



Gender and human rights in coastal fisheries and aquaculture: A comparative analysis of legislation in the Federated States of Micronesia, Marshall Islands and Palau

Alison Graham and Ariella D'Andrea



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Alison Graham¹ and Ariella D'Andrea²

¹ Independent Consultant, Human Rights Expert

² Legal Adviser (Coastal Fisheries and Aquaculture) SPC Fisheries, Aquaculture and Marine Ecosystems Division



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LIST OF ABBREVIATIONS

ADB	Asian Development Bank
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBFM	community-based fisheries management
CCRF	Code of Conduct for Responsible Fisheries
CED	International Convention for the Protection of All Persons from Enforced Disappearance
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CERD Committee	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CFE-DM	Palau Center for Excellence in Disaster Management and Humanitarian Assistance
CMS	Convention on the Conservation of Migratory Species of Wild Animals
CMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
CMW Committee	Committee on the Protection of the Rights of All Migrant Workers and Members of their Families
CPR	civil and political rights
CRC	Convention on the Rights of the Child
CRC Committee	Committee on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSC	Chuuk State Code
EEZ	exclusive economic zone
EA	environmental assessment
EIA	environment impact assessment
EIS	environmental impact statement
EPA	Environmental Protection Agency (Yap State, FSM)
ESCR	economic, social and cultural rights
FAO	Food and Agriculture Organization of the United Nations
FPIC	free, prior and informed consent
FSM	Federated States of Micronesia
HRBA	human rights-based approach
ICESCR	International Covenant on Economic, Social and Cultural Rights
IHRL	international human rights law
ILO	International Labour Organization
IMO	International Maritime Organization
IOM	International Organization for Migration
KIRMA	Kosrae Island Resource Management Authority
KSC	Kosrae State Code
MILR	Marshall Islands Law Reports
MIMRA	Marshall Islands Marine Resources Authority
MIRC	Marshall Islands Revised Code
MPA	marine protected area
NGO	non-governmental organisation
NCCOS	National Centers for Coastal Ocean Science
OHCHR	Office of the United Nations High Commissioner for Human Rights
PAN	Protected Area Network
PATA	Pacific Asia Travel Association
PICRC	Palau International Coral Reef Center
PICT	Pacific Island countries and territories
PIFS	Pacific Islands Forum Secretariat
PNC	Palau National Code
PNMS	Palau National Marine Sanctuary
PSC	Pohnpei State Code
PWSC	Palau Supreme Court
RMIEPA	Marshall Islands Environmental Protection Authority
SIDS	small island developing states
SDG	Sustainable Development Goals
SSF	small-scale fisheries
SPC	Pacific Community
TRC	Traditional Rights Court (Marshall Islands)
TT	Trust Territory
TTR	Trust Territory Reports
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
UNDROP	UN Declaration on the Rights of Peasants and Other People Working in Rural Areas
UNEP	United Nations Environment Programme
UNGA	United Nations General Assembly
VNR	Voluntary National Review
WKS	Woun Kepin Soamwoai (Palau)
YSC	Yap State Code

Preface

This report was prepared by the Pacific Community (SPC) under the Sustainable Coastal Fisheries and Aquaculture for Pacific Livelihoods, Food and Economic Security Project funded by the New Zealand Ministry of Foreign Affairs and Trade and supported by the Australian Government Department of Foreign Affairs and Trade.

The review of national legislation in three Pacific Island countries (Federated States of Micronesia, Marshall Islands and Palau) aims at identifying existing biases or barriers – including gender issues – that may inhibit the realisation of human rights for small-scale coastal fishers and fish workers. The analysis covers five main aspects: non-discrimination and gender equality; the right to food and natural resources; the right to healthy and safe environment; participation and democratic governance; and rights to and at work. It provides country-specific and overall legal advice to facilitate the necessary reforms of national legislation.

The preliminary findings of this report were shared with country counterparts and partners during a virtual workshop in June 2022. The final version incorporates the comments and suggestions made on that occasion. All activities have been coordinated with relevant SPC divisions and partners to complement existing efforts in the field of gender, social inclusion and human rights across SPC and beyond.

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EXECUTIVE SUMMARY

This study was undertaken by SPC to examine the opportunities for human rights application in coastal fisheries and aquaculture legislation in the Federated States of Micronesia (FSM), the Republic of the Marshall Islands and the Republic of Palau. It provides a comparative analysis of national legislation against gender and human rights requirements as applicable to small-scale coastal fisheries and aquaculture in the three Pacific Island countries and proposes concrete legal and policy recommendations for each country to overcome any barriers to human rights implementation. This study complements a previous study that was published in 2021, covering six Pacific Island countries, namely Fiji, Kiribati, Samoa, Solomon Islands, Tonga and Vanuatu (Graham and D'Andrea 2021).

Under international human rights law (IHRL), governments are obligated to respect, protect and fulfil human rights through all policies and legislation. This means that neither environmental conservation nor economic development can take priority over respect for human rights. Human rights come first.¹ Even when the life of the nation is at risk, many human rights are non-derogable, such as the right to life, which includes the rights to an adequate standard of living, health and social security.²

The report is a desk review of applicable legislation and policies, as well as the findings of non-governmental organisations (NGOs), academics and intergovernmental organisations, such as the United Nations (UN), the Food and Agriculture Organization of the United Nations (FAO) and SPC. It recognises the progress made in protecting the human rights of small-scale coastal fishers and fish workers, and highlights areas needing improvement. It evaluates the main pieces of legislation covering fisheries and aquaculture, as well as legislation governing the environment and land, against the requirements of the primary human rights treaties.

These treaties include, most notably, the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), the 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Also relevant are the 2018 UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) and the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

Given the complexity of legal systems that include customary laws, local ordinances and statutory legislation in Pacific Island countries and territories (PICTs), the study presents only an 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.

The report first outlines the general context and situation of small-scale coastal fishers and fish workers worldwide, including the threats they face, before reviewing the applicable human rights standards and principles and introducing the specific situation in the Pacific Island region. The report then provides country-specific analyses outlining the main legislation and the primary human rights issues. It acknowledges the positive work being done in each country and suggests areas needing improvement.

¹ This is stipulated in a number of treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

² Under the ICCPR, states can derogate from their obligations regarding human rights application, i.e. suspend the current substantive guarantees for the rights under the Covenant. However, certain human rights, such as the right to life and freedom from degrading treatment, are non-derogable and cannot be suspended. The rights to food and social security are also considered non-derogable, given their close relationship with the rights to life and freedom as well as other human rights.

1. OVERVIEW

Context

In the Pacific Island region, communities typically depend on fishing in coastal areas that historically have been managed according to local customs. That context, however, is slowly changing. Economies are becoming increasingly monetised, even in remote locations. People are migrating from their villages of origin to urban areas for jobs, which is resulting in aging fishing communities. Outmigration is also due to the adverse effects of climate change, which is reducing the amount of available land. The pursuit of economic growth, including through foreign investment (in the extraction and tourism industries), is also putting increasing pressure on governments to open up access to natural resources.³

Coastal fisheries are vital to local communities in the Pacific region. They are a source of food and livelihood. According to SPC, “inshore fisheries provide the primary or secondary source of income for up to 50 per cent of households in the Pacific region” (SPC 2015: 1). Some Pacific Island countries and territories (PICTs) are also developing small-scale aquaculture projects. Secure access to these resources is, therefore, key to the enjoyment of human rights, especially the rights to food, life and culture.

Methodology

The study evaluates the main pieces of legislation covering fisheries, as well as legislation governing the environment and land, against the requirements of the primary human rights treaties. These include, most notably, the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), the 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Also relevant are the 2018 UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) and the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

Legal framework and human rights

The report discusses how most countries reviewed here have combined customary and formal legal systems to protect indigenous cultures and the human rights of every individual, as required under international human rights law (IHRL). Most constitutions to some degree recognise and protect human rights, although this tends to be limited to civil and political rights such as freedom of expression and does not include economic and social rights such as the right to food. Moreover, without a formal requirement that customary law must respect the rights contained in the constitution, customary practices can often breach human rights without being legally challenged. For instance, where equality provisions do not prevail over customary law and practices, women may be prevented from participating in decision-making at the community level. Of the three countries studied, only one country has limited the scope of customary law by stipulating that customary law and traditional leaders’ roles and functions must not be inconsistent with the constitution (Constitution of Palau: Article V, section 1). However, since the Palau Constitution includes only civil and political rights, customary practices could still possibly jeopardise economic and social rights without being legally challenged. One example could be a decision by tribal elders banishing members of a tribe from their traditional areas and therefore depriving them of their means of subsistence. Constitutional and legislative changes may be required to make sure that customary practices uphold human rights, but this should be accompanied by social change to deter any discriminatory practice.

Specific issues

Non-discrimination and gender equality

In the Pacific region, women have traditionally faced discriminatory customary practices, especially regarding restricted control over land and limited participation in natural resource management at the local level. Often these customary practices can be protected by the constitution, especially those regarding inheritance, land governance and participation in local village councils.

³ The 2050 Strategy for the Blue Pacific Continent recognises that “the global community’s present interest in the ‘Blue Economy’ ... suggests that there will be growing demand for our resources over the years to come.” (PIFS 2022: 8) This includes vulnerable marine resources such as sea cucumbers.

While these discriminatory practices are being slowly addressed through government programmes, legislation is still to catch up and clearly establish and protect women's rights, regardless of customary practices. In FSM and Marshall Islands, for instance, customary law prevails on land matters. There are, however, some positive steps in ensuring that customary practices comply with all human rights. For instance, in Palau customary law must comply with the Constitution which includes its provision on non-discrimination. This approach would be further strengthened by prohibiting indirect discrimination and ensuring substantive equality that requires the government to go beyond the law and tackle structural causes of inequality. Marshall Islands is one example of how this has been addressed, at the statutory level, in the Gender Equality Act of 2019. The act goes beyond establishing equality in law by stipulating that "all women are entitled to substantive equality in all areas of their lives, on an equal basis with men (Gender Equality Act: section 704(1)(a)). The act prohibits any action that can restrict or exclude women from, inter alia, participating in the political process and stipulates that "the Government may consider the adoption of special measures to address the under-representation of women in decision-making in the *Nitijela*, local councils, boards, committees, taskforces, and State-owned enterprises" (Gender Equality Act: section 712). However, there is no explicit reference to women's right to participate in traditional structures.

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

In the Pacific region, communities depend on both access to and control over land and coastal waters to feed themselves and their families. Under IHRL, states must, therefore, ensure security of tenure to these resources for all people. This is part of ensuring the right to an adequate standard of living. There are also specific rights to natural resources for indigenous peoples and peasants.⁴

Most countries in the region have protected indigenous peoples' rights to land. While compulsory acquisition by the government is still possible, there are usually some human rights safeguards, such as compensation in the form of government land. Regarding the foreshore, the situation is more complicated, with various arrangements throughout the region and, in the case of FSM, different practices in each state. Under statutory law, in the Marshall Islands, Palau and some states of FSM, the land and waters of the foreshore are public land, and customary rights holders have only access or use rights rather than full ownership. This may jeopardise their access to compensation and other remedies should governments acquire these resources. Only in Chuuk and Yap (FSM), do customary groups have ownership rights to both land and water in the foreshore.

Traditional fishing rights are largely protected. Nonetheless, there are some legal gaps that could jeopardise access to livelihoods. Traditional fishing rights are often defined as applying only to subsistence fishers and, with the increasing monetisation of local economies, the definition of a subsistence fisher may need revising to avoid excluding some fishers who make a decent living out of fishing, particularly in remote areas with limited alternative employment opportunities. In most countries reviewed, traditional rights over marine areas extend to those villages/clans who own the land abutting the sea).⁵ Therefore, it is unlikely that those who have migrated away from their village of origin will still be able to enjoy legally guaranteed rights in their new location.⁶ Within these customary units there is often a hierarchy of "rights of access and use" for different families and individuals, with the titled elite or hereditary chiefs holding most of the authority in determining who has access to what.⁷

The inclusion of economic, social and cultural rights in countries' constitutions and statutory legislation can address some of these issues. Unlike other countries in the Pacific region, the three countries under review have a limited interpretation of the right to life⁸, which cannot be expanded to include the determinants of a healthy and secure life, such as access to food, as has been done in other jurisdictions.⁹ Explicitly recognising and guaranteeing the right to an adequate standard of living, including food, would give communities and individuals both outside and inside the customary systems some access to recourse for any actions that impinge on their abilities to feed themselves and their families. It can also strengthen all communities' access to compensation and other remedies, should the coastal and marine resources they depend on be acquired by the government. To fully guarantee access to resources, the right to an adequate standard of living needs to be accompanied by a provision requiring customary practices to comply with IHRL. A similar provision would ensure that communities have access to redress when traditional chiefs make decisions that can undermine livelihoods.

⁴ The term 'peasants' includes other people working in rural areas, such as fishers and fish farmers.

⁵ For instance, in Palau, "[b]etween communities, land and sea barriers were continuous, and each community had proprietorship of sections of the coast line and reef" (Lingard et al. 2011: 74). Under the Palau's Public Land Act (PNC 35, section 102), such land ownership rights are valid for any "person or group of persons who held the right at the time it was abolished by the Japanese administration, or to his or their successor or successors in interest. The extent of each right shall be governed by the local customary law in effect at the time it was abolished".

⁶ This could increase due to climate change, causing people to migrate from their place of origin to higher ground.

⁷ For example, see Graham and Idechong 1998 (pp. 146-148) for Palau and Tobin 1956 for Marshall Islands.

⁸ For example, the Constitution of the Marshall Islands, rather than recognising the right to life, specifies that "[n]o person shall be deprived of life, liberty, or property without due process of law" (Constitution: Article II, section 4).

⁹ *People's Union for Civil Liberties v. Union of India & Ors* [2001].

Right to a healthy and safe environment

The enjoyment of many human rights rests on a healthy, safe and clean environment, especially the rights to life, an adequate standard of living, and health. Moreover, any actions taken to conserve the environment must be done in full compliance with IHRL, including the core human rights principles of non-discrimination and equality, participation, transparency and accountability.

Throughout the region, there are many examples of statutory legislation aimed at protecting the environment. For the most part, however, they do not include a specific right to a healthy environment nor a remedy for people who have had their livelihoods or health affected by pollution and environmental degradation or destruction.

The countries under review have taken considerable steps to create marine protected areas (MPAs). This has increased following the region's commitment to the Micronesia Challenge, whereby five Micronesian countries and territories pledged to effectively conserve 30 per cent of nearshore marine by 2020 and now 50 per cent of all marine resources by 2030. This has resulted in the establishment of the protected area networks at state level, with the participation of local communities. However, while MPAs can help protect biodiversity and improve fisheries management, this cannot be at the expense of the enjoyment of human rights, especially the right to food, which is non-derogable. Most legislation focusing on environmental conservation would therefore benefit from more explicit reference to human rights, especially the right to food and participation, as in some cases the MPAs may restrict subsistence fishing in ways that can undermine small-scale fishers' livelihoods and indigenous peoples' connection with the marine environment as a way of living. On the other hand, in the medium and long term, MPAs help protect biodiversity and increase stocks of marine resources for future fisheries sustainability (Goñi et al. 2010). Meaningful participation by local communities in MPA management requires a robust inclusive consultation process with free, prior and informed consent (FPIC). It also requires careful case-by-case design of MPAs and monitoring programmes to help minimise negative impacts and maximise benefits for fisheries, ecosystems and people (Hilborn et al. 2004).

Under IHRL, states should also require the prior assessment of the possible impacts on human rights – including the rights to life, health, food, water, housing and culture – of proposed projects and policies. As in other countries in the Pacific region, the countries under review here have focused on requiring environmental impact assessments. While such assessments cover a wide range of issues, they do not cover the possible impacts on gender and women's rights, indigenous peoples' rights and tenure rights.

Participation and democratic governance

Under IHRL, there is a clear right to participation in public affairs. While few Pacific Island countries' constitutions include a clear right to participation, even fewer explicitly recognise indigenous rights to FPIC. Many countries, however, in line with their commitments under UNDRIP to ensure indigenous peoples' rights over their natural resources, are developing an enabling legal environment for community-based fisheries management (CBFM). Under UNDRIP and UNDROP, the recognition of these groups' rights to resources means that they have decision-making powers relating to the natural resources on which they depend culturally and for their livelihoods. Despite the increasing movement towards promoting and ensuring CFBM, enabling provisions are yet to be fully concretised in law for the countries under review.

Traditional management of resources receives varying degrees of protection in the Micronesian subregion, where landowners and resource users have recognised fishing rights. However, even where traditional management techniques are legally guaranteed, in practice, the decision-making process may follow customary norms that can discriminate against certain groups, including women, lower ranks within the community and those that may have migrated to the area from elsewhere. The inclusion of the right to participate in the constitution and statutory legislation can help ameliorate these concerns and ensure access to remedy for those excluded from decision-making processes.

Rights to and at work

States must ensure that people have health and safety at work: appropriate protective clothing and equipment, and information and training on occupational safety, as well as an adequate means of livelihood¹⁰, which includes social assistance. This is true for both employees and independent workers, even in the informal sector.

¹⁰ Under the Declaration on the Rights of Peasants, states should “take appropriate measures to strengthen and support local, national and regional markets and ensure that peasants can equitably-access these markets to sell their products at prices that allow them and their families to attain an adequate standard of living” (UNDROP: Article 16 (3)).

Countries in the Pacific region have included many of these issues in policies, but they would benefit from being legally underpinned by the recognition of a right to an adequate standard of living and rights at work, which are missing from many constitutions and statutory legislation. Safety at sea should be ensured for all coastal fishers, including those fishing with small boats. Countries would benefit from more data on the current fishing effort in coastal waters, particularly on artisanal and subsistence fishing (e.g. boat census, registration and licensing). Moreover, while acknowledging the social value and importance of family fishing in Pacific Island culture, including for the transmission of traditional knowledge, countries must make sure that children are protected from hazardous work, and that family fishing does not prevent them from attending mandatory school.

While the Pacific has basic poverty reduction schemes that may indirectly benefit fishing communities, such as general pension schemes, financial support for carers of people with disabilities, free schools, etc., there is no constitutional protection of the right to social security, including social assistance. Throughout the Pacific, there have been huge efforts to extend social security to all, but for the most part initiatives focus on social insurance models that may be inaccessible for small-scale fishers due to the cost of the premium. This is especially the case for women who may be denied formal employment opportunities due to discrimination or responsibilities within the home.

Main challenges and priority actions

Under IHRL, governments are obligated to respect, protect and guarantee human rights. Unless the life of a nation is at stake, these obligations are non-derogable. Moreover, even if the life of the nation is at stake, states cannot escape their obligations to ensure certain rights, including the right to life, which includes the rights to food, housing, health and safe environment. Governments, therefore, cannot suspend the implementation of human rights for conservation or economic development purposes.

Clearly, Pacific Island countries are making a good deal of progress in the recognition and implementation of human rights, especially regarding indigenous communities' control over and access to resources through community-based fisheries management. Today, however, governments are facing new challenges posed by the increasing movement of people, growing globalisation and interdependent global economy, as well as climate change and increasing sea temperatures affecting the stock of fish available. Overcoming these challenges will require stronger articulation of human rights. One of the main challenges is how governments can both continue protecting customary practices and ensure that they comply with human rights law.¹¹ Another challenge is how to further open up access to natural resources and pursue foreign investment, while still protecting human rights and ensuring environmental sustainability to safeguard the rights of future generations.¹²

Priority actions include amending constitutions and statutory legislation to include economic, social and cultural rights, especially the right to food, the right to participation for all, including women, and access to remedy in case of a breach. The constitution should explicitly require that all customary practices comply with IHRL and that governments should prohibit discrimination against women and ensure substantive equality in line with CEDAW. Governments can also start convening discussions with courts and customary rights holders about how customary law can progressively integrate human rights principles.

¹¹ Customary or traditional practices that are vital for sustainable fisheries may be lost as they rely on the preservation of indigenous languages, which are being eroded. For instance, the Marovo people in Solomon Islands' Western Province use their language to describe entire groups of animals, rather than individual species, using over 400 words for fish and 100 for shells. "The term used for aquatic creatures depends on collective traits including the shape of the group, its apparent purpose, its movements, and the behaviours of individuals within the group." (FAO et al. 2023: Box 8.7) Disregarding such traditions would undermine sustainability efforts, as indigenous knowledge offers valuable insights into ecosystem dynamics and climate change impacts, allowing the adoption of adaptive strategies for sustainable fisheries management and collective rights protection.

¹² As countries embrace the blue economy, some commentators note that the growing capacity to industrialise the ocean has resulted in the blue acceleration or race for the ocean, based on the observation of "a sharp acceleration of ocean uses characterizing the onset of the 21st century" (Jouffray et al. 2020: 46). Fisheries and aquaculture make no exception as "fish is one of the only sources of animal protein, depending on the species and how it is produced, for which further growth in global consumption is deemed possible within environmental limits" (Jouffray et al. 2020: 43-44). The "[g]lobal demand for blue foods, defined as aquatic foods captured or cultivated in marine and freshwater systems, is expected to double in live weight by 2050" (Jouffray et al. 2021) As large oceanic countries and territories, Pacific Islands view the ocean as a common heritage of which they are the custodians. This is stated in the regional 2050 Strategy for the Blue Pacific Continent, adopted by the Pacific Islands Forum Secretariat (PIFS) members in 2022. They are well aware of the "increasing commercial and state-sponsored interest in our region's ecological and natural resources" and approach the blue economy cautiously but with interest (PIFS 2022: 8). The strategic vision of these island nations is for "a resilient Pacific Region of peace, harmony, security, social inclusion and prosperity, that ensures all Pacific peoples can lead free, healthy and productive lives", as the custodians of nearly 20 per cent of the earth's surface (Pacific Islands Forum Secretariat 2022: 6).

2. GLOBAL CONTEXT: COASTAL FISHERS, LIVELIHOODS AND THREATS

In many parts of the world, coastal resources are crucial to local communities for both food security and income generation. Globally, small-scale fisheries accounts for 90% of capture fisheries employment (FAO et al. 2023). Fishers who depend on available marine resources for their well-being require secure tenure rights over the foreshore and land in the coastal or waterfront area in order to access fishing grounds, as well as for processing and marketing, housing and other livelihood support. The importance of these tenure rights for small-scale fishers is recognised in the 2015 FAO Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines).

Nonetheless, there are numerous threats undermining coastal fishers' abilities to provide for themselves and their families. These include competition with industrial fishers for access to declining resources, overfishing, damage to fisheries habitats, and land-based impacts, including pollution. Due to weak tenure rights in many countries, coastal fishers are at risk of having their resources grabbed by commercial interests (UNGA 2012: para 57). Their access to resources is also often undermined by the growth in tourism in the coastal areas (Cambers et al. 2003). Finally, governments worldwide have created marine protected areas (MPAs) with fishing bans or restrictions for conservation purposes, sometimes to the detriment of local fishing communities (Franco et al. 2014), although meaningful participation in MPA management and community-based fisheries management may help address similar issues.

Population growth is increasing pressure on coastal fisheries resources, pushing governments to pursue alternative livelihood options, including ecotourism and recreational fishing, near-shore fisheries around anchored fish aggregating devices and aquaculture (i.e. the farming of fish, crustaceans, molluscs, aquatic plants, and other aquatic organisms). While these options are thought to take the pressure off declining wild stocks of reef species, sustainability is a key issue in vulnerable coastal ecosystems. The development of new activities must be carefully designed and regulated to ensure economic viability, social acceptance and environmental sustainability. Some authors warn that, "ironically, if not practised wisely, aquaculture can actually increase pressure on wild stocks [and] cause environmental damage (including damage to fish habitat)" (Nixon 1997: F).

Small-scale coastal fishers worldwide also face difficult working conditions, which can affect their families, particularly their children. By being mostly self-employed or engaged informally, small-scale fishers are often without formal employment contracts and suffer from weak labour protection and limited access to social security. They often live-in remote locations, and their work is hazardous. For instance, they may be at sea in difficult weather conditions in precarious crafts, including canoes and rafts, or they may have to travel from island to island in small, motorised vessels and no safety equipment. There can also often be limited maintenance services for those crafts with an outboard motor. Most also lack access to financial resources, including credit and loans, productive services and markets, and institutional support and education. These fishers may often rely on unpaid family labour, including children, who may be exposed to health hazards.

Further compounding their vulnerable situation, there is limited political organisation of small-scale coastal fishers through unions, associations and cooperatives. This hinders their influence over decision-making. Commentators have noted that small fishers are hampered by "weak political representation" (FAO 2016: viii). Moreover, the formal fishing associations that do exist tend to be dominated by men, as women are usually more informally organised (Laqeretabua 2019).

Despite amounting to "an estimated 3 million tonnes of marine fish and other seafood per year, contributing significantly to food and livelihood security in all regions of the world", women's contributions often go unnoticed (Sea Around Us 2020).¹³ According to a recent study, globally, four out of 10 people in small-scale fisheries are women: "[a]mong those participating in small-scale fisheries supply chains or engaging in subsistence activities worldwide, an estimated 44.7 million – or 39.6 per cent – are women" (FAO et al. 2023: 221). Women are also subject to various degrees of inequality in terms of access to and control over productive resources and services, and have limited employment options, due to discrimination and societal norms. They also have restricted participation and power in decision-making, including in resource management systems and work associations, and therefore have limited opportunities to address their challenges (FAO 2017: 4).

¹³ In the Marshall Islands, for instance, women's contribution to the fisheries sector "remains undervalued, despite their gross earnings from fisheries in 2017 being higher than those of men" (Fox et al. 2023: 37). "In 2017, on average, women's gross earnings in fisheries were higher than those of men, with men earning 0.89€ for every \$1.00 earned by women." (Government of the Marshall Islands 2018: 17).



3. INTERNATIONAL HUMAN RIGHTS FRAMEWORK

A human rights-based approach (HRBA) is a conceptual framework based on international human rights standards for promoting and protecting human rights.¹⁴ Under IHRL, states are obligated to ensure human rights as stipulated in a number of treaties, including the 1966 Covenants – ICCPR and ICESCR. Civil and political rights (CPR) include the rights to freedom of association, expression and belief, while economic, social and cultural rights (ESCR) include the right to adequate food and housing, social security and work; and all must be respected, protected and fulfilled. All rights are also independent and indivisible. The realisation of one right depends on the realisation of many other rights. For instance, the realisation of the right to life depends on the right to an adequate standard of living and health. Also, civil and political rights are essential to ensure full accountability for governments in their work to secure the rights of all under their jurisdiction.

Since the adoption of the above two main covenants, numerous other human rights treaties containing both sets of rights (CPR and ESCR) have been drafted and adopted by the international community,¹⁵ including the following:

- 1966 Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- 1979 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); and
- 2006 International Convention for the Protection of All Persons from Enforced Disappearance (CED).

Table 1 reports the status of ratification of international human rights treaties by the three countries reviewed in this report.

Table 1. Status of ratification of human right treaties by FSM, Marshall Islands and Palau

Country	ICCPR	ICESCR	CERD	CEDAW	CAT	CRC	CMW	CRPD	CED
FSM				2004		1993		2016	
Marshall Islands	2018	2018	2019	2006	2018	1993		2015	
Palau*	(2011)	(2011)	(2011)	(2011)	(2011)	1995	(2011)	2013	(2011)

*Dates in brackets mean the treaty was signed but not ratified by the country.

Even if a country has not ratified a treaty, as a member of the UN and a signatory to the UN Charter, it is morally and to a certain extent legally bound by the Universal Declaration of Human Rights (UDHR), which includes all rights, be they civil, cultural, economic, political or social. While there are many different views about the extent to which the UDHR is part of customary international law, it remains the main articulation of the UN Charter’s human rights provisions and is “the primary source of the global consensus on human rights [...]” (Hannum 1996: 353). In 2013, the Special Rapporteur on the right to water and sanitation noted “The Universal Declaration of Human Rights is a constitutional document of the United Nations and is part of customary international law” (Human Rights Council 2013, para 5).

Furthermore, over the last 15 years, the international community has clarified the rights of particular individuals and communities through declarations, such as the UNDRIP on indigenous peoples’ rights, adopted by the UN General Assembly (UNGA) in 2007, and, most recently, the UNDROP on the rights of peasants and rural workers, which was adopted by the UNGA in 2018. Both instruments are particularly relevant to the situation of fisher communities worldwide. More specifically, the UNDROP addresses the gap in the human rights framework as it protects those working in rural areas who depend heavily on access to seeds, land and other natural resources. It covers small-scale fishers, pastoralists, hunters, gatherers, handicraft manufacturers, dependent family members, hired workers, indigenous peoples and communities working on the land. It also covers transhumant, nomadic and semi-nomadic communities and the landless. The FAO SSF Guidelines also promote the HRBA and help define it for fisheries managers and policy-makers.

¹⁴ While HRBA is a rights-based approach to development, it is crucial to differentiate between the adoption of an HRBA in fisheries management and the adoption of the approach known as ‘rights-based fisheries’. Rights-based fisheries focus on the use of property rights in fisheries management, generally promoting the use of transferrable fishing rights (e.g. licences, quotas) to regulate access to a given fishery. Property rights determine how a resource or economic good is owned, used and disposed of, often according to market principles and, if not carefully regulated, could result in communities losing their traditional access to resources. In contrast, HRBA “recognises that the benefits from marine resources cannot be measured purely in economic terms” and focuses on ensuring/protecting the human rights of small-scale fishers (Franco et al 2014: 39).

¹⁵ More information on these treaties is available at: https://treaties.un.org/pages/Treaties.aspx?id=4&subid=A&cclang=_en

To comply with their human rights obligations as illustrated in Table 2 and adopt a fully HRBA approach to fisheries, states must ensure the constitutional recognition and protection of human rights as key to ensuring that every human right is directly enforceable. It sets the standard against which all policies and laws can be judged and monitored. Without this explicit recognition, people cannot claim justice for any breach of their human rights, only for a breach of a law that might not meet international standards. In particular, states must legally guarantee and ensure the human rights described below.

a) Non-discrimination and gender equality

Non-discrimination and gender equality are core principles of human rights law. CEDAW defines the term “discrimination against women” as follows:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field (CEDAW: Article 1).

State obligations go beyond guaranteeing *de jure* (in law) equality to ensuring *de facto* (in practice) equality. A publication of the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) further articulates four key dimensions of substantive equality, namely: “redressing disadvantage; countering stigma, prejudice, humiliation and violence; transforming social and institutional structures; and facilitating political participation and social inclusion” (Fredman and Goldblatt 2015: i).

Under human rights law, states must end all forms of discrimination (direct and indirect) against women in laws, policies and practices. This can include special measures or affirmative action. CEDAW explicitly requires states to:

take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against women (CEDAW: Article 2).

This includes “modify[ing] the social and cultural patterns of conduct of men and women” (CEDAW: Article 5).

With regard to rural women, the CEDAW Committee notes that they are often marginalised from the control and management of natural resources and that, in some cases, special efforts are required to achieve substantive equality with men (CEDAW Committee 2016a). In particular, states should design and implement strategies that “address discriminatory stereotypes, attitudes and practices which impede their rights to land and natural resources” (CEDAW Committee 2016a: para 57). States must guarantee rural women’s right to education, participation, access to credit and loans and housing and agricultural technologies, as well as equal treatment in land and agrarian reform and in land resettlement schemes. The committee also recommends that indigenous women in rural areas have equal access with indigenous men to ownership and possession of and control over land, water, forests, fisheries, aquaculture and other resources that they have traditionally owned, occupied or otherwise used or acquired, including by protecting them against discrimination and dispossession (CEDAW Committee 2016a).

