with the way we behave"*, Joeli Veitayaki, Indigenous Peoples Fishery Adviser, Lomani Gau Initiative, Fiji Islands.

Under SDG target 14.6, States have committed to *"prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing, and refrain from introducing new such subsidies"*. The target was to be met in 2020, but it was only in June 2022 that an Agreement on Fisheries Subsidies was finally secured under the auspices of the World Trade Organization (WTO). The Agreement includes a prohibition of subsidies contributing to IUU fishing, subsidies regarding overfished stocks, and subsidies for fishing on the unregulated high seas.<sup>56</sup> It also includes a dedicated trust fund to provide technical assistance and capacity building for developing countries to implement the agreement and establishes a new institutional body (the Committee on Fisheries

Subsidies). The Committee will review how the agreement is operationalized and will identify any future modifications. For the Agreement to enter into force, two-thirds of the WTO member states must ratify it, which has not happened yet.

The Agreement does not include specific references to Indigenous Peoples, but numerous cases show that unsustainable fisheries subsidies can directly affect their fishing rights:

### MAPUCHES, CHILE

Unsustainable fishing has, over time, depleted 70% of Chile's marine fish stock. The marine capture sector developed from the 1960s to 1980s, under heavy government subsidization. In 2002, the government introduced Individual Transferable Quota, which were disproportionately awarded to large-scale commercial fishers over small-scale and artisanal fishers. Preferential treatment of large-scale industrial fishing continued under the controversial 2012 'Longueira Law', which awarded 20-year renewable concessions for major commercial stocks to the industry's four largest industrial conglomerates. While the law expanded some environmental safeguards, opponents argued that its favourable treatment of commercial industry would not curb domestic overfishing but instead would continue to threaten artisanal livelihoods. The artisanal sector mounted a series of protests when it emerged that policymakers had received irregular payments from industry before enacting the Longueira Law. In 2013, petitioners to the Constitutional Court of Chile from the Lafkenche group of the Mapuche people argued that the Longueira Law concessions violated their rights to self-determination and contravened ILO Convention No. 169, but their claims were dismissed.<sup>57</sup>

In June 2022, the newly elect President of Chile, Gabriel Boric, announced that *"In terms of fisheries and aquaculture, we will fulfil our commitment to advance in a new law, which will be free of corruption and the result of an open and transparent debate. One that delivers clear, fair, and sustainable rules, both at an industrial and artisanal level"*.<sup>58</sup> Boric further said that: *"We will reformulate the policy to promote artisanal fishing and small-scale aquaculture, improving the instruments of support provided by the National Institute for the Sustainable Development of Artisanal Fishing and Small-Scale Aquaculture. Chile is in debt to the citizens of the sea. In accordance with the importance of this sector, it is time for the state to be able to develop policies which stimulate this activity preferably destined for human consumption, advancing food sovereignty and security"*.<sup>59</sup> Planned initiatives include building 17 new fishing coves, to the benefit of more than 10,000 artisanal fishers.

### PRESSURE FROM OTHER SECTORS

In many cases, the threats to Indigenous Peoples' customary fishing rights come from developments outside the fisheries and aquaculture sectors.

*“Our traditional land by Lake Turkana has been taken over by other communities, government projects and corporations in the name of development. Recently, community land was given to the Lake Turkana wind power project. This is Africa’s largest renewable energy project but does not even supply energy to the communities. In 2021, the High Court of Meru ruled that the land was acquired without due procedure, but two years after the ruling, nothing has changed”, Christiana, Louwa, Elmolo people, Kenya, International Planning Committee on Food Sovereignty, 2023 Expert Meeting.*

This pressure is increased with the expansion of “blue economy” and “green transition” initiatives related to mining, infrastructure development, tourism, renewable energy, among others.

The UN Special Rapporteur on the Rights of Indigenous Peoples has regularly raised concerns to governments regarding threats over Indigenous Peoples’ traditional fishing activities. These threats almost always were the results of business activities or business interests over Indigenous lands. For example, the potential contamination of fishes as a result of mining activities<sup>60</sup>, the issuing of tourism concessions in traditional fishing areas without free, prior and informed consent<sup>61</sup> and the deforestation and fragmentation of traditional Indigenous fishing grounds by business operations<sup>62</sup>. However, also the lack of implementation of judgements protecting Indigenous Peoples’ fishing grounds against commercial exploitation of surrounding lands constitutes a major concern.<sup>63</sup>

The assessment of progress in the realization of SDG 14 (life below water) at the 2022 High-Level Political Forum (HLPF) noted that four SDG 14 targets (14.2, 14.4, 14.5 and 14.6) matured in 2020. None of these targets have been reached globally, although local progress towards them has been made<sup>64</sup>. Moreover, it is noted that *“the implementation of SDG 14 relies on understanding and acting upon SDG interlinkages through mainstreaming ocean issues into the work of other sectors, particularly those sectors that may have the greatest impact on ocean sustainability or that may provide the best opportunities for mutual benefits”*<sup>65</sup>.

## **INDONESIA – SASAK**

An urban development and tourism project carried out in Indonesia’s Lombok Island led to the alleged forced evictions of the coastal Indigenous Sasak communities and expropriation of their land. Hundreds of families have been forced to leave their homes by government and armed security forces<sup>66</sup>



## UNITED STATES – YUOK

The Yurok tribe holds a close relationship with salmon, as a source of food as well as a source of spiritual connection. The tribe has for years argued that a dam installed in the River basin between California and Oregon affects the salmon fish stock. A representative from the tribe told ABC News that if the salmon disappear from the river, so do they as a people.

In 2022, after a decades-long push from the Yurok tribe whose livelihood and culture are intertwined with the Klamath river, the federal government of the United States approved the removal of four dams along the river. The removal will reinstate access to more than 300 miles of habitat for salmon and improve water quality.<sup>67</sup>

## THE RESPONSIBILITY OF BUSINESSES

Businesses are major contributors to the destruction of ecosystems and the loss of biodiversity of Indigenous territories, including through “ocean grabbing” and the overexploitation of marine resources. It is therefore crucial that they meet their responsibility to respect Indigenous Peoples’ rights, including their rights to lands, territories and resources; to conservation and protection of the environment; to engage freely in their traditional and other economic activities; to consultation, participation and consent; to fundamental labour rights, among others.

## MISKITO, HONDURAS

One of the most emblematic cases of human rights violations in the context of industrial fisheries concerns the Miskito people in Honduras. Artisanal lobster, snail and sea cucumber fishing was traditionally part of the Miskito livelihood, and the freediving capacity of the indigenous fishers was exploited in the rapid commercialisation of the industry. Lobster is now one of the main export products of Honduras, mainly destined for the market in the United States.

Already in 2002, the Honduran National Human Rights Commission (CONADEH) reported that over two decades, young Miskitos had been exposed to decompression accidents, causing paralysis and other neurological injuries, due to a lack of proper diving equipment. In 2004, the Pan-American Health Organisation estimated that 97 % of the 9,000 divers had some degree of decompression syndrome, and at least 4200 were totally or partially paralysed. The Association of Crippled Miskito Divers of Honduras reported that at least 400 divers had died of diseases related to their work. In 2021, the Inter-American Court ruled that Honduras in this case was responsible for violations of the rights to life, personal integrity, judicial guarantees, equal protection of the law, judicial protection, health, work and just and favourable conditions, social security, and equality and non-discrimination as well as the rights of the child. A forthcoming study undertaken by DIHR and CONADEH in 2021-22 confirms the continued human rights violations associated with the diving practices.<sup>68</sup>

A 2019 report of the UN Special Rapporteur on the Right to Food highlights that fishery workers in general suffer persistent human and labour rights violations, but that indigenous and coastal communities face a heightened risk of exploitation, despite relevant legal protections. These violations include precarious working conditions, the most severe forms of labour exploitation, and undermine the ability of workers to secure accessible, available and adequate food for themselves and for their families.<sup>69</sup>

The UN Guiding Principles on Business and Human Rights<sup>70</sup> clarify that businesses should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved. In particular, the responsibility to respect human rights requires that business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; and (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

In order to meet their responsibilities, business enterprises should have in place policies and processes appropriate to their size and circumstances, and should practice so-called human rights due diligence (HRDD),<sup>71</sup> which includes:

- A policy commitment to meet their responsibility to respect the human rights of indigenous peoples;
- A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on indigenous peoples' human rights;
- Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute; and
- Communicate transparently about how they are addressing their adverse impacts.

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. The RAI Principles 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>72</sup>

## **STRATEGIC LITIGATION TO ASSERT TENURE RIGHTS**

Numerous Indigenous Peoples have taken the struggle for recognition of customary tenure rights in the context of fisheries to national courts and to regional and international human rights mechanisms.

