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KEY ISSUES AND CASES REGARDING INDIGENOUS PEOPLES' CUSTOMARY FISHING RIGHTS

BACKGROUND PAPER PREPARED FOR THE EXPERT
MEETING ON INDIGENOUS PEOPLES AND FISHERIES, TO
BE HELD IN THE CONTEXT OF THE 2023 SESSION OF THE
UN PERMANENT FORUM ON INDIGENOUS ISSUES

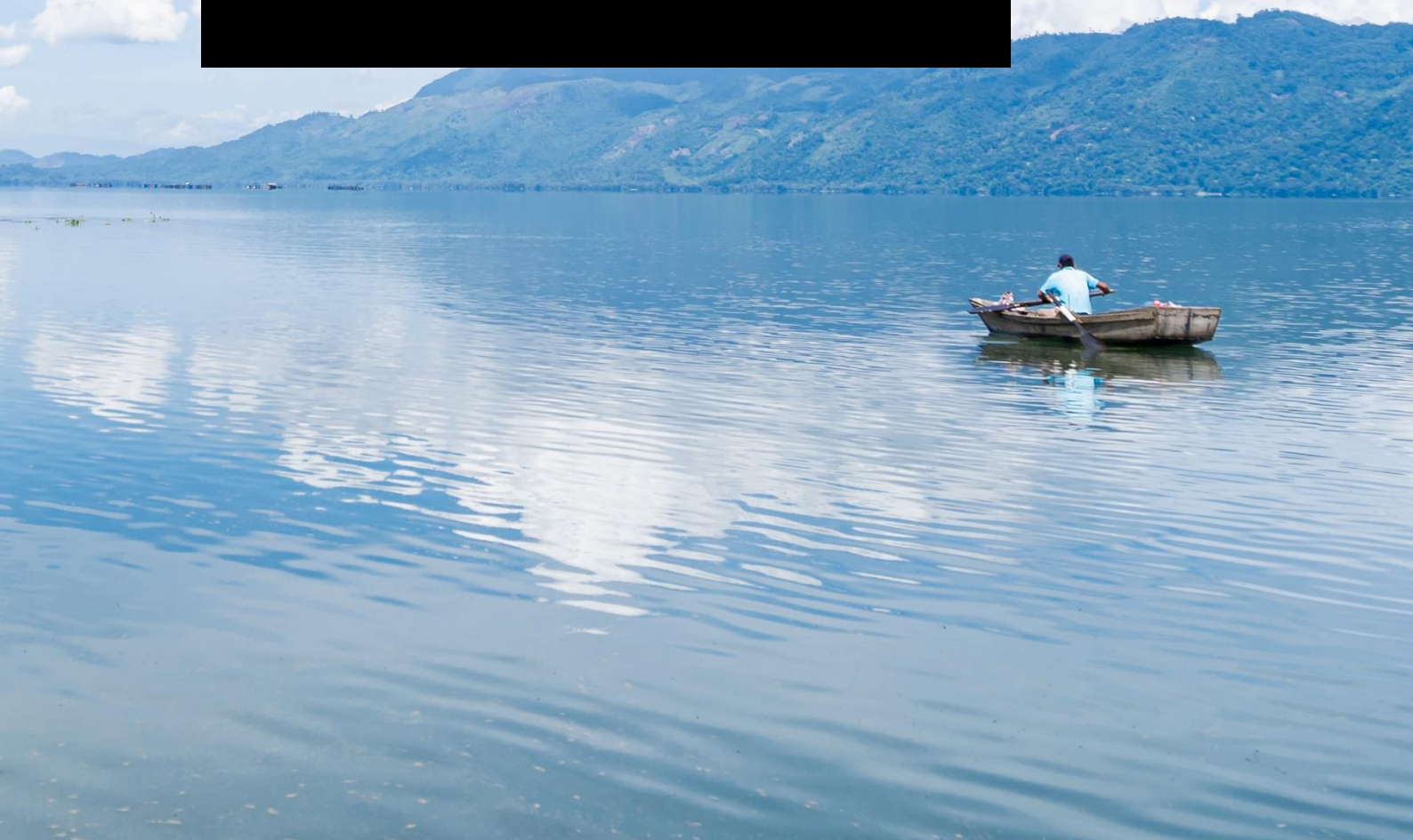


TABLE OF CONTENTS

1. INTRODUCTION	3
2. FISHERIES AND INDIGENOUS PEOPLES' RIGHTS	4
3. IMPACTS OF INDUSTRIAL FISHING AND AQUACULTURE	6
4. GOVERNANCE OF TENURE IN FISHERIES	9
5. FISHERIES SUBSIDIES	13
6. ENVIRONMENT AND CLIMATE	14
6.1 The Right to a Healthy Environment	15
6.2 Impact of Conservation Measures	17
6.3 Marine Protected Areas	18
6.4 The High Seas Treaty	19
6.5 Climate Change	21
7. CRIMINALISATION AND ATTACKS ON INDIGENOUS PEOPLES' DEFENDERS	23
ENDNOTES	26

1. INTRODUCTION

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 (IR), the International Work Group for Indigenous Affairs (IWGIA) and UN Food and Agricultural Organization (FAO), among others, have undertaken work to highlight and address impacts on Indigenous Peoples' rights within the fisheries and aquaculture sectors.ⁱ

Further, a side-event organised during the 2022 Session of the UN Permanent Forum on Indigenous Issues (UNPFII) focused on Indigenous Peoples' rights in the context of SDG 14 (life below water) and the blue economy.ⁱⁱ Speakersⁱⁱⁱ highlighted the importance of fish resources for Indigenous Peoples across the globe for food, identity, culture and sustainable livelihoods, as well as 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](#):

- 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 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 are convening an Expert Meeting during the 2023 Session of the UNPFII. The overall objective of the Expert Meeting is to:

- Examine the impacts of fisheries governance and related policies on the rights of Indigenous Peoples in regard to traditional fishing, in response to the recommendation put forward by the UN Permanent Forum on Indigenous Issues (B 57).

The meeting will address, but not be limited to, 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 background paper intends to outline key issues, related to the above sub-themes. The background paper is based on previous publications on Indigenous Peoples' rights and fisheries^{iv}, as well as cases, compiled by the Danish Institute for Human Rights. These cases, which are presented in Annex A, illustrate the struggle of Indigenous Peoples for recognition of their rights in the context of fisheries.

A full report, based on the background paper and the deliberations at the meeting, will be published in May 2023 by the Danish Institute for Human Rights and IWGIA, to inform the participatory preparation of the study called for by the UNPFII and to inspire Indigenous Peoples' further engagement and advocacy for their rights in the context of fisheries.

2. FISHERIES AND INDIGENOUS PEOPLES' RIGHTS

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

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 other human rights instruments. These instruments 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, whenever projects or other measures are likely to affect them.

Yet, land and ocean grabbing, commodification and overexploitation of aquatic resources, pollution, criminalization of Indigenous Peoples' fishing activities, lack of participation in development and conservation initiatives and disregard for their ways of life, traditional knowledge and management practices, are undermining the rights of Indigenous Peoples depending on aquatic ecosystems throughout the world. Their food security is jeopardized, their cultural practices are disrupted, some communities are pushed into unsustainable practices when faced with increasing pressure and competition over their territories, and many are at risk of further marginalization and exploitation, including becoming victims of exploitive labour practices in the fishing industry, among others.^v

While Indigenous Peoples worldwide are generally struggling for the recognition of their rights, there are specific challenges pertaining to their rights in the context of fisheries:

- Indigenous Peoples' contribution to sustainable development and management of crucial marine, freshwater, riverine and coastal ecosystems is often overlooked and disregarded in national planning and development efforts;
- Rights to marine and freshwater territories and resources as well as the fisheries and aquaculture sectors are governed by complex layers of international and national laws and regulations, which often do not incorporate specific considerations for Indigenous Peoples' rights;
- The commodification of fish, unsustainable fishing subsidies and quotas as well as expansion of aquaculture undermine Indigenous Peoples' traditional occupations and livelihoods based on aquatic resources;
- When customary rights and traditional fishing practices are undermined, poor indigenous fishers are at high risk of becoming victims of exploitive labour practices in the fishing industry, including hazardous work, child labour and forced labour. Others may be forced to attempt long-distance fishing, without the equipment necessary to protect themselves against unpredictable weather conditions;
- Indigenous Peoples are often discriminated against and excluded from decision-making processes. This leads to additional risks that their rights are ignored or undermined by conservation initiatives (such as the establishment of marine protected areas) and blue economy initiatives (such as shipping, aquaculture, tourism, ocean-based energy and extractive industries).^{vi}

Moreover, the intertwined crises of climate change and biodiversity loss and their cascading impacts on the world's aquatic ecosystems and fish stocks puts further pressure on Indigenous Peoples' rights.

Aquatic ecosystems need urgent action

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.^{vii}

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.^{viii} 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.^{ix} Around 34% of the world's marine fish stocks are currently overfished, while another 60% are being fished at their maximum sustainable limit.^x 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.^{xi}

Overall, the alarming situation of the world's aquatic ecosystems and fish stocks is the result of complex and compounding factors, with equally complex impacts on Indigenous Peoples' rights. Hence, it may not be possible to point to simplistic causal relationships between the governance of fisheries and Indigenous Peoples' rights. Rather, there is a need for a comprehensive and coherent approach to ensuring Indigenous Peoples' rights in the context of fisheries, based on the UN Declaration on the Rights of Indigenous Peoples and the general human rights instruments that underpin it.