In 2018, the CEDAW Committee also adopted a *General Recommendation on gender-related dimensions of disaster risk reduction and climate change*. The recommendation highlights how social and legal inequalities, including regarding land tenure, can affect women’s ability to move to safer areas (CEDAW Committee 2018b, para 63). It calls on states to “[p]romote and protect women’s equal rights to food, housing, sanitation, land and natural resources, including adequate drinking water, water for domestic use and for food production, and take positive measures to guarantee the availability and accessibility of those rights, even during times of scarcity” (CEDAW Committee 2018b, para 72).

In particular, the CEDAW Committee has recommended that states prioritise actions¹⁶:

... addressing discrimination in relation to the ownership, access, use, disposal, control, governance and inheritance of property, land and natural resources, as well as barriers that impede the exercise by women of full legal capacity and autonomy in areas such as freedom of movement and equal access to economic, social and cultural rights including food, health, work and social protection (CEDAW Committee 2018b: para 31).

¹⁶ When states ratify CEDAW, they accept the competence of the CEDAW Committee to monitor the implementation of the convention, and to make authoritative recommendations on any issue affecting women.

b) Security of tenure, access to natural resources and the right to food

Right to food and secure access to natural resources – An HRBA to fisheries must respect, protect and ensure the right to adequate food.

The right to food “is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement” (CESCR 1999: para 6). This requires governments to ensure that food, and the means of procuring it, is adequate (both in terms of nutrition and dietary needs) and sustainable, culturally appropriate, available and accessible (CESCR 1999). The right to food is not a right to be fed, but the right to feed oneself in dignity. States must ensure the conditions that allow a person to either produce food or to buy it. In turn, this requires secure access to land, seeds, water and other resources, and/or access to adequate livelihoods and markets.¹⁷ In cases where people are unable to feed themselves, such as after natural disasters, the state must provide food directly. The right to food is also linked with the right to life. This has been articulated by the India Supreme Court in its judgement *People’s Union for Civil Liberties v. Union of India & Ors* [2001], and the Human Rights Committee’s General Comment on the right to life (2019).

Since small-scale coastal fishers depend heavily on access to aquatic resources and land for their livelihoods, states must respect and protect this access, as well as protect their access to, use of, and control over fish and aquatic resources as part of their obligations under the right to food. Secure access to natural resources is also part of ensuring the enjoyment of cultural rights of many indigenous and rural communities who are particularly connected to land and water.

The Special Rapporteur on the right to food has further elucidated that fulfilling the right to food requires states to:

- “refrain from adopting any policy that affects the territories and activities of small-scale, artisanal and indigenous fishers unless their free, prior and informed consent is obtained” (UNGA 2012: para 39);
- “protect access rights of traditional fishing communities from industrial fishing and to control private actors that could affect the lands, territories and water on which these communities depend” (UNGA 2012: para 40); and
- “act proactively to strengthen people’s access to and utilization of resources and means to ensure their livelihoods” (UNGA 2012: para 41).

This last point includes preserving “the long-term (environmental) sustainability of fishing, including by reducing overfishing and conserving fish habitats, while concurrently improving the incomes of small-scale fishing communities” (UNGA 2012: para 41).

The importance of secure access to natural resources is also included in several other instruments, not necessarily focusing on human rights. The 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Fish Stocks Agreement) requires states: “to take into account the interests of artisanal and subsistence fishers” (UN Fish Stocks Agreement: Article 5(i)). The 1995 FAO Code of Conduct for Responsible Fisheries (CCRF) calls on states to:

appropriately protect the rights of fishers and fish workers, particularly those engaged in subsistence, small-scale and artisanal fisheries, to a just and secure livelihood, as well as preferential access, where appropriate, to traditional fishing grounds and resources in the waters under their jurisdiction (CCRF: Article 6.18).

The 2012 FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (FAO Tenure Guidelines) underline the link between the right to food and access to land and other natural resources. The 2014 SSF Guidelines recognise the tenure rights for all small-scale fishers, regardless of whether or not they are indigenous. The SSF Guidelines state that:

[1]ocal 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 (SSF Guidelines: Article 5.4).

¹⁷ Interestingly, fish can provide a source of healthy food, considering that many children in the Pacific Islands are eating inadequate amounts of healthy foods while consuming too many processed foods, as recognised by UN (UNICEF 2019).on any issue affecting women.

Right to natural resources – With regard to indigenous peoples and peasants, access rights are elevated to a right to natural resources. Two UN declarations – the 2007 UNDRIP and the 2018 UNDROP – recognise both the collective and individual rights to natural resources.¹⁸ The UNDROP requires states to:

ensure that peasants have the right to have access to and to use in a sustainable manner the natural resources present in their communities that are required to enjoy adequate living conditions, in accordance with Article 28 of the present Declaration (UNDROP: Article 5(1)).

Fishing rights

For the purpose of this report, fishing rights are not necessarily human rights but are how governments regulate access to fishery resources, and include the rights given to commercial businesses, the rights of local communities to fish in particular areas and historical fishing rights.

While not per se human rights, fishing rights – especially those that govern local communities' access to the marine resources on which they depend – are important for the enjoyment of various human rights, including the right to food. Therefore, any threat to a community's or individual's fishing rights can jeopardise their right to food and livelihood (including the right to feed oneself in dignity, the right to an adequate standard of living, and the right to safe and decent work).

c) Right to a healthy and safe environment

States have to ensure the enjoyment of a safe, clean, healthy and sustainable environment under IHRL (UNGA 2018).¹⁹ This is essential to the enjoyment of the rights to safe water, an adequate livelihood and health. It especially obligates states to prevent the pollution and contamination of marine areas and to “preserve the long-term (environmental) sustainability of fishing, including by reducing overfishing and conserving fish habitats, while concurrently improving the incomes of small-scale fishing communities” (UNGA 2012: para 41).

Under IHRL, states should require the prior assessment of the possible impacts of proposed projects and policies on human rights, including the rights to life, health, food, water, housing and culture. Not only should the environmental impact of an activity be assessed but also the possible impact on the enjoyment of human rights, including the rights to life, health, food, water, housing and culture (UNGA 2018).

States must ensure access to remedy to small-scale fishers for any threats to their healthy environment. Enjoyment of the specific right to a healthy environment includes having access to remedy for anyone who has had their livelihoods or health affected by pollution, environmental degradation and ecosystem destruction.

Finally, any actions taken to conserve the environment must be done in full compliance with IHRL, including the core human rights principles of non-discrimination and equality, participation, transparency, and accountability. Moreover, any policy or legal framework protecting and ensuring a healthy environment must respect all other rights. Over the last decades, for instance, governments have been creating marine protected areas (MPAs) to conserve marine biodiversity and sustain fisheries. However, while overfishing can threaten the livelihoods of coastal fishers, MPAs have in some cases led to small-scale fishers being denied access, which has threatened their right to food (Franco et al. 2014).

d) Participation and democratic governance

An HRBA must also put inclusion, participation and democratic governance at the heart of fisheries governance. The UN Special Rapporteur on the right to food stressed the importance of inclusion to mitigate small-scale fishers' vulnerability. This is also included in both the FAO Tenure and SSF Guidelines. The latter urges states and other parties to:

enhance the capacity of small-scale fishing communities in order to enable them to participate in decision-making processes. To this effect, it should be ensured that the range and diversity of the small-scale fisheries subsector along the entire value chain is appropriately represented through the creation of legitimate, democratic and representative structures (SSF Guidelines: Article 12.1).

¹⁸ Article 26 of UNDRIP states that “Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired,” and it directs states to give legal recognition to these territories. The Declaration on the Rights of Peasants similarly recognises both the collective and individual right to land and other natural resources for peasants and other people working in rural areas who depend on it for an adequate standard of living and culture. See Monsalve Suarez 2015.

¹⁹ Although not explicitly recognised under global treaties as a separate human right, the right to a healthy environment is rooted in the Declaration of the UN Conference on the Human Environment (Stockholm Declaration) of 1972 and has since been adopted at national and regional level by over 150 countries.

The High-Level Panel of Experts from the FAO-based World Committee on Food Security recommends ensuring “that fishing communities and fish workers actively and meaningfully participate in all decisions that impact on their enjoyment of the right to food” (HLPE 2014: Recommendation 8d). This is also acknowledged by the FAO CCRF, which notes that:

[i]n view of the multiple uses of the coastal area, States should ensure that representatives of the fisheries sector and fishing communities are consulted in the decision-making processes and involved in other activities related to coastal area management planning and development (CCRF: Article 10.1.2).

This right to participation is elevated in the case of indigenous peoples. They must give their FPIC to any project that could threaten their enjoyment of human rights. While not explicitly including FPIC, the UNDROP stipulates that peasants and other people working in rural areas have:

the right to active and free participation, directly and/or through their representative organizations, in the preparation and implementation of policies, programmes and projects that may affect their lives, land and livelihoods (UNDROP: Article 10(1)).

In 2018, the Office of the United Nations High Commissioner for Human Rights (OHCHR) issued the *Guidelines for States on the effective implementation of the right to participate in public affairs*, which further elaborates on states’ responsibilities in the matter (OHCHR Guidelines on the right to participation).²⁰ In addition to creating the appropriate mechanisms and legislation, states must also create an enabling environment. This includes guaranteeing protection for civil and political rights, including freedom of opinion, expression and assembly. People must be able to engage with the state and other structures without fear of reprisal. States must also ensure access to information, transparency and free media. Without access to information, communities cannot recognise and understand the possible implications of proposed policies, projects and programmes (De Schutter 2012).

Also, key to an HRBA is ensuring access to remedy and justice for abuses and violations of human rights. This requires both appropriate legislation and access to relevant mechanisms. These can include customary dispute resolution mechanisms, providing they conform with human rights standards and principles, as well as national and local courts, which should be empowered, in particular, to “adjudicate claims from small-scale fishers whose livelihoods are threatened by measures that infringe on their ability to fish so as to provide sufficient income to ensure an adequate standard of living” (UNGA 2012: para 39).

e) Rights to and at work

An HRBA requires states to ensure the right to work and the rights at work for all, including people in the informal sector, such as small-scale coastal fishers. States have to ensure adequate and safe working conditions, as well as access to adequate and appropriate protective clothing and equipment, and to adequate information and training. States must also ensure an adequate standard of living with fair wages.

For self-employed persons, states must:

take appropriate measures to strengthen and support local, national and regional markets ... and ensure that peasants ... have full and equitable access [to] ... these markets to sell their products at prices that allow them and their families to attain an adequate standard of living (UNDROP: Article 16(3)).

This includes ensuring the appropriate “means of transportation and [the] processing, drying and storage facilities necessary” to fishers and fish workers (UNDROP: Article 16(2)). The declaration also stipulates that states must “take all appropriate measures to ensure that their rural development, agricultural, environmental, trade and investment policies and programmes contribute effectively to protecting and strengthening local livelihood options and to the transition to sustainable [modes of agricultural] production” (UNDROP: Article 16(4)).

Safety at sea of small-scale fishers is specifically covered under the SSF Guidelines. States should address occupational health issues and unfair working conditions of all small-scale fishers and fish workers as an

²⁰ OHCHR prepared the guidelines as requested by resolution 33/22 of the Human Rights Council. The council, in resolution 39/11 adopted by consensus, took note with interest of the guidelines and presented them as a set of orientations for states and others.

integral part of fisheries management and development initiatives. The guidelines also recognise “the complexity that surrounds safety-at-sea issues (in inland and marine fisheries) and the multiple causes behind deficient safety” (SSF Guidelines: Article 6.16). In this effort, states’ maritime and fisheries authorities must work together, complementing each other’s expertise and capacity. National accident reporting, provision of sea safety awareness programmes and the introduction of appropriate legislation for sea safety in small-scale fisheries²¹ are some of the recommended strategies. It is vital in this process to actively involve existing institutions and community-based structures for increasing compliance, data collection, training and awareness, and search and rescue operations. In particular, “States should promote access to information and to emergency location systems for rescue at sea for small-scale vessels” (SSF Guidelines: Article 6.17).

Under their obligations regarding the prevention of economic exploitation, including child labour (Article 32 of the CRC²²), countries should collect data on the involvement of children in small-scale fishing and adopt a definition of what constitutes hazardous work. There should be clear guidelines ensuring that family fishing does not interfere with children’s education and is compatible with local traditions and culture.

Governments must also ensure access to social security for all, including those operating in the informal sector. This is clear in the 1948 Universal Declaration of Human Rights and is articulated further in Article 9 of ICESCR as including social assistance. Further guidance is provided in the International Labour Organization (ILO) Recommendation on Social Protection Floors (No. 202 of 2012), which calls on states to prioritise the establishment of national floors of social protection accessible to all in need, and particularly to cover the unprotected, the poor and the most vulnerable, including workers in the informal economy and their families. This is also covered in the ILO Recommendation on Transition from the Informal to the Formal Economy (No. 204 of 2015). The ILO Work in Fishing Convention (C-188) also includes articles requiring each member to adopt laws, regulations or other measures concerning the prevention of accidents and occupational diseases (C-188: Article 31) and to ensure that fishers “ordinarily resident in its territory” have access to social security (C-188: Article 34).



²¹ The international guidelines for work in fishing and sea safety in small-scale fisheries include the 2005 IMO code of safety for fishermen and fishing vessels (Part A and Part B), the 2005 FAO/ILO/IMO Voluntary Guidelines for the Design, Construction and Equipment of Small Fishing Vessels, and the 2012 Safety Recommendations for Decked Fishing Vessels of Less than 12 Metres in Length and Undecked Fishing Vessels.

²² Article 32 of the CRC requires States Parties to “recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.”

Table 2. Sources of relevant human rights

Human right	Legal source	State obligations	Relevance in fishery management
Non-discrimination and gender equality	ICESCR ICCPR CEDAW CERD	State obligations go beyond guaranteeing <i>de jure</i> (in law) equality to ensuring <i>de facto</i> (in practice) equality. The latter requires: “redressing disadvantage; countering stigma, prejudice, humiliation and violence; transforming social and institutional structures; and facilitating political participation and social inclusion” (Fredman and Goldblatt 2015: i).	This should be provided for in law and policies that identify the structural reasons for inequality and seek to overcome them.
Right to adequate food	UDHR ICESCR CEDAW CRC FAO SSF Guidelines FAO Tenure Guidelines	Respect, protect and fulfil access to food, livelihoods and housing. This includes secure access to resources and access to remedy for any breaches. This also includes perpetrators being held accountable and the provision of adequate compensation for, inter alia, those who may have had their access to livelihoods undermined by pollution, tourism, land acquisition, and customary practices, regardless of whether or not they are customary rights holders.	The right to adequate food should be recognised in both the constitution and relevant statutory legislation, such as the main fisheries act. All legislation governing land acquisition, investment projects, and the environment must include a right to remedy. It must also be clear that customary practices cannot jeopardise or undermine human rights (including the right to food).
Right to natural resources	UNDRIP UNDRIP	Both the UNDRIP and UNDRIP recognise collective and individual rights to natural resources. UNDRIP requires states to ensure that “peasants and rural people have the right to have access to and to use in a sustainable manner the natural resources present in their communities that are required to enjoy adequate living conditions, in accordance with Article 28” (UNDRIP: Article 5).	This should be established in the constitution and statutory legislation relating to fisheries and land.
Right to a healthy and safe environment	UN Declaration on the Human Environment (Stockholm 1972) UNGA 2018 (Report of the Special Rapporteur on the global recognition of the right to a safe, clean, healthy and sustainable environment. UN Doc. A/73/188)	States are obligated to ensure the enjoyment of a safe, clean, healthy and sustainable environment under human rights law (UNGA 2018). With regard to the situation of coastal fishers, this especially obligates states to “preserve the long-term (environmental) sustainability of fishing, including by reducing overfishing and conserving fish habitats, while concurrently improving the incomes of small-scale fishing communities” (UNGA 2012: para 41).	This right should be included in the constitution and statutory legislation governing the environment, including legislation relating to environment management, tourism and mining.
Right to participation and democratic governance	ICCPR UNDRIP UNDRIP OHCHR Guidelines on the right to participation	Indigenous peoples must give their FPIC to any project that could threaten their enjoyment of human rights. Peasants and other people working in rural areas have “the right to active and free participation, directly and/or through their representative organizations, in the preparation and implementation of policies, programmes and projects that may affect their lives, land and livelihoods” (UNDRIP: Article 10(1)). This must be coupled with ensuring CPR, freedom from fear of reprisal, and access to information.	This should be recognised in the constitution, fisheries act, any statutory legislation governing the foreshore, land reclamation and CBFM processes.
Right to work under safe and healthy conditions	UDHR ICESCR CEDAW UNDRIP UNDRIP ILO Recommendation 202 on Social Protection Floors ILO Recommendation 204 on Transition from the Informal to the Formal Economy FAO SSF Guidelines	States are obligated to ensure adequate and safe working conditions, including access to adequate and appropriate protective clothing and equipment, and to adequate information and training. States must also ensure an adequate standard of living with fair wages. For self-employed persons, states must take appropriate measures to strengthen and support local, national and regional markets and ensure that peasants can equitably access these markets to sell their products at prices that allow them and their families to attain an adequate standard of living (UNDRIP). “States should ensure the development, enactment and implementation of appropriate national laws and regulations that are consistent with international guidelines of FAO, the ILO and the International Maritime Organization (IMO) for work in fishing and sea safety in small-scale fisheries” (SSF Guidelines: Article 6.12).	This should be addressed in labour and sea safety legislation as applicable to small fishing vessels and be accompanied by appropriate social and fisheries policies that can assist small-scale fishers to comply with the relevant provisions.

4. SITUATION IN THE PACIFIC REGION

4.1 Context of the fisheries sector

The Pacific Islands are surrounded by a vast ocean, and have limited land and inland waters. The islanders therefore rely heavily on coastal fishery resources as a means of livelihood, while offshore fisheries, particularly those targeting tuna, are a significant source of foreign revenue. Most offshore resources are fished by large industrial-scale fishing vessels, operating in the exclusive economic zones (EEZs) (Gillett and Tauati 2018). These vessels are often flagged to distant water fishing nations. Reportedly, “almost 70 per cent of the offshore catch in the EEZs of Pacific Island countries is made by vessels based outside the region” (Gillett 2011: 26).

One study found that slightly more than half of Pacific Islanders (with the exception of Papua New Guinea islanders) live within one kilometre of the coast, and 90 per cent of Pacific Islanders live within five kilometres of the coast (Andrew et al. 2019). Coastal resources (between the shoreline and the outer reefs) are primarily fished by local communities²³ who depend on them both for subsistence and for earning small amounts of cash, which is becoming increasingly important with the monetisation of rural economies (Gillett and Tauati 2018). Seafood is often the main source of animal protein for local communities, as reported in *A new song for coastal fisheries – The Noumea strategy*, endorsed by SPC members in 2015. It has been reported by FAO that “about 70 per cent of the overall fisheries production from coastal areas of the Pacific Islands is produced by subsistence fishing” (Gillett 2011: 9).²⁴

In the region, coastal communities tend to fish using low-technology means such as gleaning from shore, swimming or using a non-powered canoe, and sometimes an entire community shares the catch (Gillett and Tauati 2018). Increasingly, coastal communities in the Pacific region are also engaging in small-scale aquaculture, such as seaweed farming (Pacific Island News 2019). Women tend to focus on sheltered coastal reefs and intertidal and lagoonal habitats for cultural and safety reasons, but this is changing (Thomas et al. 2020). Similarly, while men have typically undertaken high-value commercial fisheries targeting sea cucumbers (Tuara and Passfield 2011), women are also participating in these fisheries in some countries (Mangubhai et al. 2017). They are increasingly involved in fishing, processing and selling seafood to supplement household income. Nonetheless, their contribution to the fisheries sector is largely undervalued because it is often unpaid, informal, part-time or simply considered part of women’s household responsibilities (Harper et al. 2017).

Like other fishing communities worldwide, Pacific fishing communities face threats. These include increasing population; overfishing, particularly near urban areas; increasing population and urbanisation; and habitat destruction through pollution, logging, mining and the siltation of coastal areas destroying catchments/watersheds (Gillett and Cartwright 2010). Access to resources is also being undermined by the increasing development of coastal areas for tourism, including the construction of wharfs (Wilson 2018). Coastal fishers also often do not receive enough remuneration for their catch to allow for an adequate standard of living. This is generally due to low prices and limited access to markets because of a lack of processing and storage facilities for perishable products. Many fishers live in rural areas and cannot easily transport their catch to urban areas to sell. There is also a lack of transparency about market prices regarding particular catches, such as sea cucumber (Purcell et al. 2017; Mangubhai et al. 2017). Moreover, coastal fishers’ informal status means that they can be excluded from safety-related legislation and policies. Their profession may not be recognised, as they are often categorised as subsistence rather than professional fishers. They also lack access to social protection, with most systems in the Pacific region being contribution-based (social insurance models) to which small-scale coastal fishers, particularly women, may not be able to contribute (Barclay et al. 2019).

To help protect marine resources, in recent years PICTs have predominantly taken a decentralised approach to managing coastal fisheries.²⁵ Most provide constitutional protection of customary ownership and/or access to fishing grounds by indigenous communities, villages, and clans (Corrin 2011). This is done by constitutionally protecting all cultural practices such as in Pohnpei or, as in the case of the Marshall Islands, protecting cultural practices regarding land. In recent years, some Pacific governments have also combined this legal protection with creating structures that actively allow local communities to manage their resources and exclude outsiders, unless they get a licence (Gillett and Tauati 2018). This system, however, does face challenges. Although in most PICTs, local fishers claim some form of traditional or customary rights to coastal resources, increasing migration to urban centres for employment means that many fishers are moving

²³ While these communities are often indigenous, this is not always the case.

²⁴ “In many small Pacific Island countries, ... the contribution of small-scale fisheries to national employment is relatively high, ... supporting two out of every ten workers” (FAO et al. 2023: 104). It is also “estimated that women account for 56 per cent of small-scale fisheries catch in the Pacific region” (Harper et al. 2013, cited in FAO et al. 2023: 90)

²⁵ As further explained in the next section on regional efforts, the Pacific Framework for Action on scaling-up community-based fisheries management was endorsed by PICTs’ fisheries ministers in 2021.

away from their traditional lands and fishing areas. In their new location, some may not be regarded as indigenous or customary rights holders and be excluded from existing customary arrangements. However, they usually maintain their user rights over natural resources in their places of origin.

In some cases, customary practices may limit women's rights over land and their participation in decision-making at the community level. This remains true, even in matrilineal societies where, despite land being allocated through the maternal line, men often make the decisions.²⁶ This can also limit women's role in building fishing cooperatives and associations. Women are, therefore, often likely to be side-lined or excluded from discussions about projects meant to improve the situation of coastal fishers, which can result in inequality of outcome. Such projects may fail to improve the substantive equality of women, or they may even further undermine it (Lawless et al. 2019).

4.2 Regional and subregional efforts

The past few years, PICTs have been working closely with SPC to address gender and human rights in fisheries and aquaculture. Since 2018, gender assessments in fisheries have been completed in several countries, including FSM and the Marshall Islands, providing insight into women's contribution to the fisheries sector. Moreover, in 2019, SPC published the *Pacific handbook on gender and social inclusion in coastal fisheries and aquaculture*, which provides guidance to PICTs on how to perform gender and social inclusion analyses to inform legislation and policies, as well as programmes and services (Barclay et al. 2019).

Recently, the Pacific Islands Forum Leaders underscored their commitment to protecting human rights through the 2023 Declaration on the continuity of statehood and the protection of persons in the face of climate change-related sea-level rise and the Revitalised Pacific Leaders Gender Equality Declaration. Pacific members of parliament adopted the Port Vila declaration on human rights, good governance and development at the Pacific Parliamentarians Dialogue, held in Vanuatu in November 2019. The declaration was informed by, among others, the compendium *Human rights in the Pacific: A situational analysis* (SPC 2016), which included valuable information on Pacific Islands, complementing the earlier UN publication *Human rights in the Pacific: Country outlines* (OHCHR 2012).

Also relevant to PICTs is the recognition of human rights in small island developing states (SIDS) under the 2014 SIDS Accelerated Modalities of Action (SAMOA) Pathway. The SAMOA Pathway is the outcome document of the SIDS Heads of State Conference held in Apia, Samoa, in 2014. It was then endorsed by UNGA Resolution 69/15. Through the SAMOA Pathway, UN member nations are committed to working together to support the efforts of SIDS to:

- promote the further use of sustainable practices relating to fisheries and aquaculture to improve food and nutrition security while ensuring the sustainable management of the required water resources; and
- increase rural income and jobs, with a focus on the empowerment of smallholders and small-scale food producers, especially women.

The document recognises that:

[h]ealthy, productive and resilient oceans and coasts are critical for ... poverty eradication, access to sufficient, safe and nutritious food, livelihoods, economic development and essential ecosystem services, including carbon sequestration, and represent an important element of identity and culture for the people of small island developing States (SAMOA Pathway: para 53).

The SAMOA Pathway also gives ample space to gender equality and women's empowerment, considering women as drivers of economic growth in SIDS and as "powerful agents of change" (SAMOA Pathway, para 76). The UN supports the efforts of SIDS to "give women equal rights with men to economic resources, including access to, ownership of and control over land and other forms of property, credit, inheritance, natural resources and appropriate new technologies" (SAMOA Pathway: para 77).

Regarding safe and sustainable transportation, states commit to supporting the efforts of SIDS to "gain access to environmentally sound, safe, affordable and well-maintained transportation" and to "advance the safety of land, sea and air transportation" (SAMOA Pathway, para 67). In this regard, it is worth noting that, in 2007, SPC developed model regulations on safety of small fishing boats, under the PIMLAWS project implemented by the Geoscience, Energy and Maritime (GEM) Division of SPC. GEM is now running the Pacific Safety of Navigation Project in 13 PICTs.

²⁶ For Marshall Islands, see CEDAW Committee 2018a: para 40. However, a previous report stated that "the Marshall Islands is a matrilineal society, where women are owners of land resources and have traditionally been respected as decision-makers" (CEDAW Committee 2016b: para 25).

These high-level commitments have trickled down to regional policies and strategies dealing with coastal fisheries and aquaculture in PICTs. A number of regional policy documents were adopted in 2015 to raise the profile of coastal fisheries and aquaculture in the Pacific region, furthering the vision of the *Pacific Islands Regional Coastal Fisheries Management Policy and Strategic Actions (Apia Policy) 2008–2013*.²⁷ These regional policies include *A new song for coastal fisheries – pathways to change: The Noumea strategy* and *Future of Fisheries – A Regional Roadmap for Sustainable Pacific Fisheries*, both endorsed by SPC’s Heads of Fisheries Meeting in 2015. Guided by the vision of the Noumea strategy, SPC has developed a *Pacific Framework for Action on Scaling up Community-based Fisheries Management 2021–2025*, which was endorsed by the Second Regional Fisheries Ministers’ Meeting in 2021. The framework aims at guiding national action to empower and support local communities and foster sustainable coastal fisheries management for the benefit of Pacific peoples in terms of food, nutrition, livelihood, culture and health.

These regional policy instruments generally include loose human rights language. In particular, under the coastal fisheries roadmap, PICTs commit to empowering communities to manage their natural resources (right to resources), conserving aquatic habitats (right to a healthy environment) and promoting alternative livelihoods (right to work). Strategy 5 of the roadmap seeks to ensure equitable access to benefits and involvement in decision-making for women, youth and disadvantaged groups. The Noumea strategy has two long-term overarching outcomes: (i) improved wellbeing of coastal communities; and (ii) productive and healthy ecosystems and fish stocks. These outcomes are in line with the right to an adequate standard of living and the right to a healthy environment. A number of medium-term outcomes of the Noumea strategy specifically address human rights concerns: empowerment of coastal communities with clearly defined user rights; reliance on community-based management to underpin coastal fisheries management; equitable access to benefits and decision-making within communities, including women, youth and marginalised groups; and diversity of sustainable livelihoods, including aquaculture, for coastal communities to generate income.

In the area of aquaculture, the SPC Heads of Fisheries endorsed the *Regional framework on aquatic biosecurity* in 2020. Through this framework, PICTs commit to: safeguarding human health in relation to aquaculture production; ensuring that aquaculture is technically accessible, culturally sensitive and environmentally sustainable; and promoting gender equality and broad participation in decision-making. In 2021, the SPC Heads of Fisheries agreed to prepare a regional aquaculture strategy that can guide aquaculture development, in line with PICTs’ aspirations, including for food security and poverty alleviation, and building on the region’s strengths and experiences. At the subregional level, it is worth noting the adoption of the Agreement on the Micronesian Association for Sustainable Aquaculture (MASA) in 2015. The MASA Agreement aims at supporting the development of aquaculture as a sustainable livelihood alternative to capture fisheries. It includes equitable sharing of benefits, recognition of indigenous knowledge, and consideration of social aspects relating to aquaculture.

With regard to marine conservation efforts, the three Micronesian countries reviewed in this report – FSM, Marshall Islands and Palau – have committed to the Micronesia Challenge for the achievement of UN Sustainable Development Goal 14 – Life Below Water. In 2006, together with Guam and the Northern Mariana Islands²⁸, the three countries committed to effectively conserve at least 30 per cent of the near-shore marine resources and 20 per cent of the terrestrial resources across Micronesia by 2020. During the 24th Micronesia Island Forum in 2019, the three countries, with Guam and the Northern Mariana Islands, endorsed the new Micronesia Challenge 2030 goals to effectively manage 50 per cent of marine resources, including the exclusive economic zone (EEZ), and 30 per cent of terrestrial resources by 2030. For the implementation of the Micronesia Challenge, countries have adopted domestic legislation for the establishment, funding and management of protected area networks (PANs). This includes the Marshall Islands adopting the PAN Act of 2015 and PAN Regulations 2020 and Palau adopting the Protected Areas Network Act (PNC 24). In FSM, a national framework is implemented in each state, either via existing protected area legislation or through dedicated legislation, such as Chuuk’s Protected Areas Network Act of 2017. The Micronesia Conservation Trust is still distributing funds to Yap following the formalisation²⁹ of the role traditional councils can play in “designating protected areas within their lands under the federal PAN” (Daugherty 2019: 31). The regulations are expected to improve, among other things, the enforcement issues related to community rules on reef fish and marine invertebrates that were highlighted in the Yap PAN design workshop held on 11–22 November 2017.

²⁷ While these communities are often indigenous, this is not always the case.

²⁸ The five PICTs participating in the Micronesia Challenge were part of the UN Trust Territory of the Pacific Islands (TTPI), administered by the United States of America (USA) from 1947 to 1994. Today, FSM, Marshall Islands and Palau are independent countries, freely associated with the USA under the Compact of Free Association. More information about the challenge can be found at: <http://www.micronesiachallenge.org/>

²⁹ “The EPA and the Department of Resources and Development (R&D) developed a regulation referencing the request of the Councils and cited the executive branch’s constitutional mandate to assist the Councils in their promulgation of a PAN program” (Daugherty 2019: 31). See also Yap State R&D Regulations for the Implementation of Protected Area Networks.





5. INDIVIDUAL COUNTRY ANALYSIS

5.1

Federated States of Micronesia

In 1979, Palau and the Marshall Islands became separate countries, while Kosrae, Pohnpei, Chuuk (formerly Truk) and Yap consolidated and became a federation known as the Federated States of Micronesia (FSM). Each state has its own language, customs, local government and traditional system. Chuuk is the most populated state with nearly half of the total population (FSM Statistics Office 2020). Within each state, there is migration from the outer islands and areas to the more populated regions where better services are available (SPC 2019).