## RESPECT FOR CUSTOMARY RIGHTS.

In 2020, the Swedish Supreme Court ruled that the indigenous **Girjas community** retained the sole right to manage hunting and fishing rights in the disputed area, based on a possession since time immemorial. The verdict therefore establishes that the Girjas Sami District may grant small-game and fishing rights in the area without the consent of the State, and that the State is not permitted to grant such rights.<sup>73</sup>

In 2022, a federal appeals court ruled that members of the **Metlakatla Indian Community of Alaska** should not require state permits to fish in waters that they have traditionally relied on.<sup>74</sup>

The fishing rights of the **Sámi** in Norway have been addressed by numerous human rights monitoring mechanisms, including: the UN Special Rapporteur on the rights of Indigenous Peoples; the UN Committee on the Elimination of Racial Discrimination; the ILO Committee of Experts on the Application of Conventions and Recommendations; the UN Committee on Economic, Social and Cultural Rights; the UN Human Rights Committee, and; the National Human Rights Institution of Norway. The government holds the view that the rights of the Sámi, are sufficiently implemented through the existing legislative and administrative fishery system. In contrast, the various human rights monitoring mechanisms have in summary emphasized the need to specifically safeguard the Sámi's customary fishing rights and recommended to secure by law the Sámi rights to fisheries as a part of their culture and based on their customary fisheries as well as their right to participate in the management of the natural resources. Likewise, they have emphasized that processes are needed to secure that the Sámi rights to fisheries are not violated by industrial - or other new - use of coastal sea areas.<sup>75</sup>

## COLOMBIA, RAIZAL

In Colombia, the traditional fishing rights of the Raizal beyond the jurisdiction of the coastal State, were allegedly 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. The delimitation of the maritime borders was made without consultation and resulted in severe losses of livelihoods as some Raizal people's traditional fishing territories were considered to be part of the Nicaraguan sea. Colombia has filed an objection with the ICJ asking for the recognition of Raizal people's customary fishing rights.<sup>76</sup>

The above examples show the potential of engaging national judiciary systems and international, regional and national human rights monitoring mechanisms and institutions in the protection of Indigenous Peoples' rights.<sup>77</sup> The examples also pay testimony to Indigenous Peoples' resilience and encourage and inspire further efforts. However, engaging in litigation requires access to information, legal advice and resources.

This highlights the importance of building networks and alliances among fishing-dependent Indigenous communities, and provides support to enhance their access to information, training and capacity-building for engagement. Moreover, there is a need for support to the participatory generation of accurate data on fisheries-dependent Indigenous Peoples and communities, to provide a platform for evidence-based advocacy.

The international human rights mechanisms with a particular mandate pertaining to Indigenous Peoples' rights, can play a special role in highlighting the challenges related to fisheries. Positively, the UN Permanent Forum on Indigenous Issues (UNPFII) will discuss the recommended studies on the impacts of industrial fishing and human rights violations suffered by Indigenous Peoples in the fishing sector to be presented by FAO and ILO, respectively, at its 2024 Session.

Likewise, the 16<sup>th</sup> Session of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), which takes place in July 2023, will comprise a thematic panel discussion on the rights of Indigenous Peoples to engage freely in all their traditional and other economic activities, with a focus on fishing practices<sup>78</sup>.

*"EMRIP has received information from all regions but particularly from the Arctic, about the importance of Indigenous Peoples' traditional fisheries. We want to draw good practices and recommendation that we can put forward to the Human Rights Council and build the conversation about fisheries to be considered in the future work of EMRIP", Binota Moy Dhamai, Chairperson, EMRIP, 2023 Expert Meeting.*

# ENVIRONMENT AND CLIMATE

## THE RIGHT TO A HEALTHY ENVIRONMENT

Indigenous Peoples' right to a healthy environment is specifically enshrined in UNDRIP, 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, and to 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 activities (article 7). Moreover, the right to "*a clean, healthy and sustainable environment*" was recognized as a human right by the UN Human Rights Council in 2021, and by the UN General Assembly in 2022. Unfortunately, this recognition comes at a time, when the health of many aquatic ecosystems is already at an alarming stage.

The world's oceans are increasingly affected by acidification, eutrophication and plastic pollution, which are endangering the planet's largest ecosystem and the billions of livelihoods depending on them<sup>79</sup>. Climate change leads to rise in ocean temperatures, deoxygenation, sea level rise, decrease in polar ice coverage, shifts in the abundance and distribution of marine species, decrease in marine biodiversity, as well as coastal erosion and extreme weather events and related impacts on island and coastal communities<sup>80</sup>. Around 34% of the world's marine fish stocks are currently overfished, while another 60% are being fished at their maximum sustainable limit<sup>81</sup>.

The Political Declaration of the 2022 UN Oceans Conference highlights that marine pollution is increasing at an alarming rate, marine biodiversity continues to decrease and approximately half of all living coral has been lost, while alien invasive species pose a significant threat to marine ecosystems and resources. Action is not advancing at the speed or scale required<sup>82</sup>.

Likewise, monitored freshwater populations have declined by an average of 83% since 1970. Habitat loss and barriers to migration routes, including the construction of dams, account for around half the threats to these populations.<sup>83</sup>

The deteriorating health of the world's aquatic ecosystems has cumulative impacts on Indigenous Peoples' rights, as transboundary impacts of pollution, climate change and biodiversity loss are aggravated by the impacts of discriminatory laws and policies. Hence, Indigenous Peoples are facing the challenge of asserting their rights in the midst of an environmental and climate crisis that affects most of the world's fish stocks.

*"I come from a river valley. We live by one of the largest salmon rivers in the world. We can call ourselves salmon people. We fish with net and with rods. It is at the centre of our culture and food. With the current crisis of Atlantic salmon stocks, salmon fishing has been completely closed for 3 consecutive years. Imagine the impact on food security and the transmission of knowledge! In 2022, our claim for traditional fishing rights went to the Supreme Court, which concluded that even if Sami broke the law by fishing, they were not committing a crime. The Sami have the right to practice their culture<sup>84</sup>. However, we do not have a real outcome of the supreme court ruling yet, as fishing is currently completely closed. We need very considerate reopening of fisheries for those stocks that are relatively healthy, we need to improve conditions, protecting spawning grounds and fish predators. It is not an easy situation; we have to talk about our right in a very disturbing environmental situation", Áslat Holmberg, President, Saami Council, 2023 Expert Meeting.*

*"Now, there are barely any fish in the Yukon River; the one great river that goes from Canada into Alaska. This means the Indigenous Peoples have to compete with commercial and sports fishermen over ever-decreasing fish stocks. The sports fishermen have powerboats in the river that mess with the gravel where the fish spawn. Their commercial trawlers have millions of pounds of by-catch, which they just throw away", Chief Gary Harrison, Nay'dini'aa Na' Kayax' and Chairman of Chickaloon Village Traditional Council, 2023 Expert Meeting..*

The alarming increase in pollution of aquatic ecosystems is of particular concern for Indigenous Peoples who live from fishing and hunting and presents a huge dilemma in terms of sustaining traditional food systems.

*"As Inuit we are hunting and gathering societies, who depend on food from our territories. With the accumulation of Persistent Organic Pollutants (POPs) in fish and marine mammals, it is discussed whether it is safe for breastfeeding women to still eat our traditional food. We are reassuring Inuit women that it is still more nutritious than the food they eat. We need to bring pride to our traditional occupations, which are disregarded in the context of other professions", Aluki Kotierk, Member of the UNPFII and President of Nunavut Tunngavik Incorporated, 2023 Expert Meeting.*

The UN Special Rapporteur on Human Rights and the Environment highlights how the bioaccumulation of toxic substances in the food chain undermines the ability of Indigenous hunters and fishers to secure healthy food for their families and communities. He specifically mentions that mercury from illegal mining contaminates rivers and watersheds in Colombia, Peru and many other States.<sup>85</sup>

The Basel, Rotterdam and Stockholm conventions are multilateral environmental agreements, which share the common objective of protecting human health and the environment from hazardous chemicals and wastes<sup>86</sup>.

*"PFAS and other chemicals and pollutants are contaminating our waters. PFAS is known as "forever chemicals" because they don't break down in the environment or in our bodies. Likewise, mercury and pesticides stay in our bodies, and are passed on to our babies. This has very serious impacts, such as damage to the brains, lungs, skin and eyes. Victims may*

suffer language impairment. This is not only a threat to our health but also to our cultures. There is generally increased participation in international mechanisms regulating the Basel, Rotterdam and Stockholm conventions, but very limited participation of Indigenous Peoples. We need all hands on deck, to work towards real change”, Rochelle Diver, Indigenous Peoples Major Group and International Indian Treaty Council, 2023 Expert Meeting.