Without pointing to a simple causality, the following sections will explore some of the crucial factors that impact Indigenous Peoples' rights in the context of fisheries.

3. IMPACTS OF INDUSTRIAL FISHING AND AQUACULTURE

There is no systematic or comprehensive information available about the impacts of industrial fishing and aquaculture on Indigenous Peoples' rights. Hence, the forthcoming study by FAO in response to the UNPFII recommendation will help close an important information gap.

However, as most Indigenous Peoples are involved in small-scale fisheries^{xii}, it can be assumed that the general impacts of industrial fisheries and aquaculture on small-scale fisheries (SSF) are also impacting them.

Indigenous Peoples are mainly small-scale fishers

Most legal and policy frameworks^{xiii} 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.^{xiv} 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.^{xv} 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'.^{xvi}

Most Indigenous Peoples undertake small-scale artisanal fisheries and are thus competing with industrial fishers in an unequal fight over scarce resource.

Habitat degradation, overfishing and illegal, unreported, and unregulated fishing (IUU) are core challenges related to industrial fisheries that compromise the very basis of the ecosystems on which Indigenous Peoples' fisheries depend.^{xvii}

With regards 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.^{xviii}

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 (see Annex A, case 1).

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 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 (See Annex A, case 2).

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.^{xix}

According to FAO, IUU remains one of the greatest threats to marine ecosystem, 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.^{xx}

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, a lack of access to social security, adequate sanitation and clean water, as well as food insecurity and poor school completion rates, among others.^{xxi}

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 jungle. 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.^{xxii}

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”.^{xxiii} 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 (See Annex A, case 3).

Chile, Mapuches Huilliche, 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 (see Annex A, case 4).

4. GOVERNANCE OF TENURE IN FISHERIES

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. It is important to point out that 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, these rights exist and must be respected, irrespective of whether the State has issued formal titles or otherwise officially recognised Indigenous Peoples' rights.

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

- The Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries (the SSF Guidelines)^{xxiv};
- The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (the VGGT Guidelines)^{xxv}.

The SSF Guidelines make explicit reference to Indigenous Peoples' customary rights

The SSF Guidelines, in article 5.4. specifically highlights 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".

Numerous states fail to uphold Indigenous Peoples' rights to aquatic territories and resources, as they 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, whose traditional fishing rights have not been recognized and who, for instance, face restrictions to obtain fishing permits and prohibition to use nets or modern equipment. A recent report jointly produced by the FAO, Duke University and World Fish concludes that States' failure to protect indigenous fishers' rights has caused threats to the survival of their culture and way of life. It adds that even in the few countries that do have fisheries laws in place that

acknowledge distinct rights for indigenous fishers, these laws are rarely implemented, ‘yet their existence creates leverage for indigenous fishers.’^{xxvi}

Numerous Indigenous Peoples have taken the struggle for recognition of customary tenure rights in the context of fisheries to international human rights mechanisms and national courts, as illustrated by a number of cases included in Annex A.

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 (see Annex A, case 9).

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 (see Annex A, case 10).

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 (see Annex A, case 7).

For fishing communities, the recognition and protection of their rights to aquatic territories and resources as well as coastal and riverine lands constitute the basis for the realisation of their broader human rights to self-determination and culture, among others.

In particular, the importance of customary fishing rights for the **right to enjoy one’s culture** (as enshrined in the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; UNDRIP; ILO Convention No. 169,) has been emphasised by courts and human rights monitoring bodies.

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. It 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”.^{xxvii} Likewise, the UN Human Rights Committee has explained that traditional activities such as fishing must be protected as a manifestation of culture.^{xxviii}

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 are, as a general rule, not permitted, unless the impact of such restrictions on their culture and ways of life is limited and the people concerned had the opportunity to participate in the decision-making process related to these measures and will continue to benefit from their traditional economy. Any restriction should be reasonable and have an objective justification.^{xxix}

This link between culture and fisheries is also reflected in Annex A, where the right to culture figures prominently in cases 7, 8, 11, 14, 16, 19, 20, 21, 22, 25, 30, 31 and 32.

New Zealand, Maori

The UN Human Rights Committee (HRC) highlighted that for New Zealand to comply with article 27 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 (see Annex A, case 8).

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.^{xxx}

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 (see Annex A, case 32).

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 (see Annex A, case 6).

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, livestock-raising or hunting, which require also access to land and natural resources. Similarly, in many cases, the threats to Indigenous Peoples' customary fishing rights come from developments outside the fisheries and aquaculture sectors. This pressure is increased with the expansion of "blue economy" and "green transition" initiatives related to mining, infrastructure development, tourism, renewable energy, among others (see Annex A, cases 11, 12 and 13 related to mining; cases 5, 17 and 19 related to tourism; case 16 related to energy).

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.^{xxx} 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".^{xxxii}

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 (see Annex A, case 5).

United States – Yurok

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 has affected 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 improving water quality (see Annex A, case 16).

5. FISHERIES SUBSIDIES

A forthcoming study by the Danish Institute for Human Rights^{xxxiii}, 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 20th 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.

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.^{xxxiv} 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 will be 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 the ILO Convention No. 169, but their claims were dismissed.^{xxxv}

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".^{xxxvi} 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".^{xxxvii} Planned initiatives include building 17 new fishing coves, to the benefit of more than 10,000 artisanal fishers.

Colombia

In a 2020 case from Colombia, the UN Committee on the Elimination of Racial Discrimination (CERD) expressed concern that, although the right to prior consultation is formally recognized in Colombian law, the granting of licenses for investment, tourism, industrial fishing and mining projects, which are carried out in the territories of Indigenous Peoples and of communities of African descent, are reportedly conducted in the absence of free, prior and informed consultations in line with ILO Convention No. 169, and without the appropriate environmental precautions 2020.^{xxxviii}

6. ENVIRONMENT AND CLIMATE

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. Growing evidence shows that Indigenous Peoples possess the knowledge and ability required to successfully conserve and manage biodiverse ecosystems more effectively than governments and at a lower cost, especially where their human rights are respected, protected and fulfilled.^{xxxix} A comparison between on the one hand, marine national parks and co-managed reserves and, on the other, traditionally managed coral reefs in Indonesia and Papua New Guinea, has found that traditional

management regimes, none of which involved permanent reef closure, were more effective at conserving reef fish.^{xi}

Hence, 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 negatively impacted by marine conservation initiatives, which are often designed and implemented without their consultation and participation, with negative repercussions on the sustainability of their livelihoods and ways of life and, ultimately, on the health of the ecosystems on which they depend.^{xli}

6.1 THE RIGHT TO A HEALTHY ENVIRONMENT

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. 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).

Indigenous Peoples’ right to a clean, healthy and sustainable environment is affected by the many factors that adversely impact the health of aquatic ecosystems. One example of “impacts of deteriorating ecosystem health on the rights of Indigenous Peoples is the bioaccumulation of toxic substances in the food chain, undermining the ability of indigenous hunters and fishers to secure healthy food for their families and communities. In Colombia, Peru and many other States, mercury from illegal mining contaminates rivers and watersheds”.^{xlii} Annex A, provides more examples of how pollution of aquatic environments affect Indigenous Peoples (see cases 23 and 24).

Nigeria – Ogoni

Decades of oil exploitation in the Niger Delta resulted in the contamination of the environment, which caused environmental degradation and health problems among the Ogoni People. 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 concludes that the efforts have been too little - too weak, and have not resulted in effective clean up, and recommends that the government of Nigeria drastically step up its ambition to implement in full the recommendations of UNEP (see Annex A, case 24).

Canada – First Nation Wild Salmon Alliance

According to Bob Chamberlin, chairperson of the First Nation Wild Salmon Alliance, fish farming has serious detrimental impact on the health and abundance of wild Pacific salmon.^{xliii} For over a decade, the Alliance appealed to Norwegian salmon farming companies to leave indigenous territories and paid visits 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 (see Annex A, case 20).

The rapidly increasing levels of plastic pollution represent a specific and serious global environmental issue that negatively impacts the environmental, social, economic and health dimensions of sustainable development. 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 tons per year in 2016 to a projected 23–37 million tons per year by 2040.^{xliv}

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.

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.^{xlv}

6.2 IMPACT OF CONSERVATION MEASURES

Ironically, many Indigenous Peoples are not only affected by the destruction of the aquatic ecosystems on which they depend, but also by conservation measures established to protect remaining intact ecosystems, many of these a result of Indigenous Peoples' sustainable management over generations.

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, 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 (see Annex A, case 25).

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.^{xlvi} This is also reflected in Annex A, where cases 19, 26, 28, 29 relate to the establishment of protected areas.

Panama, Ngöbe

The Bastimentos Island National Marine Park in Panama, was established in 1988 without prior consultation with the Ngöbe Indigenous Peoples. With the establishment of the park, the Ngöbe faced restrictions on their traditional activities. Additionally, the park has had a negative effect in the marine resources of the area, as it has increased tourism, which implies increase of demand in seafood for restaurants and hotels, and the development of touristic activities (see Annex A, case 19).

South Africa, Nibela

The Nibela community has lived on the Nibela peninsula for hundreds of years and depended 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 (see Annex A, case 19).

