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POLICY BRIEF

Gender and human rights in coastal fisheries and aquaculture law

Purpose

This policy brief highlights the opportunities for Pacific Island countries and territories (PICTs) to include human rights principles in coastal fisheries and aquaculture legislation and identifies existing barriers to their effective implementation.

Key messages

Pacific Island nations are progressing in the recognition and implementation of human rights, especially regarding indigenous communities' control over and access to resources through customary or community-based fisheries management (CBFM). Today, however, due to environmental threats and population growth, governments are facing increasing challenges that can be met only by stronger articulation of human rights, in order to achieve sustainable development for both men and women working in coastal fisheries and aquaculture.

“Small-scale fisheries contribute about half of global fish catches and employ more than 90 per cent of people employed in fisheries, about half of them women (mainly engaged in marketing and processing).”

FAO, The State of World Fisheries and Aquaculture, 2020



Context

Coastal fisheries are vital to local communities in the Pacific region, being both a source of food and livelihood. *A new song for coastal fisheries – pathways to change* (2015) reports that “inshore fisheries provide the primary or secondary source of income for up to 50 per cent of households in the Pacific region”. Pacific communities, therefore, need secure access to coastal marine resources to enjoy their rights to food, life and culture. Coastal fisheries and marine tenure have traditionally been managed according to local customs and practices. In some Pacific countries, statutory laws support CBFM systems, allowing local communities to manage their marine resources and to exclude outsiders without a permit, except those fishing for subsistence. This legally establishes the rights of indigenous communities to access and use their coastal marine resources.

Human rights and the law

Under international human rights law, governments must respect, protect and guarantee the basic human rights of coastal fishers and fish farmers in all domestic policies and legislation, even if they have not ratified particular treaties. As members of the United Nations, states are obliged to respect the Charter of the United Nations and the Universal Declaration of Human Rights.

“The Universal Declaration of Human Rights is a constitutional document of the United Nations that is now part of customary international law.”

Catarina de Albuquerque, ([Doc. A/HRC/24/44/Add.1](#))
Special Rapporteur to the United Nations, 2013

Primary human rights treaties and declarations

1945	Charter of the United Nations
1948	Universal Declaration of Human Rights
1965	Convention on the Elimination of Racial Discrimination
1966	International Covenant on Economic, Social and Cultural Rights
1966	International Covenant on Civil and Political Rights
1979	Convention on the Elimination of Discrimination against Women
1984	Convention against Torture
1989	Convention on the Rights of the Child
1990	International Convention on the Rights of all Migrant Workers
2006	Convention on the Rights of Persons with Disabilities
2006	International Convention on Enforced Disappearance
2007	Declaration on the Rights of the Indigenous Peoples
2018	Declaration on the Rights of Peasants and Other People Working in Rural Areas



Key findings and challenges

To comply with their human rights obligations, countries must establish a legal framework that guarantees these rights and access to justice for any breaches. Most Pacific Island constitutions recognise and protect civil and political rights, as well as customary practices. Economic, social and cultural rights should also be explicitly recognised to ensure full human rights protection for small-scale coastal fishers and fish workers.

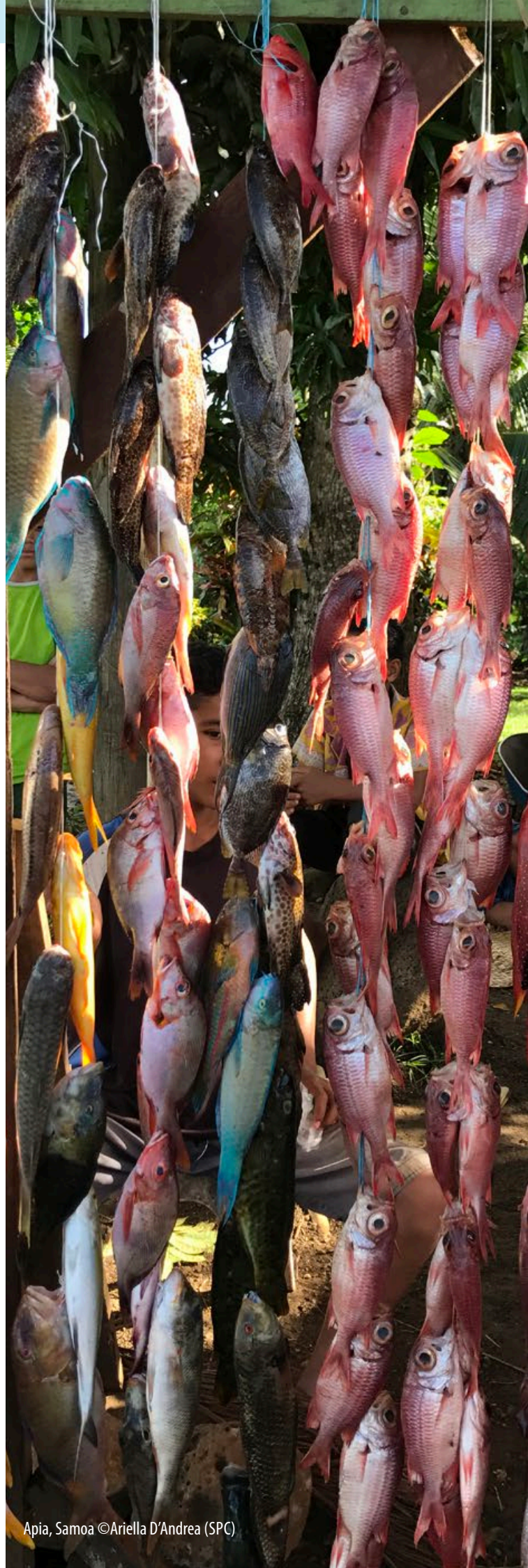
Right to health
Right to a healthy environment
Access to natural resources
Freedom of expression
Right to social security
Freedom of association
Right to safe work
Children's rights
Right to life
Gender equality
Principle of non-discrimination
Right to housing
Access to justice
Right to food
Freedom of belief
Rights to water and sanitation
Right to an adequate standard of living

