

# Gender and human rights in coastal fisheries and aquaculture – A comparative analysis of legislation in Pacific Island countries

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## Introduction

*Under international human rights law, governments are obligated to respect, protect and guarantee human rights through all policies and legislation. A new study was commissioned by the Pacific Community (SPC) in 2019 to conduct a comparative analysis of national legislation against gender and human rights requirements, as they apply to coastal fisheries and aquaculture in six countries: Fiji, Kiribati, Samoa, Solomon Islands, Tonga and Vanuatu. The study focuses on reviewing fisheries legislation, as well as environmental and land legislation, against the requirements of the primary human rights treaties (see Box 1).*

### Box 1. Primary human right treaties and declarations

- 1948** Universal Declaration of Human Rights
- 1965** Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- 1966** International Covenant on Economic, Social and Cultural Rights (ICESCR)
- 1966** International Covenant on Civil and Political Rights (ICCPR)
- 1979** Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- 1984** Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- 1989** Convention on the Rights of the Child (CRC)
- 1990** International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (CMW)
- 2006** Convention on the Rights of Persons with Disabilities (CRPD)
- 2006** International Convention for the Protection of All Persons from Enforced Disappearance (CED)
- 2007** United Nations Declaration on the Rights of the Indigenous Peoples (DRIP)
- 2018** United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (DRP)

Given the complexity of legal systems in Pacific Island countries and territories that include customary laws, local ordinances and statutory legislation, this study only presents a first indication of some of the issues at stake, rather than an exhaustive analysis. Despite these limitations, it provides a solid platform for future work by identifying key areas that need strengthening in the face of climate change and increasing globalisation.

## Main findings

In the Pacific Islands region, many communities rely on coastal fishing for livelihoods, generally due to limited employment opportunities and poor soil limiting agriculture in some countries. This study recognises the progress made in protecting the human rights of coastal fishers, especially

regarding indigenous communities' control over, and access to, resources through community-based fisheries management (CBFM) and the creation of locally managed marine areas, and focuses on the many similar challenges faced by governments throughout the region. These include climate change reducing the amount of available land, changing demographics with increasing migration to the main islands and people living outside of their traditional areas, overfishing, pollution and environmental damage, and the increasing monetisation of local economies.

While respecting and protecting indigenous rights, governments must ensure that customary practices comply with human rights law, including with regard to access to resources and economic and social rights. This is becoming increasingly important as climate change is causing people to

migrate from their place of origin to higher ground. Under the right to an adequate standard of living, these migrating communities, as well as landlocked communities, must be able to access the coastal resources they depend on for their livelihoods. Similarly, of both these communities and indigenous women must be able to participate in decision-making about these resources. Human rights law can provide guidance on how this can be done without undermining indigenous people's rights to marine resources, and local conservation efforts. Box 2 lists the relevant human rights analysed in this study.

Increasing globalisation is also putting pressure on governments to open up access to natural resources and pursue foreign investment and development projects. This includes opening up for commercial fishing, developing the foreshore for tourism, and encouraging bauxite and sand mining that can damage and pollute marine ecosystems, all of which can have a detrimental impact on the health and livelihoods of local communities. This study thus highlights the importance of environmental impact assessments being extended to cover the potential impact of projects and programmes on all human rights. It also discusses the importance of due process when private or public land is used by the government for development purposes. Often, compensation may only be given to those with formal ownership rights over an area thus excluding those with only user rights and those people who have migrated from other areas. Similarly, they will not be involved in any decision-making despite having their livelihoods directly impacted. Including stronger guarantees of economic and social rights in national constitutions and statutory legislation can help coastal fishers legally challenge actions that undermine their livelihoods and health, and are particularly relevant to small-scale fishers when it concerns access to, and the health of, coastal areas and adjacent land.

## Box 2. Relevant human rights

### Everyone has the right to...

- ...an adequate standard of living, including the right to food, water and livelihoods
- ...access and use natural resources sustainably, including marine resources
- ...participate in political affairs, including fisheries and aquaculture management
- ...safe and decent work, including market access, social security and safety at sea for fish workers
- ...an healthy and safe environment, including coastal and aquatic ecosystems
- ...non-discrimination, including women and children's rights
- ...remedy and redress for all human rights violations

## Next steps

This study puts forward numerous recommendations that will help governments protect the human rights of coastal fishers in a changing world. The findings and the proposed recommendations will be presented and discussed with the six countries and partners in an online workshop.

Given the current travel restrictions due to the COVID-19 pandemic, SPC's Fisheries, Aquaculture and Marine Ecosystems Division is holding a virtual Regional Workshop on Gender, Social Inclusion and Human Rights, focusing on coastal fisheries and aquaculture in July 2020. The online event is a joint initiative of the New Zealand-funded Effective Coastal Fisheries Management Project and the Pacific-European Union Marine Partnership (PEUMP) programme, in collaboration with SPC's Regional Rights Resource Team, and the Wildlife Conservation Society.

During the workshop, the main findings of this comparative legal analysis – as well as those of the gender and fisheries assessments undertaken so far – will be presented. Most importantly, it will be an opportunity to obtain feedback from the countries and from SPC's partners that are actively working in the Pacific to mainstream gender and human rights into national policies, laws and actions.

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