In the FSM, like in many other Pacific Island countries, most communities depend on fishing. In the outer islands this tends to be subsistence fishing, while it becomes more commercial towards the urban areas (FAO 2024).³⁰ Women generally fish the reef through netting and gleaning activities, while men focus on fishing beyond the reefs “in boats or in diving or spearfishing” (SPC 2019: 9)

The challenges coastal fishers face may vary from state to state according to their position and population. As the most populated state, Chuuk faces declining fish resources due to increasing population and a lack of other income possibilities. Yap is the least populated state and has a larger resource base so it faces less pressure on fishing resources, although there is some serious over-exploitation of clams and *bêche-de-mer* close to the state centre of Colonia (FAO 2018). While Kosrae has a small population as a single island, it has a smaller resource base. In Pohnpei, the resources are similarly regarded as not yet in crisis,³¹ but officials believe that stronger management will soon be needed (FAO 2018: 14). Moreover, all states face problems with sand mining and dredging, leading to coastal erosion, although in Chuuk this is particularly uncontrolled (FAO 2018). Similarly, the FAO has noted that land-based development in Pohnpei has resulted in the loss of forest that has caused “increased run-off, sedimentation and chronic reef degradation” (FAO 2018: 14). More recently, the FAO notes that “[c]oastal development is one of the biggest stressors to the coral reefs of Pohnpei, with more than 50 dredge sites and mangrove clearings (artificial channels) surrounding the coast” (FAO 2024b: Box 3).

³⁰ Coastal fisheries are described by the FAO as “a continuum from purely subsistence to purely commercial fishing, with the latter being much more prevalent close to population centres” (FAO 2024: Part II). In FSM coastal fisheries, “[t]he total annual catch was estimated to be 12,600 tonnes in 2007, worth USD 23.0 million. The commercial catch was 2800 tonnes.” (Bell et al. 2011: 39).

5.1.1 International human rights obligations

FSM has ratified several human rights instruments, including CEDAW (2004), CRC (1993), and CRPD (2016).³¹ While it is still to ratify the ICESCR, several of the above-mentioned treaties contain provisions on economic, social and cultural rights. This includes CEDAW, which has provisions on women's right to work, inherit land and property, social security and an adequate standard of living. Moreover, as a member of the UN and a signatory to the UN Charter, FSM is also morally and to a certain extent legally bound by the UDHR, which includes all rights, be they civil, cultural, economic, political or social.

5.1.2 Human rights and the legal and policy framework

To comply with its human rights obligations, countries' legal frameworks must guarantee human rights, including access to justice for violations. In FSM, the legal framework consists of legislation adopted by national, state and local authorities, which are the three levels of government (Constitution: Article VII, section 1).

The 1979 Constitution of FSM establishes the country as a constitutional republic composed of four states: Chuuk, Kosrae, Pohnpei and Yap, each with its own democratic constitution (Constitution: Article VII, section 2). As the supreme law of FSM, any government act contrary to the national constitution is invalid (Constitution: Article II, section 1).³² In general, however, individual states have a great deal of autonomy, given that national powers are delegated by states to the national government (Constitution: Article VIII, section 1). States may also be able to enforce national law within their respective jurisdiction. The FSM Supreme Court has ruled that states should be given full opportunity to exercise their legitimate powers in a manner consistent with the commands of the national constitution, without unnecessary intervention by national courts.³³ In addition, discussing a 1988 Supreme Court case (FSM v. Sylvester Oliver), some commentators argue that, "implicit in the Court's ruling is the conclusion that the states can enforce this law [FSM Code 23 Chapter 1 (Marine-Species Preservation)] as state law inside the 12-mile zone" (Mace 2007: 4).

Constitution and statutory law: Positively, the national and state constitutions protect certain rights, including non-discrimination, freedom of expression, peaceable assembly, association, petition and free exercise of religion (Constitution: Article IV). Its recognition of the right to life is, however, restricted to states' obligations to not arbitrarily deprive someone of their life (Constitution: Article IV, section 3). This falls short of countries' human rights obligations to respect and protect the right to life, which requires positive action to ensure the conditions necessary for a healthy life in dignity (Human Rights Committee 2019: para 26). This wording is echoed in states' constitutions; for instance, Kosrae's Constitution specifies that "[a] person may not be deprived of life, liberty, or property without due process of law, or be denied the equal protection of the laws" (Kosrae Constitution: Article II, Section 1b).

The national constitution is yet to fully recognise all economic and social rights beyond the recognition of "the right of the people to education, health care, and legal services and shall take every step reasonable and necessary to provide these services" (Constitution: Article XIII, section 1). The wording suggests that this article does not establish an immediate obligation to ensure this; instead, it just obliges states to take reasonable measures. The national constitution would benefit from recognising the rights to an adequate standard of living, social security, and work.

The state constitutions are similarly yet to fully recognise economic and social rights, with none of them recognising and protecting the rights to an adequate standard of living, work and social security. Kosrae's constitution, for instance, only recognises that "[a] person has the right to a healthful, clean, and stable environment" (Kosrae Constitution: Article XI, section 1). Similarly, although Pohnpei's constitution positively recognises that "[t]he Government of Pohnpei shall provide educational services for the public" and "health care services for the public" (Pohnpei Constitution: Article 7, sections 3 and 4), this is not the same as establishing a legally enforceable right to education and the highest attainable standard of health. While not recognising the rights to food, work and social security, Yap and Chuuk's constitutions do recognise the right of traditional communities to resources, including land and marine areas.³⁴

³¹ The power to ratify treaties is vested in the national Congress (Constitution: Article IX, section 2(b)). A treaty ratified by congress binds the national government and the four states.

³² The Supreme Court has ruled that it is required to consider any assertion that a particular national law contravenes the constitution; if it determines that the statutory provision is contrary to the constitution, this statutory provision cannot be enforced. See FSM v. Udot Municipality, 12 FSM R. 29, 47 (App. 2003) and Suldan v. FSM, 1 FSM Intrm. 339, 344 (Pon. 1983).

³³ Etpison v. Perman, 1 FSM Intrm. 405, 428 (Pon. 1984).

³⁴ Section 4 of Chuuk's constitutions stipulates that "[t]raditional rights over all reefs, tidelands, and other submerged lands, including their water columns, and successors rights thereto, are recognized. The Legislature may regulate their reasonable use." (Chuuk Constitution: section 4) Yap's constitution similarly recognizes traditional rights and ownership of natural resources and areas within the marine space of the state from the high water mark up to and beyond 12 miles from island baselines. No action may be taken to impair these traditional rights and ownership (Yap Constitution: Article XIII, section 5).

Legal pluralism and customary law: As in other Pacific Island countries, FSM has a pluralistic legal system with custom and tradition being protected by the national constitution (Constitution: Article V, Section 2). If challenged for violating the constitution, “protection of Micronesian tradition shall be considered a compelling social purpose warranting such governmental action” (Constitution: Article V, Section 2). This suggests custom and tradition have legal supremacy, which can become an obstacle to the realisation of certain human rights. The constitution also provides that court decisions shall be consistent with this customary law (Constitution: Article XI, section 11). It also acknowledges and protects the role and functions of traditional leaders as recognised by custom and tradition, as well as the traditions of the Micronesian people (Constitution: Article V, section 1).

At the state level, each state’s constitution varies in its degree of protection of traditional rights and customs. While traditions and customs exist in Kosrae, they are not mentioned in the Kosrae constitution beyond the stipulation that “a tradition protected by statute” may contravene its provisions, which includes rights such as freedom of expression and assembly (Kosrae Constitution: Article II). This suggests that only traditions that are recognised by law may contravene constitutional provisions.

The constitutions of the other three states, however, protect customs directly, and suggest they trump human rights. Pohnpei’s constitution “upholds, respects, and protects the customs and traditions of the traditional kingdoms of Pohnpei” (Pohnpei Constitution: Article 5, section 2). It further provides that statutes may be enacted to uphold customs or traditions as proved by “the existence and regular practice of the custom or tradition”, even if they violate other rights established in Pohnpei’s constitution (Pohnpei Constitution: Article 5, section 2). Chuuk’s constitution similarly stipulates that “[e]xisting Chuukese custom and tradition shall be respected”, and that such customs and traditions shall be considered “a compelling social purpose warranting such governmental action”, even if they violate human rights (Chuuk Constitution: Article IV, section 1). It also specifies that “[n]othing in this constitution takes away the role or function of a traditional leader as recognized by Chuukese custom and tradition, or prevents a traditional leader from being recognized, honored, and given formal or functional roles in government” (Chuuk Constitution: Article IV, section 2).

Elucidated in Article III, Yap’s constitution perhaps contains the most protection of customary practices and rights of the four states. It provides that “[d]ue recognition shall be given to traditions and customs in providing a system of law, and nothing in this Constitution shall be construed to limit or invalidate any recognized tradition or custom.” (Yap Constitution: Article III, section 3). It also gives councils of chiefs of the main and outer islands paramount control over custom, behaviour and development. Sometimes informally referred to as the fourth branch of the Yapese government, these two councils have the power to veto any legislation if it undermines customary practices (Yap Constitution: Article V, sections 16–18). This could impede the ability of Yap’s government to address certain human rights issues, including equality of women, if the proposed legislation is considered to adversely affect tradition and custom.

5.1.3 Overview of fisheries legislation

National level

The national constitution divides authority over the fisheries between oceanic and local by giving the FSM congress the authority “to regulate the ownership, exploration, and exploitation of natural resources within the marine space of the Federated States of Micronesia beyond 12 miles from island baselines” (Constitution: Article IX, section 2(m)). Fisheries within the territorial sea and the internal waters of FSM are thus subject to the legislative control of the adjacent state, given that “[a] power not expressly delegated to the national government or prohibited to the states is a state power” (Constitution: Article VIII, section 2).

The main sections of the FSM Code covering the management of fisheries at the national level are Title 23 (Resource Conservation) and Title 24 (Marine Resources). Title 23 focuses on species protection and includes specific provisions on marine species preservation (Title 23 Chapter 1), as well as the Endangered Species Act 1975 (Title 23 Chapter 3). It also prohibits certain fishing methods, such as the use of poison and explosives. It also contains specific measures on certain species, such as turtles, sponges, black-lip mother-of-pearl oyster shell, and trochus, including outright prohibitions and size limits. Trochus harvesting is restricted to citizens only.

Title 24 of the FSM Code, Subtitle I, known as the Marine Resources Act 2002 (further amended in 2015 and 2017), aims “to ensure the sustainable development, conservation and use of the marine resources in the exclusive economic zone by promoting development of, and investment in, fishing and related activities in the context of effective stewardship” (FSM Code 24: section 101). In particular, it contains provisions on fishing permits, allocations, allowances, quotas, reporting requirements and fishing for special purposes, including



by foreign vessels in the EEZ. It also establishes the competencies of the management authority (National Oceanic Resource Management Authority) to adopt regulations for the conservation, management and exploitation of fish in the exclusive economic zone that have the full force of law.

State level

As has already been highlighted, states have retained competence over the management of marine resources up to 12 nm from their baselines.³⁵ State constitutions establish different regimes for this area, in particular in relation to customary or traditional rights. Kosrae's constitution does not mention traditional practices. While Pohnpei protects traditional fishing rights³⁶, it does not recognise traditional ownership of marine areas. Both Chuuk and Yap combine the recognition of traditional practices with allowing local communities to own inshore marine resources.

Kosrae's main piece of legislation governing fisheries is Title 19 of the Kosrae State Code (KSC) entitled Environmental Protection and Management. The Kosrae Island Resource Management Authority (KIRMA) has the mandate to oversee and enforce those provisions pertaining to the preservation and conservation of marine resources.³⁷ KSC Title 19, Chapter 3 entitled Fishing and Marine Wildlife confirms the state's "complete sovereign rights for all purposes, including exploring, exploiting, conserving, managing, and developing living and non-living resources within the fishery waters" (19 KSC: section 19.301). It also establishes that the administrator of KIRMA "may adopt regulations for the management, conservation and development of the fishery waters" (19 KSC: section 19.302). Permits are required for the operation of foreign fishing vessels in the state fishery zone. Permits may also be required for local fishing vessels, fish import and export, aquaculture and marine research. Although subsistence fishers shall be exempted from such permits (19 KSC: section 19.306), there is no legislative protection of traditional fishing rights. Other provisions concern the registration of fishers and fishing vessels, and the safety equipment that needs to be on board (19 KSC: sections 19.311 and 19.313).

In **Pohnpei**, Title 29 of the Pohnpei State Code (PSC) is the main law governing fisheries. It establishes state powers and sovereign rights with regard to: fisheries exploration, exploitation, conservation and management; establishment and use of artificial islands, installations and structures in Pohnpei state waters; marine scientific research; and protection and preservation of the marine environment. It contains several provisions regulating fishing, such as prohibiting the use of drift nets, as well as commercial fishing and foreign fishing for shellfish, reef fish, specified pelagic fish, marine mammals or any other type of marine life (29 PSC: section 1–109). Notably, traditionally recognised subsistence fishing rights in submerged reef areas are to be preserved and respected (29 PSC: section 1–105). The act also allows specified authorities to determine the total allowable harvest or catch level of non-commercial fishing (subsistence and recreational fishing) for specific species (29 PSC: section 1–111); regulates procedures for obtaining a fishing permit (29 PSC: sections 1–112 to 1–117); and grants regulation-making powers to the Office of Economic Affairs (29 PSC: section 1–118). Also relevant to coastal fisheries is Pohnpei's environmental legislation under the Conservation and Resource Enforcement Act of 1982 and the Marine Resources Conservation Act of 1981 (respectively Chapters 1 and 6 of PSC Title 26 Conservation and Resources). These acts include measures for the protection of marine species – including black coral, black-lip mother-of-pearl oyster shell, bumphead parrotfish, crabs and lobsters, grouper, sponges, trochus, turtles and freshwater shrimp – as well as provisions on how to enforce those measures.

Chuuk has several pieces of relevant legislation governing fisheries, the main one of which is the Coastal Fisheries Protection Act of 2016. This defines the powers and duties of the Department of Marine Resources, which include adoption of regulations, establishment and administration of a permit system that governs access to the state zone, and entering into cooperative arrangements with the national government, other agencies of Chuuk state, municipalities, and community organizations. The department may regulate fish stocks including by declaring an open or closed season for any specified area or fish for any period of time or for all time and/or to prohibit the taking of certain fish (Coastal Fisheries Protection Act: sections 6 and 7). Nothing in the act, however, shall undermine traditional user and ownership rights (Coastal Fisheries Protection Act: section 8).

³⁵ In general, legislation surrounding fisheries at the state level is made even more complex by three of the states (Chuuk, Pohnpei and Yap) having outer islands, all with their own inshore fisheries issues and, in some cases, individualized management activities. These may include traditional and customary community resource and fisheries management and development actions (e.g. the Oneismw Municipal Fisheries Management Plan 2018 in Chuuk).

³⁶ The Pohnpei Fisheries Protection Act 1995 §1-105. Submerged reefs "traditionally recognized subsistence fishing rights in submerged reef areas wherever located within state waters shall be preserved and respected". In addition, according to FSM's Supreme Court, traditional practices include subsistence fishing rights (Pohnpei v. KSVI No. 3, 10 FSM Intrm. 53 (Ponape 2001), FSM Supreme Court).

³⁷ KIRMA's functions include adopting a permit system "for the construction, expansion or alteration of a development, including alteration of land or marine space"; issuing a cease and desist order to a person found to be in violation of law or regulation pertaining to the environment; ordering a polluting party to abate the causing of, and to remove, polluting matter; and devising land use plans (19 KSC: section 19.102).

Yap has several pieces of legislation governing fisheries under the Yap State Code (YSC), including the State Fishery Zone Act of 1980 (18 YSC: chapter 2), which establishes the responsibilities and powers of the Yap fishing authority to adopt regulations to manage and conserve marine resources (18 YSC section 208).³⁸ Reinforcing Yap's constitutional protection of traditional fishing rights³⁹, the act also stipulates that “[t]raditionally recognized fishing rights wherever located within the State Fishery Zone and internal waters⁴⁰ shall be preserved and respected” (18 YSC: 207).

Another relevant piece of legislation is Chapter 10 of YSC Title 18 entitled Wildlife Conservation, which prohibits certain fishing methods such as using explosives, poisons and chemicals (18 YSC: section 1008). It also contains management measures to protect species such as coconut crabs, turtles, clams and trochus (18 YSC: sections 1004-1006 and 1009) and allows the governor to “declare a temporary moratorium prohibiting the taking or harvesting” of any species that is becoming endangered (18 YSC: section 1011).

5.1.4 Specific issues

Non-discrimination and gender equality

FSM has a predominantly matrilineal society with land and clan membership being passed down through the maternal line (IOM 2017: 3), with the notable exceptions of the Yap Islands Proper and a few outlying atolls in Pohnpei.⁴¹ Nonetheless, there are numerous concerns about the enjoyment of women's rights. While recognising the diversity of cultures and traditions in FSM and acknowledging the ongoing social changes, the UN CEDAW Committee has expressed concern regarding the “persistence of adverse cultural norms and practices as well as deep-rooted discriminatory stereotypes regarding the roles and responsibilities of women and men in the family and in society” (CEDAW Committee 2017: para 24). This can result in women being subordinate to men “and negate their active participation in political life and decision-making” (CEDAW Committee 2017: para 24). Chuuk State for instance has acknowledged that, in Chuukese culture, women often walk behind their husband when in public, and sit on lower ground (Chuuk State Economic Development Commission 2016: 25). This can make it difficult for women to participate in decision-making, including regarding the traditional management of coastal fisheries, including the reef where many fish (SPC 2019: 10).

The national government and individual states have taken steps to ensure equality in law. Both the national constitution and state constitutions prohibit discrimination on grounds of sex. The national constitution specifies that “a person may not be denied the equal protection of the laws” (Constitution: Article IV, section 3) and that equal protection of the laws may not be denied or impaired on account of sex, race, ancestry, national origin, language, or social status” (Constitution: Article IV, section 4). The constitutions of the four states also prohibit discrimination on grounds of sex. Article IV of Pohnpei's constitution, for instance, stipulates: “[n]o law or other government action may deny or impair the equal rights of all persons on account of gender, race, ancestry, national origin, religion, language, or social status.” The Supreme Court has ruled that this provision: “guarantees that similarly situated individuals are not treated differently due to some sort of invidious discrimination.”⁴²

The national and state constitutions are, however, yet to establish the right to substantive equality and fully define discrimination and cover both direct and indirect discrimination in the public and private spheres. Moreover, they are yet to recognise intersecting forms of discrimination and establish mechanisms to promote equality and ensure remedies to women who are victims of discrimination (CEDAW, 2017: para 13). The national and state constitutions would, therefore, benefit from more extensive provisions that recognise the right to equality in law and fact (*de facto* equality), which obligates the authorities to ensure both legal and substantive equality.

³⁸ However, in reality, it is mostly the Department of Resources and Development at state level that adopts most regulations under Article XIII of the State constitution. It states: “[t]he State Government shall promote the conservation and development of agricultural, marine, mineral, forest, water, land and other natural resources”.

³⁹ See Yap State Constitution: Article III, section 3, and Article XIII, section 5.

⁴⁰ Internal waters are those waters on the landward side, or inside, of the baselines of the territorial sea. The exclusive economic zone starts twelve nautical miles seaward of the baseline and extending outward for another 188 nautical miles. A desire to maximize the area that might be included within the baselines, subject to the FSM's international treaty obligations, cannot be interpreted as a recognition of state ownership of the ocean resources 12 to 200 nautical outside of those baselines when drawn. *Chuuk v. Secretary of Finance*, 9 FSM R. 424, 430-31 (App. 2000).

⁴¹ Based on information provided by the FSM Office of Statistics for the Millennium Development Goals Status Report 2010, it appears that “with the exception of Yap and a few outlying atolls in Pohnpei, most ethnic groups [in FSM] are matrilineal” (UNDP 2010: 35). It is worth noting that Yap State is made up of 4 main islands – collectively known as Yap Islands Proper, forming the first and most prominent election district under the Yapese Constitution (Article XI, section 1) – and over a hundred outer islands, some grouped into atolls, known as the Caroline Islands, which extend towards the matrilineal State of Chuuk. Although some literature reports Yap State to be “traditionally patrilineal”, without distinguishing between the main and outer islands (UN Women 2022a: 2), “[c]hthological research in the outer islands of Yap State (Ulithi to Satawal) has demonstrated that most of these societies possess... [a] lineage-based system, usually matrilineal” (Alkire and Fujimura 1990: 75).

⁴² *FSM v. Isaac*, 21 FSM R. 370, 376-77 (Pon. 2017). *Berman v. Pohnpei Legislature*, 16 FSM R. 492, 496 (Pon. 2009).



Moreover, despite the national and state constitutions prohibiting discrimination, women's rights within communities may still be jeopardised without their being able to be legally challenged. This is due to the national constitution recognising that, even if there are such violations, customary law shall be upheld as it has "compelling social interest" (Constitution: Article IV, section 1). This wording has been echoed in most state constitutions. Chuuk's constitution, for instance, states that "[i]f challenged as violative of Article III⁴³, protection of Chuukese custom and tradition shall be considered a compelling social purpose warranting such governmental action" (Chuuk Constitution: Article IV, section 1). Yap's constitution stipulates that: "Due recognition shall be given to traditions and customs in providing a system of law, and nothing in this Constitution shall be construed to limit or invalidate any recognized tradition or custom" (Yap Constitution: Article III, section 3). Pohnpei's constitution is even more explicit, stipulating that customs or traditions must be upheld, even if they violate other rights established in the constitution (Pohnpei Constitution: Article 5, section 2).

In other situations, even if it is possible to legally challenge discrimination, women may find it difficult to access the formal systems due to a lack of knowledge of their rights, the limited number and accessibility of courts, and available legal aid (CEDAW Committee 2017: para 16). Moreover, not all of the judiciary are aware of women's rights and states obligations under CEDAW (CEDAW Committee 2017: para 16).

Security of tenure, access to natural resources and the right to food

In the FSM, communities depend on access to land and marine resources for livelihoods. FAO argues that "[n]early all households in villages (all of which are coastal) are involved in coastal fishing activities" and [i]t could therefore be stated that all villages in FSM are 'fishing communities'" (FAO 2024b: Part II Narrative). As in many other Pacific Island countries, access to marine areas is vital due to limited alternatives for other income, and land, including access to reefs, has been traditionally held by clans. Traditional management measures, mainly based on customary control of marine usage area and resources usage, is reported to exist in all States (FAO 2024b). The FSM certainly has a complex rights system, with the Supreme Court recognising different customary rights such as "immediate possession and use" and "actual possession,"⁴⁴ as well as permissive use rights.⁴⁵

Since independence, the situation regarding land and marine areas has been clarified through the constitution and statutory legislation at national and state levels, which built on Title 67 of the Trust Territories (TT) Code. The TT Code defined public lands "as being those lands situated within the Trust Territory which were owned or maintained by the Japanese government as government or public lands, and such other lands as the government of the Trust Territory has acquired or may hereafter acquire for public purposes" (67 TT Code, Chapter 1, Section 1). The TT Code Title 67 also established that all areas below the "ordinary high watermark" belong to the government, except for those that relate to fish weirs or traps established in accordance with local customary law (67 TT Code: Chapter 1, Section 2). It also protected traditional access by providing "[n]othing in the foregoing subsections of this section shall withdraw or disturb the traditional and customary right of the individual land-owner, clan, family or municipality to control the use of, or material in, marine areas below the ordinary high watermark, subject only to, and limited by, the inherent rights of the government as the owner of such marine areas" (67 TT Code: Chapter 1, section 2e).

According to the national constitution, "a statute of the Trust Territory of the Pacific Islands continues in effect except to the extent it is inconsistent with this Constitution, or is amended or repealed" (Constitution: Article XV, section 1). The national constitution also prohibits non-citizens from owning land; long term leasing options are available but indefinite leases are not permissible (Constitution: Article XIII). While the national constitution does not explicitly recognise traditional ownership of land, it protects customary and traditional rights and practices (Constitution: Article V) that are proved by a "preponderance of the evidence"⁴⁶ i.e. that establishing that the claim is more than 50% likely to be true.

With specific regard to marine areas, the national constitution empowers congress "to regulate the ownership, exploration, and exploitation of natural resources within the marine space of the Federated States of Micronesia beyond 12 miles from island baselines (FSM exclusive economic zone)" (Constitution: Article IX, section 2). This does not, however, detract from customary rights and practices to and over the area. According to FSM's Supreme Court, any claim to resources in FSM's EEZ is based on custom and tradition, again providing it can be proved by "preponderance of the evidence".⁴⁷

⁴³ This article includes the bill of rights and provision on non-discrimination.

⁴⁴ *Sana v. Chuuk*, 7 FSM Intrm. (Chk. S. Ct. Tr. 1995), FSM Supreme Court.

⁴⁵ *Marcus v. Truk Trading Corp.*, 11 FSM R. 152, 159 (Chk. 2002), FSM Supreme Court; and *Peter v. Jessy*, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010), FSM Supreme Court.

⁴⁶ "Parties who proffer custom as a basis for a claim must prove the relevant custom by a preponderance of the evidence." *Narruhn v. Aisek*, 16 FSM R. 236, 240 (App. 2009), FSM Supreme Court.

⁴⁷ *Ibid*

Coastal areas, however, fall under the competence of individual states. Under Article IX, section 2 of the national constitution, congress can only “regulate the ownership, exploration, and exploitation of natural resources within the marine space of the Federated States of Micronesia beyond 12 miles from island baselines”. Therefore, the individual states are responsible for managing marine resources up to 12 nm from their baselines.⁴⁸ Each state varies in its formalisation and interpretation of Title 67 of the TT Code so there are significant differences between states in their recognition and protection of traditional access to and rights over marine resources.

In **Kosrae**, the marine areas are owned by the state and the constitution does not protect traditional fishing practices. Section 4 of the Kosrae constitution specifies that the waters, land and other natural resources within the marine space of the state are public property, the use of which is regulated by state law in the public interest, subject to the right of the owner of the land abutting the area (Kosrae Constitution: Article XI, section 4). This is developed further in KSC Title 19, which regulates the management, conservation and development of the fishery waters. While subsistence fishers are exempt from needing a permit (19 KSC: section 813), the legislation is yet to include an explicit protection of traditional fishing rights, unless the term ‘public interest’ is developed further to incorporate this. Kosrae may also adopt legislation protecting Kosraean peoples’ traditions, given the national constitution’s provision that peoples’ traditions may be protected by statute (Constitution: Article V; Kosrae Constitution: Article II).⁴⁹ Perhaps in the short-term, however, the judiciary could elaborate on the term “public interest” to include traditional rights and economic and social rights.

The lack of protection of traditional fishing practices could render traditional communities vulnerable to instances where state actions over public land have affected or undermined access to the reef. While under Kosrae’s constitution, compensation is to be paid for the acquisition of private land and water (Kosrae Constitution: Article XI, section 5), there is no such provision for public land and communities depending on the reef for their livelihood. With no explicit recognition of customary/traditional rights under the state constitution, it is unclear whether such communities would receive compensation for any development that would threaten their access.

In **Pohnpei**, the state similarly owns the fishing zone and the submerged reef area. However, Pohnpei’s constitution protects customs and traditions, which according to FSM’s Supreme Court includes the right to navigate the reef, subsistence fishing, and control and use of materials within the shoreline.⁵⁰ This is elucidated further in the Fisheries Protection Act (PSC Title 29), which stipulates that “[t]raditionally recognized subsistence fishing rights in submerged reef areas wherever located within state waters shall be preserved and respected” (29 PSC: section 1-105). The act also prohibits commercial and foreign fishing (29 PSC: section 1-106) and requires people to have special permits for recreational and sport fishing (29 PSC: section 1-108).

There is also greater constitutional protection from state using public land for development in Pohnpei. The Government of Pohnpei can express interest in land for public purposes, but only after consultation with the local government and the owners of such interests, and compensation shall include the offer to exchange the land for land of comparable value, or a payment of just compensation (Pohnpei Constitution: Article 12, section 6). If the negotiations are not successful, the state may begin a court action to acquire the interest in land.⁵¹ However, for marine resources that are public land, such development initiatives that could jeopardise means of livelihoods is far less likely. Courts have recognised this land as being for the public good, which coupled with the protection of customs that includes subsistence fishing, means that “Pohnpei State may not sell submerged reef areas, or destroy or waste these resources with impunity. Such actions would violate the public trust”.⁵² The Courts have further clarified that “[i]t is the duty of Pohnpei State to maintain the public lands and ensure that the public may continue to use public lands for these purposes.”⁵³

Nonetheless, while traditional rights are protected, and considerable effort has been made to guarantee secure access to resources, there are some human rights questions. The relatively narrow definition of traditional practices as including subsistence fishing⁵⁴ accompanied by the act’s provision that “no person may engage in commercial fishing within state waters” (29 PSC: section 1-106) unless provided by law, may result in many traditional fishers being liable to fines or having their goods confiscated, all of which could substantially affect livelihoods. Nonetheless, the legal definition of subsistence fishing in Pohnpei state is slightly broader

⁴⁸ In general, legislation surrounding fisheries at the state level is further complicated by three of the states (Chuuk, Pohnpei and Yap) having outer islands all with their own inshore fisheries issues, and in some cases individualised management activities. These may include traditional and customary community resource and fisheries management and development actions (e.g. the Oneisomw Municipal Fisheries Management Plan 2018 in Chuuk).

⁴⁹ *Kosrae v. Waguk*, 11 FSM R. 388, 390 (Kos. S. Ct. Tr. 2003), FSM Supreme Court.

⁵⁰ *Pohnpei v. KSVI* No. 3, 10 FSM Intrm. 53, 66 (Pon. 2001).

⁵¹ *Sigrah v. Kosrae*, 12 FSM R. 513, 519 (Kos. S. Ct. Tr. 2004).

⁵² *Pohnpei v. KSVI* No. 3, 10 FSM Intrm. 53, 66 (Pon. 2001).

⁵³ *Ibid.*

⁵⁴ *Ibid.*



than the legal definition adopted at national level⁵⁵ as it allows fishing that contributes to the livelihoods of local fishers⁵⁶ rather than just explicitly prohibiting the selling of fish, which could give a little more leeway to traditional fishers in providing for their families. It is also possible that traditional customs could deny some communities and individuals security of tenure. Since women are not always involved in decision-making, it is possible that some conservation decisions could be made that deny them access to reefs where they tend to do most of their fishing (SPC 2018). Those who have migrated from outer islands may not be considered as part of the traditional community.

In contrast to the other two states, both Chuuk and Yap allow for the traditional ownership of all inshore resources. **Chuuk**, through its constitution, recognises traditional rights and ownership over all reefs, tidelands, and other submerged lands, subject to legislative regulation of their reasonable use (Chuuk State Constitution: Article IV, Sections 1-4).⁵⁷ This is further elucidated in the Coastal Fisheries Protection Act of 2016, which mandates the Department of Marine Resources to control and regulate fishing in the Chuuk State Fisheries Zone, while explicitly protecting traditional ownership and use rights.⁵⁸ However, these rights can be exercised only upon receipt of a permit from the director, although the director shall not “unreasonably deny a permit upon the request of any individual, clan or lineage” (Coastal Fisheries Protection Act: section 8) and a failure to do so “would ... constitute a violation of this act” (Coastal Fisheries Protection Act: section 9). Nonetheless ‘unreasonably’ has not yet been defined and there are concerns that any delay in or failure to issue a permit could undermine livelihoods. There could also be questions about whether those individuals who have migrated to the bigger island are entitled to a permit in their new location.