The rapidly increasing levels of plastic pollution represent another specific and serious global environmental threat. Under a business-as-usual scenario and in the absence of necessary interventions, the amount of plastic waste entering aquatic ecosystems could nearly triple from some 9-14 million tonnes per year in 2016 to a projected 23–37 million tons per year by 2040<sup>87</sup>.

It is therefore an important development that the United Nations Environment Assembly in 2022 adopted a resolution to develop an international legally binding instrument to reduce Plastic pollution, to be completed by 2024.

In the past, extractive industries have contributed significantly to the contamination and destruction of aquatic ecosystems. Recent developments indicate that industrial-scale mining for metals on the ocean floor of international waters governed by the International Seabed Authority may turn out to be the next frontier for exploitation of the Ocean’s resources – with prospects of extracting metals such as cobalt, nickel, copper and manganese, which are essential for the batteries used in electric vehicles.<sup>88</sup> Environmental organizations warn that deep-sea mining is predicted to cause a decline in fish stocks, with devastating consequences for Indigenous communities who rely on fisheries for their food security and livelihood, and for whom fishing-related rituals and practices are an important part of their cultural life.<sup>89</sup>

## **MAORI - AITEAROA**

In a protest at the International Seabed Authority meeting in March, 2023, Maori activist Quack Pirihi stated that: “*We can’t be Māori without the moana (ocean), we are not Māori without the moana!*”<sup>90</sup> However, a proposal to ban deep sea mining in New Zealand (Aotearoa), was turned down in Parliament in May 2023<sup>91</sup>.

## **NIGERIA – Ogoni**

Decades of oil exploitation in the Niger Delta caused environmental degradation and health problems among the Ogoni People, resulting from the contamination of the environment. The land and water sources were poisoned because of oil exploitation, thereby making farming and fishing (the two principal means of livelihood of the Ogoni) impossible.

In 2001, the African Commission on Human and Peoples’ Rights found that Nigeria had violated the rights to life, property, best attainable state of health, family life, free disposal of wealth and natural resources and a satisfactory environment, enshrined in the African Charter on Human and Peoples’ Rights. The Commission appealed to the government to ensure protection of the environment, health and livelihood

of the people of Ogoniland, including by stopping all attacks on Ogoni communities and leaders by security forces; permitting citizens and independent investigators free access to the territory; conducting an investigation into human rights violations and prosecuting officials of the security forces, and relevant agencies involved in human rights violations; ensuring adequate compensation to victims of the human rights violations, and undertaking a comprehensive clean-up of lands and rivers damaged by oil operations.

In 2011, the UN Environment Programme (UNEP) released a report, stating that pollution from over 50 years of oil operations had penetrated deeply and that the environmental restoration of Ogoniland could prove to be the world's most wide-ranging and long-term oil clean-up exercise, if contaminated drinking water, land, creeks and important ecosystems such as mangroves should be brought back to full, productive health. The report also set out urgent recommendations for clean-up. However, a 2020 investigation published by human rights and environmental NGOs concluded that the efforts had been too little - too weak, and had not resulted in effective clean up. The report recommended that the government of Nigeria drastically step up its ambition to implement in full the recommendations of UNEP.<sup>92</sup>

### Impact of conservation measures

The profound relationship that Indigenous Peoples have with the environment of their territories has allowed them to acquire and transmit over many generations an extremely accurate knowledge of aquatic ecosystems and to develop sustainable use and management practices of the resources of these ecosystems.

The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) stated that evidence was “*well established*” that tenure rights and equitable access to land, fisheries, and forests contribute to the sustainable use of wild species. Where tenure security had been improved, there was also “*evidence of improved food security and positive conservation outcomes for wild species.*”<sup>93</sup>

*“The Inuit rely on fish and marine mammals, we rely on the health of our ecosystem for nutrition. We are rights holders and we possess Indigenous knowledge. The Inuit Circumpolar Conference (ICC) defines Indigenous Knowledge as: ‘a systematic way of thinking applied to phenomena across biological, physical, cultural, and spiritual systems. It includes insights based on evidence and acquired through direct and long-term experiences and extensive and multigenerational observation, lessons, and skills. It has developed over millennia and is still developing in a living process, including knowledge acquired today and in the future, and it is passed on from generation to generation’. Governments must be held accountable, partner with Indigenous Peoples and include us in decision-making partners, based on our Traditional Knowledge, whenever they make decisions about quota, licenses etc. Herb Angik Nakimayak, ICC, 2023 Expert Meeting.*



Indigenous Peoples play a central role in the conservation and sustainable management of aquatic and coastal ecosystems as well as their restoration. Yet, their role, including the importance of their traditional knowledge and management practices, are often ignored or dismissed by decision-makers.

Moreover, Indigenous Peoples are also adversely impacted by conservation initiatives, which are often designed and implemented without their consultation and participation, with negative repercussions on the sustainability of their livelihoods and ways of life and, ultimately, on the health of the ecosystems on which they depend<sup>94</sup>.

*“Fish for us is not business or trade. It is our tradition, our life and lifestyle. We have nothing against protected areas, but we lose access to these areas, which poses a threat to our food security. We have lived in these areas for centuries, and we need to be involved in decision-making. Convention No. 169 has been ratified in our country, but we are looking for implementation. When you are limited in using your resources, you are losing your livelihood and culture. Without access to these resources, we don't have a future. Most of our young people are migrating. They don't know what is going on; they don't have access to information and are not heard. I am tired of seeing my people not being part of the discussion”, Felicito Nuñez, Mesa Regional de Pescadores Artesanales Centro America, 2023 Expert Meeting.*

## **THE UNITED STATES, MAKAH**

The Makah Reservation is located in Washington State. For thousands of years, the Makah have based their cultural identity on the grey whale, which is used as the basis of their diet as well as spiritual practices, reflected in their ceremonies, songs, dances, and baskets. Thus, whaling is essential to the cultural tradition of the Makah, and it is the only group of Native Americans that has a treaty with the United States government that allows them to do whaling. In the 1920s, due to industrial exploitation, the grey whale became an endangered species, so the Makah tribe voluntarily paused their whaling practices so that the population could recover. In 1994, the grey whale was delisted from the endangered species registry, and the Makah intended to resume their lost tradition. However, they were faced with a protracted administrative and legal battle waged by conservationists and animal rights activists, who called the practice ‘barbaric’ and generated a wave of negative attitude against the tribe.

In 1999, the Makah tribe reasserted its right to whaling after animal rights activists lost the legal battle, but in 2007, a tribe member was arrested and jailed given a federally unauthorized whaling. In 2019, the National Marine Fisheries Service published a proposed rule and hearing notice to issue a waiver under Marine Mammal Protection Act to develop regulations for the Makah tribe to hunt grey whales in a limited manner over a 10-year period. However, the proposal remains undecided in court.<sup>95</sup>

## Marine Protected Areas

As pointed out by the UN Special Rapporteur on Human Rights and the Environment, in many countries, the designation of national parks and other protected areas has led to Indigenous Peoples and local communities being displaced and denied access to traditional territories used for food, water, culture and livelihoods.<sup>96</sup> While the adverse impact of land-based protected areas on Indigenous Peoples' rights have gained attention in recent decades, there has been less focus on the effects of Marine Protected Areas (MPA).

The world's first Marine Protected Area (MPA) was proclaimed in 1935 and the concept gradually gained momentum. In 1985, approximately 430 MPAs had been proclaimed and a decade later nearly 1300. Today, over 13,000 designated MPAs cover an estimated 7.65 percent of the world's Ocean. To date, 52 countries and territories have protected at least 10 percent of their marine areas<sup>97</sup>.

Indigenous Peoples' contribution to conservation is increasingly acknowledged. 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, found that traditional management regimes, none of which involved permanent reef closure, were more effective at conserving reef fish.<sup>98</sup>

**There is recent examples of good practice, where MPAs are based on agreement between state and Indigenous Peoples' authorities.**

### CANADA, QIKIQTANI INUIT

The Tallurutiup Imanga National Marine Conservation Area Inuit Impact and Benefit Agreement is agreed upon by Qikiqtani Inuit and the Canadian government. The Agreement establishes a joint management board, and Inuit Advisory Board and provides for investments into infrastructure (such as small harbours and a training centre) as well as funding for building capacity<sup>99</sup>.

### CHILE, RAPA NUI

In Chile, the Rapa Nui Marine Park, Latin America's biggest Marine Protected Area, was established after a consultation process with the Rapa Nui. In 2017, the government announced that the park would be managed by a Council comprising six representatives of the Rapa Nui people and five representatives of the State.<sup>100</sup>

### CANADA

Canada achieved its goal of conserving 10% of its oceans in advance of 2020 and has committed to working with Indigenous Peoples to protect 25% of Canada's land and oceans by 2025 and at least 30 percent by 2030<sup>101</sup>.