6.3 MARINE PROTECTED AREAS

While the adverse impact of land-based protected areas on Indigenous Peoples' rights have gained much 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, while today over 13,000 designated MPAs cover an estimated 7.65 percent of the world's oceans. To date, 52 countries and territories have protected at least 10 percent of their marine areas.^{xlvii}

The Global Biodiversity Framework, which was adopted in December 2022 to reach the goals of the Convention on Biological Diversity, sets a global target for conservation of terrestrial and aquatic ecosystems:

"Ensure and enable that by 2030 at least 30 per cent 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" (emphasis added).^{xlviii}

With the adoption of the Global Biodiversity Framework, the need to ensure 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.^{xlix}

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 [the goal to conserve 30% of by 2030], should not be done at the expense of establishing trusting and meaningful relationships.ⁱ

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)”.^{li}

6.4 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. The target for protection of marine areas under the Global Biodiversity Framework discussed above should be seen in the light of an important development under UNCLOS; namely the adoption in March 2023 of 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**.^{lii}

Exclusive Economic Zones versus High Seas

About one third 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 now, these areas have been mostly unregulated. 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, have also a role to play in the

governance of the high seas. Yet, Indigenous Peoples have generally been underrepresented in the debate about the governance of the high seas.^{liii}

The High Seas Treaty applies to 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 enable signatory states to be held to account on 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 to the treaty. 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 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, indicate also specific human activities in the area, including uses by Indigenous Peoples and local communities in adjacent coastal States, and that Indigenous Peoples be invited to submit views on the merits of the proposal and any other relevant information, including information based on their traditional knowledge.^{liv}

While it is still premature to assess whether the Global Biodiversity Framework and the High Seas Treaty will reach the intertwined goals of protecting aquatic and marine ecosystems and protecting Indigenous Peoples' rights, there are examples of emerging good practice in the establishment of MPAs.

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 (see Annex A, case 28).

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 per cent by 2030.^{lv}

6.5 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 per cent at 1.5 degrees Celsius, with larger losses (over 99 per cent) 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”.^{lvi}

Climate change is adding a further layer of challenges to Indigenous Peoples’ lives and livelihoods. Indigenous Peoples living in coastal areas are, for example, facing increasingly frequent hurricanes and cyclones as well as sea level rise and coral bleaching, which 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 certain Indigenous Peoples are at risk of disappearance as a result of sea level rise. In the Arctic, ice melt and heat waves are disrupting the fishing activities of indigenous communities. 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.^{lvii}

The 2023 IPCC Synthesis Report^{lviii} underlines the seriousness and urgency of addressing the climate crisis, but also highlights that recognition of 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 (see 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 inherent rights of Indigenous Peoples, is integral to successful adaptation and mitigation across forests and other ecosystems (see 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)).^{lix}

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.^{lx} This includes legal action to hold governments to account for their failure to protect Indigenous Peoples against 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 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 (see Annex A, case 21).

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, 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" (see Annex A, case 22).

7. CRIMINALISATION AND ATTACKS ON INDIGENOUS PEOPLES' DEFENDERS

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. 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.^{lxi}

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.^{lxii} There is evidence that such cases are prevalent in many regions of the world (see Annex A, cases 31-34). Hence, this is an issue that would require more systematic examination.

Canada, Mi'kmaq

In 1993, a Mi'kmaq fisherman was arrested for catching and selling eel captured with an illegal net and without license. The case set off 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 offences against him, based on his treaty rights to fish for food, social and ceremonial purposes and moderate livelihood fisheries (see Annex A, case 30).

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 (see Annex A, case 31).

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 an “Sector-Wide Human Rights Impact Assessment of the Salmon Industry” in Chile.^{lxiii} The assessment documents 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”.^{lxiv}

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 (see Annex A, case 33).

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. 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 (see Annex A, case 34).

ENDNOTES

- ⁱ See for example: [Key Messages on Indigenous Peoples' Rights in the context of Fisheries and Aquaculture](#).
- ⁱⁱ See [recording of the UNPFII side-event](#).
- ⁱⁱⁱ Expert speakers included Victoria Tauli-Corpuz, Robert Chamberlin, Anne Nuorgam, Wilmien Wicomb, Ken Paul.
- ^{iv} See DIHR [publications on human rights and fisheries](#).
- ^v 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.
- ^{vi} See [Key Messages on Indigenous Peoples' Rights in the context of Fisheries and Aquaculture](#): page 4.
- ^{vii} [WWF Living Planet Report 2022](#): page 36.
- ^{viii} Progress towards the Sustainable Development Goals Report of the Secretary-General [E/2022/55](#): para 130.
- ^{ix} [UN Oceans Conference 2022 Political Declaration](#): para 5.
- ^x [Global Indicators under SDG target 14.4](#).
- ^{xi} [UN Oceans Conference 2022 Political Declaration](#): para 130.
- ^{xii} <https://www.fao.org/voluntary-guidelines-small-scale-fisheries/guidelines/indigenous-peoples/en/>.
- ^{xiii} See for example: [Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries \(SSF Guidelines\)](#), [ILO Work in Fishing Convention \(No. 188\)](#).
- ^{xiv} 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.
- ^{xv} FAO, Duke University & WorldFish. 2023. Illuminating Hidden Harvests – The contributions of small-scale fisheries to sustainable development. Rome. <https://doi.org/10.4060/cc4576en>.
- ^{xvi} 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](#).
- ^{xvii} FAO: [International Year of Artisanal Fisheries](#).
- ^{xviii} [The State of the World Fisheries and Aquaculture 2022](#).
- ^{xix} See UN Doc. A/HRC/40/56.
- ^{xx} FAO: [IUU fishing](#).
- ^{xxi} 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](#).
- ^{xxii} [CERD/C/ECU/CO/23-24](#): para 14.
- ^{xxiii} FAO: [State of World Fisheries and Aquaculture 2022, Key Messages](#).
- ^{xxiv} [SSF Guidelines](#).
- ^{xxv} [VGGT Guidelines](#).
- ^{xxvi} FAO, Duke University & WorldFish. 2023. [Illuminating Hidden Harvests – The contributions of small-scale fisheries to sustainable development](#).p 177.
- ^{xxvii} CESCR, 2009: [UN Doc. E/C.12/GC/21](#), para 36.
- ^{xxviii} HRC, General comment No. 23: [UN Doc. CCPR/C/21/Rev.1/Add.5](#).

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- xxix Danish Institute for Human Rights, 2021: [The Rights of Indigenous Peoples in the Context of Fisheries and Aquaculture](#), p. 17.
- xxx <https://www.loc.gov/item/global-legal-monitor/2022-05-09/finland-supreme-court-rules-on-sami-indigenous-rights-to-fish/>.
- xxxi HLPF 2022, Session on SDG 14 and interlinkages with other SDGs: Secretariat Background Note: page 1.
- xxxii Ibid, page 2.
- xxxiii [The Human Rights Impacts of Fisheries Subsidies: Analysis, Implications and Recommendations \(Working Draft\)](#).
- xxxiv https://www.wto.org/english/news_e/news22_e/fish_29jul22_e.pdf.
- xxxv [The Human Rights Impacts of Fisheries Subsidies: Analysis, Implications and Recommendations \(Working Draft\)](#).
- xxxvi <https://www.seafoodsource.com/news/supply-trade/chile-president-boric-doubles-down-on-new-fishing-law-environment>.
- xxxvii Ibid.
- xxxviii Source: [CERD/C/COL/CO/17-19](#).
- xxxix Danish Institute for Human Rights, 2021: State obligations related to indigenous peoples' rights in the context of sustainable fisheries and aquaculture: page 4.
- xl Forest Peoples Programme. 2016: Local Biodiversity Outlooks 2.
- xli Danish Institute for Human Rights, 2021: [State obligations related to indigenous peoples' rights in the context of sustainable fisheries and aquaculture](#): page 16-17.
- lii UN Special Rapporteur on Human Rights and the Environment [A/75/161](#) para. 53.
- liiii <https://www.wildfirst.ca/salmon-farms-have-a-very-negative-impact-on-the-health-and-abundance-of-wild-pacific-salmon/>.
- xliv <https://www.unep.org/about-un-environment/inc-plastic-pollution>.
- xliv <https://www.nytimes.com/2023/03/19/us/politics/seabed-mining-metals-united-nations.html?smid=li-share>.
- xlvi UN Document [A/75/161](#) para. 39.
- xlvii See: <https://enb.iisd.org/international-marine-protected-areas-congress-impac5-summary>
- xlviii <https://www.cbd.int/doc/c/e6d3/cd1d/daf663719a03902a9b116c34/cop-15-l-25-en.pdf>.
- xliv February 2023: [IMPAC5 Summary Report](#): page 1.
- l February 2023: [IMPAC5 Summary Report](#): page 14.
- li [hIMPAC5 Chairs' Statement](#).
- lii <https://www.un.org/bbnj/>.
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ANNEX A – PRELIMINARY COMPILATION OF CASES EVIDENCING IMPACT ON INDIGENOUS PEOPLES' FISHING RIGHTS, ORGANISED BY THEMES

IMPACT OF INDUSTRIAL FISHERIES

1. Russia – Itelmen

Key words: Inland; River; Smelt fish

Year: 2008

The Itelmen are a small indigenous group in Kovran, livin to the West of the Kamchatka peninsula in the Far East region of Russia.¹