According to FSM’s Supreme Court, traditional claims are legally recognised only for “areas immediately adjacent to an island or submerged reef.”⁵⁹ There are also exceptions to the recognition of traditional rights. For instance, traditional rights on certain tidelands may not be protected under Article IV of Chuuk’s constitution. The FSM Supreme Court has stated that “[t]idelands traditionally are those lands from the dry land to the deep water at the edge of the reef. Tidelands must be shallow enough for Chuukese women to engage in traditional methods of fishing, including net fishing, gathering of shellfish, octopus and the building of fish traps” (Sellem v. Maras, 7 FSM Intrm. 4 (Chuuk S. Ct. Tr. 1995)). However, traditional rights on “deep water channels or tidelands that have become dry land through filling or other activity that raised the level of the marine lands above the mean high tide mark” are excluded from constitutional recognition (Sellem v. Maras, 7 FSM Intrm. 1, 7 (Chk. S. Ct. Tr. 1995)).⁶⁰

While vital to ensuring livelihoods, the protection of customary/traditional rights may not guarantee everyone secure tenure to the resources needed for livelihoods. Rights over land including tidelands and reefs are complex in Chuuk⁶¹. Typically, lineage land is owned by the matrilineal descendants or *futuk*, and the patrilineal descendants or *afokur*⁶² have permissive use rights only in lineage land.⁶³ Therefore, despite their livelihoods depending on having access to the land, *afokur* may not be able to participate in the decision-making on the sale or lease of land that can include the reef. On the other hand, despite lineage land being owned through the matrilineal line, decision-making may be confined to the highest male in the lineage, such as the brother of the eldest woman (Hezel and Oneisom 1992). Unequal access to decision-making is becoming an increasingly pertinent concern. Driven by the heightened need for cash with the gradual monetisation of the country’s economy, land is being increasingly transferred to individual ownership, particularly in the highly populated islands of the Chuuk lagoon and Chuuk proper (Hezel 2004). It has been reported that “[i]n general, most reefs within Chuuk lagoon are owned by individuals or families”, whereas sparsely populated outer island and atoll reefs are usually still owned by traditional leaders or the municipality (Weeks et al. 2017: para 5.3.2).

Commentators have also observed numerous land disputes in Chuuk between those who have alleged claims over the land, including instances where chiefs may have sold land despite people continuing to rely on the resource (Hezel 2004). They also noted the disputes about inheritance and ownership that have been exacerbated by the fact that “less than half of the 15,000 parcels of land in Chuuk have been filed with

⁵⁵ Under the Marine Resources (Amendment) Act of 2015 ‘Subsistence fishing’ means fishing by a citizen or a resident substantially for personal consumption, and does not include any fishing resulting or intending or appearing to result/directly or indirectly in the sale or trading of any fish which may be taken during the fishing operations” (24 FSM Code, section 102)

⁵⁶ Under Fisheries Protection Act 1995, “Subsistence fishing” means fishing undertaken by citizens of Pohnpei to ensure the livelihood of the immediate or extended family as may be further defined by regulation” (29 PSC 1).

⁵⁷ This is also articulated in Nimeisa v. Department of Public Works, 6 FSM Intrm. 205, 209 (Chk. S. Ct. Tr. 1993).

⁵⁸ It is specified that nothing in the Act shall be interpreted as prohibiting or restricting traditional ownership and use rights (Coastal Fisheries Protection Act: section 8).

⁵⁹ Chuuk v. Secretary of Finance, 8 FSM R. 353, 377 (Pon. 1998), (FSM Supreme Court).

⁶⁰ The Chuuk Supreme Court has ruled that “[t]idelands, including man-made islands that were filled prior to this effective date (October 1, 1989) are no longer classed as tidelands and have become dry land” (Sellem v. Maras, 7 FSM R. 1, 3-4 (Chk. S. Ct. Tr. 1995) (FSM Supreme Court)). In addition, “[a] deep water passage through a reef too deep for Chuukese women to engage in their traditional fishing methods is not a tideland. While under Chuukese tradition and custom channels may have been owned, the constitution does not recognise traditional rights over channels. The state thus retains ownership of the channels, as was the situation prior to the adoption of the Chuuk Constitution.” (Sellem v. Maras, 7 FSM Intrm. 1, 5 & n.9 (Chk. S. Ct. Tr. 1995)).

⁶¹ The Chuuk Joint State Action Plan 2017 reports that Chuuk “is a matrilineal society. Land and clan title are handed down on the woman’s side. Chuuk is the only state with both ‘Soufonu’ and ‘Sounono’, Soufonu are those who own the land and Sounono are those who own the reefs and shores.” (page 12).

⁶² Chipuelong v. Chuuk, 6 FSM R. 188, 197 (Chk. S. Ct. Tr. 1993).

⁶³ Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

the land office, and only 4,300 of these have had the ownership confirmed by the former land commission under TT Code Title 67 (Hezel 2004). Such disputes are usually handled by traditional authorities who act in accordance with customary law. While an appeal can be made directly to the Trial Division of the Chuuk State Supreme Court, under Chuuk's constitution, the judicial system must be "consistent with local traditions and customs" (Chuuk Constitution: Article VII, section 14). This means that human rights, including access to livelihoods, may not be taken into account in dispute resolution.

In managing its coastal areas, Yap is the state with the strongest protection of customary and traditional practices, and almost all land and aquatic resources in Yap are traditionally owned (Daugherty 2019: 16). The constitution recognises that communities and their leaders have authority over access to and use of coastal areas, and that "no action may be taken to impair these traditional rights and ownership", except with regard to the conservation and protection of national resources (Yap State Constitution: Article XIII, section 5). Moreover, the constitution also provides that the traditional government, headed by the high chiefs representing mainland Yap's villages (Councils of Pilung), and the high chiefs of outlying islands (Council of Tamol) can disapprove bills that adversely affect tradition (Yap Constitution: Article V, section 17), making it difficult for the Yap government to adopt any legislation affecting or undermining traditional tenure rights. Moreover, all actions covering land and water out to 12 nautical miles from shore that are undertaken by the councils of Pilung and Tamol while performing their functions concerning tradition and custom are protected by Article III, section 2, of the Yapese constitution.

These principles are also echoed in statutory legislation. Chapter 2 of YSC Title 18 stipulates that "[t]raditionally recognized fishing rights wherever located within the State Fishery Zone and internal waters shall be preserved and respected" (18 YSC: section 207). Chapter 10 of YSC Title 18 (Wildlife Conservation) also specifies that "[n]othing in this section shall be construed to prohibit any fishing method used under custom and tradition, including use of local roots, nuts or plants" (18 YSC: section 1008). Moreover, FSM's Supreme Court has recognised that, since Yap's constitution and statutory legislation has recognised traditional rights and ownership of "areas within the marine space of the State within 12 miles from island baselines", Chapter 67 of the TT Code no longer applies as Yap state law.⁶⁴

Despite the strong protection of customary practices, there could be human rights concerns with regard to having secure tenure and access to livelihoods. In practice, although the customary system varies throughout the islands, it typically includes some groups having user rights separate from those who are traditionally regarded as the owners (Doran 2004: 23). Patrilineal family or household groups called *tabinaw*, for instance, have the right of immediate possession and use of the marine resources in the marine area that appertains to his *tabinaw*, with each village having numerous *tabinaw*.⁶⁵ Therefore, if a person moves or migrates to another island, they may not have *tabinaw* rights in the new location. Moreover, these *tabinaw* rights are also subject to rights held by groups outside of that family group or *tabinaw*. This includes *mafen* rights through the maternal line. *Mafen* rights holders have the "ultimate possession or responsibility for the land but without use rights".⁶⁶ They can confiscate the estate lands of someone who has offended customary law, thus depriving them of their means of subsistence.⁶⁷ This could include widows that have "not performed [their] traditional obligations to [their] husband, to the land and to the family group of which her husband was a member".⁶⁸ Again given the protection of customary practices, such decisions cannot be legally challenged. In addition, low caste villagers who have no ownership rights to land or marine areas can use only certain fishing methods, such as "poke sticks" in the reef flats, gleaning of invertebrates, and taking of freshwater eels (Graham 1992: 20). Moreover, as with Chuuk, since the economy is becoming increasingly monetised, chiefs might face financial pressure to issue leases or, in some cases, sell land to citizens, and those that do not have *mafen* rights may not be consulted about this threat to their livelihood.⁶⁹

From this analysis, it is clear that throughout FSM there needs to be greater protection of economic, social and cultural rights (ESCR) in both the national and state constitutions.⁷⁰ This remains the case, even in states

⁶⁴ People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 414 (Yap 2006).

⁶⁵ People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 38 (Yap 2008), FSM Supreme Court.

⁶⁶ Moolang and Yamor, Plaintiffs v. Manggur Toruuan, Defendant, Civil Action No. 34, Trial Division of the High Court, Yap District, December 15, 1966.

⁶⁷ Giyal and Ligou, Plaintiffs v. Guor, Defendant Civil Action No. 47, Trial Division of the High Court Yap District February 28, 1969.

⁶⁸ Ibid.

⁶⁹ Those with *Mafen* right must be consulted when major land use changes or alienation of land occurred. See Moolang and Yamor, Plaintiffs v. Manggur Toruuan, Defendant, Civil Action No. 34, Trial Division of the High Court, Yap District, December 15, 1966. Moreover, the Yap State Mortgage Law (29 YSC: chapter 1) (§106.) and the Yap State Deed of Trust Law (29 YSC: chapter 2) (§204) require *Mafen* approval for certain acts regarding property.

⁷⁰ So far however, ESCR are neglected in both national and state constitutions. While positively the Kosrae Constitution recognises the right to a healthy environment (discussed more under the following section), this would apply only to instances where the environment has been affected, not to issues related to tenure and access. Moreover, the reference to the right to life is limited in both the national and state constitution; just confined to recognising the state's obligation not to deprive individuals of their life "without due process of law" (Constitution: Article IV, section 3). This could be extended further to reflect states' obligations to protect life which requires positive action to "take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity" (Human Rights Committee 2019: para 26). As it currently stands, the provision limits the possibility of the judiciary further developing the content of the right to life to address violations of ESCR. There are, for instance, examples of judicial bodies recognising the link between the right to food and the right to life, e.g. the India Supreme Court (People's Union for Civil Liberties v. Union of India & Ors [2001] 1 SCC 39 (Supreme Court of India, Writ petition (Civil) No.196.) and the UN Human Rights Committee on the link between the right to food and the right to life (Human Rights Committee 2019: para 26).



where there is considerable protection of traditional fishing rights (such as in Pohnpei), as well as in states that recognise traditional ownership over coastal areas (Chuuk and Yap). As has been noted, traditional fishing rights can be limited to subsistence fishing, which is narrowly defined at the national level⁷¹ (as well as within some states, such as Chuuk⁷²), and could exclude from protection those traditional fishers who are increasingly needing to sell their produce at local markets. On the positive side, Pohnpei's legal definition of subsistence fishing as "fishing undertaken by citizens of Pohnpei to ensure the livelihood of the immediate or extended family"⁷³ is broader and could even be interpreted as an example of how the definition could be widened to prevent the exclusion of coastal fishers selling fish at local markets. This, however, would still need to be accompanied by the formal recognition of the right to an adequate standard of living, including food, to ensure that no-one is inadvertently excluded and, if they are, that they have access to legal remedy. Greater recognition of the right to an adequate standard of living, including food, in the national and state constitution, would also allow communities to challenge other decisions that impede their access to the resources they need for subsistence and livelihood. This could include any permit denial, burdensome requirements for permits, as well as decisions regarding the development of coastal areas and the settling of land disputes. This can also include decisions by chiefs. As has been highlighted, customary practices and decisions could deny certain groups access to resources. Therefore, to fully ensure that everyone's access to resources and therefore livelihoods are protected, greater recognition of ESCR needs to be accompanied by a requirement that customary practices comply with IHRL.

Right to healthy and safe environment

In FSM, responsibility for environmental issues is shared between the national government and the individual states. A lack of clarity about the different roles has, however, often led to duplicative legislation at the state and national levels, as well as gaps (Mace 2007). The National Biodiversity Strategy and Action Plan 2002 says that:

States take the lead role in ensuring that development is avoided in vulnerable areas and ensuring that critical natural systems are protected. Each State has made efforts to control development and manage natural resources through the creation of land use plans, coastal zone plans, legislation and regulations. The National Government provides guidance and technical assistance to the States when needed and requested on matters related to planning, economic development, natural resources, fisheries, and the environment (FSM Government 2002: 9).

Environmental rights and legislation: While the national constitution does not provide for a right to a healthy environment, there is extensive statutory legislation governing environmental issues. This includes Title 23 on marine resources conservation that aims to protect marine species and address the specific situation of endangered species. Title 25 of the FSM Code (Environmental Protection) establishes the Environmental Protection Office that has the power to adopt regulations and policies "to protect the environment, human health, welfare, and safety and to abate, control, and prohibit pollution or contamination of air, land, and water" (25 FSM Code: section 209).

Most state constitutions have focused on articulating the duties of the authorities to look after the environment rather than recognising and protecting the right to a healthy environment for all. In Chuuk, "[t]he Legislature shall provide by law for the development and enforcement of standards of environmental quality, and for the establishment of an independent state agency vested with responsibility for environmental matters" (Chuuk Constitution: Article XI, section 1). Similarly, "[t]he Government of Pohnpei shall establish and faithfully execute comprehensive plans for the conservation of natural resources and the protection of the environment" (Pohnpei Constitution: Article 7, section 1). Yap's constitution is a little less specific as to the responsibilities of the state, establishing only that "[t]he State Government may provide for the protection, conservation and sustainable development of agricultural, marine, mineral, forest, water, land and other natural resources" (Yap Constitution: Article XIII). There is one exception, however. Kosrae's Constitution establishes that "[a] person has the right to a healthful, clean, and stable environment" and that "[w]hile providing for the orderly development and use of natural resources, the State Government shall by law protect the State's environment, ecology, and natural resources from impairment in the public interest" (Kosrae Constitution: Article XI, section 1).

⁷¹ Under the Marine Resources (Amendment) Act of 2015, 'subsistence fishing' means fishing by a citizen or a resident substantially for personal consumption and does not include any fishing resulting or intending or appearing to result, directly or indirectly, in the sale or trading of any fish which may be taken during the fishing operations" (24 FSM Code: section 102, as amended in 2015).

⁷² Chuuk State Coastal Fisheries Protection Act of 2016 defines subsistence fishing as "fishing by a citizen substantially for personal consumption and does not include any fishing resulting or intending or appearing to result, directly or indirectly, in selling or trading for profit and fish which may be taken during the fishing operations" (Chuuk State Coastal Fisheries Protection Act, section 3).

⁷³ Fisheries Protection Act 1995 (29 PSC 1).

While few states in FSM recognise the right to a healthy environment, there are some positive examples of legal provisions under states' environmental legislation that do. Under Chapter 4 of Title 18 of YSC, it is unlawful to damage a reef (18 YSC, section 402). In Pohnpei, despite the lack of statutory legislation in this regard, traditional fishers, rather than the municipality, received compensation for damage to a reef when a ship grounded, even though the state owns the fishing zone and the submerged reef area. Both the Pohnpei state and Kitti municipality submitted arguments for compensation based respectively on the state's ownership of marine resources and the municipality's claim that traditional rights have been affected. The Supreme Court, however, found that any claims to resources in the EEZ based on custom and tradition must rest with clans, families and individuals rather than with the states.⁷⁴ It reasoned that "[s]ince the real issue in this case is who deserves to be compensated for damage to public lands, the Court concludes that the public should benefit by having damages received for injury to such property placed in trust for the people, and the funds used to repair the harm done to the affected public lands."⁷⁵



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⁷⁴ Pohnpei v. KSVI No. 3, 10 FSM Intrm. 53, 60-61 (Pon. 2001).

⁷⁵ Ibid.



The FSM Congress has adopted the FSM Protected Area Network (PAN) Policy Framework (FSM Government 2015) that puts in place an application process for the drawdown of funds from the FSM Micronesia Challenge Endowment. The framework also establishes a technical committee that reviews PAN applicants for membership of the network and evaluates management plans and budgets of existing sites. In addition, the framework establishes criteria for sites to become part of the FSM PAN, creates monitoring protocols for management effectiveness and legally binds all PAN sites to their management plans.⁷⁶ Each state is now working towards achieving its commitments under the Micronesia Challenge using a variety of management approaches, including designing and establishing PANs (Weeks et al. 2017).

In **Kosrae**, where the state owns the marine areas, the Protected Areas Act of 2010 (19 KSC, chapter 8) incorporates all areas already designated as marine park areas and provides for the identification of new areas. Areas should be first proposed to the mayor of the municipality in which the area is located, before being reviewed by the appropriate authorities. In such areas, no person shall take or possess any fish, bird, mammal or other wild vertebrate animal or any part or nest or egg thereof within any such area; neither should they engage in fishing, dredging, mining or other removal of minerals, rock, sand, coral or other natural resources (19 KSC: section 19.812). Nonetheless, the KIRMA administrator can “under such regulations as he may adopt, ... permit the use of areas within the System for non-commercial recreational hunting and fishing, subsistence fishing...” (19 KSC: section 19.813). Such necessary regulations are to be issued in consultation with the traditional leaders and the leaders of the local municipal government (19 KSC: section 19.811). While there is no obligation to ensure protection of traditional livelihood activities, the obligation to consult with traditional leaders suggests that subsistence fishing could still be exceptionally allowed on a case-by-case basis.

As already highlighted, while **Pohnpei** is similar to Kosrae in that, according to the constitution, the state owns marine areas, both the state constitution and statutory legislation protects traditional subsistence fishing rights in submerged reef areas (Pohnpei Constitution: Article 6, section 1⁷⁷; 29 PSC: section 1-105). It is unclear, however, to what extent this protection covers protected areas. In 1999, Pohnpei state adopted the Marine Sanctuary and Wildlife Refuge Act (PSC Title 26, revised in 2012) that provides for the establishment of the State Marine Sanctuary and Wildlife Refuge System and for the creation of protected areas should they “possess conservation, cultural, recreational, ecological, historical, research, educational, or aesthetic qualities of national and international significance” (26 PSC: section 5-102). In such areas, regulations must be adopted in consultation with traditional leaders. However, the act includes minimum guidance that, for some areas, includes a total prohibition of fishing, including for subsistence (26 PSC: sections 5-119 and 5-120). With regard to Oroluk Atoll, for instance, subsistence fishing is restricted to full-time residents of the area (26 PSC: section 5-118). In 2011, a bill amended the Sanctuary and Wildlife Act, adding four protected sites (including over 1500 hectares of reefs and mangroves) to become part of the Pohnpei PAN. In particular, it establishes the Senpehn/Lehdau Mangrove Forest Reserve, where both commercial and subsistence fishing is restricted (26 PSC: section 5-130), and the Nanwap Marine Protection Area, where subsistence and commercial fishing is prohibited (26 PSC: section 5-132).

In **Chuuk**, the number of MPAs has been historically much lower than in other states. However, there are currently 22 locally managed marine areas, perhaps facilitated by the customary ownership of marine resources (Integrated Aquatic Solutions Inc. 2018). Nonetheless, there are legal provisions that allow for the creation of protected areas. Under the 2016 Coastal Fisheries Protection Act, the Department of Marine Resources may declare an open or closed season for any specified area. The act also specifies that nothing contained within it “shall be interpreted as prohibiting or restricting traditional ownership and user rights” (Coastal Fisheries Protection Act: section 8). This makes it unlikely that traditional fishing rights will be affected. In 2017, the Chuuk government expanded on this by adopting the Protected Area Network Act that establishes Chuuk State PAN to consist of areas that have previously been “designated as protected areas and areas that have been or may be designated as PAN sites” (Chuuk State PAN Act: section 4). While this does not affect the ownership of the resources, their use will “be regulated in the manner provided for by this Act” (Chuuk State PAN Act: section 4). However, all policies, management plans, guidelines, rules and regulations must be consistent “with traditional Chuukese conservation and management practices” (Chuuk State PAN Act: section 5) that includes *mechen* and *pau*, which are both temporary closures in which most or all fishing activity is prohibited (Weeks et al. 2017: section 4.1).

⁷⁶ Amongst the initiatives taken by the government to implement the commitments made under the Micronesia Challenge is the closure, in 2017, of the contiguous zone to all fishing activities, except for locally-owned fishing companies authorised by NORMA (Act No. 19-176). In practice, this creates a 24 nm-zone around each state where no foreign fishing is allowed.

⁷⁷ FSM's Supreme Court includes the right to navigate the reef, subsistence fishing, and control and use of materials within the shoreline. *Pohnpei v. KSVI* No. 3, 10 FSM Intrm. 53, 56 (Pon. 2001).

In contrast to the other states, **Yap** has a large resource base and, in most areas, a small population. Currently, it does not have any officially designated MPAs, although there are several sanctuaries protecting certain species, such as the manta ray sanctuary and protection of manta rays. These were established by the Manta Ray Sanctuary and Protection Act of 2008, which covers 8,234 square miles, taking in 16 islands and 145 islets and atolls, out to 12 miles offshore, specifically protecting the manta ray population and its habitat (UNEP 2015). With specific regard to the creation of a Protected Area Network, while legislation has been drafted, it has not yet been adopted due to resistance from traditional leaders who are able to veto legislation (Daugherty 2019: 28). In the meantime, Yap's traditional councils (the Councils of Pilung and Tamol) have asked the governor "for assistance in designating protected areas within their lands under the federal PAN" (Daugherty 2019: 31). In response, Yap's Environmental Protection Agency (EPA) and the Department of Resources and Development developed a regulation⁷⁸ that has been accepted by the Micronesia Conservation Trust "as an appropriate law for PAN establishment and began distributing funds and manpower to Yap" (Daugherty 2019: 31). Thus protected areas can be established only with the agreement of the community. For instance, the Tamil Marine Protected Area, as well as the Rull, Nimpal and Malay/Thabeth Marine Protected Areas "have all been certified and endorsed by the relevant communities, and all are surveyed on an annual basis" (Yap State 2019: 15). In practice, however, not everyone in the community is aware of the implications of creating a protected area or agrees on the size of the area to be protected, including those who rely on fishing for their main source of livelihood: in some cases, the creation of a protected area has led to local fishers having to go to other villages to access marine resources.⁷⁹

Similar situations may lead to conflict between neighbouring communities over marine resources.

In general, throughout FSM, the protection of local livelihoods varies in each MPA, in part depending on the degree to which traditional access to resources is protected. In any case, even when there is considerable protection of traditional subsistence fishing such as in Pohnpei, no-take protected areas still exist. Although subsistence fishing may be allowed in protected areas, the increasing cash economy means that many traditional communities are also selling their catch at markets, an activity which could exclude them from protection, depending on the definition of subsistence in the relevant state.⁸⁰ Additionally, formal recognition of traditional ownership of marine resources does not necessarily ensure that everyone's right to food is respected and protected. Communities' traditional management techniques can include chiefs taking decisions to close certain reefs or areas.⁸¹ While arguably necessary for conservation, it is unclear what happens if these practices result in some people losing access to livelihoods. Such decisions could affect livelihoods without any possibility for legal challenge, given the protection of customary practices and the lack of recognition of the right to an adequate standard of living, amongst other rights. Therefore, both FSM and individual states would benefit from introducing legislation that obligates authorities at the state level to make sure that conservation and the creation of MPAs respect peoples' human rights, especially their right to food, and ensures access to justice for any breach.

Environmental impact assessments: Under Title 25 of FSM Code (chapter 7), the national government and its agencies shall submit an environmental impact statement to the Environmental Protection Board, prior to taking any major action significantly affecting the quality of the human environment (25 FSM Code: section 702). The national Environmental Impact Assessment Regulations adopted in 1989 further elaborate the procedures and criteria that surround the preparation of such assessments, which consist of drafting an initial statement to determine whether a more comprehensive environmental impact assessment (EIA) is required. There are also provisions allowing public participation, including a 30-day period for public agencies and the public to review and comment on a draft EIA statement before finalisation (EIA Regulations: regulation 5.2). The EIA statement is also to include a list of those who have been consulted (EIA Regulations: regulation 6.5).

Appendix A of the national EIA Regulations provide examples of "significant impacts on the environment", such as projects that: (i) conflict with adopted plans and established uses of the community where it is to be located; (ii) substantially diminish habitats for fish, wildlife or plants; (iii) displace a large number of people; or (iv) cause substantial flooding, erosion or siltation and create a potential public health hazard. While the list is extensive, it does not provide any clear criteria for the determination of a significant impact on the environment. The list also fails to include issues such as damage to peoples' livelihoods or their tenure, or

⁷⁸ Yap State Regulations for the Implementation of Protected Area Networks (copy not available).

⁷⁹ This information was reported by participants during the SPC Subregional Workshop on Gender, Social Inclusion and Human Rights in Coastal Fisheries and Aquaculture. Virtual Meeting, 28–30 June 2022.

⁸⁰ Pohnpei's definition of subsistence fishing (see Fisheries Protection Act 1995/29 PSC 1) is broader than the national definition.

⁸¹ In Chuuk, this includes *mechen* and *pau*, which are both temporary closures in which most or all fishing activity is prohibited (Weeks et al. 2017: section 4.1). *Pau* however tends to be stricter with violation being strictly reprimanded. It means totally no access, no take, no use of any resource for whatever purpose (Weeks et al. 2017: section 4.1). In Yap, customary rules regarding the management of coastal resources are enforced through the chief, and this includes prohibiting outsiders from using the resources within that area; and confiscating fishing equipment and boats (Graham 1992: 44).



access to public services, such as schools and health facilities. Moreover, what happens if just a few people are displaced? Does that not warrant more of an investigation than just the initial statement?

Each state has adopted separate legislation governing EIA for private/state projects, with separate regulations governing the processes and criteria. All states have taken a tiered approach with all projects requiring an initial environmental statement, which echoes the approach taken by the national government.

The **Kosrae** Island Resource Management Program Regulations for Development Projects 1994 stipulate that an initial environment assessment is required before a development permit is required for any project that satisfies any of the following criteria: “(a) involve[s] any earthmoving activities; (b) [is] located below the mean high water mark (includes mangroves); (c) costs over \$5,000; (d) [is] incompatible with surrounding land uses; (e) [involves the] disposal or removal of dredged materials, including all sandmining operations; (f) [involves the] use, handling or disposal of toxic or hazardous chemicals, pesticides, petroleum, oil and lubrication” (Regulations for Development Projects: regulation 3.1). If something is then to be judged as having a significant environmental impact, then a full environmental impact statement is required. Under these regulations, an environmental impact assessment is defined as “the process by which all environmental, social, cultural and economic impacts of a project, including project alternatives, are identified and analysed before the decision to approve the project is made” (Regulations for Development Projects: regulation 1.4(m)). Being more comprehensive, the environmental impact statement shall evaluate the potential “changes in natural resources, ecological systems, environmental systems, environmental quality and physical processes attributed to the project if implemented; socio-economic changes resulting from impacts on natural resources and the environment; socio-cultural impacts; and cumulative effects” (Regulations for Development Projects: regulation 5.4).

Yap’s Environmental Quality Protection Act (18 YSC: chapter 15) and subsequent Regulations on Environmental Impact Assessment (2 YSC: chapter 1) similarly stipulate that all projects require a Preliminary Environmental Impact Statement (PEIS), to determine whether a full environmental impact statement is required. Similar to Kosrae, the PEIS requires a “general description of the project’s technical, economic, social, health and environmental effects”, as well as possible environmental impacts (Regulations on EIA: regulation 2.3). In considering whether the potential impact can be regarded as significant, Yap’s EPA shall evaluate, among other things, whether the project involves irrevocable loss or destruction of any natural or cultural resource; curtails the range of beneficial use of the environment; conflicts with Yap’s long-term



environmental policies; substantially affects the economic or social welfare of the community and public health; and involves substantial secondary impacts, such as population changes or effects on public facilities or infrastructure (Regulations on EIA: regulation 2.5).

With regard to the situation in Chuuk and Pohnpei, the details of the EIA procedure should be developed in regulations, which are not yet in place. Indeed, under Pohnpei's Environmental Protection Act of 1992 (27 PSC: chapter 1), the Environmental Protection Agency has been tasked with adopting environmental impact assessment regulations that include criteria for the development of environmental impact statements and require a fee for the preparation of such statements.

As in many other countries in the Pacific region, FSM would benefit from extending its environment impact assessments to also covering human rights. This would allow the authorities to consider the impact any development might have on human rights, such as access to livelihoods, women's enjoyment of rights and security of tenure. Although an initial evaluation of the regulations suggests that the scope is quite broad, including possible socio-cultural and socio-economic changes, this falls short of requiring a full human rights evaluation that includes gender concerns and indigenous peoples' right to land. Human rights have clearly established standards that provide a framework for evaluating possible impacts of a project from the perspective of the community and individuals affected, and their legal entitlements under international law.

The legislation would also benefit from explicitly requiring effective participation of affected communities in decision-making as well as the free, prior, informed consent of those considered to be indigenous. For instance, the Kosrae Island Resource Management Program Regulations for Development Projects just require a list of those consulted in the EIS (Regulations for Development Projects: regulation 5.5). The right to participation is discussed more in the following section.

Participation and democratic governance

In FSM, both the national constitution and the individual state constitutions would benefit from a formal recognition of the right to participation, including indigenous peoples' right to FPIC. Nonetheless, there are several positive initiatives and legal provisions that allow communities to actively participate in decision-making.

For instance, the role of traditional leaders has been recognised at the national level with the national constitution allowing traditional leaders to play a role in government by specifying that “[n]othing in this Constitution takes away a role or function of a traditional leader as recognized by custom and tradition, or prevents a traditional leader from being recognized, honored, and given formal or functional roles at any level of government” (Constitution: Article V, section 1). This has been taken up by some states. For example, **Chuuk's** constitution echoes the words of the national constitution almost word for word (Chuuk State Constitution: Article IV, section 2), while **Pohnpei's** constitution highlights the possible role of traditional leaders at the local level, stipulating that “[e]ach local government may establish its own constitution ... [which] may provide a functional role for traditional leaders” (Pohnpei Constitution: Article 14, section 2). **Yap** has perhaps the strongest participatory mechanism, with the state constitution explicitly establishing traditional chiefs' rights and responsibilities that include veto power over any legislation that violates basic custom. “The Council of Pilung and the Council of Tamol may disapprove a bill” if they believe it has an “adverse effect on the respective tradition and custom or the role or function of a traditional leader as recognized by tradition and custom” (Yap State Constitution: Article V, section 17). The state constitution does not, however, provide for a role for traditional councils in drafting legislation or participating in the judiciary.

The role of traditional leaders has definitely been taken into account at national and state levels. However, given that there may be some tensions between some customary practices and human rights, especially regarding women, there could be concerns that chiefs might resist legislation aimed at protecting rights and equality, including with regard to decision-making over resources. The legislation would therefore benefit from establishing the supremacy of human rights, and chiefs' obligations in upholding them.

FSM is also developing communities' participatory management of resources, including in marine protected areas, although this varies from state to state, often depending on the degree of protection of traditional fishing rights.



In **Kosrae** the legislation governing the creation of the protected areas system would benefit from more provisions explicitly requiring the participation of local communities. Under the Protected Area Act of 2010 (19 KSC: chapter 8), which establishes the Kosrae State Protected Areas System, once an area has been categorised as a protected area, the KIRMA Administrator only has an obligation to consult traditional leaders in issuing necessary regulations (19 KSC: section 810). This falls considerably short of protecting communities' right to participation, much less indigenous peoples' right to FPIC. Moreover, traditional leaders may not reflect the views of all communities, including women who typically have a more subservient role in society (CEDAW Committee 2017: para 30.) Without an explicit right to participation and a requirement that all customary practices comply with human rights law, there is no possibility of women being able to legally challenge traditional practices that may hinder their participation in decision-making.

In **Pohnpei**, while the Fisheries Protection Act of 1995 (29 PSC: chapter 1) requires traditionally recognised subsistence fishing rights in submerged reef areas to be preserved and respected, it does not formally create a CBFM system, and the state has ultimate power to regulate the management of the resources.⁸²

The pieces of legislation that allow local authorities to create MPAs would also benefit from language creating stronger participatory rights in the management of resources. For instance, in Pohnpei, the Marine Sanctuary and Wildlife Refuge Act of 1999 (PSC Title 26) provides that the Director of the Department of Resource Management and Development only has to consult traditional leaders when issuing regulations for recently proclaimed sanctuaries (26 PSC: section 5-106). There is no right to participation for affected communities. For instance, in chapter 5 of the PSC there is no mention of the right of local communities to participate in the creation and management of the various MPAs (26 PSC: section 5-120 *et seq.*).