However, there are also examples of MPAs established without the participation of Indigenous Peoples, with a negative impact on their rights.

### **PANAMA, NGÖBE**

The Bastimentos Island National Marine Park in Panama, was established in 1988 without prior consultation with the Ngöbe Indigenous People. With the establishment of the park, the Ngöbe faced restrictions on their traditional activities. Additionally, the park has had a negative effect on the marine resources of the area, as it has increased tourism, which implies an increase of demand for seafood for restaurants and hotels, and the development of touristic activities.<sup>102</sup>

### **SOUTH AFRICA, NIBELA**

The Nibela community has lived on the Nibela peninsula for hundreds of years, depending on fish from the lake for their food security. From about 1895, they were systematically removed to create the Isomangaliso Wetland Park. Thus, there has been a dispossession of access to land and natural resources related to their traditional livelihoods (fishing and forestry). The Nibela ancestral fishing grounds are now a marine protected area, and the law is enforced in this area with rangers that work for local conservation agencies (a very militarized sector in Africa). The Nibela have often been mistaken for poachers and on 16 September 2020, one person was shot and killed on site. One year later, the investigation pertaining to the death, commissioned by the Minister of Forestry, Fisheries and the Environment had not been made available to the family or the community.<sup>103</sup>

In some cases, however, the transboundary nature of factors such as climate change and pollution may undermine the effects of MPAs.

*“The Marine Protected Areas around Rapa Nui and the Salas and Gomez Islands, comprise 720'000 square kilometers, making it the largest MPA in Latin America. However, the area is not actually protected. The marine ecosystem is profoundly affected by human activities that generate microplastics, nuclear waste, IUU and climate change. The big ship factories empty the Pacific Ocean. The cumulative impact is devastating for the conservation of marine resources and for our subsistence and food security. There is a 97% decrease in fisheries. The ocean is an ancestral sanctuary that should be governed under our indigenous cosmivision, on the basis of our traditional knowledge and by our traditional authorities, under our overall right to self-determination. International collaboration in this area is needed, and we need resources to support Indigenous Peoples to protect the oceans”, Erity Teave-Hey, Rapa Nui Parliament, 2023 Expert Meeting.*

## THE GLOBAL BIODIVERSITY FRAMEWORK

The Global Biodiversity Framework (GBF) was adopted in December 2022 to reach the goals of the Convention on Biological Diversity. The GBF target that has attracted the most attention is the “30 x 30” target, which sets a global target for the conservation of 30% of terrestrial and aquatic ecosystems:

*“Ensure and enable that by 2030 at least 30 percent of terrestrial, inland water, and of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem functions and services, are effectively conserved and managed through ecologically representative, well-connected and equitably governed systems of protected areas and other effective area-based conservation measures, recognizing indigenous and traditional territories, where applicable, and integrated into wider landscapes, seascapes and the ocean, while ensuring that any sustainable use, where appropriate in such areas, is fully consistent with conservation outcomes, recognizing and respecting the rights of **indigenous peoples** and local communities including over their traditional territories”* (GBF, target 3, emphasis added).<sup>104</sup>

*“The International Indigenous Forum on Biodiversity was centrally involved in negotiations of the GBF, given the crucial role of Indigenous Peoples in biodiversity conservation and sustainable use. Studies show that around 40% of the best-preserved areas are within formally protected areas, whereas around 60 % are found on Indigenous Peoples’ territories. Hence, Indigenous Peoples have offered their partnership to protect biodiversity, on the basis of recognition of their rights to lands, territories and resources. However, the expansion of protected areas also raises serious concerns, as Indigenous Peoples have terrible experiences of evictions due to conservation measures. Hence, Indigenous Peoples’ rights must be protected, and their Free Prior and Informed Consent required, whenever the establishment of protected areas is being considered. Likewise, as established in the preamble of the GBF, Indigenous Peoples must be involved in all efforts under the GBF, including in the implementation and monitoring of progress. So far, there are 4 indicators regarding Indigenous Peoples proposed to the CBD, concerning security of tenure and traditional occupations, among other. We must try to ensure that these indicators are also relevant for monitoring tenure of aquatic territories and resources, as well as fisheries as a core traditional occupation for many Indigenous Peoples”, Jennipher Corpuz, Nia Tero, 2023 Expert Meeting.*

With the adoption of the Global Biodiversity Framework, the need to ensure the protection of Indigenous Peoples’ rights in the context of MPAs has become even more pressing. Positively, Indigenous Peoples’ rights are explicitly referenced in target 3. Another positive signal is that the role of Indigenous Peoples in the context of MPA was featured prominently in the Fifth International Marine Protected Areas Congress, celebrated in Canada in February 2023.

## FIFTH INTERNATIONAL MARINE PROTECTED AREAS CONGRESS (IMPAC5)

IMPAC5 was co-hosted by the Musqueam, Squamish and Tsleil-Waututh First Nations. The Congress specifically addressed Indigenous-led Ocean conservation and knowledge.<sup>105</sup>

At the Congress, Indigenous leaders highlighted violent colonial pasts and presents, underlining that the paths forward must center on Indigenous knowledge, worldviews, leadership, and self-determination, and be guided by reconciliation. One participant stressed that MPAs, for them, are a proxy for social justice and protecting communities, culture, and future generations. Many highlighted that Indigenous voices were brought to the MPA establishment tables too late, and that it is important for potential partners to: be prepared to rethink their frameworks and approaches; see their work, not as leaders, but as supporters; and align their priorities with those of First Nations. Speakers stressed that oral traditions must be acknowledged and respected, and their values must lead the work ahead. Participants also underlined the responsibility of potential partners in educating themselves on First Nation history and culture. Some pointed out that achieving political goals on a timeline, such as 30 by 30, should not be done at the expense of establishing trusting and meaningful relationships<sup>106</sup>.

The IMPAC5 Chairs' Statement affirms that "*Indigenous-led conservation is critical for successful conservation of the marine environment and is best supported through implementing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*". Moreover, it emphasizes that actions should be underpinned by "*partnership with Indigenous Peoples to enable Indigenous-led conservation and the establishment and management of MPAs and OECMs [other effective area-based conservation measures] in a manner consistent with principles of the UNDRIP, in particular Article 29(1)*".<sup>107</sup>

## THE HIGH SEAS TREATY

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

Under the UNCLOS, in March 2023, the **Agreement on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction**, also known as the **High Seas Treaty**, or the **BBNJ Treaty** was adopted<sup>108</sup>. The target for the protection of marine areas under the Global Biodiversity Framework discussed above should be seen in light of this important development.

## EXCLUSIVE ECONOMIC ZONES VERSUS HIGH SEAS

About 40% of the Earth's ocean is covered by Exclusive Economic Zones (EEZ), which are the particular domains of the nearest country for economic purposes. The remainder of the oceans and seabed are called the high seas or international water. Until recently, UNCLOS required that uses of these areas were to be regulated by Intergovernmental Agencies (IGOs) such as Regional Fisheries Management Organizations in FAO for fisheries, and International Maritime Organization for shipping. However, States vary widely in their implementation of IGO regulatory frameworks, and there was no body with authority to oversee conservation and sustainable use of biodiversity overall.

These areas are relevant to Indigenous Peoples, given the number of migratory and straddling species on which they rely and have sustainably managed for generations. At the same time, their traditional knowledge is also important for the management of the high seas, considering the interconnectedness of marine areas, including coastal seas. Moreover, since some species, such as salmon, migrate upstream through rivers, Indigenous communities living inland who rely on them, also have a role to play in the governance of the high seas. Yet, Indigenous Peoples have generally been underrepresented in the dialogue about the governance of the high seas.<sup>109</sup>

The High Seas Treaty applies to all areas beyond national jurisdiction. It will provide a legal framework for establishing MPAs in international waters to protect against the loss of wildlife. It also contains a procedure for managing returns from the genetic resources of the high seas. It includes the establishment of a Conference of the Parties (that will meet periodically and hold signatory states to account for the treaty's implementation). Before the treaty can come into force, it needs to be formally adopted at a later UN session and then ratified by at least sixty parties.

In its preamble, the High Seas Treaty recalls the UNDRIP and it contains several references to Indigenous Peoples, including, among others:

- The recognition that States' efforts should be guided, among others, by the use of the traditional knowledge of Indigenous Peoples;
- The obligation of States to ensure that traditional knowledge associated with marine genetic resources in areas beyond national jurisdiction that is held by Indigenous Peoples is only accessed or shared with the prior and informed consent or approval and involvement of the Indigenous Peoples concerned;
- The requirement that proposals concerning the establishment of area-based management tools, including marine protected areas, also indicate specific human activities in the area, including uses by Indigenous Peoples and local communities in adjacent coastal States, and that Indigenous Peoples be invited to submit views on the merits of the proposal and any other relevant information, including information based on their traditional knowledge<sup>110</sup>.