From 2008, the Itelmen have opposed the industrial fishery located in the Kovran river, as the massive fishing threats the stock of smelt fish. The Kamchatka Minrybprom (Fishery Ministry) considered that it was possible to establish limits on industrial fishing limits on the Ovrán river. However, a month later, the Russian Fishery Committee made a competition for distribution of fishing sites. The 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.²

2. Honduras – Miskitos

Key words: Ocean; Diving; Harzardous Working Conditions; Business and human rights; NHRI; Special Rapporteur on the rights of indigenous peoples; Committee on the Elimination of all forms of Racial Discrimination; Inter-American Commission on Human Rights; Inter-American Court of human rights;

Year: 2002 – 2022

The situation of the indigenous Miskito divers in the Gracias a Dios region of Honduras, illustrates the grave human and labour rights violations that can occur in the fisheries sector. The region is characterised by high poverty levels, illiteracy, unemployment, chronic malnutrition, and poor access to health services, among others. Generally, the state presence and control in the region are weak. Artisanal lobster 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 diving is now the main source of employment in the region, especially for boys above 14 years, and lobster is one of the main export products of Honduras.³

In 2002, the Honduran National Human Rights Commission (CONADEH) presented a report, referring to the situation of indigenous Miskito divers involved in fishing for lobster. 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. To address the situation of the Miskito divers, CONADEH issued a series of recommendations to different state institutions, such as the Ministries of Work and Social

Security, the Honduran Social Investment Fund, the National Congress, the marine and the police.

In 2004, the Pan-American Health Organisation estimated that 97 % of the 9,000 divers that were engaged in the industry 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. The reasons for these devastating effects are: lack of supervision of the diving teams; abuse by the boat captains, forcing the divers to go deeper than 40 metres down; accidents caused by the abuse of drugs, which are permitted and provided by the captains; lack of training; lack of first aid in the case of accidents.

In 2004, the Association of Crippled Miskito Divers, the Association of Miskito Women and the Almuruk Nani Asla Takanka Council of Elders, filed a petition to the Inter-American Commission on Human Rights, alleging that Honduras had violated the rights of 53 Miskito indigenous persons. In 2018, the Commission concluded that Honduras was responsible for violations of the right to life, to integrity of the person; to a fair trial; to family life; the rights of the child; the right to access to justice; and the rights to health and to work. Moreover, taking into account the multiple vulnerability factors of the victims who belong to an historically excluded indigenous people living in extreme poverty, the Commission also noted that the state was responsible for violating the principles of equality and non-discrimination.⁵

In 2014, the Committee on the Elimination of Racial Discrimination published its concluding observations on Honduras. The Committee expressed concern over the deplorable situation of Miskito divers that had suffered work injuries due to a lack of safe working conditions. The committee noted the establishment of an inter-agency commission to address and prevent the problem of underwater fishing but expressed regret over the lack of information about measures taken to assist divers who have developed a disability and to prevent further accidents.⁶

The Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz visited Honduras in 2015 and urged the government of Honduras to adopt the necessary measures to regulate and monitor underwater fishing, as well as to address the demands of Miskito divers and their families for health services, social services, and compensation.⁷

Given the failure of the state to protect the Miskito divers and provide remedy to the victims, the Inter-American Commission on Human Rights relayed the case to the Inter-American Court of Human Rights in 2019.⁸

In August 2021, the Inter-American Court delivered its judgment on the case. It found that Honduras 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. Accordingly, it ordered the State to, among other things:

- Provide medical and psychological assistance to the victims and their family members and strengthen the health system in La Moskitia;
- Grant scholarships to the victims, their children and their grandchildren;
- Establish a programme of productive projects in favour of the victims and their family members, in consultation with them, to ensure them a dignified life; Provide housing to the victims and their family members;
- Develop and broadcast a documentary about Miskito divers and their fight with a view to overcoming prejudices against them and design and implement a sensitization campaign about the situation of the Miskito people for the general public;

- Provide reparation for the material and immaterial harm caused, according to the terms established by the Court;
- Include Miskito divers and their family members in the social programmes targeting persons living in situation of extreme social exclusion;
- Adopt measures to ensure adequate regulation, inspection and supervision of the activities undertaken by industrial fishing companies.

With regards to this last measure, the Court also indicated that companies must adopt safeguards to ensure the protection of their workers' rights and to avoid adverse impacts stemming from their activities on local communities and the environment.⁹

In 2022, Miskito divers who developed medical conditions after diving without adequate equipment said that the Honduran government has not yet fully complied with the 2021 court ruling mandated compensation. Today, only 10 of the original plaintiffs are still alive.¹⁰

A study undertaken by DIHR and CONADEH in 2021-22 (to be published in 2023), confirms the continued human rights violations associated with the diving practices, and highlighted the following factors:

- The lack of a regulatory framework and control mechanisms;
- 90 % of those who suffer accidents in the high sea are not offered adequate first aid;
- Only 10% of the divers who suffer accidents make a claim for reparation, due to the costs of transport in the region; failure of the boat owners and captains to assume responsibility; weak presence of responsible institutions, and; lack of communication between institutions.
- Incomplete information about the situation of the divers;
- Lack of job and economic alternatives in the region;
- The majority of involved companies are not aware of their human rights responsibilities, as reflected in the UN Guiding Principles on Business and Human Rights;
- The seasonal prohibitions for lobster fishing are selective and impact the cultural use of other species as well as the livelihoods of the indigenous peoples and afrodescendants in the region.¹¹

3. Canada - Kwakwaka'wakw people

Key words: Marine; Business and human rights; Salmon fish farm; Piscine orthoreovirus; Sea lice; Waste dumping; Free, Prior, and Informed consent (FPIC); Environmental pollution

Year: 2017

The Kwakwaka'wakw people are considered the traditional gatekeepers of the Northeast Coast of Vancouver Island, living in the island since time immemorial.¹²

Foreign companies such as Marine Harvest, the largest salmon farm corporation in the world, have been operating in the Kwakwaka'wakw territory of First Nations Mamalilikala, Musgamagw and 'Namgis for the last 30 years without their consent.¹³

Amongst the companies present in the island is the Swanson Island fish farm, located in Kwakwaka'wakw territory. The Swanson Island fish farm has become a breeding ground for

Piscine orthoreovirus (PRV) and sea lice. Because of the PRV, the salmon are developing diseases that act as vectors and infect native wild species, threatening their populations. Additionally, some salmon packing plants are dumping raw salmon waste into water systems, which is also infecting the local wild salmon.¹⁴

The Kwakwaka'wakw people depend on salmon for their livelihood. As a way of protesting what private companies are doing in their territories, some members of the Kwakwaka'wakw people occupied the Swanson Island fish farm for over 284 days in 2017, being the longest occupation of any fish farm located in British Columbia. Besides from the occupation, members of the Kwakwaka'wakw First Nation have also protested the expedition of licenses to British Columbia fish farms.¹⁵

4. Chile - Mapuches (Mapuches-Huilliche and Mapuches-Lafkenche), the Kawésqar and the Yagán people.

Key words: Marine; Salmon fish farm; Environmental pollution; Right to food; Free, Prior, and Informed Consent (FPIC); Regional court; NHRI; Business and Human Rights

Year: 2016-ongoing

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”. The proliferation of red tide led to a preventive closure of the coastline from southern Chiloé to Los Ríos region and the declaration of a health alert over the consumption of shellfish. This ignited a mobilization amongst the Mapuche Huilliche who inhabit Chiloé island, and 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.¹⁶

In the context of the crisis, Chile's National Human Rights Institute (INDH) undertook a fact-finding followed by the issuing of recommendations to the Chilean government. Amongst the recommendations, INDH highlighted that the government of Chile must act diligently to guarantee the local community's right to food, having a special consideration for local indigenous people's historical diets.¹⁷

In 2021, INDH and the Danish Institute for Human Rights conducting a Sector-Wide Human Rights Impact Assessment of the salmon industry in Chile. The assessment 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 Mapuches-Huilliche, Mapuches-Lafkenche, the Kawésqar and the Yagán indigenous peoples.¹⁸

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. In the request for a hearing, these peoples argued that the expansion of the salmon farming industry has exerted pressure over the ecosystems and indigenous territories.¹⁹

GOVERNANCE OF TENURE RIGHTS

The examples included in this category refer to all instances of disputes over indigenous peoples' rights to tenure and failure to promote, protect and fulfil rights of indigenous peoples to land, territories and natural resources, including marine resources.