Nonetheless, numerous communities have prompted the creation of MPAs and have participated in the formulation of management plans in consultation with NGOs and networks, including the LMMA Network⁸³ (Communities of *Woun Kepin Soamwoai* 2015: 8). For instance, a 2001 amendment to the Marine Sanctuary and Wildlife Refuge Act of 1999 created the first community-led MPA (the Nahtik MPA), and the communities of *Woun Kepin Soamwoai* have played an active role in preparing appropriate action and management plans (Communities of *Woun Kepin Soamwoai* 2015: 8). However, this effective participation is still to be guaranteed by law. So while Pohnpei is taking steps to ensure communities' participation in managed areas, this would benefit from being done on a more systematic basis, underpinned by the legal recognition of the right to participation for everyone.

In **Chuuk**, since the traditional ownership of reefs is allowed, communities already participate in resource management and to a certain degree this has been protected by legislation. In some cases, the government has legislatively provided for the direct participation of resource owners in managing MPAs. Section 7 of the Kuop Atoll Marine Protected Area Act (Chuuk State Law No. 13-15-07), as amended in 2017 (Chuuk State Law No. 14-17-04), establishes a marine protected area advisory committee "to promulgate policies and regulations to afford the MPA with effective protection and management" that includes four resource owners or their representatives. However, it is unclear from this legislation whether all communities dependent on the resource can participate in its management. It could for instance exclude the *afokur*, who have only permissive use rights.⁸⁴

In 2017, Chuuk adopted the Protected Areas Network Act which develops further the role of local communities. The act expresses the intent of the legislature "to encourage the traditional, conservation practices of *mechen* and *pwaaw*, to recognize continued traditional ownership and use rights for clans, lineages and individuals, and to insure the greatest possible level of community input and support" although the PAN will be managed by the state (PAN Act: section 1). It specifies that all areas to be included in the PAN must first "be proposed by the local community through the traditional system including the Mayor of the municipality in which the area is located, and the traditional owners" (PAN Act: section 6). It also stipulates that the director shall ensure that the local community understands the PAN process through appropriate public education and consultation and that the "proposal contains the written informed consent of the traditional owners of any land, sea and marine lives, property or traditional use rights to their resources" (PAN Act: section 6). Positively, this appears to extend the issue of consent beyond the owners of the resource to all users, but it would be interesting to know how this is implemented in practice to ensure that everyone participates freely and in an informed manner. It would also be useful to know that if any communities dependent on these marine resources are excluded from giving consent such as those who have migrated to the area.

⁸² This was demonstrated by FSM's Supreme Court's ruling in 2016 that any traditional and customary right to control the use of, or material in, marine areas below the ordinary high watermark is subject to, and limited by, the inherent rights of the Pohnpei Public Lands Trust as the owner of such marine areas. *Mwoalen Wahu Ileile en Pohnpei v. Peterson*, 20 FSM R. 632, 641-42 & n.1 (Pon. 2016). FSM Supreme Court.

⁸³ A learning network of marine conservation practitioners throughout the Indo-Pacific region.

⁸⁴ *Peter v. Jessy*, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010), Chuuk Supreme Court.

Since most of the marine resources in **Yap** are owned by traditional communities, it has perhaps the closest to a CBFM system, as it maintains a customary marine resource tenure system with the “state constitution and laws recogniz[ing] that communities and their leaders have authority over access to and use of coastal areas” (FAO 2018: 14). It also gives explicit rights to communities to grant permits. The Yap constitution states that “[a] foreign fishing, research or exploration vessel shall not take natural resources from any area within the marine space of the State, except as may be permitted by the appropriate persons who exercise traditional rights and ownership and by statute” (Yap State Constitution: Article XIII, section 6).

While Yap is still to adopt legislation creating a protected area network, it is likely that any legislation adopted will uphold communities’ traditional rights since it will have to be approved by the Council of Chiefs. Moreover, in the interim, Yap’s traditional councils (the councils of Pilung and Tamol) appear to be taking the lead in developing protected areas within their traditional areas (Daugherty 2019: 31). While this is helpful in ensuring community management of resources, given the complex nature of customary rights to marine resources within the traditional system, it is unlikely that everyone will be able to participate equally in management decisions, especially without the explicit recognition of the right to participation.

In summary, while FSM is still to fully implement CBFM, there are certain elements in some individual states that allow the promotion of a community approach. The legislation, however, needs to explicitly recognise the right to participation in order to ensure the participation of groups who may be side-lined from decision-making such as those with use rights.

Rights to and at work

In FSM, both the national and state constitutions would benefit from including the right to decent work, which would act as a legal imperative that would guide policies and statutory legislation. Constitutional recognition of the right to decent work would also ensure the prioritisation of safe working conditions for everyone, including those in the informal sector, and avoid a piecemeal approach that only addresses certain categories of people. This is key, as in FSM, as in many other Pacific Island countries, sea safety for small-scale fishers is a critical issue. The government has noted “many small fishing vessels that go missing and are never seen again” (Integrated Aquatic Solutions Inc. 2018: 64) but the country and individual states are still to fully address the issue.

Under the FSM Code, Title 19 (Admiralty and Maritime), only vessels 12 meters and over must be registered (19 FSM Code: section 301). Nonetheless, there are some requirements for smaller vessels. Chapter 4 of Title 19 of the FSM Code establishes requirements – such as carrying certain safety equipment (19 FSM Code: section 401) – for “non-registered small craft⁸⁵ which navigate outside lagoons, or navigate within lagoons in such a way as to affect interstate or international commerce” (19 FSM Code: section 412). While Title 19 also empowers the Secretary of the FSM Department of Transportation and Communications to make regulations for small crafts as “necessary to provide for the safety and control of foreign and domestic small crafts, including those used for fishing” (19 FSM Code: section 403), at the time of writing, these regulations are not yet in place.

At the state level, some attention is being given to small boat safety to make up for the national regulatory gap. **Kosrae** perhaps has the broadest legislation targeting all boats. Chapter 3 of Title 19 of the State Code (Fishing and Marine Wildlife) empowers the director to adopt a regulation that requires all fishermen or any class of fishermen, or all vessels or any class of vessels within the state to be registered (section 11). Draft regulations on the registration and safety of small boats were prepared in 2017 but they are yet to be adopted by the state government. Nonetheless, Title 19 also specifies that no person shall operate a vessel in the state fishery zone extending seaward from one mile beyond any reef without the following equipment aboard: (i) reasonable amounts of food and water; (ii) an operable flare gun and flares, or a mirror; (iii) a sea anchor or drogue; (iv) emergency rowing equipment; (v) life jackets or other reasonable floating devices sufficient for all passengers; and (vi) 50 meters of line (19 KSC: section 13).

In **Pohnpei**, the legislation concerning sea safety appears to be constrained to seaports with the *Pohnpei State Seaport Rules and Regulations 2015* requiring small vessels (those 19 feet and smaller) to “stay clear of large commercial vessels in navigating channels, while manoeuvring in the turning basin, berthing or departing berth” (Seaport Rules and Regulations: section 211). These rules additionally require small vessels to have written permit approval by the Board of Directors when operating with the Pohnpei Port Authority’s controlled areas.

⁸⁵ Small crafts are defined as “vessels of less than 12 meters in length of any kind or type used or capable of being used as a means of transportation on water, vessels of any length used exclusively for private, non-commercial recreation and pleasure, and traditional canoes of any length, but not including ... fishing vessels.” A fishing vessel is defined as “any vessel used commercially for catching fish or other living resources of the sea, except vessels exclusively used ... for sport or recreation or ... for research and training” (19 FSM Code: section 106).



No legislation regarding sea safety has been found for **Chuuk** or **Yap**.

While the national and state governments are beginning to take steps to help ensure safety at sea for coastal fishers, there is more to be done. Legislative reform must also be accompanied by specific policies to help the fishers comply. Integrated Aquatic Solutions observed that “few of the fishers can, or would be prepared to fund expensive equipment such as EPIRBs [emergency position-indicating radio beacons] and radios” and subsequently, coastal fishers are “rarely equipped” with appropriate communicative and safety equipment (Integrated Aquatic Solutions Inc. 2018: 65 and 108). Government assistance does not appear to be available in this regard. Integrated Aquatic Solutions observed that there is little funding set aside for assisting fishers (Integrated Aquatic Solutions Inc. 2018: 65). While *Yap State Marine Resources Management Plan 1986* refers to a “[s]afety at sea development plan, which includes subsidising safety equipment for small fishing boats”, it is not clear whether the plan was eventually implemented.

In general, children are particularly vulnerable to hazardous working conditions globally, even when working for family businesses or in subsistence activities such as fishing, especially given the lack of safety equipment. In FSM, national and state laws are still to establish a minimum age or prescribe limits on hours or occupations for the employment of children. In 2020, the Convention on the Rights of the Child (CRC) also expressed concern that the government is still to adopt legislation prohibiting child labour or establishing the minimum age for admission to hazardous and non-hazardous work, as well as programmes to prevent child labour or support children involved in the practice (CRC Committee 2020: para 64). FSM, like many other Pacific Island countries, would also benefit from greater data on the involvement of children in small-scale fishing, a clear definition of what constitutes hazardous work, and a list drawn up of hazardous work explicitly prohibited for children (CRC Committee 2020: para 65). The country should also clarify “the conditions in which light work may be permitted and the number of hours during which such employment of children may be undertaken, ensuring that children have sufficient leisure time and do not miss school” (CRC Committee 2020: para 65).

As elsewhere in the Pacific region, FSM’s coastal fishers face low prices and insufficient access to well-run markets with the necessary equipment such as refrigeration, especially if they are in remote areas and outer islands that impede their access to adequate livelihoods.⁸⁶ Integrated Aquatic Solutions has noted the importance of ensuring modern fish markets at landing sites and in the major towns, with ice supply, fresh water supply and improved landing facilities (Integrated Aquatic Solutions Inc. 2018: 45). Women are particularly likely to lack adequate livelihoods, as they are typically heavily engaged in unpaid family work that includes subsistence fishing (Integrated Aquatic Solutions Inc. 2018: 66). The relatively narrow definition of traditional fishing as subsistence fishing could also prevent some small-scale fishers from selling catches⁸⁷, especially in Kosrae and Pohnpei, where local communities have weaker rights over marine resources.

While policies at the national and state levels have committed to addressing some of the problems coastal fishers face, this is not done as part of a comprehensive strategy to improve their livelihoods. For instance, Chuuk State Strategic Development Plan 2018–2023 has highlighted how poor infrastructure, including roads, is an impediment to development, but it does not assess the specific situation of coastal fishers, despite them comprising the majority of the population. While Kosrae Strategic Development Plan (2014–2023) commits to “[f]acilitat[ing] and promot[ing] sustainable utilization and management of Kosrae’s coastal fisheries resource” and to improve and maintain fisheries infrastructure, it appears to lack a comprehensive assessment of the issues coastal fishers face (Kosrae State Government 2014: 42 and 43). Perhaps reflecting the lack of prioritisation of this sector, Integrated Aquatic Solutions has identified limited public investment in coastal fisheries, alleging that “the government does not generally see coastal fisheries as requiring investment and has responsibilities in other sectors, which take priority when the budget is divided up” (Integrated Aquatic Solutions Inc. 2018: 68). Moreover, since both the FSM national and state constitutions and statutory legislation are still to recognise the right to an adequate standard of living, addressing these issues is not a legal imperative.

States must also establish a legal framework that guarantees all persons in need access to social security, including social assistance. In FSM, however, both the national and state constitutions are still to recognise the right to social security. Moreover, statutory legislation at the national level just guarantees and regulates social insurance systems. The 1982 Law on Social Security (FSM Code, Title 53) just creates a social insurance system covering old age, disability and survivors (53 FSM Code: Article 102) for people who are employed and earning at least USD 10,000 a year or with at least one employee (53 FSM Code:

⁸⁶ Under IHRL, coastal fishers must also have access to adequate livelihoods. States must “take appropriate measures to strengthen and support local, national and regional markets and ensure that peasants can equitably access these markets to sell their products at prices that allow them and their families to attain an adequate standard of living” (DRP Art 16 (3)).

⁸⁷ *Pohnpei v. KSVI* No. 3, 10 FSM Intrm. 53, 56 (Pon. 2001).

Article 603). Self-employed persons earning less than USD 10,000 a year can also contribute; “[t]he remuneration of such person shall be deemed to be \$1,250 per quarter or \$5,000 per year and such persons must pay both the employee and employer contributions in order to be so eligible” (53 FSM Code: section 903 as amended by Public Law 14-8). As with most insurance systems, this is likely to exclude coastal fishers who have low levels of income. This is especially the case in Pohnpei, where the legal protection of traditional rights is dependent on coastal fishers being subsistence only,⁸⁸ although, as established earlier, its definition of subsistence is quite broad.⁸⁹ Women are also particularly unlikely to be able to contribute, given the proportion of time they spend on unpaid household duties that often includes agriculture and fishing (CEDAW Committee 2017: para 38).

There also appears to be a lack of social assistance programmes. The CEDAW Committee has observed the lack of social protection programmes in the state party, in particular those targeting disadvantaged groups of women, such as female-headed households, older women and women with disabilities (CEDAW Committee 2017: para 38). By recognising the right to social security, the constitution would help people legally challenge the lack of social assistance programmes, and push for change.

5.1.5 Looking forward: conclusions and recommendations

While FSM has taken many positive steps, such as ratifying key human rights treaties and including human rights in its constitution, it needs to go further to fully guarantee the human rights of coastal fishers and fish workers, especially women, and respond to changing contexts. These include migration from outer islands and the increasing monetisation of the economy (IOM 2016).

The national and state constitutions are yet to fully recognise all economic and social rights. Like many Pacific Island countries, FSM’s national and state constitutions primarily only recognise civil and political rights, such as freedom of conscience, expression, assembly and association, as well as protection for the privacy of the home and other property. Moreover, their recognition of the right to life covers only the country’s obligation to not deprive someone of their life arbitrarily. This falls short of states’ obligations to protect life which requires positive action to “take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity” (Human Rights Committee 2019: para 26). This in turn limits the possibility of the judiciary further developing the content of the right to life to address violations of economic and social rights.

With the exception of Kosrae,⁹¹ most states positively protect traditional fishing practices that can help ensure access to livelihoods. Both Chuuk and Yap also recognise traditional ownership of marine areas. It is worth noting that, in Pohnpei, the protection of traditional rights is limited to subsistence fishing⁹⁰ and, in Kosrae, subsistence fishers are exempt from needing a permit to fish (19 KSC: section 813). In both these cases the definition of subsistence fishing is quite broad, covering fishing undertaken to “ensure the livelihood of the immediate or extended family as may be further defined by regulation” (19 KSC: section 804). However, these definitions may need to be reviewed to ensure that they do not prohibit fishers from selling part of their catch as needed in an increasingly cash-based economy. Moreover, in some cases the protection of subsistence fishers does not extend to all areas. In Pohnpei, for instance, authorities have created no-take MPAs that do not allow local communities to even fish for subsistence. When creating protected areas, Chapter 5 of Title 26 of Pohnpei’s State Code authorises the director to make the necessary regulations after consulting with traditional leaders and, in the case of no-take areas, there are no clauses ensuring the right to fish in times of draught or national disaster (26 PSC chapter 5: sections 120-125). Also, even in those states where protection of traditional practices is accompanied by the traditional ownership of marine resources (Chuuk and Yap), fishers can be denied access. In Yap for instance, people usually have only use rights to marine areas immediately adjacent to their place of origin. Therefore, this protection might not extend to people who have migrated away from there in search of better services. Incorporating the right to food in national and state legislation would thus help further protect livelihoods and ensure that the different regulatory frameworks work together rather than contradict one another and fill any gaps that can result in people falling through the cracks.

Both FSM and individual states’ constitutions would also benefit from greater recognition and protection of the right to participation, including participating in resource management, and indigenous communities’ right to FPIC. This remains the case, even in the states that allow customary ownership of marine resources. In Chuuk, for instance, the state remains responsible for many elements of conservation, including

⁸⁸ Ibid.

⁸⁹ The Fisheries Protection Act of 1995 defines subsistence fishing as “fishing undertaken by citizens of Pohnpei to ensure the livelihood of the immediate or extended family” (29 PSC 1).

⁹⁰ There is no explicit recognition of customary/traditional rights in Kosrae state constitution.

⁹¹ Pohnpei v. KSVI No. 3, 10 FSM Intrm. 53 (Pon 2001), FSM Supreme Court.



closing access to reef areas. Positively, states within FSM are working towards developing the community management of marine resources. For example, Chuuk's Protected Areas Network Act develops the role of local communities and requires their consent in categorising an area as part of the protected network. However, this needs to be legally underpinned by the guarantee of the right to participation for all. This can also help ensure the participation of groups who may be side-lined from decision-making, such as women, and obligates the government to not just ensure the right to participation in law but to also ensure it in fact by addressing barriers to participation.

Another issue is the lack of human rights assessments for development projects. Most Pacific Island countries have limited impact assessments that only cover environmental issues, although social and cultural aspects are sometimes taken into consideration (e.g. Kosrae's Regulations for Development Projects; Marshall Islands EIA Regulations). This means that there is no requirement for the authorities to consider the impact that any development project might have on human rights, such as access to livelihoods, women's enjoyment of rights, or security of tenure. This is true of FSM. All EIA legislation across all FSM states would benefit from requiring project planners – whether government or private actors – to identify the possible impact on human rights.

Lastly, one of the key human rights challenges is FSM's plural legal system. Any legal recognition of human rights is jeopardised by both national and state constitutions clearly establishing the primacy of custom, and explicitly suggesting that it trumps human rights principles. While vital to protecting indigenous customs, this may prevent women and other communities from enjoying their tenure rights, and the right to participate in decision-making processes. This is particularly the cases in Yap and Chuuk, where traditional chiefs can make decisions that could have detrimental effects on the users of marine resources, especially those who may not be able to participate in any traditional decision-making process. All constitutions should, therefore, stipulate that customary law must respect human rights, including economic and social rights and the right to participation.

Based on the above analysis of the current framework, the following **legal and policy recommendations** are made for FSM and individual states:

Short-term policy and programme actions

1. Implement educational and awareness-raising activities for community leaders and the general public, including women, on the importance of the full and equal participation of women in leadership and decision-making for society as a whole (CEDAW Committee 2017). This includes the need to enable gender-sensitive decision-making processes over access and use of natural resources, particularly at the local level.
2. Review upcoming legislation, policies and programmes targeting coastal fisheries and aquaculture at state and national level to make sure they respect and protect the ESCR of small-scale fishers and fish workers and their communities.
3. Train chiefs on human rights principles, especially economic and social rights, in all states, and hold consultations on how such principles can be integrated into customary practices and be upheld by traditional institutions.
4. Improve the definition of the category of subsistence fishing, based on clear and objective criteria, considering it could affect people's right to livelihoods in an increasingly monetised economy (e.g. explore how inclusive the definition of subsistence fishers is in Pohnpei and Kosrae).
5. Organise meetings with the judiciary and legal practitioners to discuss how the legal system, as it currently stands, can be opened up to protect economic and social rights. For instance, in Kosrae, developing the term 'public interest' as contained in the state constitution (Kosrae State Constitution: Article XI, section 4) to address human rights issues, especially ESCR.
6. Convene discussions and input sessions in all states on how the EIA procedure could be improved to ensure better access to information and more public participation, especially by those who may be affected by the proposed action, and provide for effective legal remedies.
7. Review environmental legislation to identify where new or amended legislation/regulations are needed to be consistent with the right to a clean and healthy environment and other related human rights, including a right to remedy.
8. Explore the extent to which coastal fishers in Kosrae can bring cases to court through the state's constitutional protection of the right to a healthy environment, and examine how this provision could be extended to other states.

9. Collect data on child labour in coastal fisheries throughout all states and determine whether certain types of activities can be considered as hazardous work and how they may affect access to education⁹², while also recognising the importance of passing on traditional knowledge through family fishing as part of the right to culture.
10. Identify health and safety measures that would improve working conditions for coastal fishers, including specific policies and programmes in each of the states, focusing in particular on small boat safety at sea and taking into account gender-sensitive considerations on safety and health.
11. Track the implementation of human rights law for small-scale coastal fishers and fish workers through existing national mechanisms for reporting and follow-up; this should also feed into international review mechanisms, such as the human rights treaty bodies and the United Nations' reporting mechanisms, through the Universal Periodic Review and the Sustainable Development Goals.

Medium-term legislative changes

12. Improve EIA legislation at national and state level (particularly in Chuuk and Pohnpei) to cover social, economic and cultural impacts, as well as ecological and public health impacts, by explicitly referencing human rights and defining clear criteria to determine what is 'significant impact' in all these areas.
13. Incorporate the right to an adequate standard of living in all national and state legislation concerning fisheries, the environment and land, including acquisition.
14. Adopt legislation protecting Kosraean peoples' traditions⁹³ that includes traditional fishing rights with an expansive definition of subsistence fishers.
15. Review PAN legislation and recognise both the right to an adequate standard of living and the right to participation in resource management for all communities, including owners and users of marine resources.
16. Ensure that appropriate mechanisms and institutions are put in place to review, monitor and evaluate the implementation of laws and policies at the state and national levels to ensure compliance with its obligations under CEDAW (CEDAW Committee 2017: para 13).
17. Incorporate fully into appropriate legislation a definition of discrimination against women, covering direct, indirect and intersecting forms of discrimination (CEDAW Committee 2017: para 12).
18. Implement health and safety measures that would improve working conditions for coastal fishers, including the adoption of small boat safety legislation.

Long-term constitutional changes

19. Amend the national and state constitutions to:
 - (i) require that all customary practices comply with international human rights law, and that traditional chiefs must respect and protect human rights;
 - (ii) recognise the right to equality in law and practice (*de facto* equality); and
 - (iii) include the right to FPIC for indigenous communities and the right to participation for all, including non-indigenous communities, women and other marginalised groups, as well as all economic, social and cultural rights, especially the rights to food, decent work and social security.

⁹² In particular, determine the conditions in which light work may be permitted and the number of hours during which such employment of children may be undertaken, ensuring that children have sufficient leisure time and do not miss school (CRC Committee 2020).

⁹³ *Kosrae v. Waguk*, 11 FSM R. 388, 390 (Kos. S. Ct. Tr. 2003).





5.2

Marshall Islands

The Republic of the Marshall Islands consists of 29 low-lying coral atolls and five islands, of which 22 are inhabited (Vierros et al. 2010: 21). The total Marshallese population is approximately 70,000 with more than half living around Majuro, the capital, and smaller numbers on Ebeye (in Kwajalein), Jaluit, Wotje and other atolls. The majority live in close proximity to the coast (Government of the Marshall Islands 2020a: 10), and are heavily reliant on subsistence and small-scale fishing, mostly within a three-mile zone from the low-water mark (Sahib and White 2018: 9). Communities also rely on cultivating black pearls, marine ornamentals (cultured hard and soft corals and giant clam) and trochus for livelihoods (Bell et al. 2011: 107)

While the reefs are in better condition than in many other countries in the region (Waddell and Clarke 2008: 388), there are still numerous threats to the livelihoods of local communities, including illegal foreign and local overfishing, loss of traditional conservation practices and subsistence crops, solid waste pollution, overpopulation, invasive species, climate change and sea-level rise of “1 cm per decade” (Vierros et al. 2010: 21). There is also pervasive poverty due to scarce natural resources, high unemployment rates and wealth inequality. Only 39% of the population aged 15 years and above is employed (Borgen Project 2017). This has increased urbanisation and over-crowding over the past 30 years with people moving from the outer islands to the urban centres of Majuro and Ebeye. This is “primarily due to: (i) a lack of employment opportunities in other locations; and (ii) greater reliance on the cash economy as compared to a subsistence lifestyle” (Government of the Marshall Islands 2020b: 28).

Certain communities also continue to be affected by the nuclear testing undertaken by the USA Government in the late 1940s and 1950s, including continued displacement, especially of people from Bikini, Enewetak, Rongelap and Utrok Atolls. The testing essentially created “nomads who are disconnected from their lands and their cultural and indigenous way of life” (Human Rights Council 2012: para 33).

5.2.1 International human rights obligations

The Marshall Islands has ratified many human rights treaties, including the ICCPR (2018) the ICESCR (2018), CEDAW (2006), the CERD (2019), the CRC (1993), the CRPD (2015) and the CAT (2018).

5.1.2 Human rights and the legal and policy framework

The Marshall Islands has a dualist legal system, which means that the treaties’ provisions must be formally included in domestic legislation, as the treaties are not directly applicable in a court of law.



Constitution and statutory law: The Constitution of the Marshall Islands recognises numerous human rights, including the rights to: equality and non-discrimination; freedom of thought, speech, press, religion, assembly, association, and petition; due process, fair trial and just compensation; and to be free from torture or to inhuman and degrading treatment, cruel and unusual punishment, excessive fines or deprivations (Constitution: Article II). It also specifies that “[n]o person shall be deprived of life, liberty, or property without due process of law” (Constitution: Article II, section 4).

With regard to ESCRs, the government “recognizes the right of the people to health care, education, and legal services and the obligation to take every step reasonable and necessary to provide these services” (Constitution: Article II, section 15). However, the constitution is yet to recognise the right to an adequate standard of living and social security. Like other countries in Micronesia, the limited scope of the right to life also means it cannot be expanded to include the determinants of a healthy and secure life, such as access to food, as has been done in other jurisdictions.⁹⁴

Under the constitution, “the people of every populated atoll or island ... have the right to a system of Local Government” that “shall in each case extend to the sea and the seabed of the internal waters of the atoll or island and to the surrounding sea and seabed to a distance of 5 miles from the baselines from which the territorial sea of that atoll or island is measured” (Constitution: Article IX, section 1). Such local governments can make any ordinances, provided they are not inconsistent with any act (Constitution: Article IX, section 2).

Legal pluralism and customary law: Like many other PICTs, the Marshall Islands has a plural legal system. Under the constitution, the Nitijela (legislative body) has the responsibility “to declare, by Act, the customary law in the Republic of the Marshall Islands or in any part thereof” (Constitution: Article X, section 2). The Traditional Rights Court is established to address the issue of customary land rights (Constitution: Article VI, section 4). Moreover, regarding traditional land tenure rights, the constitution cannot preclude the application of customary law “to every place within the traditional boundaries of the archipelago of the Republic” (Constitution: Article X, section 1(3)).

While it is important to protect customary rights, provisions are needed to ensure that these do not jeopardise the enjoyment of other rights. Under the constitution, Marshallese custom (*manit*) has primacy. Article X, Section 1, of the constitution specifies that “nothing in Article II shall be construed to invalidate the customary law or any traditional practice concerning land tenure or any related matter ... including, where applicable, the rights and obligations of the *Irojlaplap*, *Irojjedrik*, *Alap* and *Dri Jerbal*.” This means that, when customary practices and traditions regarding land tenure undermine or breach human rights, it may not be possible for the individual to seek a legal remedy.

5.1.3 Overview of fisheries legislation

In the Marshall Islands, most of the legislation governing coastal fisheries is contained in Title 51 of the Marshall Islands Revised Code (MIRC). The Marine Resources Act (MRA) of 1997 (51 MIRC: section 144) established the mandate of the Marshall Islands Marine Resources Authority (MIMRA) as an independent authority to manage fisheries resources. Under sections 119 and 120, MIMRA’s powers and functions include: establishing management plans and programmes to manage the resources in the fishery waters; issuing licenses; regulating the processing, marketing and export of fish and fish products; seeking technical assistance for the determination of the fishery waters zones and boundaries; and making regulations and standards to carry out the purposes and provisions of this Title 51.⁹⁵

The Fisheries Act of 1997 (51 MIRC: chapter 2) provides further detail on the role of the MIMRA in governing the conservation, management and sustainable use of the fishery resources. In particular, it permits the MIMRA to: (i) determine total levels of fishing and allocations of fishing rights (51 MIRC: section 205); (ii) designate a fishery and implement a plan for the management and development of such fishery (51 MIRC: section 207); (iii) take conservation and management measures, such as declaring an open or closed season for any specified area and for any fish and any period of time (section 208 1a); and (iv) protect and promote artisanal fisheries, which includes “establishing reserved areas for artisanal fishing” and “giving priority to artisanal fisheries⁹⁶ in the allocation of fishing licenses or quota” (51 MIRC: section 210). The authority may also declare *fisheries exclusion zones* to designate an area for the exclusive or predominant use for subsistence artisanal and/or sport fishing (51 MIRC: section 211). There are many other provisions,

⁹⁴ *People’s Union for Civil Liberties v. Union of India & Ors* [2001]

⁹⁵ The Marshallese High Court argued that, while local governments have the authority to manage local fisheries within its jurisdiction, they must operate within the law. Under the MIMRA Act, MIMRA has exclusive powers to manage all Marshallese fishery waters, including the Majuro lagoon. Thus, MIMRA “may limit the operation of local government” without it being “a violation of the people’s right to a system of local government”. (*Majuro Atoll Local Government v. Marshall Islands Marine Resources Authority* [2015], page 7).

⁹⁶ This act defines artisanal fisheries or artisanal fishing as “in-shore fishing by citizens using vessels powered by outboard engines, and which could include commercial fishing.” (Part 1).

including prohibiting the harvesting of trochus except during open season, and using certain fishing gear. Importantly, the High Court has recognised that portion of the act which grants the MIMRA exclusive powers and functions over fishery waters in the republic does not contradict Article IX of the constitution that establishes the powers of local government.⁹⁷ Chapter 5 of MIRC (Fisheries Enforcement Act) further outlines the responsibilities of authorities in combatting illegal, unreported and unregulated fishing. This includes requiring that any boat operator facilities an authorised observer to safely board the vessel and inspect both it and an “any fishing gear, equipment, records, fish and fish products” (51 MIRC; section 518). Despite their extensive provisions, these acts would benefit from requiring the MIMRA to protect traditional fishing rights and the human rights of coastal communities who depend on fishing for livelihoods. This includes their right to participate in decisions that affect them.

Chapter 3 of Title 51 called “Management and Development of Local Fisheries” empowers local government councils to “take measures for the management and development of local fisheries in its internal waters and within its waters up to five miles seaward of the baseline from which the territorial sea is measured, in accordance with this Title” and “for the benefit of the people of the Republic of the Marshall Islands” (51 MIRC: section 302). The duties of these councils include preparing fishery management plans and recommending the promulgation of regulations, including regarding licenses (51 MIRC: section 303). They can also establish marine protected areas, recommend to the authority the declaration of a designated local fishery, adopt ordinances for fisheries management and development, and issue fishing licenses for species (51 MIRC: section 304). Again, the chapter would benefit from requiring the local councils to respect and protect traditional fishing rights and human rights. Another pertinent act under Title 51 is the Fishing Access and Licensing Act (51 MIRC: chapter 4), which governs the licensing and registration of fishing vessels or fishermen, as well as the access of foreign vessels to the country’s fishery waters.

Also of relevance is the National Environmental Protection Act 1984 (35 MIRC: chapter 1) which establishes the competence of the Marshall Islands Environmental Protection Authority (RMIEPA) to manage fisheries resources. This includes “recommend[ing] to the Minister a system of rational exploitation of fisheries and of the aquatic resources within the territorial waters and the EEZ” (section 130). This can include regulating the harvesting and marketing of threatened species of fish or other aquatic life (section 130).

There are also numerous regulations that further implement these acts, including the Sea Cucumber Regulations of 2012, the Aquarium Fishery Regulations of 2016, the Aquaculture Regulations of 2019 and the Fish Harvest Regulations of 2020, which regulate fishing methods, catch size limits and fish export licensing.