*“Before the adoption of the High Seas Treaty, there were already some authorities with responsibilities for managing commercial interests in the high seas, but also with some responsibility for conservation. These authorities include Regional Fisheries Management Organisations, the International Seabed Authority and the International Whaling*

Commission, among others. Under the High Seas Treaty, there will be a special agency directly responsible for conserving biodiversity. This is a profound change of governance, which could potentially have broad implications, but it is too early to know. The High Seas Treaty has references to Indigenous Peoples in all sections where you could expect it. However, Indigenous Peoples were not part of the discussion. There is a widespread misconception that Indigenous fisheries are limited to freshwater or coastal areas. This is a misconception because fish do not have passports, and do not respect national boundaries. What happens on the high seas, has implications for Indigenous Peoples. This also highlights the importance of adjacency,<sup>111</sup> what does that mean in the high seas? Who is adjacent to highly migratory fish stocks? How should this be interpreted for the good of all peoples and for nature? The conclusion is that the High Seas Treaty has implications for Indigenous Peoples, they have a lot to contribute, and they should claim to be part of the dialogue. The Parties to the Treaty must take Indigenous Peoples into account in decision-making”, Jake Rice, IUCN, 2023 Expert Meeting.

## CLIMATE CHANGE

The Ministerial Declaration of the 2022 High-Level Political Forum on sustainable development, states that world leaders “are alarmed by the global emergency facing the ocean caused by the adverse impacts of climate change, including slow-onset changes and more frequent and severe sea level events which are projected to escalate in the coming decades, with coral reefs projected to decline by 70 to 90 percent at 1.5 degrees Celsius, with larger losses (over 99 percent) at 2 degrees Celsius of global warming. Rising sea levels, coastal erosion and ocean warming and acidification are serious threats for many coastal human communities and ecosystems, and can impact food and water availability and quality, especially in developing countries, with negative impacts on sustainable development”.<sup>112</sup>

Climate change is adding a further layer of challenges to Indigenous Peoples' lives and livelihoods. Indigenous Peoples living in coastal areas face increasingly frequent hurricanes and cyclones as well as sea level rise and coral bleaching, which reduce the ability of ecosystems to provide communities with necessary food and non-food resources. In some small island States, particularly in the Pacific, entire territories of Indigenous Peoples are at risk of disappearance as a result of sea level rise. In the Arctic, ice melts and heat waves are disrupting the fishing activities of Indigenous communities. 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>113</sup>.

The 2023 IPCC Synthesis Report<sup>114</sup> underlines the seriousness and urgency of addressing the climate crisis, but also highlights that recognition of the inherent rights of Indigenous Peoples, is integral to successful adaptation and mitigation:

- Climate change has caused substantial damages, and increasingly irreversible losses, in terrestrial, freshwater, cryospheric, and coastal and open ocean ecosystems. Hundreds of local losses of species have been driven by increases in the magnitude of heat extremes with mass mortality events recorded on land and in the ocean. Impacts on some ecosystems are approaching irreversibility such as the impacts of hydrological changes resulting from the retreat of glaciers, or

the changes in some mountain and Arctic ecosystems driven by permafrost thaw (A.2.3)

- Ocean warming and ocean acidification have adversely affected food production from fisheries and shellfish aquaculture in some oceanic regions (see A.2.4)
- Climate change has caused widespread adverse impacts and related losses and damages to nature and people that are unequally distributed across systems, regions and sectors. Economic damages from climate change have been detected in climate-exposed sectors, such as fishery, among others (A.2.6).
- Maintaining the resilience of biodiversity and ecosystem services at a global scale depends on effective and equitable conservation of approximately 30% to 50% of Earth's land, freshwater and ocean areas, including currently near-natural ecosystems. Conservation, protection and restoration of terrestrial, freshwater, coastal and ocean ecosystems, together with targeted management to adapt to unavoidable impacts of climate change reduces the vulnerability of biodiversity and ecosystem services to climate change, reduces coastal erosion and flooding, and could increase carbon uptake and storage if global warming is limited. Rebuilding overexploited or depleted fisheries reduces negative climate change impacts on fisheries and supports food security, biodiversity, human health and well-being. Cooperation, and inclusive decision making, with Indigenous Peoples and local communities, as well as recognition of the inherent rights of Indigenous Peoples, is integral to successful adaptation and mitigation across forests and other ecosystems (C.3.6)

The Paris Agreement on Climate Change, in its preamble, stipulates that States, when taking action to address climate change, should 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)).<sup>115</sup>

Indigenous Peoples across the globe are actively engaged in efforts to mitigate and adapt to climate change, while struggling to ensure that their rights are not further undermined by climate change action.<sup>116</sup> This includes legal action to hold governments to account for their failure to protect Indigenous Peoples against the adverse impacts of climate change.

### **AUSTRALIA, TORRES STRAIT ISLANDERS**

In 2019, representatives from the indigenous Torres Strait Islanders resorted to the Human Rights Committee (HRC) under the claim that Australia had violated their rights under the International Covenant on Civil and Political Rights (ICCPR), by failing to take mitigation and adaptation measures to combat the effects of climate change. The islanders argued that changes in climate with heavy rainfalls and storms had degraded the land and had also reduced the amount of available food from traditional fishing. In 2022, the HRC found that Australia's failure to adequately protect Indigenous Torres Strait Islanders against the adverse impacts of climate change constituted a violation of their rights to enjoy their culture and be free from arbitrary interferences with



their private life, family, and home. As remedies, the Committee asked Australia to compensate the Indigenous Islanders for the harm suffered, engage in meaningful consultations with their communities to assess their needs, and take measures to continue to secure the communities' safe existence on their respective islands.<sup>117</sup>

## **NORWAY, SÁMI**

In 2022, the European Network of National Human Rights Institutions (ENNHRI) intervened in a climate case on Arctic oil exploration before the European Court of Human Rights. ENNHRI argued that Arctic Indigenous Peoples, including the Sámi people, are disproportionately impacted by the effects of climate change. This is due to their high level of dependence on climate-sensitive ecosystems for their health and wellbeing, food security, the transmission of cultural knowledge and traditional livelihoods, which for the Sami people include fishing and reindeer herding. ENNHRI concluded that a failure to assess the long-term disproportionate effects on vulnerable groups such as indigenous peoples of a decision which may ultimately lead to extraction of fossil fuels, could amount to indirect discrimination". Lasse Eriksen Bjoern, an activist from the indigenous Sámi people of northern Norway, said that "*the Sami culture is closely related to the use of nature, and fisheries are essential ... A threat to our oceans is a threat to our people.*"<sup>118</sup>

## CRIMINALISATION AND ATTACKS ON DEFENDERS OF INDIGENOUS PEOPLES' RIGHTS

It is widely recognized that Indigenous land and environmental defenders are among those most at risk for becoming victims of killings, kidnappings, enforced disappearances, arbitrary detention and torture. Global Witness reports that *“in 2021 the disproportionate number of attacks against Indigenous peoples continued once again, with over 40% of all fatal attacks targeting Indigenous people, despite them only making up 5% of the world’s population”*<sup>119</sup>. As pointed out by Indigenous Peoples Rights International (IPRI), this reflects a broader issue of criminalization and violations of Indigenous Peoples’ individual and collective rights with impunity. IPRI notes that this situation is prevalent in States, which do not legally recognize and protect the rights of Indigenous Peoples, and where structural racism and discrimination persist. These human rights violations worsen as more aggressive expropriation and exploitation of Indigenous Peoples’ lands and resources are done in the name of development. These violations happen with the imposition of mega-infrastructure projects, extractive industries, agri-business expansion, real estate development, commercial tourism, conservation and also for so-called climate solutions, such as large hydroelectric dams, renewable energy projects and biofuel plantations.<sup>120</sup>

*“Criminalization happens when we assert or exercise our customary rights, for example our customary fishing rights, and are criminalized by doing so. Customary fishing constitute an inherent right, linked to our rights to self-determination, to lands, territories and resources. We need to decolonize criminal law that criminalises inherent rights and put in place laws that protect our rights”,* Joan Carling, Executive Director, IPRI, 2023 Expert Meeting.

*“In the US, we have a treaty right to food. It is an inherent right that we never relinquished. We are highly criminalised when exercising our right to fish. If fishing outside the open fishing time, we live in danger for exercising our rights as enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR ) and the International Covenant on Civil and Political Rights (ICCPR), which stipulate that ‘in no case may a people be deprived of its own means of subsistence’ (ICESCR and ICCPR, common article 1.2.)”,* Rochelle Diver, International Indian Treaty Council, 2023 Expert Meeting.