5. Indonesia – Sasak from the West Nusa Tenggara Province

Key words: Marine; Urban development; Tourism project; Alleged forced evictions; Land expropriation; Asia Infrastructure Investment Bank (AIIB); NGOs; NHRI; Special Procedures,

Year: 2020-2022

The Mandalika urban development and tourism project carried out in Indonesia's Lombok Island has 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.²⁰

After receiving information about the alleged forced evictions, Komnas HAM (the National Human Rights Institution) conducted monitoring missions during 2020. Following the missions, Komnas HAM recommended that Indonesia's Tourism Development Corporation (ITDC) the agency in charge of implementing the project, pay compensation to the evicted residents for the loss of buildings and crops located on their land and to provide them with psychosocial recovery and rehabilitation. Komnas HAM also recommended that the parties identify, locate, verify, and clarify the disputed land plots, and urged the government to identify solutions to protect the residents from forced evictions.²¹

In March 2021, a joint communication was sent from 8 Special Procedures²² to the Government of Indonesia. The Special Procedures expressed their serious concerns that the ITDC appears to have prima facie failed to respect human rights in the implementation of the Mandalika project.²³

A few days later, Olivier de Shutter, Special Rapporteur on extreme poverty and human rights sent a communication to the President of Asia Infrastructure Investment Bank (AIIB) where he shared observations on the conditions under which the alleged forced evictions took place, including the consent of the affected households and communities; the compensation for the loss of land, properties and livelihoods; and the conditions of resettlement. He stated that these elements constitute a prerequisite for the success of the Mandalika project.²⁴

Despite several actors condemning the project for its alleged human rights violations, the AIIB has argued that the project meets AIIB's standards and has refused to address the human rights violations associated with the project.²⁵

6. Colombia – Raizal

Key words: Ocean – Maritime border – ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) – International Court of Justice

The ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) has addressed a case concerning the traditional fishing activities by the Raizal people of Colombia.²⁶

The case concerned the traditional fishing rights of the Raizal beyond the jurisdiction of the coastal State, which had allegedly been adversely affected by the decision of the International Court of Justice (ICJ) on the delimitation of the maritime border between Colombia and

Nicaragua of 2012. It was complained that the delimitation of the maritime borders was made without the consultation and the participation of the people concerned and resulted in severe losses of livelihoods because some Raizal people's traditional fishing territories were considered to be part of the Nicaraguan sea as a result of the ICJ's decision. As a result, Colombia has filed an objection with the ICJ asking for the recognition of Raizal people's customary fishing rights.²⁷

7. Norway – Sámi

Key words: Ocean – Marine – Fishing – Cultural fishing right – Legislation

Year: 2011-2020

In 2011, the Special Rapporteur on the rights of indigenous peoples, James Anaya, examined the human rights situation of the Sámi people of Norway, Sweden, and Finland. In this report, the Special Rapporteur highlighted Norway's Finnmark Act of 2005 as it protects the advancement of Sámi rights to self-determination and control over natural resources. The Special Rapporteur acknowledged that while the Finnmark Act is an important step towards advancing Sámi rights, some Sámi representatives characterized the law as not being fully protective and noted that the extent to which it genuinely advances Sámi self-determination and resource rights will be determined by its implementation over time.²⁸

In 2011, the Committee on the Elimination of Racial Discrimination (CERD) in its concluding observations noted that measures taken may not be sufficient to preserve and promote the culture of the Sámi people, including the fishing rights of the Sea Sámi.²⁹ In its 2015 concluding observations, CERD expressed concern that while the Finnmark Act recognizes that Sámi have acquired collective and individual rights in Finnmark through long-term usage of land and resources, there remain significant gaps in translating the legal recognition into practice, thus resulting in limited recognition and protection of Sámi rights over their lands. The Committee finally recommended Norway to take concrete steps to ensure full practical effect of the legal recognition of the Sámi rights to their lands and resources as provided for in the Finnmark Act to enable them to maintain and sustain their livelihoods.³⁰

In 2013, the UN Committee on Economic, Social and Cultural Rights (CESCR), referring to the right to take part in cultural life, recommended that Norway take steps to preserve and promote the traditional means of livelihood of the Sámi people, such as reindeer-grazing and fishing.³¹

In 2014, the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) examined the impact of Norway's Marine Resources Act on Sámi fishing rights. The Committee emphasized that indigenous peoples' fishing rights must be specifically safeguarded, in conformity with article 15 of Convention No. 169, which recognizes indigenous peoples' right to the natural resources pertaining to their territories. The Committee also invited the State to provide information on the measures taken, with the participation of the Sámi, to ensure that traditional fishing activities are strengthened and promoted, in line with article 23 of ILO Convention No. 169, which addresses indigenous peoples' traditional activities, including fishing.³²

In 2016, the National Human Rights Institution (NHRI) of Norway conducted a study on Sámi rights to fisheries in coastal sea areas based on customary use, with reference to ICCPR article 27 and ILO Convention no. 169 on the rights of indigenous peoples.³³ The study concluded that: (i) the Sámi rights to fisheries as a part of their culture and based on their customary fisheries should be secured by law; (ii) the right to participate in the management of the natural resources should be better secured; and (iii) processes are needed to secure that the

Sámi rights to fisheries are not violated by industrial - or other new - use of coastal sea areas. These conclusions are in line with the Governmental Commission Report on fishing rights in the sea surrounding Finnmark³⁴, and the recommendations of CERD in 2015.

In 2018, the NHRI included a section on Sámi rights to fisheries in its independent report to the Human Rights Committee (HRC), described the key issues and the view held by the Government that the rights of the Sea Sámi, are sufficiently implemented through the amendments of the provisions and administrative fishery system. The NHRI suggested that the HRC recommended Norway to: “consider recognizing in statutory law the fishing rights of Sea-Sámi along the coast of Finnmark”.³⁵ HRC addressed the lack of legislation ensuring fishing rights of indigenous peoples through the lenses of the rights to self-determination, to equality and non-discrimination and to enjoy one's culture. It recommended that Norway should enhance the legal framework on indigenous land, fishing and reindeer rights, ensuring in particular that fishing rights are recognized by law.³⁶

In 2020, the NHRI included a section on Sámi fishing rights in its independent report to CESCR. The NHRI suggested that the CESCR recommends Norway to: “consider recognizing in statutory law the Sami rights to fisheries as a part of their culture and based on their customary fishing”; and “strengthen the rights of the Sami to participate in the management of maritime natural resources, and secure that the Sami rights to fisheries are not violated by industrial- or other new - use of coastal sea areas”.³⁷ The CESCR did not address these issues in its concluding observations in 2020.³⁸

8. New Zealand – Māori

Key words: Marine; Restrictions; Fishing rights; HRC; International Covenant on Civil and Political Rights

Year: 2000

The *Apirana Mahuika v New Zealand* case was taken to the Human Rights Committee (HRC) by a group of Māori people representing seven different tribes (tiwis). The claimants attested that New Zealand had violated their rights to self-determination, to equality and non-discrimination, to enjoy one's culture, to equality before the law, and to freedom of thought, conscience, and religion, because of the restrictions imposed on their ability to fish.³⁹

The HRC examined the example with reference to article 27 of the International Covenant on Civil and Political Rights, which recognizes the right to enjoy one's culture.⁴⁰

The Committee stated that the use and control of fisheries is an essential element of the culture of the Māori and therefore it is protected under the right to enjoy one's culture. The court further claimed that such right does not only protect traditional means of livelihood but also allows for adaptation of those means to the modern way of life. The HRC emphasized that the enjoyment of the right to one's own culture may require positive legal measures of protection by the State as well as measures to ensure the effective participation of members of concerned communities in decisions which affect them.⁴¹

The HRC highlighted that to comply with article 27 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.⁴²

9. Sweden – Sámi

Key words: Fishing; Permits; Self-determination; Provincial Court; Supreme Court.

Year: 2020

In 2019, Umeå Provincial court ruled in favour of the Girjas Sámi village/association and the Swedish Sámi National Union (SSR). The claimants had taken the Swedish state to court to fight for their right to manage hunting and fishing in areas traditionally occupied by the Girjas Sámi village.⁴³

A District Court had granted Girjas Sámi village the right to control hunting and fishing permits on their land. Later, the Office of the Chancellor of Justice, on behalf of the Swedish state argued against the decision, stating that it is the state who owns the land and must have a decision on hunting and fishing.⁴⁴

After the Provincial court ruling, the Swedish state appealed, and the case was taken to the Swedish Supreme Court.⁴⁵

In 2020, the Supreme Court delivered its decision on the case. The court found that the Girjas community retained the sole right to manage hunting and fishing rights in the disputed area, based on a possession since time immemorial, including the right to lease these rights to others.⁴⁶ The verdict therefore establishes that:

- Girjas Sami District may grant small-game and fishing rights in the area without the consent of the State; and
- the State is not permitted to grant such rights.⁴⁷

10. United States – Metlakatla Tribal Community

Key words: Marine; Fishing; Fishing rights; District Court; Federal appeals court,

Year: 2020

The Metlakatla Indian Community of Alaska sued the Alaska Governor Mike Dunleavy and state agencies, for legal recognition of their fishing rights. The indigenous community said that the commercial fishing permit system is detrimental for the local fishermen that harvest on traditional fishing grounds, as they are required to seek a permit.⁴⁸

In 2021, a District Court judge sided with the State of Alaska and dismissed the case. However, in 2022, a federal appeals court ruled that Metlakatla tribal members should not require state permits to fish in waters that they have traditionally relied on.⁴⁹

11. South Africa – The Khoisan people

Key words: Marine; Deep Sea mining; Cultural identity; Business and Human Rights

Year: 2020

The Kassiesbaai village, is the only remaining historic Khoisan fishing village in South Africa. More than 90 percent of the households are 100 percent dependent on marine living resources. The Khoisan have an intricate relationship with the sea. They perceive sea water as the essence of spiritual and physical life and use sea water to conduct rituals to aid communication with the spiritual world.⁵⁰