5.2.4 Specific issues

Non-discrimination and gender equality

The Marshall Islands is traditionally a matrilineal society with land tenure, which in turn determines authority over neighbouring marine areas, being inherited through the maternal line (CEDAW Committee 2016b: para 25).⁹⁸ “[T]he traditional authority of women within the matrilineage” in the Marshall Islands is likened “to that of a ‘shadow government’, without institutional form but powerful nonetheless” (Hezel 2001 as cited in Stege et al. 2008: 13). However, society has also historically “believed that the place of a woman was in the home while men should occupy the public space and be the breadwinner” and thus be the decision makers (OHCHR 2018). Commentators have reported that the “*maam maroñroñ* tradition of delegating duties to male relatives remains a part of the social fabric” (Stege et al. 2008: 24). The CEDAW Committee has noted that “although customary land rights are based on a matrilineal system, decisions regarding land use ... are taken by men” (CEDAW Committee 2018a: para 40). This presumably includes the reefs. Moreover, while the Council of Iroj (traditional leaders) does include women, only a quarter of the members are female, as women are rarely given chief status (UN Women 2022b). Political representation of women in the 24 main islands and atolls’ local governments is weak. It is reported that, in 2011, only “3 of the 24 mayors (13%) and 47 of the 251 councillors (19%) were women” (Asian Development Bank 2020: 28).

The Constitution of the Marshall Islands recognises the right of all persons to equality under the law and prohibits discrimination based on multiple grounds, including gender (Constitution: Article II, section 12). It provides that “[a]ll persons are equal under the law and are entitled to the equal protection of the laws” and prohibits legislation, and executive and judicial actions from discriminating “against any person on the basis of gender, race, colour, language, religion, political or other opinion, national or social origin, place

⁹⁷ *Majuro Atoll Local Government v. Marshall Islands Marine Resources Authority* [2015] MHHC 3; Civil Action 2015-025 (23 November 2015).

⁹⁸ This is discussed more in the next section of the report.



of birth, family status or descent” (Constitution: Article II, section 12). While this provision protects people against direct discrimination, it could go further by also prohibiting indirect discrimination.

The Marshall Islands was the first country in the Pacific region to adopt legislation protecting the human rights of women and girls, including the right to substantive equality.⁹⁹ Both the Constitution (section 112) and the Gender Equality Act (section 108) authorise the taking of affirmative action for women that is necessary to ensure substantive equality (Constitution: Section 12). Section 108 of Gender Equality Act 2019 calls for the “adoption of special measures to counterbalance the under-representation of women and girls in public, political and economic realms, especially in decision-making processes”, including in the fisheries sector (Fox et al. 2023: 25). The act also requires that the courts and all other persons and bodies take into account “the purpose and principles” of the CEDAW, including all “interpretative guidelines, statements, general recommendations, and jurisprudence” of the CEDAW Committee (section 104(2)(b)).

In addition to recognising the equal right of women to education and encouraging women and girls to study non-traditional subjects such as science and technology (Gender Equality Act: section 113), the Gender Equality Act explicitly recognises women’s right to participate “in all areas of political and public life on an equal basis with men” (Gender Equality Act: section 112(1)) and, as already highlighted, allows affirmative action to ensure women’s full participation. It prohibits any act that can restrict or exclude women from, inter alia, participating in the political process, and being a member of, or occupying any position of seniority, management or leadership in a political party, civil society or community organisation, church institution or group (Gender Equality Act: section 112(2)). However, there is no explicit reference to women’s right to participate in traditional structures.

The Gender Equality Act also does not explicitly address the use of natural resources or other fisheries-related matters. Moreover, since Marshallese custom (*manit*) concerning land tenure, which in turn affects access to reefs,¹⁰⁰ has primacy over the Constitution’s Bill of Rights including the non-discrimination provision (Constitution: Article II, section 12), woman may not be able to legally challenge any “customary practices and traditions that are discriminatory towards women and girls” (CEDAW Committee 2018a: para 12). This could include men making decisions regarding reefs both in their position as chief or as *maam maroiroh* - a “male relative with power to act for a female lineage head” (Stege et al. 2008: 27).

Security of tenure, access to natural resources and the right to food

As with many other Pacific Island countries, local communities depend on access to and control over marine areas for their livelihoods. In the Marshall Islands, this dependence is increasing due to drought and rising sea levels that are eroding available agricultural land (Government of the Marshall Islands 2020a: 5). Communities must, therefore, have secure tenure to marine areas to enjoy their right to adequate food.

While traditions vary between atolls (Sahib and White 2018: 3), historically coastal communities have owned the land and coastal resources that surround their villages along traditional matriarchal lines (Vierros et al. 2010: 21). Decisions have typically been made by the traditional leader of the highest ranked family group on the island or atoll paramount chief or *irooj* (FAO 2024a). Chiefs could declare a reef their own reef where no one else was allowed to fish without permission (Tobin 1956). Penalties could include “death or expulsion from his land” (Tobin 1956: 67). Chiefs have also prohibited outsiders from exploiting the resources of an atoll without first obtaining their permission (FAO 2024a; Tobin 1956).¹⁰¹ Other community members include the clan heads or noblemen (*alap*), who are supported by labourers/workers on the land (*dri-jerbal*) (Alik et al. 2008). Both *alap* and *dri-jerbal* have rights that may be dependent on those further up the hierarchy (Spenneman 1990). The rights of the *dri-jerbal*, for instance, include the right to a percentage of the proceeds from the land. these rights can, however, be terminated, changed or transferred by the *irooj laplap* or the *alap* if there is “good cause”, such as not paying the share of the copra sales.¹⁰² Commentators note that while customary marine tenure still exists in Marshall Islands, it “has declined in importance, with varying degrees of effectiveness depending on geographical location ... with [t]he current conservation action plan seek[ing] to strengthen [it] throughout the country” (FAO 2024a: Box 3).

⁹⁹ 24 MIRC: chapter 10, added by Public Law 2019-116.

¹⁰⁰ This is discussed more in the next section of the report.

¹⁰¹ The main decision-making power over these resources was held with the traditional leader of the highest ranked family group on the island or atoll paramount chief or *irooj* (FAO 2024a). They hold the power to grant or restrict access to the resources according to their preferences and conservation (Sahib and White 2018: 7). They also prohibited outsiders from exploiting the resources of an atoll without first obtaining their permission (FAO 2024a). This traditional system has since been eroded, partly due to the role of foreign colonisers. For instance, in 1934, following colonisation, the Japanese declared reef areas open to everyone (public land). By 1958, a researcher noted that “...the power of the paramount chief has become weakened since the arrival of the foreigners, but the concept that the right to exploit the marine resources of an atoll is the prerogative of the inhabitants of that atoll still persists” (Rhodes et al. 2011 as cited in FAO 2024a: Box 3).

¹⁰² *Binni v. Mwedriktok* 5 T.T.R. 374 (1971); *Nenjir v. Laibinmij* 5 T.T.R. 477 (1971); *Jekkeni v. Bilimon* 5 T.T.R. 442; disregard of the *alap*’s authority and failure to pay respect to the *alap* (*Alek S. v. Lomjeik* 3 T.T.R. 112 (1966)).



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Marine areas are now technically owned by the state. Under the Public Lands and Resources Act (9 MIRC: chapter 1), public lands are those owned or maintained by the Japanese government during its administration of the islands (9 MIRC: section 102). Current public land, therefore, includes the marine areas below the high-water mark. There are, however, some exceptions to the public ownership of marine areas, including:

- fish weirs and traps and the right to erect these as recognised by customary law;
- fishing rights on and in water over reefs where the general depth of water is less than four feet at low tide, as recognised by customary law to “the owners of land abutting the ocean or lagoon”;
- the traditional and customary right of the individual landowner, clan or municipality to control the use of marine areas or resources below the high-water mark (subject to the inherent rights of ownership of the government); and
- any legal interest in or title to such marine areas (9 MIRC: section 103).

Communities, therefore, retain some fishing rights that are effectively determined by their customary land rights.¹⁰³ Any owner of “abutting land”, whose rights existed under local customary law at the time of Japanese occupation, has the right to fish in neighbouring reefs (Waddell 2013: 48). Nonetheless, the powers and responsibilities associated with landowners over abutting reefs and other marine areas have so far not been formally defined in law or tested in the court system, although traditional owners hold considerable *de facto* power over the use of the resources, particularly in the outer islands (Sahib and White 2018: 3).

Despite this formal acknowledgment of fishing rights, there are still threats to the enjoyment of secure tenure to the resources needed for livelihoods. Disputes over land, which in turn decide customary access to marine areas, are decided in accordance with customary rules by the Traditional Rights Court (TRC) (Constitution: Article VI, section 4(3)) that are then certified by a formal court. According to the Supreme Court, the certifying court is to review and adopt the decision of the TRC unless that decision is clearly erroneous or contrary to law.¹⁰⁴ Disputes can include what sort of rights someone may hold over the land and therefore marine areas, and since they are for the most part decided in accordance with lineage and customs,¹⁰⁵ courts

¹⁰³ Upon reaching independence (in 1994), most land was still owned by clans. The government has helped protect this by establishing that nothing can “invalidate the customary law or any traditional practice concerning land tenure or any related matter” (Constitution: Article X, section 1), as well as prohibits, “without prejudice to the continued application of the customary law”, any person having any rights over land to sell, lease or license that land “without the approval” of customary leaders (Constitution: Article X, section 1).

¹⁰⁴ *Abija v. Bwijmaron*, 2 MILR 6, 15 (RMI Sup. Ct. 1994).

¹⁰⁵ See for instance *Bungitak v. Jowells, et al.*, CA 10-177 (09/29/16). In its decision, the traditional rights court outlines applicable customary law.



do not take into account peoples' dependence on the land and related resources. Moreover, the lack of legal recognition of the right to an adequate standard of living means there is therefore no possibility of challenging decisions, even if they undermine people's access to food.

When regulating marine areas, the government should protect the right of individuals to secure tenure over the natural resources they need. While both the role of chiefs and customary law are constitutionally protected, there is limited protection of the fishing rights of those dependent on marine resources. For instance, despite the Public Lands and Resources Act establishing the rights of owners of abutting land to marine resources, it does not explicitly obligate governmental actors to protect those rights. There is also no guarantee to preserve fishing rights for those who no-longer own abutting land. Moreover, in some cases, courts have affirmed the rights of the state to fill in submerged areas, which directly undermines communities' fishing rights.¹⁰⁶ Also courts have often awarded compensation for damaged reefs has gone to the state as an owner rather than the communities who use and depend on the reef for livelihoods.¹⁰⁷

Therefore, the Fisheries Act, while empowering MIMRA to adopt fisheries regulations to protect and promote artisanal and sustainable fisheries, would benefit from going further and explicitly require MIMRA to protect the human rights of small-scale fishers and fish workers in all its actions. Such actions could include, for instance, the closure of certain fisheries (e.g. sea cucumbers) or negotiation of international trade measures on high value marine products (e.g. CITES).

Under the constitution, the government can compulsorily acquire land if "a law authorizes such taking" and it is of "public use" and not "to generate profits or revenues", provided that the High Court has determined that it is in fact legal (Constitution: Article II, section 5). The compensation is to be determined by the High Court in consultation with the Traditional Rights Court that "shall include reasonably equivalent land rights for all interest holders or the means to obtain the subsistence and benefits that such land rights provide" (Constitution: Article II, section 5). There is however no explicit reference in either the constitution or the Land Acquisition Act of 1986 (9 MIRC: chapter 2) to the need to compensate for the fishing rights that might be affected by such acquisition and development. Moreover, there is no requirement that any development on coastal land must still allow access for coastal communities to the sea. This in part is also facilitated by the lack of any legal provisions requiring government to protect fishing rights.

Even within the customary system, not everyone may be able to enjoy secure tenure to marine resources, as chiefs' decisions could theoretically erode or deny people access to the resources they need. Without the constitutional recognition and protection of the right to an adequate standard of living, there is no possibility of legally challenging such decisions. These decisions could include leasing the land abutting the marine resources, which could leave people without access to coastal resources. While under customary law, the *iroij edrik*, *alap* and *dri jermal* must all agree to any alienation, lease or mortgage of lineage land,¹⁰⁸ but there can be questions about whether women are represented in this decision-making process since, despite the matrilineal land tenure system, decisions are usually made by the men (CEDAW Committee 2018a: para 40). Similarly, without formal legal recognition of the right to food, it may be difficult to challenge any decision by the *iroij laplap* or the *alap* that removes *dri-jermal* rights, that could substantially undermine a person's access to livelihoods.¹⁰⁹ Chiefs can also temporarily close certain areas of the fishing grounds (Sahib and White 2018: 7), which, while necessary for conservation, could particularly affect some community members more than others, especially those who can have less say in the decision-making process, such as women (Steger et al. 2008: 24). They could also exclude outsiders, such as displaced communities from the nuclear testing or climate change.

In short, while fishing rights are recognised, there is scope for this to be strengthened to guarantee that everyone has secure tenure in line with the Marshall Islands' obligations under human rights law. Stronger articulation of the right to food is essential to ensure that everyone can challenge any decision that threatens their tenure over marine resources. In the short term, the government could consider how to include this right more explicitly in statutory legislation, such as Fisheries Act, while in the longer term the constitution could be amended to include the right to food, which in turn includes the right to secure tenure over marine resources, and to require that customary law comply with all human rights. It can also obligate the government to ensure alternative forms of livelihood that can help protect marine resources for current and future generations.

¹⁰⁶ *Jurelang Zedkaia & Tolbwij Toring v. Marshalls Energy Company, Inc., et al.*, S. Ct. Civil No. 2012-001.

¹⁰⁷ *Kabua et al. vs M/V Mell Springwood - Civil Action No. 2015-200 ORDER of the RMI High Court (20 June 2016)*. See also *Kabua et al. vs M/V Mell Springwood- Supreme Court No. 2016-001 OPINION (22 October 2019)* analysing the *Kabua Plaintiffs' Interest in Marine Areas Below the Ordinary High Water Mark*.

¹⁰⁸ *Makroro v. Kokke* 5 T.T.R. 465; *Neikabun v. Mute* 5 T.T.R. 493,495; *Linidrik v. Main*, 5 T.T.R. 561,565; *Likinono v. Nako* 4 T.T.R. 483; *Ladrik v. Jakeo* 6 T.T.R. 391,391 (1973).

¹⁰⁹ *Binni v. Mwedrikotok* 5 T.T.R. 374 (1971); *(Nenjir v. Laibinmij* 5 T.T.R. 477 (1971), 481; *Jekkeni v. Bilimon* 5 T.T.R. 442); disregard of the *alap's* authority and failure to pay respect to the *alap* (*Alek S. v. Lomjeik* 3 T.T.R. 112 (1966)).

Environmental rights and legislation: Like many other Pacific Island countries, the constitution would benefit from recognising the right to a healthy environment. While Its preamble does “pledge... to safeguard and maintain (our sacred heritage), valuing nothing more dearly than our rightful home on the islands within the traditional boundaries of this archipelago,” some have interpreted this as giving an explicit responsibility to the government to enact an effective legislative framework that protects the environment and ensures the sustainable management of resources (Waddell 2013: 3). Nonetheless this is not the same as a people having a legally enforceable entitlement to a healthy and sustainable environment.¹¹⁰

While statutory legislation does not recognise the right to a healthy environment, there is a strong framework protecting the environment in line with the Preamble of the Constitution. The Fisheries Act of 1997 grants legal protection to certain marine species, such as trochus (Fisheries Act: section 218) and turtles (Fisheries Act: section 215). This is implemented by the Fish Harvest Regulations of 2020, which prohibit certain methods, such as under water breathing apparatus, chemicals and explosives (Fish Harvest Regulations: section 5), and sets minimum size standards (Fish Harvest Regulations: section 7). Also, under MIRC Title 51, the government has adopted the Marine Resources Act of 1997 (51 MIRC: chapter 1), which is implemented through the Sea Cucumber Regulations of 2012 that ensure the sustainable harvest of this resource, the Aquarium Fishery Regulations of 2016 that regulate the collection of marine ornamentals, and the Aquaculture Regulations of 2019.

Other relevant legislation includes the National Environmental Protection Act of 1984 (35 MIRC: chapter 1) which establishes the RMIEPA that can provide policy recommendations for the management and conservation of natural resources and the environment, including animals and plants within the EEZ. It can also regulate harvesting and marketing of threatened species of fish or other aquatic life (35 MIRC: sections 19 and 120). Also of interest is the Coast Conservation Act (35 MIRC: chapter 3) governing coastal development activities in the area between 25 feet landward of the mean high-water line and 200 feet seaward of the mean low water line, and the Fishing Access and Licensing Act (51 MIRC: chapter 4), which governs the licensing and registration of fishing vessels or fishermen, as well as the access of foreign vessels to the country’s fishery waters.

The Marshall Islands has created several MPAs, on a piecemeal basis by local ordinances, often prompted by local communities. For instance, in 2003 Ailinginae, Rongelap and Rongerik were declared protected areas under local government ordinances, which need revision to ensure better compliance.¹¹¹ The Tuna and Game-Fish Conservation Zone Act of 1996 (33 MIRC: chapter 3) established the Tuna and Game Fish Conservation Zone that comprises those parts of the sea from the base lines of Kwajalein and Majuro Atolls to 50 nautical miles seaward (33 MIRC: section 303). Under this act, foreign and local fishing vessels cannot fish unless they have a valid license issued by MIMRA, although the provision does not apply to sport fishing and subsistence fishing activities (33 MIRC: section 304), which turns the conservation zone into a reserved fishing ground for subsistence and sport fishing.

Under the Fisheries Act of 1997, MIMRA can also respond to requests from local governments to assist them in developing a resource management plan to conserve fisheries, especially for those atolls with the highest population and subject to the greatest development pressures (*Reimaan* National Planning Team 2008: 40). As already noted, however, there is no obligation to respect fishing rights, nor certain human rights. Nonetheless, several management plans do allow subsistence fishing such as the Jaluit Atoll Conservation Area (declared in 1999). Its management plan suggests a three-tier system consisting of: (i) general use areas that allow subsistence and some commercial activities; (ii) *mo* areas that are community-determined and allow subsistence fishing; and (iv) the sanctuary zones that are usually biologically important areas located within *mo* and are strictly no-take zones (Lindsay and Aiello 2003: ii).

In 2015, to implement the Micronesia Challenge (see section 4.2 of this report on regional and sub-regional efforts), the government adopted the Protected Areas Network (PAN) Act 2015 (35 MIRC: chapter 5). This act specifies that “[t]he Ministry of Resources and Development, in consultation with the LRC and local government officials, may designate areas as Protected Areas” by publishing a notice on the national government’s website, advertise on radio and distribute relevant information to the affected people (inhabitants of the area and/or atoll) (35 MIRC: sections 505 and 506). The local government is then expected to work with the local community to develop management plans and relevant ordinances that govern each

¹¹⁰ Due to the nuclear tests, seawater was contaminated, sediments were remobilised and low-level radioactivity was recorded in fouling marine growth and in seawater piping systems, fish and clams, calcareous algae and coral skeletons. With people still being displaced approximately 60 years after the testing took place, the coral reef community of Bikini Atoll has reportedly been able to recover, in the absence of further human disturbance. Bikini also benefited from the presence of uninhabited and non-impacted neighbouring atolls and a supportive ocean current for larval import. In this specific situation, the visible impact of atomic testing on the reef can be compared to those following natural disasters such as cyclone/hurricane damage (Richards et al. 2008). Nonetheless, high levels of radiation have recently been found in giant clams in Runit Island (Los Angeles Times 2019).

¹¹¹ This was indicated in the SPC Subregional Workshop on Gender, Social Inclusion and Human Rights in Coastal Fisheries and Aquaculture - Virtual Meeting, 28–30 June 2022.



protected area (MIMRA 2020) building on the 2008 *Reimaanlok* national framework for the planning and establishment of community-based conservation areas in the Marshall Islands. One of the key principles of the *Reimaanlok* process is the empowerment of communities, including men, women and youth, to participate in community-based management through a quota system for all social groups to be represented in the local resource committees (LRCs). While this is a very positive step towards promoting inclusive decision-making for management, it needs to be further assessed in how far community diversity in numbers equates to meaningful participation and substantive equality.

Each area included in the PAN will be eligible for assistance and support under this act (35 MIRC: section 503). Echoing the already existing different types of MPAs under the *Reimaanlok* Process (*Reimaan* National Planning Team, 2008: 21), the act stipulates that “protected areas shall only be of two types: Type I - Subsistence only. This type of area is managed for subsistence use ... Type II - High level of protection. This type of area is subject to no-take or a very low level of subsistence or special occasion activities with no commercial use” (35 MIRC: section 504).

MIMRA has also developed regulations to further govern PAN areas, including setting the criteria and standards that apply to areas that are eligible to be included in the PAN, as well as guidelines outlining the requirements for management plans for protected areas. The 2020 Protected Areas Network Regulations specifically “create an avenue for the PAN Office to receive and disburse funding to support protected areas established by communities in the RMI” and “provide the legal framework for the process of nominating areas for protection under the Act” (PAN Regulations: section 4). With specific regard to the criteria for inclusion in the PAN network and receiving assistance, section 10 of the PAN Regulations establishes that the focal areas to be assessed include: “the creation, monitoring, management, or enforcement of marine and terrestrial protected areas ...; the development of new and alternative livelihoods for communities living in the proximity of protected areas ...; and capacity building – the training of resource management personnel, conservation officers, fishermen, aqua culturists, or others.”¹¹²



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¹¹² This is also detailed in the application form as contained in the PAN Regulations.

The PAN regulations, section 11, also increase the different types of protected areas that can be established:

- subsistence only;
- special reserve that includes “a high level of protection, and occasionally a very low level of subsistence or special occasion activities”;
- restricted and protected areas with “total restrictions subject to no activities, either within a large protected area or in an identified protected area”; and
- traditional *mo* that “is managed and restricted through the practice of Mo by Chiefs (Iroij) only”.

According to MIMRA’s annual report in 2020, 11 coastal communities are reported to be managing their fishing areas by implementing coastal fisheries resource management plans developed under the Reimaanlok Process. Seven management plans were completed in 2020 and formally endorsed by their local governments; four plans were under final review; and 10 new plans were in draft, awaiting endorsement of the local resource committees, as well as local and traditional leaders (MIMRA 2020: 9). Interestingly, the Reimaanlok framework also has an alternative livelihood intervention, where the community chooses an income-generating project, such as aquaculture of giant clams or handicrafts, and implementing partners grant the community around \$150,000 to start up their operations, all of which will be ultimately fully owned by the target communities. Challenges may arise when it comes to maintaining these efforts over time to guarantee secure access to the resources that these communities have depended on for centuries.

The Reimaanlok framework, coupled with the PAN legislation that formalises the different types of protected areas, provides the Marshall Islands with a solid legal framework for MPAs and community-based fisheries management, which allows for recognition of subsistence fishing rights and traditional *mo* closure. Greater reference to human rights could, however, be made by recognising the right to food and by providing for appropriate complaints and remedy mechanisms to ensure that individuals can challenge any unnecessary or overly restrictive conservation measure that threatens their livelihoods.

Environmental impact assessments: In the Marshall Islands, under the National Environmental Protection Act of 1984 (35 MIRC: chapter 1), all governmental ministries, departments, offices and agencies must “include in every recommendation or report on proposals for legislation and other major governmental action significantly affecting the human environment, an environmental impact statement (35 MIRC: section 133). An environmental impact statement is a detailed statement by the responsible official on:

- (a) the environmental and cultural impact of the proposed action;
- (b) any adverse environmental effects which cannot be avoided if the proposal is carried out;
- (c) alternatives to the proposed action;
- (d) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and
- (e) any irreversible and irretrievable commitment of resources which the proposed action will necessitate if it is carried out (35 MIRC: section 134).

The act also provides that “[b]efore making an environmental impact statement, the responsible official shall consult and obtain the comments of the interested”. It also provides that the statement shall be made available to the public “a reasonable time before the completion of the Government of the Marshall Islands decision making process” (35 MIRC: section 134).

The Environmental Impact Assessment (EIA) Regulations of 1994 provides further details on how the National Environmental Protection Act 1984 and the Coast Conservation Act 1988 (section 11) are to be implemented “by establishing standard procedures for the preparation and evaluation of an environmental impact assessment” (EIA Regulations 1994: Article 2). The first stage is for “[t]he proponent of each and every proposed development activity shall prepare and submit to the General Manager of the [Environmental Protection] Authority a Preliminary Proposal” (EIA Regulations 1994: Article 6).¹¹³ The General Manager will then determine whether it is likely to have a significant impact – which includes affecting public health and safety, as well as the unique characteristics of the geographic area – and whether a fuller EIA is required. Initially, the RMIEPA will conduct a scoping exercise that includes gathering comments from the public and affected communities for any “proposed development activity involving Governmental action” (EIA Regulations 1994: Article 11b). Similarly, the RMIEPA, if necessary, may also require scoping

¹¹³ Such a proposal should include a brief description of the proposed development activity; the methods, materials, and techniques used; its possible impact and possible alternatives to mitigate this, as well as a brief description of the area to be affected and justification of why the project is needed.



comments from the general public for “a proposed development activity not involving Governmental action” (EIA Regulations 1994: Article 11c).

Positively, the legislation regarding EIAs requires the assessment to include the possible impact on health and safety, but it should also include assessing the socio-economic impact and the impact on women and various other groups, including for the *dri jermal* and displaced communities. In addition to being a legal requirement, human rights offer a comprehensive framework that can help guide an assessment of the impact on different groups and individuals, including those lower in the village hierarchy such as labourers and displaced communities. Moreover, there needs to be a stronger protection of the affected communities’ right to participate in the process, including as part of the initial proposal (EIA Regulations 1994: section 7). Currently there is no requirement for the review of the preliminary proposal to include effective consultation with groups that might be affected. Moreover, as noted above, there is no explicit requirement for any development activity not involving the government to participate with anyone affected. It is instead left to the judgement of the RMIEPA and whether they consider it necessary.

Participation and democratic governance

In the Marshall Islands, as in many other Pacific Island countries, the constitution does not recognise the right to participation or indigenous peoples’ rights to FPIC. It ensures, however, participatory mechanisms for traditional leaders. It establishes the Council of Iroij, composed of holders of the title of *iroijlaplap* or other analogous traditional titles, who are elected by the chiefs (*iroji*), who in turn are typically elected by the village’s strongest clans (Lynch 1984). This Council can review any Bill affecting “the customary law, or any traditional practice, or land tenure, or any related matter” (Constitution: Article III, section 2). In addition, many pieces of statutory legislation have established participatory mechanisms. The Marshall Islands Administrative Procedure Act of 1979 also establishes the procedure for agencies to adopt rules, which includes making it publicly available prior to adoption and organising public hearings (Administrative Procedure Act: section 104).

The government could also go further in protecting community management of the resources they depend on for livelihoods. While in the Marshall Islands customary management of marine resources is still being practised,¹¹⁴ these “powers and responsibilities associated with ownership are not formally defined in law (or tested in the court system)” (Sahib and White 2018: 1). Instead, the Management and Development section of the Local Fisheries Act establishes that “each Local Government Council shall be responsible for the management, development and sustainable use, in accordance with this Title, of the reef and inshore fisheries within its waters, extending up to five miles seaward from the baseline from which the territorial sea is measured” (51 MIRC: section 302). In this regard, the local council is to prepare fishery management plans, recommend certain regulations, and adopt ordinances (51 MIRC: section 303). Although these plans are often prompted by local communities, there is no legal requirement for local councils to consult with such communities. Similarly, while chiefs can prompt the creation of MPAs, and communities have been involved in preparing fisheries management plans,¹¹⁵ there is no legislation requiring this.

In 2008, the government adopted the *Reimaanlok*, a national framework for the planning and establishment of community-based conservation areas in the Marshall Islands (Reimaan National Planning Team 2008). A year previously (2007), stakeholders, including governmental authorities, became aware of the need for an “over-arching resource management framework that addresses fisheries, conservation, and coastal zone management” that “must be community-driven, while being supported with resources and expertise” (Reimaan National Planning Team 2008: 40). They thus formulated the *Reimaanlok* framework. One of the key principles of the *Reimaanlok* process is that communities, including men, women and youth, participate in community-based management, with all social groups being represented in the local resource committees (LRCs) (Fox et al. 2023).

To implement community-based planning, first there must be a clear need to develop a community-based resource management plan, either at local government level or at national level. There must then be a scoping exercise by a national team, who will also engage with the community and map local knowledge and use of resources. The team will also gain socio-economic and scientific information before developing the management plan, which must be signed off by the PAN Office (Reimaan National Planning Team 2008: 43; PAN Act: section 515). This commitment continued with the Strategic Plan for 2015–2017, committing the government to continue with establishing community-based fisheries and resource management (*Reimaanlok*) (Government of the Marshall Islands 2015: 33).

¹¹⁴ Customary marine management, including traditional mo closure of particular areas for fishing, is practised today to varying degrees, depending on geographical location. Coral reef and lagoon areas near Majuro are open access, whereas outer islands and atolls are still controlled under traditional customary marine tenure (FAO 2024a: Box 3).

¹¹⁵ For instance, regarding the Jaluit Atoll Conservation Area. See Lindsay and Aiello 2003.



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The adoption of the PAN Act in 2015 also allows some possibilities for local management in PAN areas, including the creation of local resource committees that will “consist of at least 4 members approved by the community” (PAN Act: section 510) and can lead the management of such areas and apply for funding. They are to develop management plans for such areas in consultation with the PAN Office and stakeholder groups. In collaboration with local government, they also promote compliance with the ordinance relating to the protected areas and support law enforcement. In practice, the Reimaanlok follows an eight-step process: “when triggered by a community’s leadership (Step 1), includes a scoping and budgeting exercise (Step 2), site visits by Reimaanlok facilitators to build awareness on the need for resource planning by the target atoll community (Step 3), followed by the gathering and analysis of various natural and social resource data parameters (Step 4) in order to design (Step 5) and ultimately legislate (Step 6) an integrated atoll resource management plan inclusive of programs to ensure ongoing monitoring and adaptive management (Step 7) and local commitment retention (Step 8)” (MIMRA 2020: 15 and 16).

The MIMRA Annual Report of 2019 underscored the role of the local resources committee in ensuring community involvement and representation from traditional leadership, the local council, women’s clubs, fishermen’s groups, and youth groups in the Reimaanlok Process (MIMRA 2019: 12). Moreover, the PAN Regulations of 2020 state that the PAN Office will take into account an “applicant’s status under the Reimaanlok process” (Part III, section 10). The PAN regulations also contain a section asking if the *Reimaanlok* process is being followed. This, however, does not ensure the participation of all groups within communities or legal remedy for any failure to ensure full participation.

The Marshall Islands is to be commended for its efforts in strengthening community management of marine resources, particularly through the inclusive Reimaanlok process and the PAN legal framework. To fully comply with human rights law, however, legislation could be strengthened by explicitly protecting and ensuring the rights of communities and individuals to participate in the management of marine resources. Recognising the right to participation, accompanied by a requirement that customary practices respect human rights, would require traditional leaders to ensure that everyone is represented in any decisions governing the resources on which they all rely, including women, labourers and displaced communities. Current legislation could also be amended to help ensure that the local resource committees are truly representative of all village members by facilitating a more democratic election of traditional chiefs that goes beyond the villages’ strongest clans and noblemen (*alap*¹¹⁶).

¹¹⁶ The senior member of the lineage; the head man or woman of --a land holding or number of land holdings (Tobin 1956). Retrieved from: https://rmicourts.org/wp-content/uploads/tobin_land_tenure.pdf.



As already noted, in the Marshall Islands, poverty is pervasive, with limited employment options, which means that many communities rely on fishing to survive, sometimes selling the catch at local markets. Coastal fishers can also face dangerous working conditions with reports of fishermen being lost at sea for weeks (Johnson 2020).