*“It is very confusing not to be allowed to do, what you have always done. Seven out of ten children in Nunavut go to bed hungry. We have high rates of unemployment and poverty. Yet, the right to hunting and fishing is not recognised. One grandfather, Noah Piugattuk, had eaten bowhead whale, and made a comment to his son and son-in-law that he would want to eat bowhead whale again before he died. The hunters were jailed, but Inuit Circumpolar Conference (ICC) won the case, so the Inuit could again hunt bowhead whales<sup>121</sup>. We are told we need a license to fish commercially. In 2017, Inuit organisations strategically went out to fish 1000 kilos of Arctic char, to affirm our right to harvest food, although it was considered “illegal”. We see it as an act of resistance”,* Aluki Kotierk, Member of the UNPFII and President of Nunavut Tunngavik Incorporated, 2023 Expert Meeting<sup>122</sup>.

*“Canada has apologized for violating our rights, but an apology without change is just to make the perpetrator feel better. If we want to exercise our rights to fish and feed our people, we must use their crown-imposed license system to do so. They put us at the same level as someone who has the privilege of a license to fish, as opposed to an inherent right”,* Robert Chamberlin, Chairperson, First Nation Wild Salmon Alliance, 2023 Expert Meeting.

*“The Griqua community in South Africa are Indigenous fisherfolks, who experience conflict with the law when fishing for livelihood and undertaking land-based activities, such as collection of firewood. Criminalization cannot be separated from Indigenous Peoples’ struggle in South Africa. The basis for criminalization is that, except for a few communities, we do not have recognition of traditional territories. The fishing quota goes to commercial fisheries. However, the Griqua community was successful in negotiating a community biocultural protocol, in compliance with the Nagoya Protocol, which South Africa has ratified<sup>123</sup>. Through the community protocol, customary law was reflected in a legal document under the Nagoya Protocol, and the Griquas started to negotiate and redefine criminal law. They made a claim to the police to manage the criminal procedure act with the community protocol. It is not a perfect solution, but the Griquas were able to open up the interpretation of the law and decolonize it. One Griqua human rights defender was arrested, and we included the biocultural protocol as a defense in the case. We need to change and disrupt what lawmaking means, and make it bottom-up”,* Lesle Jansen, former Indigenous Member of the Working Group on Indigenous Populations of the African Commission on Human and Peoples Rights.

There has been limited systematic data collection on cases of killings, kidnappings, enforced disappearances, arbitrary detention, torture and criminalization of Indigenous defenders of rights in the context of aquatic ecosystems or related to the defense of customary fishing rights. However, a recent article on ocean defenders and human rights concludes that *“we do not know the true scale and geographic distribution of the repression, violence, and murders being experienced by ocean defenders due to a historical lack of attention to the marine and coastal environment in efforts to document the plight of environmental defenders”*. Harrassment, imprisonment and unlawful killings of Indigenous ocean defenders in Mexico is one of the cases documented in the article.

<sup>124</sup> There is evidence that such cases are prevalent in many regions of the world. Hence, this is an issue that would require more systematic examination as well as concerted efforts and urgent actions to address these intolerable human rights violations.

## **CANADA, MI'KMAQ**

In 1993, a Mi'kmaq fisherman was arrested for catching and selling eel captured with an illegal net and without a license. The case set of a six-year legal battle that escalated to the Supreme Court of Canada. Finally, the court affirmed the right of First Nations to earn a moderate livelihood from fishing and hunting. In 2020, a group of Mi'kmaq fishermen initiated lobster fishery based on this decision. Shortly after, non-indigenous fishermen began intimidating these communities by hauling their gear, taking traps and cutting ropes and buoys. Canada's Human Rights Commission condemned the violence against Mi'kmaq groups and stated that the State must uphold the rule of law through the implementation of Indigenous and Treaty rights, and in guaranteeing the

safety of the Mi'kmaq. In 2022, a Mi'kmaq fisherman from Nova Scotia was fishing for eel when officers with the Department of Fisheries and Oceans seized his catch. The fisherman is seeking permission from a provincial court judge to challenge the fishery offenses against him, based on his treaty rights to fish for food, social and ceremonial purposes and moderate livelihood fisheries.<sup>125</sup>

### **AUSTRALIA, WALBUJA**

The New South Wales Aboriginal Land Council (NSWALC) called on the New South Wales Government to support Aboriginal cultural fishing practices by ending the prosecutions of people exercising their cultural fishing rights. This request followed the apprehension of a 74-year-old Aboriginal fisher, who was chased into the sea by Fisheries Officers because of a small bag of abalone, which he had fished to feed his family. Another man from the Walbunja indigenous group faces a jail sentence or a five-year fishing ban after fishing abalone. The NSWALC councillor expressed concern over Aboriginal people being prosecuted for fishing, while the local government increased the quota of the abalone fishing industry.<sup>126</sup>

### **CHILE, MAPUCHE-WILLICHE**

In 2022, the Danish Institute for Human Rights, along with the Observatorio Ciudadano and other local organizations organized a workshop with Mapuche-Williche communities in Chile. The purpose of the workshop was to share the findings of a “Sector-Wide Human Rights Impact Assessment of the Salmon Industry” in Chile<sup>127</sup>. The assessment documents the severe impacts of the industry on labour rights, the environment and the rights of Indigenous Peoples.

The workshop was interrupted by approximately 50 representatives and workers from salmon farming companies, who impeded the continuation of the event. A representative of the Observatorio Ciudadano stated that *“As a human rights organization, we think this shows an intention to intimidate and constitutes a clear hindrance to our work as human rights defenders, whose protection against events such as these is addressed in the recently ratified Escazú Agreement”*.<sup>128</sup>

### **JAPAN, AINU**

In 2018, criminal charges were brought against an indigenous Ainu fisherman for harvesting salmon without prior permission. The criminal charges were ultimately suspended by the District Court in July 2020. The reason for suspending the charges is not known but it can be assumed that their filing in court would have led to considerable negative publicity for Hokkaido Prefecture and the Japanese state. That the indictment has been suspended rather than dropped, however, continues to cast a threat over further Ainu protests overfishing as they remain potentially “illegal” actions.<sup>129</sup>

## **HONDURAS, LENCA, MAYA, TOLUPÁN, GARIFUNA, NAHUA, PECH TAWAHKA AND MISKITO PEOPLES**

After a country visit to Honduras in 2018, the UN Special Rapporteur on Human Rights Defenders, Michel Forst, stated concern over the situation of Indigenous activists of the Lenca, Maya, Tolupán, Garifuna, Nahua, Pech Tawahka and Miskito peoples<sup>130</sup>. The Special Rapporteur specifically referred to El Tornillito, the second biggest hydropower project in Honduras. A company obtained an environmental permit to carry out the project in the Ulúa river, without prior consultation with the indigenous communities concerned, of which five could be flooded out of their settlements. Additionally, the communities opposed the dam as it would have an adverse impact on their livelihoods (farming, livestock and fisheries). In 2021, Juan Carlos Cerros Escalante, a Lenca indigenous person was shot dead. Cerros Escalantes led a local group called “Communities United” that was active in the opposition against the Tornillito hydropower project.<sup>131</sup>

# ANNEX: ENTRY POINTS FOR ADVANCING INDIGENOUS PEOPLES' RIGHTS IN THE CONTEXT OF FISHERIES

## ENTRY POINTS

### **Undertake participatory processes to generate data on:**

- Fisheries-dependent Indigenous Peoples and communities (scoping)
- Criminalization of indigenous fishers
- Violations of labour rights of Indigenous fishers and fish workers
- Indigenous Peoples' fisheries management systems and governance institutions
- The concept of replacement values, to reconsider indigenous peoples' fisheries

### **Engagement, including strategic litigation as appropriate, with the national judiciary system and with national, regional and international mechanisms established to further human rights and Indigenous Peoples' rights:**

- Support Indigenous Peoples' strategic litigation with the national judiciary system, regional and international human rights monitoring mechanisms
- Report violations of rights to National Human Rights Institutions and build collaboration for advocacy
- Contribute to the session of EMRIP, July 2023, which will include a panel discussion on traditional occupations with a focus on fisheries. This is an opportunity for panelists to convey key messages and provide input for EMRIP future work.
- Contribute to the 2024 thematic report on Fisheries being developed by the UN Special Rapporteur on the Right to Food, through submissions and engagement in consultations.
- Contribute to the Session of UNPFII 2024, where studies by FAO and by FAO/ILO have been recommended by the Forum.