Kassiesbaai village falls within the prospecting rights for marine phosphate, which were allocated to three companies in 2012 and 2014.⁵¹ Indigenous tribes in south Africa have

opposed mining, as they believe that it will destroy the sea, and threat their cultural identity. A leader of the Khoisan noted that deep sea mining is a threat to the cultural identity of the Khoisan and, if it occurs, it will be despite opposition from the scientific world, cultural activists, and non-governmental organisations.⁵²

12. Brazil – Mura

Key words: Inland; River: Amazonia; Potassium Mining; Business and Human Rights

Year: 2010- 2022

Amid the invasion of Ukraine and given the rise of price of potassium worldwide, the existing reserves of this mineral in the Brazilian Amazonia have ignited mining interests. This mineral already began to be exploited by the Canadian company Brazil Potash in 2010, around the lands in which the Indigenous Mura live.⁵³

The Canadian company plans to build Latin America's biggest potassium mine and infrastructure to transport the fertiliser, but the project stalled in 2016, given the lack of adequate consultation with the Mura.⁵⁴

In 2022, Oxyer Holding Company, based in Brazil, made several requests to the Brazilian Mining Agency to research for potassium on Mura indigenous land. The Mura, other indigenous groups, and environmentalists fear that potassium exploitation in their lands will destroy natural resources and pollute their river, affecting their ability to fish.⁵⁵

13. New Zealand – Māori

Key words: Marine; Seabed mining; Iron Sands; Supreme Court

Year: 2017

New Zealand's Environmental Protection Authority granted Trans-Tasman Resources Ltd a permit for seabed mining of iron sands under the Exclusive Economic zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act).⁵⁶

In September 2021, following a seven-year-long legal fight by Māori tribes, fisheries and environmental groups, the High Court ruled against the government, a decision that was upheld by the Court of Appeal and then heard by the Supreme Court. The ruling acknowledged that the Environmental Protection Authority should consider the effects of the proposed seabed mining on Māori "existing interests" (under the Treaty of Waitangi) and that Maori customary values and practices constitute such existing interests. Hence, the Environmental Protection Authority must consider the kaitiakitanga of iwi [tribes] of their relevant rohe [territory], which can be translated into issues pertaining to self-determination, sovereignty, autonomy, self-government, and control in the context of the marine environment.⁵⁷

14. Kenya – Bajun, Orma, Sanye and Aweer

Key words: Marine – Port – High Court –Compensations

Year: 2019

In 2018, the Malindi High Court of Kenya decided upon a case concerning the impact of the ongoing Lamu port planning and construction process on the local Bajun, Orma, Sanye and Aweer indigenous communities, who have for generations depended upon and sustainably managed their land and marine natural resources. The High Court affirmed the communities'

grievances regarding the Lamu Port project's lack of public participation, lack of environmental assessment and management plans, and failure to recognize and consider the communities' traditional fishing rights. It also affirmed the citizens' rights to protection of their cultural identity and to a clean and healthy environment and ordered the payment of compensations for the fishers affected.⁵⁸

Despite Kenya's High Court judgement, the construction of Lamu port continues its planning and construction.⁵⁹

15. Canada - Lax Kw'alaams Tsimshian First Nation

Key words: Ocean – River – Salmon – Fossil fuel company – Export facility

Year: 2015 – 2017

Petronas, a Malaysian fossil fuel company has proposed the establishment of a natural gas export facility on Lax U'u'la island in British Columbia. The island is traditional territory of the Gitw'ilyoots clan, one of the Tsimshian nations of Lax Kw'alaams.⁶⁰

Members of the Gitw'ilyoots clan have opposed the project, as the infrastructure would be located in an eel grass habitat, which is key for the salmon to transition from freshwater to saltwater. As the project constitutes a threat for the local salmon fish stocks, members of the clan began protesting the project by occupying the island, boycotting survey work for the project and evicting employed personnel of Petronas, who conduct the survey work. In 2017, Petronas announced that it would no longer be pursuing the project.⁶¹

16. United States – Yurok Tribe

Key words: Inland – River – Salmon – Dam – Removal

Year: 2022

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 Klamath River basin between California and Oregon has affected 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.⁶²

In 2022, after a decades-long push from river basin tribes whose livelihood and culture are intertwined with the river, the federal government of the United States approved the removal, which will be the largest dam removal in U.S. history, paving the way for the restoration of the Klamath River basin.⁶³

The Federal Energy Regulatory Commission (FERC) gave the final stamp of approval for four dams along the lower Klamath River to be removed, reinstating access to more than 300 miles of habitat for salmon and improving water quality.

17. Colombia – Piaroa, Curripaco, Amorua, Sikuani, and Puinave

Key words: Inland; River; Mass migration; Fish stocks; Sport fishing; Fishing gears; Sustainable fisheries

Year: 2002

The Orinoquia region in Colombia is inhabited by the Piaroa, Curripaco, Amorua, Sikuani and Puinave and other indigenous peoples. Over the years, through the establishment of fixed

territorial ownership, these groups have had to settle in specific areas and form communities. The sedentary lifestyle required the identification of stable extraction zones and a recognition of the temporality of fishing resources due to the high hydroclimatic variability of the region.⁶⁴

Fishing has become one of the main forms of subsistence, whether as a source of protein or as a source of income. These communities claim that over the years, the freshwater fish stocks have diminished, affecting their livelihoods. They identify three factors that impact freshwater fish stocks. First, the number of communities and inhabitants in the area has increased because of the mass migration following Venezuela's economic crisis. Therefore, more actors rely on fishing resources for their survival and wellbeing. Secondly, sport fishing has become popular. Given that most of the tourists are foreigners, this recreational activity is considered an important source of income for local and national tour operators in the region. Local fishers worry that sport fishing is keeping the fish away and reducing its availability, because it is a practice commonly conducted in their prime fishing areas. Thirdly, fishing gears such as the chinchorro seine net is now a widespread technique, which leads to a larger-scale extraction of fishery resources, since species are being caught irrespective of their sizes. This disadvantages local fishers who are still implementing traditional arts of fishing (Boya, Tarraya), which allow for a more sustainable fishing practice in the region.⁶⁵

Fishing communities located on the banks of the Orinoco River explain that the availability of fish has decreased, or they must spend extra hours navigating greater distances in their boats to obtain the minimum amount for their consumption and commercialization. To address this ongoing issue, they request that the government guarantees greater control and surveillance of the use of natural resources. However, many of the fishing areas are in zones that are distant from the municipal centres, where the presence of patrolling entities is already reduced due to a lack of budget.⁶⁶

18. Philippines – Tagbanua from Coron island

Key words: Marine – Tourist resort developers – Real estate agents – Illegal fishing – Certificate of Ancestral Domains.

Year: 2002

The Tagbanua people from the Coron Island holds ancient traditions related to the sea and conservation practices, such as fish sanctuaries, and the regulation of fishing activities. Since the 1970s, the Tagbanua have had to defend their territory in the face of pressures and encroachments from tourist resort developers, real estate agents and migrants from neighbouring provinces practising illegal fishing.⁶⁷

In the 1990s, the Tagbanua were able to apply for a Certificate of Ancestral Domain Claims (CADC), recognizing them preferential rights to exploit, manage and protect their ancestral territory. The CADC was granted to them in 1998 and comprised 22,284 hectares, including the entire island and a portion of the seas surrounding it. The adoption of the Indigenous Peoples' Rights Act (IPRA) of 1997 further recognized Tagbanua's rights. Thus, in 2002, the CADC of the Tagbanua people was converted into a Certificate of Ancestral Domain Title (CADT), a title that formally recognizes the rights of possession of the Tagbanua people over their ancestral domains, in accordance with IPRA.⁶⁸

The recognition of the CADT has allowed the Tagbanua people to confront the local government and propose their own plans for the management of their territory, including controlling the number of tourists who enter the various lakes and beaches and protecting the fragile habitat of the area, the marine sanctuaries, and other areas that the Tagbanuas consider as sacred sites.⁶⁹

IMPACT OF ENVIRONMENTAL DEGRADATION AND CLIMATE CHANGE

19. South Africa – The Nibela

Key words: Inland; Wetland Park; Dispossession; Access to land; Access to natural resources; Supreme Court; Favourable ruling; Indigenous fishing rights

Year: 1895- 2021

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 (UNESCO world heritage site). Thus, there has been a systematic dispossession of access to land and natural resources related to their traditional livelihoods (fishing and forestry). In 2018, following 8 years of litigation, a case on customary fishing rights was brought to the Supreme Court of South Africa. The Court recognized the customary fishing rights of the community and also recognised fishing rights as an expression of the right to culture.⁷⁰ However, this legal recognition has done very little for fishers on the ground, including the Nibela. The case is complex as the Nibela ancestral fishing grounds are now marine protected areas, 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.⁷¹ 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.⁷²

20. Canada – First Nation Wild Salmon Alliance

Key words: Marine; open salmon farming; salmon stocks on the verge of collapse; phaseout of salmon farming; lawsuit by companies; consultations; precautionary approach.