The Marshall Islands has numerous pieces of legislation governing sea safety of vessels engaged in foreign trade and domestic commerce,¹¹⁷ as well as fishing boats. Under the Fishing Access and Licensing Act (51 MIRC: chapter 4), operators of fishing vessels are required to “ensure the vessel is seaworthy and contains adequate life safety equipment and survival gear for each passenger at all times” (51 MIRC: section 406). It also empowers MIMRA to, by regulation, require that any fisher or class of fishers, or any vessel or class of vessels be registered (51 MIRC: section 424). Also, under the Management and Development of Local Fisheries Act (51 MIRC: Ch 3), local government councils may also adopt fisheries management ordinances requiring the registration of fishers, boats and fishing gear (51 MIRC: section 308).

In 2017, the government promulgated the maritime regulations that contain extensive safety provisions for commercial and non-commercial fishing vessels but the provisions on registration and safety inspections are limited to fishing vessels of 24 metres or more in length (Maritime Regulations: regulation 1.11). Most coastal fishers use smaller boats that are governed by the Domestic Water Crafts Act 1992 (47 MIRC: chapter 9) and the Domestic Water Craft Regulations (34 Marshall Islands Administrative Code: sections 101 et seq.). These regulations are intended for smaller vessels than the maritime regulations – they apply to boats up to 16 feet, between 16 and 33 feet, and bigger than 33 feet (Appendix A.2). The Domestic Water Craft Regulations apply to commercial watercrafts (including commercial fishing or the gathering of mineral resources, shells or other marine products, for commercial use or sale) exclusively used in the territorial waters and to pleasure watercraft. The regulation contains provisions on safety, including numbering and registration of vessels (regulations 108 and 109). Vessels must carry equipment to navigate outside of the lagoon, as well as a compass, radio, flares and drinking water. Owners must also report any loss of the watercraft (regulation 122). Moreover, any failure to register a domestic watercraft could result in an administrative penalty of up to one hundred dollars for each day the violation continues (regulation 111). The Minister for Transportation and Communication can also revoke or cancel any certificate of registration for non-compliance with any of the safety regulations; or for any other violation which may endanger the safety of the domestic watercraft, her passengers, or crew (regulation 113). Nonetheless, it is unclear that this will cover subsistence fishers since their crafts may not fall under the definition of either commercial or pleasure watercraft. Moreover, even commercial fishers may need help to comply with the regulations. There is a concern that the fine for non-compliance with these regulations could undermine their ability to feed themselves and their families, given the low incomes of coastal fishers and the scarcity of alternative livelihoods.

While one of the objectives of the National Strategic Plan 2015–2017 is to provide for and ensure compliance with all applicable marine safety standards for watercraft, both the legislation and policies would benefit from more explicit reference to the situation of coastal fishers. Due to their subsistence lifestyle, fishers often have limited financial resources to invest in safety equipment for their small boat. While the government must ensure safety at work, hence at sea, it must also ensure that legislative requirements are not too costly (i.e. do not prevent coastal fishers from feeding themselves and their families). It should thus provide assistance programmes to such fishers to help them comply with safety legislation.

To further ensure the safety of children, the CRC Committee recommends that the country “[t]ake the necessary measures to strengthen the capacity of labour inspection services to ensure monitoring of child labour in the informal economy and to guarantee the protection afforded by the Convention, and by putting in place social programmes that target the elimination of child labour, especially its worst forms” (CRC Committee 2018a: para 40(b)).

In the Marshall Islands, remote, rural communities face the challenge of accessing markets to sell their produce (FAO2018a), which can limit their access to adequate livelihoods. The government is trying to address this in line with its obligations under IHRL.¹¹⁸ The National Strategic Plan (NSP) 2020–2030 includes various objectives that relate to the fishing industry, such as maximising the long-term value from its fisheries for the benefit of the Marshall Islands’ economy and people, and maximising income and livelihood opportunities through sustainable coastal fisheries. It acknowledges the importance of earning revenue through charging

¹¹⁷ The Maritime Administration Act of 1990 (47 MIRC: chapter 1) covers all vessels “engaged in foreign trade and domestic commerce” (47 MIRC: section 102) and requires those registered to “undergo inspection and [...] at all times carry on board such proof of inspection as may be required by Law or Regulation” (47 MIRC: section 140). The Documentation and Identification of Vessels Act (47 MIRC: chapter 2), regulates the registration of vessels, but this does not apply to vessels engaged solely in domestic commerce (47 MIRC: section 204).

¹¹⁸ Under the Declaration on the Rights of Peasants, states shall take appropriate measures to help peasants and other people working in rural areas access transportation, processing, drying and storage facilities, and national and regional markets.

fees for commercial fishing and the need to maximise fishing revenues while also respecting the sustainability of fisheries and the needs of fishing companies and investors. It states that RMI will pursue opportunities for private sector development and investment, and public policy initiatives to stimulate increased economic activity. Nonetheless, the strategy would benefit from greater attention to the specific situation of coastal fishers and how their livelihoods could be improved. Moreover, by amending the constitution to recognise the right to an adequate standard of living, the government would help ensure that all actions concerning the fishing industry respect and protect small-scale livelihoods.

The Marshall Islands' constitution is still to recognise the right to social security although there are some pieces of legislation that provide for and regulate access to social security. Under the Social Security Act of 1990, as amended (49 MIRC: chapter 1), social security is administrated through the Marshall Islands Social Security Retirement Fund for workers and self-employed workers, who “will be ensured a measure of security in their old age and during disability, and whereby surviving spouses and surviving children of deceased workers or self-employed workers will be ensured support after the loss of the family’s income” (49 MIRC: section 118). Part V of the Social Security Act covers workers’ contributions, which, as of 2017, was set at 8% of earnings to be collected by the employer and paid to the Marshall Islands Social Security Administration or directly paid to the administration by self-employed workers (49 MIRC: section 129, as amended in 2017). By paying this contribution, the person is entitled to one of the following insurance benefits: old age, disability or surviving spouse/child. There is no mention of covering periods of unemployment. It therefore does not cover all contingencies listed in the ILO Convention 102 on Social Security (Minimum Standards) of 1952.¹¹⁹ While this convention has not been ratified by the Marshall Islands, the CESCR General Comment on the Right to Social Security also refers to these contingencies (CESCR 2008: paras 12–21). The Workers Compensation Act of 2016 (16 MIRC: chapter 7) provides for workers (employees)¹²⁰ to receive compensation/rehabilitation for work related injuries, including in the fishing industry. The Social Security Act does not cover periods of unemployment or low income.

As elsewhere in the Pacific region, many coastal fishers are informal workers and so are unlikely to be covered by such legislation as they may be unable to afford the contributions under the Social Security Act. It is also unclear what social assistance provisions there are for those in need. The CEDAW Committee, for instance, has observed “[t]he lack of information on the extent to which women in part-time employment and disadvantaged groups of women, such as single women, women heads of households, older women and women with disabilities, have benefited from existing social protection schemes” (CEDAW Committee 2018a: para 38c). Including the right to social security in the constitution would allow coastal fishers and fish workers to challenge the lack of assistance. It would also provide a legal underpinning for the development of a non-contributory social protection scheme that assists all those in need.

5.2.5 Looking forward: conclusion and recommendations

The Marshall Islands has ratified most of the human rights treaties, including the ICCPR, ICESCR and CEDAW. Importantly, its constitution recognises many human rights, including non-discrimination; freedom of thought, speech, press, religion, assembly, association, and petition; due process, fair trial and just compensation; and freedom from torture, inhuman and degrading treatment, cruel and unusual punishment. It has also followed up on treaty body recommendations, for instance enacting a comprehensive gender equality act in response to its 2018 review by CEDAW. The Marshall Islands is also committed to promoting community management of fishery resources. This is key to helping address threats, such as over-fishing in coastal regions, and to strengthening communities’ control over marine resources in line with both UNDRIP and UNDROP.

Nonetheless, there are still numerous steps to take for the country to fully comply with its obligations under IHRL. For instance, while the role of chiefs is constitutionally protected, there is limited protection of the fishing rights of those dependent on marine resources. Despite the Public Lands and Resources Act establishing the rights of owners of abutting land to marine resources, it does not explicitly obligate governmental actors to protect these rights. Similarly, the Fisheries Act, while empowering MIMRA to adopt fisheries regulations to protect and promote artisanal fisheries (51 MIRC: section 211), would benefit from going further to explicitly require MIMRA to protect local communities’ fishing rights in all of its actions, as part of their enjoyment of their right to food. This also needs to be accompanied by greater

¹¹⁹ The contingencies are: health care, sickness, old age, unemployment, employment injury, family and child support, maternity, disability, and survivors and orphans.

¹²⁰ The definition of the word employee is the same as contained in the Social Security Act 1990, as amended, which is “any natural person who, under the common law rules applicable in determining the employer-employee relationship, has entered into or works under a contract with an employer in any capacity, excluding that of an independent contractor, whether the contract is express or implied, oral or written, requiring the personal execution of any work or labor and includes all employees of the Government of the Republic of the Marshall Islands, Local Governments, any firm, company, partnership, corporation, association, joint venture, religious organization or other entity, and all elected officials and self-employed workers” (s103(s)).



articulation of human rights, especially ESCR and the right to an adequate standard of living, including food. Even when traditional fishing rights are protected, chiefs' decisions could theoretically erode or deny people access to the resources they need, and without the constitutional recognition and protection of the right to an adequate standard of living, there is no possibility of legally challenging such decisions. Constitutional protection of the right to food also obligates the government to go beyond protecting fishing rights and adopt legislation and policies that strengthen peoples' livelihoods. Moreover, it would help ensure that communities' dependence on resources is taken into account when courts are adjudicating on land disputes and access to marine resources.

If the country is to fully ensure a community-based approach to managing marine resources, its legislative framework similarly needs to guarantee and protect the rights of local communities to participate in decision-making. In the Marshall Islands, as in many other Pacific Island countries, the constitution and statutory legislation is still to recognise the right to participation and indigenous peoples' rights to FPIC. For instance, while the local council is tasked with preparing fishery management plans (51 MIRC: section 303) there is no legal requirement for them to consult with local communities. This is crucial to ensure that all members of the community can participate, including women and persons low in the village hierarchy.

As in many other Pacific Island countries, the Marshall Islands has combined customary and formal legal systems to ensure both protection of indigenous culture and the human rights of every individual as required under human rights law. Nonetheless, it would benefit from including provisions that explicitly stipulate that customary law must comply with all human rights. Until this is done, since traditional practices can supersede the constitution's protection of human rights, it is possible that such practices could jeopardise peoples' enjoyment of human rights. Examples include the lack of enjoyment of women's right to participation in decision-making or when chiefs' decisions jeopardise access to livelihoods.

Based on the above analysis of the current framework, the following **legal and policy recommendations** are made for the Marshall Islands:

Short-term – Policy and programme actions

1. Train the judiciary on human rights law, especially ESCR, and their relationship with civil and political rights and their importance for coastal fishers.
2. Ask academics and legal practitioners to further clarify how ESCR protection could be strengthened in existing legislation.
3. Review the Reimaanlok initiative and identify any legal and other barriers to effective community-based management of resources, including gender and social inclusion factors as recommended in the 2023 Gender Analysis of the Fisheries Sector in the Republic of the Marshall Islands (Recommendation 7 and 8). This can include recommending that appropriate legislation be adopted or amended to ensure a community-based system to fisheries management that also recognises, respects and protects everyone's right to participation.
4. Create a broad consultative process with affected families, customary leaders and civil society on solutions to reconcile the traditional land tenure system with durable solutions to displacement (Human Rights Council 2012).
5. Review labour legislation to identify the normative gaps and areas of priority as they affect coastal fishers and the positive measures needed to help coastal fishers comply with health and safety standards.
6. Review coastal fishers' access to social assistance and insurance schemes, and remove legislative gaps that might prevent them from receiving any benefits.

Medium-term – Legislative changes

7. Review all fishing and environment legislation to require government authorities to respect and protect traditional fishing rights, particularly as a pre-condition to the enjoyment of the right to food.
8. Amend the Land Acquisition Act of 1986 to include the right to FPIC for indigenous peoples, and the right to participation of all who depend on access for their livelihoods.
9. Amend the Fisheries Act of 1997 to require government agencies to respect and protect existing fishing rights, and to include the right to an adequate standard of living for all.

10. Amend the Environmental Protection Act of 1984 and other relevant legislation to include human rights language recognising right to a healthy environment, the right to participation and access to remedy.
11. Amend the environmental impact assessment regulations of 1994 to ensure that impact assessments also examine and identify any potential impact on human rights, including gender; the regulations should also require public participation in the drafting and consideration of the initial proposal.
12. Develop safety at sea regulations that are appropriate for small-scale fishers and include assistance with purchasing the necessary equipment to encourage compliance.
13. Identify and implement the necessary measures to strengthen the capacity of labour inspection services to ensure monitoring of child labour in the informal economy (CRC Committee 2018a).

Long-term – Constitutional changes

14. Amend the constitution to:
 - (i) include the rights to food and housing, a healthy environment, education, decent work and social security, as well as the right to participation; and
 - (ii) require all customary practices to comply with IHRL and the UDHR.





5.3

PALAU

Palau is composed of 586 islands, of which 12 are continuously inhabited, stretching over 700 km (Friedman and Golbuu 2011: 51). The most populated island is Koror, which hosts more than 70% of the population (UN 2017: 111).

Palau's economy depends on tourism. It is one of the world's top dive destinations due to its high biodiversity and unique marine ecosystems. In 2014, the IMF noted: "tourism has contributed about three quarters of GDP growth, more than 80 percent of exports of goods and services, 15 percent of total tax revenue, and 40 percent of total employment" (IMF 2014: 9). Palau's economy also depends on the aid provided by the USA under the Compact of Free Association.¹²¹

While there is a lack of exact information, subsistence fishing remains a major activity. A 2003 survey from the Palau International Coral Reef Center noted that 87% of Palau's population is engaged in coastal artisanal and subsistence fishing activities (Friedman and Golbuu 2011: 64), although recent numbers seem to have decreased (Gillett and Tauati 2018). Women traditionally engage in reef gleaning activities (Chapman 1987; Singeo A. et al. 2021) and men capture finfish, which constitute most of the Palauan diet (Lingard et al. 2011: 74). Community fishing is, however, threatened by an erosion of customary marine tenure and traditional fishing ethics (FAO 2024c).

Greater demand for cash, growing tourism and increasing availability of non-fisheries-related employment is resulting in a cash market for fresh fish and other seafoods, particularly in Koror (FAO 2024c). Many are also reportedly "fishing for cash to purchase imported goods and export to family and friends abroad", which is significantly contributing to overfishing (Termetet 2021: 11). This is exacerbated by people using more modern fishing gear and increasing population, which in turn is increasing the demand for fish (Termetet 2021: 2; FAO 2024c). Although Palau has a global reputation as leader in marine conservation and sustainable development (UN 2017), it has been estimated that "at least 79 percent of nearshore fish species are being overfished and therefore not fished sustainably" ([National Environmental Protection Council 2019](#): 38).

In response, the government is increasing its commitment to tourism¹²² and developing the aquaculture sector. For instance, in 2014, it established the Giant Clam Seed Sustainability Project Fund in order to: "provide assistance to clam farmers; promote and increase the production of cultured clams in order to reduce pressure on wild clam stocks; restock wild clam populations in Palau's reefs; and increase the population of wild giant clams and preserve the species" (27 PNCA: section 1211).

5.3.1 International human rights obligations

Palau has ratified the CRC (1995) and the CRPD (2013). It has also signed, but not ratified, many human rights treaties, including ICESCR, ICCPR, CAT, CERD, CED, CEDAW and

¹²¹ The Compact of Free Association agreement with the Republic of Palau, enshrined in U.S. Public Law 99-658, was followed by a Compact Review Agreement signed between the U.S. and Palau in 2018, extending certain financial provisions through September 30, 2024.

¹²² According to some authors, the COVID-19 pandemic led to the number of tourists visiting Palau falling by 43 per cent in February 2020 and 70 per cent by March 2020 (Termetet, 2021). This led to "to an inevitable closure of hotels, restaurants, and dive shops with consequential increase in unemployment, financial woes and psychological afflictions" (Termetet, 2021: 15).

CMW (2011). Moreover, as a member of the UN, Palau is still morally and to a certain extent legally bound by the UDHR, which includes all rights, be they civil, cultural, economic, political or social.

5.3.2 Human rights and the legal and policy framework

To comply with its human rights obligations, Palau's legal framework must guarantee these rights and ensure access to justice for any breaches. Palau has a federal system with 16 states; the national government retains all powers not expressly delegated to the individual state governments (Constitution: Article XI).

Constitution and statutory law: The Constitution of Palau, as the supreme law of the country, clearly stipulates that “[a]ny law, act of government, or agreement to which a government of Palau is a party, shall not conflict with this Constitution and shall be invalid to the extent of such conflict” (Constitution: Article II, section 2).

The constitution, which was amended in 2005, recognises numerous human rights, including numerous civil and political rights. In particular, it recognises equality under the law, including the right to non-discrimination on the basis of sex. It also recognises freedom of expression or press, freedom of conscience or of philosophical or religious belief, and “the right of any person to peacefully assemble and petition the government for redress of grievances” (Constitution: Article IV, section 3).

Furthermore, the constitution establishes that “[e]very person has the right to be secure in his person, house, papers and effects against entry, search and seizure” (Constitution: Article IV, section 4); and that no person shall allow their “private property be taken except for a recognized public use and for just compensation in money or in kind” (Constitution: Article IV, section 6). It also prohibits torture, and cruel, inhumane or degrading treatment or punishment. With regard to the right to life, it stipulates that “[t]he government shall take no action to deprive any person of life ... without due process of law (Constitution: Article IV, section 6). This provision would benefit from being extended further to take into account the country's positive obligations to ensure a life in dignity that includes access to food (Human Rights Committee 2019: para 26).

There are also several articles that mention economic and social rights. Section 16 of Article IV for instance specifies that “The national government shall provide free preventive health care for every citizen as prescribed by law.” Moreover, Article VI specifies that the national government shall take positive action to attain these national objectives and implement the following national policies:

- conservation of a beautiful, healthful and resourceful natural environment;
- promotion of the national economy;
- protection of the safety and security of persons and property;
- promotion of the health and social welfare of the citizens through the provision of free or subsidized health care; and
- provision of public education for citizens which shall be free from grades one (1) to twelve (12) and compulsory as prescribed by law.

Much statutory legislation has also been adopted to implement this constitutional provision, including the Presidential Declaration No.10–14 on the establishment of a marine mammal sanctuary in 2010, as well as the Protected Areas Network Act (24 PNCA: Chapter 34). However, the constitution is yet to establish legally enforceable entitlements for Palauan citizens regarding the right to an adequate standard of living (including food), social security and work. It would thus benefit from including rights that entitle people to a legal remedy if, for instance, their livelihoods are threatened either by government actions or by third parties such as business corporations.

Legal pluralism and customary law: Like many other Pacific Island countries, Palau's constitution recognises customs as a source of law and protects the role and functions of traditional leaders. It establishes that “[t]he government shall take no action to prohibit or revoke the role or function of a traditional leader as recognized by custom and tradition which is not inconsistent with this Constitution, nor shall it prevent a traditional leader from being recognized, honored, or given formal or functional roles at any level of government.” (Constitution: Article V, section 1). This is also echoed in state constitutions. For instance, in Koror, the state government shall “take no action to prohibit, revoke, or take away a role or function of a traditional leader as recognized by custom and tradition, nor shall it prevent a traditional leader from being recognized, honored, and given formal or functional roles at level of government” (Koror State Constitution: section 2 on traditional rights).

According to the Supreme Court's decision in *Yangilmau v. Carlos*,¹²³ traditional law, rooted in custom, must be proved by "clear and convincing evidence, often through the testimony of expert witnesses." Moreover, in 1982, in *Ngirmekur v. Municipality of Airai*, the High Court has further specified that "the viability of a custom is not abrogated merely because of the relative infrequency of its implementation".¹²⁴ As legal academics have noted, this is important as it allows for the restoration of traditional rights even when it has been impossible to practice them due to societal changes (Daugherty 2019: 21).

However, as clarified above, customary law and traditional leaders' roles and functions are not allowed to be inconsistent with the constitution. They therefore cannot supersede the Palau Constitution. Nonetheless, their ability to supersede statutes¹²⁵ is less clear, with the constitution suggesting statutes and tradition have equal power:

Statutes and traditional law shall be equally authoritative. In case of conflict between a statute and a traditional law, the statute shall prevail only to the extent it is not in conflict with the underlying principles of the traditional law (Constitution: Article V, Section 2).

Since under Article II, section 2 specifies that statutes cannot conflict with the constitution, one can assume that the statutes themselves conform with the human rights as specified in the constitution. However, it is unclear if customary law can violate statutes on issues that do not relate to human rights. The only traditional practice that could potentially supersede other constitutional rights, depending on how the Palau Supreme Court decided, would be fishing customs¹²⁶ (Daugherty 2019: 21). It is unclear, however, if this includes conservation practices. Daugherty suggests that this is still to be decided by the Supreme Court (Daugherty 2019: 21).

In practice, customary law is enforced by the chiefs and formal judicial systems. While the Supreme Court can decide traditional law disputes, it has opted to employ "the least supervision necessary and the provision of the greatest freedom of customary action as possible";¹²⁷ an approach which "keeps the customary law intact and semi-autonomous from the western government" (Daugherty 2019: 20). Moreover, in cases where statutory legislation law does not apply, the court can apply customary law,¹²⁸ providing it is not inconsistent with the constitution (Constitution: Article V, section 1). This approach has resulted in codifying custom into common law (Graham and Idechong 1998: 151).

5.3.3 Overview of fisheries legislation

Authority over the fisheries resources in Palau is shared by the national government and the 16 states. The constitution gives the states authority over the fisheries resources within the 12 nm-zone, subject to two provisions: (i) highly migratory species are excluded; and (ii) traditional fishing rights and practices must not be impaired (Constitution: Article 1, section 2). Nonetheless, in contrast to FSM,¹²⁹ Palau's national government can also regulate waters within the 12 nm-zone. Under Article IX, section 5(12) of the constitution, the national government maintains its authority to regulate the ownership, exploration and exploitation of natural resources.

The main national fisheries legislation is contained in several chapters of Title 27 of the Palau National Code Annotated (PNCA): Chapter 1 (Fishery Zones and Regulation of Foreign Fishing); Chapter 2 (Monitoring of Foreign Vessels in the Domestic Fishing Zone and Palau National Marine Sanctuary), Chapter 3 (Bottom Trawling Prohibited) and, importantly, Chapter 12 (Marine Protection Act of 1994). A 2015 amendment created the Palau National Marine Sanctuary, a complete no-take zone protected from all exploitation and covering 80 % of Palau's EEZ, the remaining 20% is for traditional and domestic fishing activities only.

PNCA Title 27 also determines who has access to which area. For instance, "[t]raditionally recognised fishing rights in submerged reef areas within the fishery zone... shall be preserved and respected for domestic fishing" (27 PNCA: section 146). It also gives priority to local fishers and small domestic companies and introduces a permit system for foreign fishers (27 PNCA: section 167).

¹²³ *Yangilmau v. Carlos*, 7 ROP Intrm. 169 (1995). "Customary law must be proven by clear and convincing evidence, usually through the testimony of expert witnesses." See also *Udui v. Dirrechetet*, 1 ROP Intrm. 114 (1984); *Ngirmang v. Qrrukem*, 3 ROP Intrm. 91 (1992); *Remoket v. Omrekongel Clan*, 5 ROP Intrm. 225 (1996).

¹²⁴ *Ngirmekur v. Municipality of Airai et al.*, 1 ROP Intrm. 22, 28 (1982).

¹²⁵ A statute is a written law passed by a legislative body, such as an act of parliament.

¹²⁶ The Palau Constitution specifies that "[e]ach state shall have exclusive ownership of all living and non-living resources, except highly migratory fish, from the land to twelve (12) nautical miles seaward from the traditional baselines; provided, however, that traditional fishing rights and practices shall not be impaired" (Constitution: Article I, section 2)

¹²⁷ *Sato v. Ngerchelongs State Assembly*, 7 ROP Intrm. 79 (1998).

¹²⁸ 2020 Palau 5 Civil Appeal No. 19-010 Appeal from Civil Case No. 16-05. See also *Delbirt v. Ruluked*, 10 ROP 41, 43 (2003) (holding that where 25 PNC § 301(b) does not apply the trial court "must turn to customary law to determine the proper heir of the deceased").

¹²⁹ Under Article IX, section 2 of FSM constitution, congress can only "regulate the ownership, exploration, and exploitation of natural resources within the marine space of the Federated States of Micronesia beyond 12 miles from island baselines".



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Chapter 12 of Title 27, also known as the Marine Protection Act of 1994, restricts certain types of fishing within the fishery zones and includes regulations for certain species, such as groupers, wrasses, parrotfishes, giant clams, sea cucumbers and crabs (27 PNCA: section 1204). It also empowers the Minister for Resources and Development to make regulations that better protect particular species from over-harvesting (27 PNCA: section 1206).

Palau's environmental legislation includes relevant provisions for coastal fisheries, in particular with regard to protected sea life, such as sponges, mother-of-pearls, dugong, trochus and turtles (PNC 24: Chapter 12). It also specifies illegal methods of capture and seeks to protect stocks and habitats through the banning of destructive fishing practices (24 PNCA: Chapter 13).

There are also examples of legislation adopted at the state level in Koror introducing licensing requirements (Fishing License & Fees Act 1990 - KSPL No. K3-42-90) or establish no-take areas such as in Ngemelis (No Fishing Zone Ngemelis Area Act 2010 - KSPL No. K9-229-2010).

While all statutory legislation must respect the human rights established under the Palau constitution, the lack of constitutional recognition of economic and social rights means that such statutory legislation may not protect coastal fishers' right to an adequate standard of living. This is further explored in the sections below.

5.3.4 Specific issues

Non-discrimination and gender equality

Palau is a matrilineal society, with titles over land, which also determine authority over reefs, inherited through the maternal line.¹³⁰ Villages, which include several clans, have a council of chiefs (*klobak*) and a female traditional council that is comprised of high-ranking female leaders (*ourrot*) (Government of Palau 1998; 2005).¹³¹ These women are responsible for electing the village chief who is usually “the (male) leader of the highest-ranking clan” (Government of Palau 2005: 7). Women, however, are also legally able to be a chief and take part in community decision-making¹³² although this may not always occur in practice (Government of Palau 2005; CFE-DM 2016). In fact, there remain gender-based issues in Palau, including prevalent violence against women (Palau Supreme Court 2017). Women are also likely to have professional jobs that pay less than those occupied by men (SPC 2014), except for those working in the public sector (UN Women 2022c).

The role of women in fishing is considerably underreported, although it represents an important source of livelihoods for communities (Singeo et al. 2021). A recent study shows that most of those who identify themselves as gleaners are women, while most of those who identify themselves as fishers are men which “reflects a gendered division of marine resources use in Palau” (Singeo et al. 2021: 22). Women also remain underrepresented at senior management levels in public policy (Government of Palau 2005: 76). In 2016, there were no women in the legislature (CFE-DM 2016: 44). This lack of women in high-level decision-making positions, coupled with the lack of recognition and articulation of their role in fishing, can directly affect women’s access to livelihoods. For instance, in 2011, the government lifted a 1994 ban on the export of sea cucumbers for six months. This decision resulted in considerably reducing stocks and disproportionately affecting the women who depend on such marine invertebrates for subsistence and income (Ferguson 2019: 58). While the ban reversal resulted in many rural communities receiving an injection of cash, according to initial reports the benefits were not distributed equally to all fishers, and the main beneficiaries were men (Ferguson 2019: 58).

Demonstrating its willingness to comply with the convention, Palau has signed CEDAW but is yet to ratify it. As a member of the UN, however, Palau is both legally and morally bound by the UDHR to ensure non-discrimination and equality of men and women. Positively, Palau’s constitution prohibits direct discrimination on the basis of sex. It stipulates that:

Every person shall be equal under the law and shall be entitled to equal protection. The government shall take no action to discriminate against any person on the basis of sex, race, place of origin, language, religion or belief, social status or clan affiliation except for the preferential treatment of citizens, for the protection of minors, elderly, indigent, physically or mentally handicapped, and other similar groups, and in matters concerning intestate succession and domestic relations. (Constitution: Article IV, Section 5).

Moreover, as already mentioned, while traditional law is protected, custom and tradition must be consistent with the constitution, which includes this provision on non-discrimination. To fully comply with human rights law, however, the constitution would benefit from going further and explicitly prohibiting both direct and indirect discrimination, as well as discrimination based on sexual orientation and gender identity. This would help ensuring substantive equality by requiring the government to go beyond the law and tackle the structural causes of inequality. This includes, for instance, addressing the practical impediments that stop women participating in decision-making at community and national levels.

Security of tenure, access to natural resources and the right to food

Historically, in Palau, each village, in addition to having responsibility for the land surrounding it, also owned the reefs in front of their land. “Between communities, land and sea barriers were continuous, and each community had proprietorship of sections of the coastline and reef” (Lingard et al. 2011: 74). Typically,

¹³⁰ “Palauan society is unique in that it is one of the few matriarchal societies in the world, observed by the fact that authority lies within the elderly women or the matriarchs of each clan to elect the chiefs representing their clans. The matriarchs bestow titles on their male chiefs based on their personal righteous character and merit, the work they’ve done to help the best interests of the clan, and most important by their matrilineal blood lines, depending on if their mother was a prominent, respectable and productive member of the clan.” (Vogt 2019: 30). See also Beouch v Sasao [2013] PWSC 1; Civil Appeal 11-034 (3 January 2013).

¹³¹ “Ourrot -- an elder woman of the blai [house] who has done important and great deeds as well as having made numerous contributions to the kebliil [clan].” (Government of Palau 1998: 28).

¹³² In Kayangel, for instance, “[f]ollowing the death of a chief and until his successor is selected and installed pursuant to custom and tradition, his counterpart female title bearer may appoint a person to temporarily carry out the constitutional function of the chief” (Constitution of Kayangel State: Article VI, section 6). See also *Ngerungor Clan v. Renguul*, 2019 Palau 4 (para 16), in which the Appellate Division of the Palau Supreme Court reports that “In *Edwards*, the Trial Division determined that the candidate appointed by the strongest senior female titleholder was the proper titleholder. In reaching its decision, the Trial Division reasoned that “The female title bearer is the most senior member of the clan and as such her decision must be followed.” Id. At 192.”

those from outside the village had to ask permission from the high chief of that village or the village council (*klobak*) before fishing or collecting there (SPREP 2018: 9). Moreover, within these village units there was a hierarchy of “rights of access and use” for different families, the titled elite or hereditary chiefs holding most of the authority in determining who has access to what (Graham and Idechong 1998: 146-148). Commentators have noted that if fishers were found violating community rules usually set by the chief, they could have their fishing equipment, including their boat, confiscated, although this was a rare occurrence (Graham and Idechong 1998: 159). The Supreme Court has also found that the clan is “entitled to exercise a wide discretion” when managing and distributing its assets.¹³³

Following independence, the government has established that marine areas, including reefs, are owned by individual states. Under the constitution, “[e]ach state shall have exclusive ownership of all living and non-living resources, except highly migratory fish, from the land to twelve (12) nautical miles seaward from the traditional baselines” (Constitution: Article I, section 2). This includes all mangrove swamps and reefs (all marine areas below the ordinary high-water mark). However, while states can manage these resources, under Palau’s national constitution, they must respect traditional fishing rights and practices in its territorial waters. Title 27 of the PNCA similarly specifies that “[t]raditionally recognized fishing rights in submerged reef areas wherever located within the fishery zones of the Republic shall be preserved and respected for domestic fishing in accordance with the regulations of the Bureau and the Division of Marine Law Enforcement of the Ministry of Justice” (27 PNCA: section 146). Moreover, under section 602 of Title 35 of the PNCA that governs public access to lands abutting sea or tidal areas, prior to any change in such public land “the Chief of the Division of Lands and Surveys shall first lay out and establish ..., over and across such public lands, a reasonable number of public roads and paths from existing or established public roads to insure public access to the sea and tidal areas.”¹³⁴

This, however, may not mean that everyone has secure tenure to the resources they need for their livelihoods. Historically, those who are considered as having traditional rights over marine resources are those villages/clans who own the land abutting the sea (Lingard et al. 2011: 74). According to national legislation on public lands, such land ownership rights are valid for any “person or group of persons who held the right at the time it was abolished by the Japanese administration, or to his or their successor or successors in interest. The extent of each right shall be governed by the local customary law in effect at the time it was abolished” (35 PNCA: section 102). Therefore, it is unlikely that those who have migrated¹³⁵ from other islands within Palau in search of work opportunities would still be able to enjoy secure access to resources in their new location.