### **Engagement with instruments, processes and bodies established to further sustainable fishing:**

- Engage with the 10<sup>th</sup> anniversary of the SSF Guidelines by organizing celebrations, testimonials, stock taking etc.
- Participate in the SSF Summit 2024 and subsequent SSF Summits, including providing inputs through the engagement strategy.<sup>132</sup>
- Engage with the FAO Committee on Fisheries (Sub-Committee on Fisheries Management)
  - Sign up as observers by sending a request to [FAO-COFI@fao.org](mailto:FAO-COFI@fao.org)
- Explore engagement with the High Seas Treaty (BBNJ).
- Request FAO to organize a follow-up to the Arctic seminar on Indigenous Peoples and fisheries

## ENTRY POINTS

### **Engagement with processes and frameworks established to combat climate change and protect biodiversity:**

- Engage in the implementation, development of indicators, and monitoring of the Global Biodiversity Framework (GBF), including through engagement with the International Indigenous Forum on Biodiversity (IIFB), which follows the COPs and meetings of the Subsidiary Body on Scientific, Technical and Technological Advice, the Working Group on article 8(j), among others<sup>133</sup>.
- Engage in the process of transforming the Working Group on article 8(j) into a subsidiary body of the CBD
- Engage with the Basel, Stockholm and Rotterdam Conventions
- Engage with the Convention on Mercury Working Group to amend the Code of Conduct on Pesticide Management.
- Explore the potential of developing bio-cultural community protocols in the context of the Nagoya Protocol.<sup>134</sup>
- Develop protocols on the ethical collection and use of Indigenous knowledge, to inform and guide related processes under the GBF and beyond.

### **Engagement with processes and mechanisms aimed at reaching the SDGs:**

- Engage in national policy and programming processes to reach the SDGs, with particular focus on those crucial for raising visibility of Indigenous Peoples' rights in the context of fisheries; SDG 2 (food security), 10 (reducing inequalities) and 14 (life below water), including target 14.b on the access of small-scale fishers to marine resources and markets.
- Engage in regional and global processes related to the implementation and review of the above-mentioned SDGs (SDG 14 will be up for global review at the High-Level Political Forum (HLPF) in 2025).<sup>135</sup>

### **Engagement with processes related to food security:**

- Explore engagement with the coalitions established under the UN Food System Summit on 1) Indigenous Peoples Food Systems and 2) on Aquatic and Blue Food
  - Present DIHR work at Aquatic/Blue Foods Coalition
- Ensure inclusion of fisheries in new FAO paper on Indigenous Peoples' collective rights.<sup>136</sup>
- Follow-up if engagement with Committee on World Food Security for Indigenous Peoples is opening up.

### **Provide support for training, capacity-building and networking among Indigenous Peoples**

- Provide training for Indigenous Peoples organisations, including on CLOS; Basel, Stockholm and Rotterdam Conventions, the High Seas Treaty, Regional Fisheries Management Organisations, among others.
- Support engagement, alliance-building and networking among Indigenous Peoples.

## ENDNOTES

- 1 See for example: [Key Messages on Indigenous Peoples' Rights in the context of Fisheries and Aquaculture](#)
- 2 See [recording of the UNPFII side-event](#)
- 3 Expert speakers included Victoria Tauli-Corpuz, Robert Chamberlin, Anne Nuorgam, Wilmien Wicomb, Ken Paul.
- 4 UNPFII, 21<sup>st</sup> Session, May 2022: [Final report](#)
- 5 Referred to here as “2023 Expert Meeting”.
- 6 See DIHR [publications on human rights and fisheries](#)
- 7 The complete compilation of cases can be found here: [Cases concerning Indigenous Peoples' rights and fisheries](#)
- 8 Adapted from FAO, Duke University & WorldFish, Rome, 2023: *Illuminating Hidden Harvests – The contributions of small-scale fisheries to sustainable development*.
- 9 The Doctrine of Discovery provided that, by law and divine intention, European Christian countries gained power and legal rights over indigenous non-Christian peoples immediately upon their “discovery” by Europeans. To benefit their own countries, various European monarchs and their legal systems developed this principle, which has become institutionalized in law and policy, at national and international levels. See: [UNPFII 2012 Backgrounder](#)
- 10 [VGGT Guidelines](#)
- 11 [SSF Guidelines](#)
- 12 See Danish Institute for Human Rights, 2021: [State obligations related to indigenous peoples' rights in the context of sustainable fisheries and aquaculture](#): page 4-5.
- 13 CESCR, 2009: [UN Doc. E/C.12/GC/21](#), para 36
- 14 HRC, General comment No. 23: [UN Doc. CCPR/C/21/Rev.1/Add.5](#)
- 15 Danish Institute for Human Rights, 2021: [The Rights of Indigenous Peoples in the Context of Fisheries and Aquaculture](#), p. 17
- 16 Danish Institute for Human Rights, 2021: [The Rights of Indigenous Peoples in the Context of Fisheries and Aquaculture](#), p. 15
- 17 <https://www.loc.gov/item/global-legal-monitor/2022-05-09/finland-supreme-court-rules-on-sami-indigenous-rights-to-fish/>
- 18 Philippa J Cohen, Brittany Tholan, Kama Dean-Fitz, Sisir Pradhan, Vivienne Solis Rivera, Hugh Govan, Sofia O'Connor, Victoria Molyneaux (2023, in press). *Marine and Coastal Tenure*. James Cook University, p 168.
- 19 FAO, Duke University & WorldFish. 2023. [Illuminating Hidden Harvests – The contributions of small-scale fisheries to sustainable development](#).p 177.
- 20 See DIHR 2023: [Using ILO International Labour Standards to Address Discrimination against Indigenous Peoples Working in Fisheries and Aquaculture](#)
- 21 See FAO 2021, [The White/Wiphala Paper on Indigenous Peoples' Foodsystems](#)
- 22 See website of the [Working Group on the Establishment of the Sub-Committee on Fisheries Management](#)
- 23 See [Integrated Fisheries Management Plans](#)
- 24 [Arctic Council](#)



- 25 See ICC, 2022: [Circumpolar Inuit Protocols for Equitable and Ethical Engagement](#).
- 26 <https://www.fao.org/voluntary-guidelines-small-scale-fisheries/guidelines/indigenous-peoples/en/>
- 27 FAO: [International Year of Artisanal Fisheries](#)
- 28 See for example: [Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries \(SSF Guidelines\)](#), [ILO Work in Fishing Convention \(No. 188\)](#)
- 29 There is no single agreed definition of SSF, but the category would include those using fishing vessels of less than 12 meters in length overall or using other non-motorized or low-powered vessels, and encompassing a wide range of fishing activities, including subsistence, artisanal and commercial fishing.
- 30 FAO, Duke University & WorldFish. 2023. Illuminating Hidden Harvests – The contributions of small-scale fisheries to sustainable development. Rome. <https://doi.org/10.4060/cc4576en>
- 31 Danish Institute for Human Rights, 2021: [Enhancing Accountability for Small-Scale Fishers, using human rights monitoring to guide effective implementation of SDG target 14 b](#)
- 32 [The State of the World Fisheries and Aquaculture 2022](#)
- 33 See: [Alaska Tribal Organizations sue Federal Government to Protect Subsistence Fishing as the Salmon Crisis Intensifies](#)
- 34 [Environmental Justice Atlas 2020](#)
- 35 FAO: [IUU fishing](#)
- 36 Environmental Justice Foundation: [A Human Rights Lens on the Impacts of Industrial Illegal Fishing and Overfishing on. The socio-economic rights of small-scale fishing communities in Ghana](#)
- 37 See Andrew M. Song and Joeri Scholtens: [Collateral damage? Small-scale fisheries in the global fight against IUU fishing](#), in *Fish and Fisheries*, Vol. 20, 2020, page 832.
- 38 Ibid
- 39 Ibid
- 40 Ibid
- 41 [CERD/C/ECU/CO/23-24](#): para 14.
- 42 FAO: [State of World Fisheries and Aquaculture 2022, Key Messages](#)
- 43 [Environmental Justice Atlas, 2018](#)
- 44 Danish and Chilean Institutes for Human Rights, 2021, p. 242. [The Salmon Industry and Human Rights in Chile](#)
- 45 <https://www.wildfirst.ca/salmon-farms-have-a-very-negative-impact-on-the-health-and-abundance-of-wild-pacific-salmon/>
- 46 See DIHR [Cases concerning Indigenous Peoples' rights and fisheries](#)
- 47 See [Cohen Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River](#)
- 48 See DIHR [Cases concerning Indigenous Peoples' rights and fisheries](#)
- 49 Ibid
- 50 See: [Nunavut Fisheries and Marine Training Consortium](#)
- 51 [Baffin Fisheries Coalition Purchases Vessel - Nunavut Tunngavik Inc.](#)
- 52 SDG Indicator meta-data: <https://unstats.un.org/sdgs/metadata/files/Metadata-14-0b-01.pdf>
- 53 <https://unstats.un.org/sdgs/?aspxerrorpath=/sdgs/indicators/database/>