Year: 2009-2022

For over a decade, Bob Chamberlin, Chairperson of the First Nation Wild Salmon Alliance, had appealed to Norwegian salmon farming companies to leave the Indigenous territory, including visits to Norway to engage with the companies. In 2009 he delivered an appeal to the general assembly of the Norwegian company Mowi.⁷³

In December 2020, the Canadian government decided to phase out open salmon farming around Discovery Islands in British Columbia. The end of open coastal farming was one of the campaign promises of Prime Minister Justin Trudeau, before he was re-elected in 2019. Officially, 102 of the 203 indigenous tribes in the province have actively supported the phase-out, along with several nature and interest organisations.⁷⁴

In 2021, three Norwegian aquaculture companies (Mowi, Grieg Seafood and Cermaq) launched a lawsuit against the Canadian government, to stop the phasing out of salmon farming.⁷⁵ The companies wanted a legal assessment of the legality of the decision, as they had not been involved in the process before the decision was made. The court upheld the Norwegian companies' claim that the government's decision to phase out the open facilities was unreasonable.⁷⁶ On 17 February 2023, the Minister of Fisheries, Oceans and the Canadian Coast Guard announced a decision not to renew licences of 15 Atlantic 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, are in serious, long-time decline, with many stocks on the verge of collapse. Hence, the

government decision is an action to protect wild pacific salmon migrating through the Discovery Islands. Prior to this announcement, in 2022, the Minister convened consultations on salmon farm licences in the Discovery Islands.⁷⁷ These consultations included bilateral and aggregate meetings with industry and First Nations, as well as exchanges of e-mails, letters and information.⁷⁸ Bob Chamberlin supported the decision not to renew the licences of 15 aquaculture sites and expressed his appreciation of the Minister's precautionary approach, recognition of the state of the Pacific salmon and the focus on the cumulative effects. Bob Chamberlin called for attention to the transition plan to respond to risks further up the straights and the west coast.⁷⁹

21. Australia – Torres Strait islanders from Boigu, Poruma, Warraber and Masig

Key words: Marine; Fishing; International Covenant on Civil and Political Rights (ICCPR); Human Rights Committee; Joint complaint.

Year: 2019-2022

In 2019, eight 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 articles 2, 6, 17 and 27 International Covenant on Civil and Political Rights (ICCPR). They also claimed violations of the rights of the six children under article 24 (1), by failing to take mitigation and adaptation measures to combat the effects of climate change.⁸⁰ 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.⁸¹

In 2022, the HRC found that Australia's failure to adequately protect indigenous Torres Strait Islanders against 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.⁸²

22. Norway – Sámi

Key words: European Network of National Human Rights Institutions (ENNHRI); European Court of Human Rights (ECHR); Climate change

Year: 2019-ongoing

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. It is considered a potential "impact case" as it raises "important question[s] of general interest capable of having major implications for domestic legal systems and for the European system".⁸³ In its written observation, ENNHRI argues that Arctic indigenous peoples, including the Sámi people, are disproportionately impacted by the effects of climate change due to their high level of dependence on climate-sensitive ecosystems for their health and wellbeing, food security, transmission of cultural knowledge and traditional livelihoods, which for the Sámi people include fishing and reindeer herding. ENNHRI concluded that a failure to assess the long-term disproportionate effects on vulnerable groups such as children and indigenous peoples of a decision which may ultimately lead to extraction of fossil fuels, could amount to indirect discrimination".⁸⁴ Lasse Eriksen Bjoern, an activist from the indigenous Sámi people of

northern Norway, said that "the Sámi culture is closely related to the use of nature, and fisheries are essential ... A threat to our oceans is a threat to our people".⁸⁵

23. Ecuador – Kichwa and Shuar

Key words: Inland; River; Amazonia; Private Company; Petrol pollution

Year: 2020

In April 2020, a landslide destroyed three pipelines, leading to the leakage of 15,000 barrels of petroleum and other fuels in the border area between Ecuador and Peru. According to official figures, the spill occurred in different rivers, one of them the Napo, which is one of the main tributaries of the Amazonas.⁸⁶

According to the I NGO Amazon Frontlines, around 27,000 indigenous Kichwa and Shuar living near the rivers Coca and Napo have been affected by the spill.⁸⁷

The communities had remained in voluntary isolation given the covid-19 pandemic. One Kichwa person informed that members of the community had decided to not go to the nearby town for food, and therefore relied on fishing from the river. After seeing the black oil stains in the river, community members began finding dead fishes and warned that the oil pollution is affecting the river fauna, thus threatening the communities that rely on the river as a source of food.⁸⁸

24. Nigeria – Ogoni

Key words: Inland; River; Niger Delta; Oil Spill; African Commission on Human and Peoples' rights; United Nations Environment Programme; Special Procedures; Special Rapporteur on Minority Issues

Year: 1996 – 2011

The Government of Nigeria, through its state-owned oil corporation, Nigeria National Petroleum Corporation (NNPC) and the multinational company, Shell Petroleum Development Corporation, allegedly caused environmental degradation and health problems resulting from the contamination of the environment among the Ogoni People. 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.⁸⁹

In 1996, the Social and Economic Rights Centre filed a complaint to the African Commission on Human and Peoples' Rights, alleging violation of Articles 2, 4, 14, 16, 18(1), 21 and 24 of the African Charter, pertaining to the rights to life, property, best attainable state of health, family life, free disposal of wealth and natural resources and a satisfactory environment. In 2001, the Commission found that Nigeria had violated these Articles. The Commission made an appeal to the government of Nigeria to ensure the protection of the environment, health, and livelihood of the people of Ogoniland.⁹⁰

In 2011, the UN Environment Programme (UNEP) released a report, stating that pollution from over 50 years of oil operations in the region has penetrated further and deeper than many may have supposed. Hence, the environmental restoration of Ogoniland could prove to be the world's most wide-ranging and long-term oil clean-up exercise ever undertaken, 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 concludes that the efforts have been too little - too weak, and have not

resulted in effective clean up, and recommends that the government of Nigeria must drastically step up its ambition to implement in full the recommendations of the 2011 UNEP environmental assessment report for Ogoniland.⁹¹

In 2015, the Special Rapporteur on Minority Issues, Rita Izsák, undertook a mission to Nigeria. She reported to have witnessed the devastating effects of the oil spills in affected Ogoni and Ikwerre communities, including the destruction of traditional farming and fishing livelihoods owing to widespread soil and water pollution. The pollution caused severe health problems among community members and population migration to other areas. The Special Rapporteur urged the Nigerian government to take effective measures in order to assist the affected community, providing health care and education facilities and foster means for the creation of alternative livelihood options.⁹²

In 2018, UN Environment began a new project aimed at strengthening the Hydrocarbon Pollution Remediation Project (HYPREP) and its Governing Council, so that they can discharge their responsibilities better and clean up oil contamination in Ogoniland.⁹³

25. United States – Makah Tribe

Key words: Ocean; Whaling; Endangered Species; Marine Mammal Protection Act; Court example

Year: 1999-ongoing

The Makah Reservation is located in Washington State. For thousands of years, the Makah have based their cultural identity on the grey whale, which they have used as the basis of their diet as well as spiritual practices, reflected in their ceremonies, songs, dances, and baskets. Thus, whaling has been essential to the cultural tradition of the Makah. Given the cruciality of whaling for the Makah tribe, this tribe is the only group of Native Americans that have a treaty with the United States government that allows them to do whaling.⁹⁴

In the 1920s, the grey whale became an endangered species, so the Makah tribe voluntarily paused their whaling practices so that the population could recover. In the 1970s, the grey whale became an endangered species under the Marine Mammal Protection Act of 1972.⁹⁵

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 call the practice ‘barbaric’ and have generated a wave of negative attitude against the tribe.”⁹⁶

In 1999, the Makah tribe reasserted their 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.⁹⁷

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.⁹⁸

26. Costa Rica - Bribri and Cabecar peoples from the Maleku territory

Key words: Marine Protected Areas; UN Special Procedures; Special Rapporteur on the rights of indigenous peoples; Free Prior and Informed Consent (FPIC); Access to Natural Resources; Ancestral activities

Year: 2022

In 2022, the Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay, conducted a country visit to Costa Rica. The Special Rapporteur received allegations about indigenous peoples not being consulted about the delineation and management of protected areas, when these are in indigenous territories and lands, as is the example of the Bribri and Cabecar peoples in the Talamanca area and in the territories of Maleku and Boruca.⁹⁹

The indigenous leaders informed the Special Rapporteur about the obstacles that they were facing in gaining access to their sacred places and medicinal plants and in engaging in ancestral activities. In relation to the Maleku territory, the Special Rapporteur was informed of obstacles impeding ancestral fishing practices and the prohibition of some types of ancestral hunting, even though these activities take place in accordance with their scientific knowledge, in a way that ensures the conservation of the species in question and of the environment.¹⁰⁰

27. Canada – Haida Nation

Key words: Ocean; Marine Conservation Area Reserve; Co-management

Year: 1985 -

Gwaii Haanas National Marine Conservation Area Reserve in Canada is a Heritage Site of the Haida Nation (established in 1985) and a protected marine area under the National Marine Conservation Areas Act (established 1988). Based on the Gwaii Haanas Agreement of 1993, it is managed by joint management boards that comprise equal numbers of representatives from both the Haida Nation and the Canadian federal government. Under the law, the Government has ultimate decision-making power, but in practice co-management of the area has prevailed. Discussions about co-management arrangements and power-sharing between indigenous peoples and the Government are also emerging in the current process of establishing a network of marine protected areas in the Northern Shelf Bioregion. The process, which is still ongoing, is co-led by the Federal Government, the Province of British Columbia and 17 First Nations. Indigenous peoples are providing their principles, ethics and values into the network design and governance.