Non-discrimination and gender equality

In most PICTs, fisheries are still perceived as a male dominated sector, and women's fishing activities are often undervalued or underestimated. Women and vulnerable groups may face discriminatory customs, especially regarding land tenure and participation in local resource management. Since custom is recognised in many PICTs' constitutions as a source of law alongside formal legislation, it can be difficult to secure justice for human rights breaches. Nonetheless, progress has been made to ensure that customary practices comply with all human rights: PICTs laws and court decisions increasingly recognise that custom is bound by certain fundamental rules.

Secure tenure, access to natural resources and the right to food

Access to certain marine areas is critical for the livelihoods and subsistence of coastal communities, neighbouring landlocked communities and those non-indigenous to the area. The foreshore and reef areas are either owned by indigenous communities under customary marine tenure arrangements or by the state, with local fishers having only access or user rights. While CBFM systems help ensure access to coastal marine areas and mitigate pressure on marine resources, there are still some human rights challenges. Guaranteeing the right to adequate food in a country's constitution would provide recourse and compensation for any person denied this right.



A safe and healthy environment

Throughout the Pacific region there are many examples of statutory legislation aimed at protecting the environment. However, such legislation is yet to include a specific right to a healthy environment and remedy for people who have had their livelihoods or health affected by pollution and environmental degradation and destruction. Moreover, while many PICTs provide for environmental impact assessments of proposed projects and policies, the social impact and acceptability of those projects and policies are not considered. Because the realisation of all rights is interlinked, states should also require the prior assessment of the possible human rights impacts of proposed projects and policies.

Participation and democratic governance

Many constitutions are yet to include a right to participation in public affairs or to recognise the rights of indigenous peoples to free, prior and informed consent before the adoption of measures that may affect them. While CBFM arrangements operationalise these rights, in practice, decision-making processes may follow customary norms that discriminate against certain groups, including women, youth and people from outside the community. Including the right to participation in the constitution and statutory legislation can help ensure access to remedy for those excluded. Increased awareness of coastal fisheries issues and better stakeholder organisation can also promote meaningful participation.

Right to work under safe, healthy conditions

Countries in the region have enacted many important labour, health and safety policies but small-scale coastal fisheries often come under the informal sector, with most fishers and fish workers being self-employed, independent workers. For this reason, they often lack access to social

security, information, training and safety at sea. Occupational health and safety policies and legislation should be more comprehensive and legally underpinned by constitutional recognition of people's rights at work. Child labour policies should ensure that family fishing does not prevent children from going to school, while acknowledging the social value of such activity in Pacific Island culture.

Recommended priority actions

Many priority actions can be taken by states in the short term, including:

- reviewing legislation, policies and programmes to make sure they respect and protect economic, social and cultural rights, and do not jeopardise the rights of local communities that depend on coastal marine resources for their livelihood;
- training the judiciary, civil society and customary institutions on upholding economic, social and cultural rights in order to raise awareness of human rights and social inclusion issues;
- clarifying how the right to life – included in most constitutions – can be used to protect economic and social rights, especially the rights to adequate food, a healthy environment and safety at work; and
- tracking the implementation of human rights law for small-scale coastal fishers and fish workers through existing national mechanisms for reporting and follow-up.

In the medium and long term, states can amend statutory legislation and the constitution to include economic, social and cultural rights, especially the right to food. They can also provide access to justice, ensure that customary practices respect human rights, and recognise the right to participation for all – including women and vulnerable groups.

Further reading

- Barclay K., Mangubhai S., Leduc B., Donato-Hunt C., Makhoul N., Kinch J. and Kalsuak J. (eds). 2021. Pacific handbook for gender equity and social inclusion in coastal fisheries and aquaculture. Noumea, New Caledonia: Pacific Community.
- Graham A. and D'Andrea A. 2021. Gender and human rights in coastal fisheries and aquaculture: A comparative analysis of legislation in Fiji, Kiribati, Samoa, Solomon Islands, Tonga and Vanuatu. Noumea, New Caledonia: Pacific Community.
- Yuen C. (ed). 2019. Pacific human rights law digest. Volume 6. Prepared by the Regional Rights Resource Team. Suva, Fiji: Pacific Community.

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