- 54 Danish Institute for Human Rights, 2021: [Enhancing Accountability for Small-Scale Fishers, using human rights monitoring to guide effective implementation of SDG target 14 b](#), page: 20
- 55 [The Human Rights Impacts of Fisheries Subsidies: Analysis, Implications and Recommendations \(Working Draft\)](#)
- 56 [https://www.wto.org/english/news\\_e/news22\\_e/fish\\_29jul22\\_e.pdf](https://www.wto.org/english/news_e/news22_e/fish_29jul22_e.pdf)
- 57 [The Human Rights Impacts of Fisheries Subsidies: Analysis, Implications and Recommendations \(Working Draft\)](#)
- 58 See: SeafoodSource: [Chilean President Gabriel Boric planning reconstruction of country's fishing laws](#)
- 59 Ibid
- 60 See: [DNK 2/2021 \(19 April 2021\)](#)
- 61 See: [End-of-Mission Statement of the UNSR after his visit to Greenland, 2023](#)
- 62 See: [FIN 1/2015 \(15 December 2015\)](#)
- 63 : [MYS 3/2011 \(18 February 2011\)](#)
- 64 [HLPF 2022, Session on SDG 14 and interlinkages with other SDGs: Secretariat Background Note](#): page 1
- 65 Ibid, page 2.
- 66 Business and Human Rights Resource Center, 2022: [Indonesian AIB Mandalika project](#)
- 67 ABC News, 2022: [Largest dam removal in US history](#)
- 68 See CONADEH, Estudio de impacto sectorial de la industria de pesca por buceo en los derechos humanos de los buzos indígenas miskitus, desde un enfoque de empresas y derechos humanos, available [here](#). For an English summary, see DIHR [Cases concerning Indigenous Peoples' rights and fisheries](#)
- 69 See UN Doc. A/HRC/40/56.
- 70 [UN Guiding Principles on Business and Human Rights](#)
- 71 For more thorough guidance, please refer to Danish Institute for Human Rights, 2019: [Respecting the rights of indigenous peoples: A due diligence checklist for companies](#).
- 72 [RAI Principles](#)
- 73 IWGIA, 2020, p. 530-531: [IWGIA The Indigenous World, 2020](#)
- 74 Ktoo, 2022: [Court rules with Metlakatla in example challenging Alaska state fishing regulations](#)
- 75 See DIHR [Cases concerning Indigenous Peoples' rights and fisheries](#)
- 76 Danish Institute for Human Rights, 2021, p.13. The rights of indigenous peoples in the context of fisheries and aquaculture.
- 77 See also the cases regarding Maori and Sámi fishing rights on pages XXX, the cases regarding Yukon-Kuskokwim region, Alaska and Miskito divers on pages xxxx, cases about climate change litigations on pages xx, among others.
- 78 [EMRIP, 16th Session](#)
- 79 Progress towards the Sustainable Development Goals Report of the Secretary-General [E/2022/55](#): para 130.
- 80 [UN Oceans Conference 2022 Political Declaration](#): para 5
- 81 [Global Indicators under SDG target 14.4](#)
- 82 [UN Oceans Conference 2022 Political Declaration](#): para 130
- 83 [WWF Living Planet Report 2022](#): page 36.
- 84 See case on Sámi in Finland on page XXX

85 UN Special Rapporteur on Human Rights and the Environment [A/75/161](#) para. 53

86 See: <http://www.brsmeas.org/Home/tabid/813/language/en-US/Default.aspx>

87 <https://www.unep.org/about-un-environment/inc-plastic-pollution>

88 <https://www.nytimes.com/2023/03/19/us/politics/seabed-mining-metals-united-nations.html?smid=li-share>.

89 Environmental Justice Foundation, March 2023: *Towards the Abyss: How the rush to deep sea mining threatens people and our planet*, p.38.

90 Greenpeace, 2023: *We can't be Mori without the ocean' – Quack Pirihi, Pacific activist against deep sea mining*

91 RNZ, 10 May 2023: *Bid to ban deep sea mining defeated: 'Our community don't want it. The public doesn't want it*

92 See DIHR *Cases concerning Indigenous Peoples' rights and fisheries*

93 See IPBES IPBES, 2022: *Summary for Policymakers of the Thematic Assessment Report on the Sustainable Use of Wild Species of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services*: page 35.

94 Danish Institute for Human Rights, 2021: *State obligations related to indigenous peoples' rights in the context of sustainable fisheries and aquaculture*: page 16-17.

95 *Environmental Justice Atlas, 2021*

96 UN Document [A/75/161](#) para. 39

97 See: *Summary Report, 5th International Marine Protected Areas Congress (IMPAC5)*

98 See Timothy R. McClanahan, Michael J. Marnane, Joshua E. Cinner, and William E. Kien, 2006: *A Comparison of Marine Protected Areas and Alternative Approaches to Coral-Reef Management* in: *Current Biology* 16

99 See: *Tallurutiup Imanga National Marine Conservation Area Inuit Impact and Benefit Agreement*

100 Chile's Ministry of Environment, 2018: *Se establece en Rapa Nui el área marina protegida mas grande de America Latina*

101 <https://www.IMPAC5.ca/partners-and-organizers/host-governments/government-of-canada/>

102 See Danish Institute for Human Rights, 2021: *State obligations related to indigenous peoples' rights in the context of sustainable fisheries and aquaculture*

103 DIHR *Cases concerning Indigenous Peoples' rights and fisheries*

104 <https://www.cbd.int/doc/c/e6d3/cd1d/daf663719a03902a9b116c34/cop-15-l-25-en.pdf>

105 February 2023: *IMPAC5 Summary Report*: page 1

106 February 2023: *IMPAC5 Summary Report*: page 14

107 *IMPAC5 Chairs' Statement*

108 <https://www.un.org/bbnj/>

109 Danish Institute for Human Rights, 2021: *State obligations related to indigenous peoples' rights in the context of sustainable fisheries and aquaculture*: page 19.

110 <https://www.un.org/bbnj/>

111 In the context of BBNJ, the term “adjacency” is discussed as regard the rights and duties of coastal States to enforce conservation measures in adjacent high seas. As a minimum, the application of the concept implies that adjacent coastal States are consulted, informed, and their concerns heard in the design of MPAs and the conduct of Environmental Impact Assessments (see for example: *Brief, Office of the Pacific Ocean Commissioner* .

- 112 E/HLS/2022/1, para: 54
- 113 Danish Institute for Human Rights, 2021: State obligations related to indigenous peoples' rights in the context of sustainable fisheries and aquaculture: page 30
- 114 IPCC 2023 Synthesis Report AR6
- 115 [https://unfccc.int/sites/default/files/english\\_paris\\_agreement.pdf](https://unfccc.int/sites/default/files/english_paris_agreement.pdf)
- 116 <https://lcipp.unfccc.int>
- 117 OHCHR, 2022. Australia violated Torres Strait Islanders' rights to enjoy culture and family life
- 118 ENNHRI 2022, ENNHRI intervenes in "climate case"
- 119 See Global Witness: Decade of Defiance
- 120 See: Indigenous Peoples Rights International
- 121 See more at: Arviq - bowhead
- 122 See more at: Tunggavik, 2016: NTI and Nattivak to assert Inuit fishing rights
- 123 See: <https://www.cbd.int/abs/Nagoya Protocol on Access and Benefit-sharing>
- 124 Bennett NJ, Lo' pez de la Lama R, Le Billon P, Ertör I and Morgera E., 2023: Ocean defenders and human rights. Frontiers in Marine Science, 18 Jan 2023.
- 125 See DIHR forthcoming: compilation of cases
- 126 New South Wales Aboriginal Land Council, 2021: End Prosecutions for Aboriginal Cultural Fishing
- 127 DIHR, 2021: The Salmon Industry and Human Rights in Chile: Sector-Wide Impact Assessment
- 128 <https://www.mundoacuicola.cl/new/ong-reacciona-a-critica-por-conversatorio-sobre-impactos-de-la-salmonicultura/>
- 129 IWGIA. 2021: The Indigenous World 2021: Japan
- 130 A/HRC/40/60/Add.2
- 131 Business & Human Rights Resource Center, 2021 Honduras: Indigenous leader against El Tornillito hydroelectric dam is killed
- 132 Access here: <https://ssfhub.org/ssf-summit-2024>
- 133 International Indigenous Forum on Biodiversity
- 134 See the example of South African Khoikhoi communities developing their community protocol around their indigenous plant specie called Rooibos: NJ-Rooibos-BCP-Web.pdf (naturaljustice.org)
- 135 SEE Indigenous Peoples Major Group for the SDGs
- 136 SEE FAO Global Hub on Indigenous Peoples