28. Chile – Rapa Nui

Key words: Ocean; Marine Park; Co-management

Year: 2017

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.¹⁰¹

29. Panama – Ngöbe

Key words: Ocean; Marine Park; Tourism; Free, Prior, and informed Consent (FPIC)

Year: 1988

The Bastimentos Island National Marine Park in Panama, was established in 1988 without prior consultation with local communities, including the Ngöbe indigenous peoples.¹⁰²

With the establishment of the park, the Ngöbe have faced restrictions on their traditional activities. Additionally, the park has had a negative effect in the marine resources of the area, as it has increased tourism, which implies increase of demand in seafood for restaurants and hotels, and the development of touristic activities.¹⁰³

CRIMINALISATION

30. Canada – Mi'kmaq

Key words: Ocean; Fishery offences; Provincial court; NHRI

Year: 2020 – 2022

The 1993 Marshall decision is named after Donal Marshall Jr., a Mi'kmaq fisherman who was arrested for catching and selling eel captured with an illegal net and without license. The case set of a six-year legal battle that escalated to the Supreme Court of Canada. Finally, Marshall Jr.'s court victory affirmed the right of First Nations to earn a moderate livelihood from fishing and hunting.¹⁰⁴

In 2020, a group of Mi'kmaq fishermen from the Sipekne'katik First Nation initiated lobster fishery in St. Mary's Ba, based based on the Marshall Decision. Shortly after, non-indigenous fishermen began intimidating these communities by hauling their gear, taking traps and cutting ropes and buoys.¹⁰⁵

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. The Commission recognized and supported Mi'kmaq right to fish and earn a moderate livelihood as stated in the Peace and Friendship Treaties and upheld in the Marshall Decision. The Commission affirmed that the United Nations Declaration on the Rights of Indigenous Peoples further affirms the right of the Mi'kmaq to maintain, develop, and govern their own fisheries.¹⁰⁶

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 offences against him, based on his treaty rights to fish for food, social and ceremonial purposes and moderate livelihood fisheries.¹⁰⁷

31. Australia – New South Wales Aboriginal people

Key words: Ocean – Marine – Fishing – Abalone – Quotas – Criminalization – Court – Aboriginal land council – Cultural fishing right – Fisheries act

Year: 2021

The New South Wales Aboriginal Land Council (NSWALC) of Australia called on the New South Wales Government to support Aboriginal cultural fishing practices by ending the prosecutions of Aboriginal people exercising their cultural fishing rights. This request followed the apprehension of 74-year-old Kevin Mason by New South Wales Fisheries officers, who chased him into the sea 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.¹⁰⁸

The NSWALC councillor expressed concern over Aboriginal people being prosecuted for fishing, while the local government increased the quota of the abalone fishing industry. Fishing constitutes a cultural practice that is vital for the aboriginal people of New South Wales.¹⁰⁹

In 2008, the New South Wales Parliament passed a new act to the Fisheries Management Act of 1994, which would allow an Aboriginal person practising cultural fishing to take fish despite bag limits. However, the approved section has not yet become operational.¹¹⁰

The NSWALC called on the government to support aboriginal people's cultural fishing practices; place an immediate moratorium on the prosecution of Aboriginal cultural fishers and develop reforms to protect Aboriginal cultural fishers from prosecution; remove restrictions on Aboriginal cultural fishers and cultural fishing activity, commence section 21AA of the Fisheries Management Act of 1994, without any restrictions; and work in partnership with Aboriginal community-controlled organizations.¹¹¹

32. Finland – Sámi

Key words: Marine; Fishing licenses; Touristic fishing; Supreme Court; CESCR.

Year: 2002-2022

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.¹¹²

Several examples of criminal prosecution against Sámi persons were taken to the Courts, with some Sámi persons even turning themselves in to the authorities. The Sámi persons were prosecuted for fishing out of season and with banned stationary nets, and for fishing without permits in state-owned lands/water.¹¹³

In these cases, the court acknowledged fishing as a cultural practice of the Sámi, which is enshrined in the Finnish constitution as well as international human rights laws.¹¹⁴

In 2021, the Committee on Economic, Social and Cultural Rights (CESCR) concluding observations on Finland, expressing concern over the legislative changes, infrastructure projects and incursions into territories that have eroded the rights of the Sámi to maintain their way of life and traditional livelihoods, including reindeer husbandry and fishing. The Committee also expressed concern over the lack of a legal obligation to conduct consultations with a view to obtaining the free, prior and informed consent of the Sámi on matters that affect their lands and resources. The Committee urged Finland to act upon infringement on the rights of the Sámi in order to maintain their culture, way of life and traditional livelihoods. In this regard, it recommended that Finland assess the impact of existing laws on these rights and enact the necessary amendments. Moreover, the Committee urged Finland to strengthen the legal recognition of the Sámi as an indigenous people, and the legal and procedural guarantees for obtaining the free, prior and informed consent of the Sámi in line with international standards. It also encouraged the State party to expedite the ratification of ILO Convention No. 169.¹¹⁵

In 2022, the Supreme Court of Finland ruled in two cases that members of the Sámi indigenous people were not legally responsible for having violated joint Finnish-Norwegian rules on fishing, dismissing the cases on the basis of provisions in the Finnish Constitution and the International Covenant on Civil and Political Rights (ICCPR). One of the cases involved the violation of fishing outside the seasonally accepted period, while the other concerned fishing without a legally required permit.¹¹⁶

In the case of fishing outside the seasonally accepted period the relevant Decree regulating fishing rights, did not specify exemptions for the Sámi people. In contrast, fishing is generally recognised as a constitutional Sámi right. In the other case, the 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. In both cases, the Supreme Court determined that the pursuit of traditional fishing is a form of Sámi cultural heritage. However, the court found that the right to fishing was not absolute and could be restricted, provided that the “restrictions were proportionate to the benefit sought”.¹¹⁷ Because sustaining the salmon stock levels is beneficial also to the Sámi — as a complete depletion of the species would prevent fishing in the future — restrictions on the Sámi rights were acceptable, in principle, when proportionate. 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”.¹¹⁸ The Supreme Court also referred to previous communication from the Finnish Constitutional Law Committee, which 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 should be increased before limiting the rights of the Sámi. Hence, the court dismissed the case as incompatible with the Constitution.

In the case concerning fishing without a permit, the court found 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. The claims of unauthorized fishing against the Sámi individuals were therefore dismissed as incompatible with the Constitution.¹¹⁹

33. Japan – Ainu

Key words: Inland; River; Salmon; Self-determination; Free prior and informed consent (FPIC); Court; NGO; Human Rights Committee; The Centre for Environmental and Minority Policy Studies (CEMIPoS)

Year: 2018

In 2018, criminal charges were brought against Hatakeyama Satoshi, 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.¹²⁰

Rahoro Ainu Nation of Urahoro Town, an Ainu organization, filed litigation against the Japanese state and the Prefecture of Hokkaido to confirm that their riverine harvesting rights have historically never been extinguished by Japanese law.¹²¹

In 2020, the Centre for Environmental and Minority Policy Studies (CEMIPoS) of Japan, submitted a report to the Human Rights Committee for the periodic review of Japan. The report refers to the case of Hatakeyama Satoshi and notes that the authorities claimed that fishing salmon in the river without prior permission is illegal under the antiquated yet still-intact Hokkaido Regulation restricting the Ainu to use their freshwater resources. According to the Hokkaido Regulation, an exception for Ainu salmon fishing can be granted for ritual purposes only, and with prior permission granted by the governor of Hokkaido. Mr. Hatakeyama maintains that the Ainu fished salmon as a part of their traditional livelihood in

Hokkaido before they were colonised and that his act of fishing was for a ceremonial event that has been observed by the Ainu for centuries. Hence, his actions only corresponded to preserving and maintaining the right to Ainu culture and cultural identity as part of the acknowledged rights belonging to indigenous peoples.¹²²

The report further states that despite Japan enacting the Ainu Policy Promotion Act, which acknowledges the importance of Ainu culture, including rituals and practices in connection to fishing salmon in rivers, a revision of local legislation that currently obstructs Ainu rights has not taken place. Thus, in practice, Japan is failing to recognise and enable indigenous peoples to exercise control over natural resources.¹²³

34. Honduras – Lenca, Maya, Tolupán, Garifuna, Nahua, Pech Tawahka and Miskito peoples

Key words: Inland; River; Hydroelectric Dam; Energy; Free, Prior, and informed consent (FPIC); Human Rights Defenders; Business and Human Rights; Special Procedures; Special Rapporteur on Human Rights Defenders

Year: 2021

After a country visit to Honduras in 2018, the 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.¹²⁴

The Special Rapporteur specifically referred to El Tornillito, the second biggest hydropower project in Honduras, carried out by the construction company Hidrovolcan S.A. The company obtained an environmental permit to carry out the project in the Ulúa river and signed an agreement with the Government for the provision of energy, 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).

The Special Rapporteur recommended that Honduras implement an “inclusive and appropriate dialogue and consultation process with the broadest possible range of organizations of indigenous peoples in order to adopt, with their consent, a regulatory framework on the right to free, prior and informed consultation of indigenous peoples in the country in accordance with the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the United Nations Declaration on the Rights of Indigenous Peoples”.¹²⁵

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.¹²⁶

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