Furthermore, establishing secure land titles after independence (1994) has been challenging due to the complexity of the traditional land ownership system, the lack of written documentation and occasional overlapping claims, especially in more populated areas such as Koror (Jones 2007).¹³⁶ In 1996, the government created a land court to determine “ownership of all land in the Republic, and to provide for the return, to the original owners or their heirs or assigns, of land which became public land as a result of the acquisition by the previous occupying powers or their nationals through force, coercion, fraud or without just compensation or adequate consideration” (35 PNCA: section 1302).¹³⁷ In determining such disputes, the courts take into account customary rules for determining who has the strongest claim to ownership.¹³⁸ While customary law must abide by the constitution, including its human rights provision, the lack of recognition of the right to food means that there is no legal requirement to take into account whether a clan, community or individual has depended on this land (and reef access) for livelihood.

There can also be tenure concerns within the customary system. In the outer islands, chiefs can still decide who can access what by declaring a *bul* (traditional fishing ban) that would restrict access to a reef. Chiefs, in consultation with members of senior clans, can also lease land that can affect access to coastal areas.¹³⁹ Again, the lack of the explicit recognition of the right to adequate standard of living means that these decisions or laws cannot be challenged, even if they undermine livelihoods.

¹³³ Ngeribongel v. Gulibert, 8 ROP Intrm 68 (2001).

¹³⁴ Title 35 PNCA: section 602. Public access prerequisite; lands abutting sea or tidal areas. Before offering for sale, lease, homestead, exchange or allocation for any other purpose any parcel of public land abutting the sea or tidal areas, the Chief of the Division of Lands and Surveys shall first lay out and establish, or cause to be laid out and established, over and across such public lands, a reasonable number of public roads and paths from existing or established public roads to insure public access to the sea and tidal areas.

¹³⁵ IOM has recognised that there is continued internal migration from the outer islands (IOM 2018: 3).

¹³⁶ This was further complicated by Palau’s history of colonisation, where occupying nations, particularly Japan, confiscated traditional lands and converted them to government use or gave them to immigrants who also might have then sold them.

¹³⁷ Also known as Land Claims Reorganization Act of 1996.

¹³⁸ See for example Ngirametuker v Oikull Village [2013] PWSC 19; Civil Appeal 12-030 (21 May 2013).

¹³⁹ Palau’s Constitution specifies that land can be leased for different periods depending on whether the lessee is a citizen of Palau. This includes clan land. Under Palau custom, the clan has considerable autonomy in determining what happens to their land; “It is Palauan custom that the management and distribution of assets within a clan is primarily a private matter in which the clan is entitled to exercise a wide discretion” (Ngeribongel v. Gulibert, 8 ROP Intrm 68 (2001)) and courts rarely get involved (Demei v. Sugiyama, 2021 Palau 2, Cf. Aitaro v. Koror State Gov’t, 15 ROP 175, 179 (Tr. Div. 2008)). While chiefs cannot sell or lease clan lands to outsiders without the consent of all other stronghold members of their clan (Remoket v. Omrekongel Clan, 5 ROP Intrm. 225, 230 (1996)), this can exclude many clan members who continue to rely on the resource for livelihoods. (Vogt 2019). Moreover, if clan land is leased for a sum of money, while customary law requires that the assets of a clan be distributed fairly, there is no regulatory body to ensure that all clan members receive the benefits (Vogt 2019). Reportedly, there are cases of money not being distributed to the other clan members (Vogt 2019; Isimang v. Arbedul, 11 ROP 66 (2004)).

States may also have permitting and licensing systems in place to regulate local fishing activities. For instance, in 1990, Koror State adopted the Fishing License and Fees Act, under which commercial fishing within state waters is subject to a licence, as well as non-commercial fishing by non-Palauan citizens (KSPL No. K3-42-90: section 3, as amended). Given the increasing demand for cash, many traditional fishers are no longer fishing just for subsistence but are also selling their catch at markets (FAO 2024c) and could thus be considered as commercial. While the cost of the license or permit is not currently prohibitive for many fishers, they may not be aware of the legislation, and could risk being subjected to fines (Putney 2008: 65).

In summary, while the protection of customary rights to marine areas extends tenure security to most communities at a communal level, greater articulation of economic and social rights, especially the right to food, would enable people to legally challenge any possible practice that now and in the future denies them access to the resources they need, regardless of their position in the community. It would also help prevent the enactment of future legislation that could jeopardise tenure, such as increasing license or permit fees.

Right to healthy and safe environment

Environmental rights and legislation: Palau's constitution stipulates that “[t]he national government shall take positive action to attain these national objectives and implement these national policies: conservation of a beautiful, healthful and resourceful natural environment” (Constitution: Article VI). While this constitutional provision clearly obligates the state to prioritise the environment, it does not recognise environmental rights as substantive rights. It falls short of creating a legal entitlement to a healthy and safe environment for all, including coastal fishers, and to obtain reparation should the right to be breached (Boyd 2013: 28¹⁴⁰).

Statutory legislation is also yet to expressly recognise the right to a healthy environment. Nonetheless, there are numerous pieces of legislation creating a safe and sustainable environment for coastal fishers. The main one is the Marine Protection Act 1994, which aims at “promot[ing] sustainably and develop[ing] the marine resources of the Republic while also preserving the livelihood of the commercial fishermen of the Republic” (27 PNCA: section 1202). Palau's environmental legislation also introduces domestic controls for coastal fisheries regarding protected sea life, as well as illegal methods of capture, seeking to protect stocks and habitats by banning destructive fishing practices (24 PNCA: chapters 12 and 13). It also includes provisions on the protection of environmental quality, endangered species and coastal areas, as well as specific spawning sites (PNCA 24: remaining chapters). Although these laws help maintain water quality to protect health, welfare and property, and to prevent pollutants from being discharged into Palau's waters untreated, it is unclear what avenues there are for reparation for coastal fishers who have their lives affected by such pollution. While under section 243 “[a]ny person who may be adversely affected by the enforcement of any standard policy, regulation, permit or order of the Board and who alleges its invalidity may file a petition” to the High Court, there is no provision allowing coastal fishers to legally challenge any failure to enforce appropriate legislation or a lack of appropriate legislation that protects their right to a healthy environment.

With regard to protecting marine areas, fishing communities in Palau have for thousands of years created informal marine protected areas (MPAs) through the customary tenure system that recognised village-based ownership of reefs and lagoons (Putney 2008: 7). Outsiders required the chief's permission if they wanted to fish there (Putney 2008: 7). Chiefs could also create closed areas to fishing by implementing traditional moratoria on fishing, or *bul*, prohibiting all use for a restricted period.

Since independence, the government has introduced a statutory system that overlaps with customary practices by establishing that states own the reef and introducing legislation at national and state levels that directly manages and conserves these resources (Putney 2008: 65). For example, at the national level, the government created two legally protected areas under the environmental legislation (PNCA Title 24). This included the Ngerukewid Islands Wildlife Reserve, where “[n]o person shall take or transport any firearms of any description, or other weapons, nets, traps, snares or objects or materials capable of killing or otherwise taking birds, animals, or marine life” (24 PNCA: section 3002) and the Ngerumekaol Spawning Area, where “[n]o person shall kill, trap, capture, wound, possess, transport, restrain or otherwise have under his control any fish or any part thereof in Ngerumekaol between April 1, and July 31 of each year” (24 PNCA: section 3102). The Trust Territory Land Planning Act (31 PNCA: chapter 1) allows beach areas to be declared as conservation sites (section 153) but despite the constitutional protection of traditional fishing rights, this legislation is still to explicitly protect them within the context of these protected areas.

There has also been legislation adopted at state level. For instance, the Koror government adopted legislation creating the Ngemelis Islands Conservation Zone (K4-68-95, later amended in 2010 - K9- 229-10).¹⁴¹ The

¹⁴⁰ See appendix A of this publication that recognises four types of rights. Retrieved from: <https://davidsuzuki.org/wp-content/uploads/2013/11/status-constitutional-protection-environment-other-nations.pdf>

¹⁴¹ Available at: PW_KSPL No. K9-229-2010 No Fishing Zone Ngemelis Area (2010).pdf (spc.int)



purpose of the legislation was “to establish a ‘no fishing’ zone for all areas within one (1) mile of the Ngemelis Islands complex, to prohibit the taking of flora and fauna from, and introduction of flora and fauna into, the Ngemelis Islands complex...”. Penalties for doing so include fines of USD 250. Like the previously mentioned legislation, there is no requirement to protect local livelihoods. Moreover, the term flora and fauna is very broad and can cover all forms of ecosystem services, including plants and shells for medicine and handicrafts, which women in particular rely on for livelihoods.

The creation of MPAs has been given more impetus through the PAN initiative, and in 2003, Palau adopted the Protected Area Network Act (Public Law No. 6-39) that incorporates existing MPAs and allows the national and state government, as well as traditional leaders, to designate and manage marine and terrestrial protected areas (24 PNCA: section 3402). The criteria for areas to become part of the network are to be defined by the national government and may include “biogeographic importance, ecological considerations, naturalness, economic importance, social importance, scientific importance, international or national significance, feasibility of management and protection, duality or replication, representativeness, complementarity, adequacy, international and bioregional planning measures currently in place or anticipated, and present or anticipated cultural uses” (PNC 34: section 3404).¹⁴² The Protected Areas Network Regulations of 2007 that implement the Protected Area Network Act provide details on how to establish “a fair and efficient system governing the designation, application, and effective operation of the Protected Areas Network system” (PAN Regulations: section 3.1). Also, categories of protected areas are established under the regulations to reflect “the traditional, local, and/or national uses of a protected area” (PAN Regulations: section 6.1.1).

Importantly, the management structures introduced for the protected area cannot contradict cultural/traditional practices (PNC 34: section 3403), which include fishing practices. It is unclear if this includes traditional conservation techniques, although theoretically this could be developed by the Supreme Court as part of the definition of traditional practices (Daugherty 2019: 21).

To also help protect domestic fishing, in 2015, the government adopted the National Marine Sanctuary Act (PNCA Title 27) that was further amended in 2019.¹⁴³ It came into effect fully in 2020.¹⁴⁴ The act designates 80% of Palau’s exclusive economic zone as a no-take zone. While initially it created a domestic fishing zone from the remaining 20% of the EEZ in which traditional and domestic fishing activities are allowed only to

¹⁴² Amendment to Protected Areas Network and Micronesia Challenge, RPPL 7-42 2008. Retrieved from: pau147780.pdf (fao.org)

¹⁴³ The amendment is available at: PW_RPPL No. 10-35 of 2019 (Palau National Marine Sanctuary Amendment Act).pdf (spc.int)

¹⁴⁴ The Act specifies that a transitional approach will be taken to its implementation with various deadlines for the implementation of different provisions (section 161).

provide fish for the domestic market, the 2019 amendment to section 164 allows the export of fish caught through long-line fishing. The 2019 amendment also redraws the domestic fishing zone to allow a corridor to the high seas. In recognition of the fact that the prohibition of fishing within 50 nautical miles radius to the east of the reef entrance of Malakal Harbour affects traditional and more sustainable fishing, it also creates an area twenty-four mile from baseline, where fishing with small pole and line vessels is allowed (section 165 as amended).

Under the 2015 PNMS Act, the Ministry of Natural Resources, Environment and Tourism – now called the Ministry of Agriculture, Fisheries and Environment – is mandated to adopt regulations governing the Palau National Marine Sanctuary and the Domestic Fishing Zone. The Palau National Marine Sanctuary Fishing Regulations were adopted in 2019, repealing the Palau National Marine Sanctuary Transition Period Fishing Regulations 2016.

While positively Palau's legislature appears to be responding to the concerns of local fishers and ensuring that the legislation continues to help protect domestic fishing, without an explicit recognition of the right to food as well as other rights, coastal fishers cannot legally challenge any existing and future amendments that threaten their ability to feed themselves and their families.

In summary, Palau has a great deal of legislation on the protection of the marine environment, including coastal fishing areas. There is also a movement towards explicitly protecting traditional livelihood rights, as shown by the PAN legislation. This does not mean, however, that everyone has their access to their livelihoods protected and facilitated and improved as required under IHRL. Traditional practices can exclude particular groups from the resources they need. For instance, chiefs' decisions to close a reef can disproportionately affect those who depend on access for livelihoods, such as women who predominantly engage in reef gleaning (Chapman 1987; Laqeretabua 2019). Moreover, ensuring the right to food goes beyond traditional practices, and states must "pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security" (CESCR, 1999: para 15). This requires conservation to go beyond attracting tourism and be aimed at strengthening sustainable livelihoods. Including explicit commitments to respect, protect and fulfil the right to an adequate standard of living in the constitution obligates the government to maintain and strengthen peoples' existing traditional livelihoods.

Environmental impact assessments: In Palau, the Environmental Quality Protection Act of 1981 (PNC 24, Chapter 1) establishes that "[a]ll agencies of the national government and all state governments shall ... include in every recommendation or report on proposals for legislation and other major government actions significantly affecting the quality of the human environment, a detailed environmental impact statement by the responsible official on:

- (a) the environmental, including cultural, impact of the proposed action;
- (b) any adverse environmental effects which cannot be avoided should the proposal be implemented;
- (c) alternatives to the proposed action;
- (d) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and
- (e) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented" (PNC 24: section 142).

It also stipulates that "[p]rior to making any detailed environmental impact statement, the responsible government official shall consult with and obtain the comments of the interested public", and that the "public shall be notified of the existence of the environmental impact statement a reasonable time before completion of the governmental decision-making process" (PNC 24: section 143).

The Environmental Impact Statement (EIS) Regulation¹⁴⁵ gives further details about the process regarding environmental impact assessments. It specifies that an initial environmental assessment (EA) (a written evaluation by an applicant to determine whether an action may have a significant environmental effect¹⁴⁶) is required for any planned activities that will use: (i) national or state lands; (ii) any land which has been or may be classified as a conservation district by the republic or one of its state's land-use commissions; and (iii)

¹⁴⁵ Adopted by the Palau Environmental Quality Protection Board in 1996. Available at: <http://extwprlegs1.fao.org/docs/pdf/pau32800.pdf>

¹⁴⁶ For something to be considered significant, it must inter alia: involve an irrevocable loss or destruction of any natural or cultural resource; curtail the range of beneficial use of the environment; substantially affect the economic or social welfare of the community and public health; and have substantial secondary impacts, such as population changes or effects on public facilities or infrastructure (EIS Regulations: section 2401-61-06).

land directly or indirectly impacting coastal waters and wetlands as defined in the Republic of Palau Marine and Fresh Water Quality Regulations.¹⁴⁷ Once the EA is evaluated by the board as having a significant effect on the environment, a full EIS must be completed, which discloses the environmental effects of a proposed action, the effects of a proposed action on the economic and social welfare of the community, the effects of the economic activities arising out of the proposed action, the measures proposed to minimise adverse effects, and the alternatives to the action and their environmental effects.

While this process is quite broad, taking into account communities' economic and social welfare, there are no clear guidelines about what exactly it would entail. By explicitly including human rights, the legislation would ensure that assessments are guided by well-established standards that give a clear framework to evaluate the possible impact of project from the perspective (and legal entitlements) of the communities and individuals affected. Moreover, while such a two-tiered system helps ensure that projects without significant environmental or social impacts are still provided with appropriate measures to mitigate and minimise impact, such a high bar could result in some projects being dismissed entirely from requiring a full statement, even if they have a subsequent impact on people's enjoyment of human rights. The legislation would also benefit from a clear requirement to consult with affected communities as required under IHRL, including indigenous communities' right to FPIC.

Participation and democratic governance

In Palau, various policies have committed to improving stakeholder participation (Government of Palau 2008: 2). but as in many other Pacific Island countries, the constitution is yet to recognise the right to participation and indigenous peoples' rights to FPIC. Legislation at the statutory level would also benefit from explicitly recognising and facilitating the right to participation. For instance, as already noted, the EIS regulations do not require the effective participation of affected communities, nor do they implement the indigenous right to FPIC. The legislation regarding the compulsory acquisition of public land also does not expressly include the right to participation (PNCA 35: chapter 4), although under section 403 the government is required to "make every reasonable effort to acquire real property expeditiously through negotiation". The government is also yet to enact a law guaranteeing freedom of information in compliance with international standards, which is key for informed participation (Human Rights Council 2021: para 23).

Importantly, however, the Council of Chiefs composed of a traditional chief from each of the states, shall advise the president on matters concerning traditional laws, customs and their relationship to the constitution and the laws of Palau (Constitution: Article VIII, Section 6). This has also been implemented at state level. In Koror, for instance, the role of traditional councils is constitutionally protected (Koror State Constitution: Article VI, sections 1 and 2). The powers and responsibilities of the House of Traditional Leaders are also outlined in the Koror constitution, including: (i) to submit to the legislature proposed bills; (ii) represent the state in engaging in any dialogue with any entity, including but not limited to other states, the national government of the Republic of Palau, or any foreign country; (iii) advise the governor on matters concerning traditional laws, and their relationship to this constitution and the laws of the state of Koror; and (iv) approve any major agreement to which the Government of the State of Koror is a party, relating to traditional law. In Kayangel State, the Traditional Council of Chiefs continues to exercise authority over the state (Kayangel State Constitution: Article VI).

While they do not have the right to veto any legislation such as in Yap (FSM), traditional authorities in Palau still have a substantial advisory role, which in Koror includes proposing bills for adoption. Moreover, under the constitution, the chiefs are also required to respect human rights. Nonetheless, the chiefs are representative of and elected by the strongest clans rather than the whole village or community and therefore may not represent all members.

With regard to the participatory management of resources, historically, local communities have been responsible for managing their own resources, including reefs, at the village level, with the main decision-makers being the chiefs that are elected by female elders, called the *ourrot* (Vogt 2019). Only senior female members of each clan may be considered as *ourrot* (Tmetuchl 1998; Government of Palau 1998). As already noted, the chief may therefore not be representative of all users of the marine areas.

Moreover, since independence, there is an overlapping customary and statutory system with regard to managing fishery resources. While the constitution, and Title 27 of the PNC¹⁴⁸, provides for the protection of traditional fishing rights, these are yet to be clarified as including conservation practices (Daugherty 2019:

¹⁴⁷ Adopted by the Palau Environmental Quality Protection Board in 1996 and subsequently amended in 1998. Available at: <https://www.ecolex.org/details/legislation/marine-and-freshwater-quality-regulations-chapter-2401-11-lex-faoc032780/>

¹⁴⁸ Article § 146. Submerged reefs in the Palau National Code 27 (Fishing): Traditionally recognized fishing rights in submerged reef areas wherever located within the fishery zones of the Republic shall be preserved and respected for domestic fishing in accordance with the regulations of the Bureau and the Division of Marine Law Enforcement of the Ministry of Justice.

21). Nonetheless participatory approaches are being taken to managing MPAs. For instance, the Ebiil Conservation Area was initiated by local chiefs, and formally established in 2000 (Ngarchelong State Public Law No. 87). There is, however, no formal agreement with the state government (Friedman and Golbuu 2011: 61), even though community members work with the Ebiil Society to promote the conservation of resources at Ngarchelong, including the Ebiil Conservation Area, and both traditional chiefs and elected leaders have endorsed the management plans (Oldia et al. 2010: 5).

The Protected Areas Network Act of 2003 (24 PNCA: chapter 34), as amended in 2008, allows traditional leaders to designate protected areas, which are managed by the state. However, while there is no explicit provision allowing communities to manage the resource, the Council of Chiefs traditional leaders can play a role in the administration of PAN areas. Under the PAN Act, the Council of Chiefs has a member on the PAN Management Committee, which works on PAN applications, monitors implementation of PAN plans and budget, and develops technical assistance for sites (24 PNCA: section 3404).

According to the PAN Regulations 2007, a Protected Areas Network Nomination Form is required to establish a protected area, including information about the management or informal management practices of the PAN site (PAN Regulations: section 5.4). Also, the applicant shall provide a brief description of how the local community is involved in the nomination of the proposed site. A management plan shall be developed for each PAN site, including information on awareness, education and interpretation, and the relationship between various stakeholders (PAN Regulations: section 6.4).

The involvement of traditional leaders in creating and administering protected areas under the PAN act can help ensure continued community-based management that is in line with states' responsibilities to protect their resources and to attain the goal of the Micronesia Challenge. This could be further strengthened by the Palau's Supreme Court establishing conservation as a traditional right, and thereby protected under the constitution (Daugherty 2019: 21). To be truly participatory, all who depend on the resource must be involved or at least represented in the decision-making. This goes beyond village elders representing the strongest clan and includes all users of the marine resources. Including a right to participation in both the constitution and statutory legislation would thus obligate both the government and chiefs to ensure that everyone can participate in decision making.

Rights to and at work

In Palau's fishing sector, only a small proportion of people are formally employed (FAO 2024c). Most work in the informal sector, particularly in coastal fisheries, where they face numerous issues. While these are in part being addressed by the government, more work needs to be done.

Small boat safety is an important issue for coastal fishers, especially as they have to travel further to find better fishing grounds. PNCA Title 7 grants "express permission" to everyone living in Palau "to operate within the territorial waters ... outrigger vessels of all kinds; vessels propelled by outboard motors; and vessels measuring less than 25 feet [7.6 metres] at the water line when empty of cargo and passengers, and which are not used either to carry cargo or passengers for hire or for travel outside the Republic" (PNCA 7: section 102). The FAO observes that "[f]or coastal fishing most of the boat-based activities involve the use of small fishing craft typically from 4.8 to 7.6 m in length and powered by outboard motors" (FAO 2024c).

Unless registered elsewhere, the owner or person in control of a vessel must apply for registration (PNCA 7: section 104) and, once registered and licensed, the boats will be examined by the ministry to ensure "that every such vessel has the structure and suitable engine power and accommodations for passengers commensurate with the service in which she is employed, and that in general the vessel is in a condition to warrant belief that she may be used in navigation as a vessel with safety to life and cargo". It should be noted, however, that registration is not required for boats below 25 feet (7.6 metres) in length (PNCA 7: section 101). The maritime regulations of 2012 are more specific about safety requirements, but the provisions mostly apply to vessels of 24 metres (79 feet) or more. Some safety requirements are established for private yachts and small commercial yachts of less than 24 metres (79 feet), carrying 12 passengers or less and without cargo (Maritime Regulations: section 5.9).

States have also adopted relevant legislation. Koror's Boat Registration Act of 1999 establishes that certain motorboats owned by residents of the State of Koror must be registered in this state (Koror Boat Registration Act: section 2). This includes all motorboats, with or without outboard engines. The person applying for registration must provide proof of a safety inspection certificate, indicating compliance with the national government regulations (Koror Boat Registration Act: section 9).

Positively, some states are adopting sea safety legislation that is applicable to small fishing vessels, but the provisions on safety and communications equipment need to be more comprehensive. The legislation also needs to fully apply to coastal fishers and be accompanied by appropriate social and fisheries policies that can help them comply. While vitally important, provisions on safety and communication equipment for small boats cannot be an impediment to their livelihoods and, if unaffordable, the government should help in providing the necessary assistance.

In particular, more action needs to be taken regarding the role of children. Globally, children can face hazardous working conditions, even when working for family businesses. With regard to coastal fisheries in Palau, it is considered normal for children to help families but of course they are more vulnerable when boats lack the necessary safety equipment. The CRC has noted that there is no specific law or policy addressing child labour in Palau and there are no social programmes aimed at preventing child labour and supporting children affected by the issue. Moreover, as in many other Pacific Island countries, there is no hazardous child labour list (CRC Committee 2018b: paras 52 and 53).

Coastal fishers also face several impediments preventing them from having adequate livelihoods as required under IHRL.¹⁴⁹ While there is a growing need for cash, outside of Koror it can be difficult for fishers to access markets to sell their produce. Women in particular have reported problems in getting transport to the markets and restaurants, especially as many do not own boats (Matthews 1992: 1). They face high transportation cost in comparison to the “relatively low cost of the seafood products” they market (Laqeretabua 2019: 25). There is also a shortage of storage and processing facilities such as freezers and smokehouses (Matthews 1992: 1). Moreover, due to the “low value and irregular supplies”, women’s catch is often excluded by the cooperatives that “provide shore side facilities and services to local fishers” (Laqeretabua 2019: 24). This is reportedly being addressed. In its 2008 Aquaculture and Fisheries Action Plan, the government pledged to seek continued donor assistance funds in providing equipment, such as refrigeration, and better infrastructure, including road access to harbours (Action 14).

The government has committed to building its domestic fishing industry. Its Voluntary National Review (VNR) on the Sustainable Development Goals, for instance, highlighted that Palau “is exploring strategic partnerships for developing a local fishing fleet, establishing a central fish auction market, building processing and wharf facilities, and identifying value-added products that can be developed from excess catch or by-catch” (Government of Palau 2019: 28). However, there is no reference to how this will protect and enhance the livelihoods of coastal fishers. Their position is particularly precarious, given the lack of legal protection of right to livelihoods, and therefore no possibility of legal redress if these strategies undermine their livelihoods.

There is also growing emphasis on developing tourism. When announcing the signing of the National Marine Sanctuary Act, the President of Palau reportedly stated: “[o]ur future lies in tourism, not tuna” (Horizon International 2015). Palau’s VNR highlighted that the country will move away from mass tourism to developing “a high-value model delivering a Pristine Paradise Palau brand experience to discerning travellers” (Government of Palau 2019: 28). This is further elucidated in the Palau Responsible Tourism Policy Framework, which recognises that: “Tourism development provides economic, social, and environmental benefits to all of Palau’s states”. There is no further information, however, on how the government will continue to strengthen traditional livelihoods for coastal fishers while enhancing tourism opportunities. While bringing in much needed foreign exchange, tourism brings its own challenges, including increasing demand for fish resources, the impact on reefs, and the demand for coastal land for hotels. Tourism is a volatile industry, dependent on external conditions, as the recent COVID pandemic has shown. The government cannot, therefore, focus on tourism alone and must elaborate on how it will strengthen the livelihoods of coastal fishers as required under human rights law.

The right to social security, including social assistance for all, is yet to be recognised in Palau’s constitution. Moreover, statutory legislation regulates only social insurance systems. The Palau Social Security System Act (41 PNCA: chapter 7) provides for a contributory social security system, under which employees are “ensured a measure of security in their old age or during disability, and may be given in old age an opportunity for leisure without hardship and loss of income, and, further, to provide survivor’s insurance for their spouses and children” (PNC 41: section 701). It also establishes that the system is “self-supporting and self-financing and is not to be financed from public money” (PNC 41: section 701). With regard to those working “as a farmer, fisherman, or taxi driver”, they can also be covered, providing they earn a minimum of USD 300 each quarter (PNC 41: section 741). While UNICEF observed that, in 2014, the scheme appeared “to have fairly

¹⁴⁹ Under the Declaration on the Rights of Peasants, states shall take appropriate measures to help peasants and other people working in rural areas access transportation, processing, drying and storage facilities, and national and regional markets.

wide coverage” with 33% of households receiving the pension, it covered only those in the formal sector and excluded “the majority of workers who operate in the informal economy”, which shows that the scheme is “not targeted at the poorest members of society” (UNICEF 2017: 92). UNICEF also notes that such “contributory schemes involving formal sector workers also tend to have a gender bias, as the majority of formal sector workers are men” (UNICEF 2017: 92).

While there are a few social assistance schemes, such schemes are limited to certain, often very narrow, categories, and there is no comprehensive approach. For instance, insurance schemes are available for persons with severe disabilities¹⁵⁰ who are home-bound and are eligible for a monthly government stipend of USD 100 per month (Government of Palau 2019: 25). Under the Convention on the Rights of Persons with Disabilities, however, social protection should be broader and not be limited to those with severe disabilities. Moreover, due to a lack of recognition of right to social security, a lack of access to social assistance cannot be legally challenged.

5.3.5 Looking forward: conclusions and recommendations

Palau’s legislation on and around marine resources is quite comprehensive and developed. The country strictly regulates commercial fishing by reducing foreign fishing, while pursuing more sustainable tourism and protecting traditional fishing rights. Palau has also signalled its commitment to human rights by signing most of the human rights treaties. (In fact, it was one of the first Pacific Island countries to do so.) While signature is yet to be followed by ratification in all but two cases (CRC and CRPD), the country has also recognised numerous human rights in its constitution, including the right to non-discrimination. Moreover, it both protects customary practices and requires customary law to comply with human rights principles contained in the constitution.

The government has also taken steps to ensure people’s fishing rights as part of their obligations under the right to food by, for instance, providing that any change to public land must include “a reasonable number of public roads and paths from existing or established public roads to insure public access to the sea and tidal areas” (602 of Title 35 of the PNCA).¹⁵¹ However, the country can still improve its protection of the human rights of coastal fishers, especially the right to food. While the constitution protects traditional fishing rights, this has not explicitly been incorporated in all statutory legislation, including those laws creating MPAs, and it is unclear how the establishment of ‘no take’ zones fits with the constitutional protection of traditional fishing rights. Moreover, the government is yet to fully protect the participation rights of fishing communities to manage the resources on which they depend. This also needs to be accompanied by the explicit protection of all human rights, since the protection of traditional fishing rights may not ensure that everyone has secure access to resources. For instance, the hierarchal nature of decision-making within a village might mean that not all users of the marine resources will be involved in decision-making, and some decisions could be taken that directly impede their livelihoods, such as the closure of reefs and leasing of coastal land.

The clear articulation of all human rights in the constitution and statutory legislation, especially economic and social rights and the right to participation, is thus necessary to ensure that the individual rights of women and communities low in the clan hierarchy are fully protected and guaranteed, including with legal access for any breach. This is vitally important, as the government moves towards increasing tourism that could inadvertently put even more pressure on resources, without necessarily providing a more secure form of income for small-scale fishers. As COVID has demonstrated, tourism is heavily dependent on external factors often beyond a country’s control and can therefore not be a substitute for guaranteed access to and control over resources.

Based on the above analysis of the current framework, the following **legal and policy recommendations** are made for Palau.

Short-term policy and programme actions

1. Review upcoming legislation, policies and programmes to make sure they respect and protect economic, social and cultural rights and do not jeopardise small-scale fishers’ and coastal communities’ livelihoods. This should include marine spatial planning, tourism plans, aquaculture policies and strategies for the domestic fisheries sector.

¹⁵⁰ Palau’s social security law (PNCA Title 41) narrowly defines “disability as “inability to engage in any substantial gainful employment by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months” (section 702). Section 754 also specifies that anyone “who is disabled and was at the time of the onset of the disability both fully and currently insured, or permanently insured, is entitled to a monthly disability insurance benefit”.

¹⁵¹ Title 35 PNCA: section 602. Public access prerequisite; lands abutting sea or tidal areas. Before offering for sale, lease, homestead, exchange or allocation for any other purpose any parcel of public land abutting the sea or tidal areas, the Chief of the Division of Lands and Surveys shall first lay out and establish, or cause to be laid out and established, over and across such public lands, a reasonable number of public roads and paths from existing or established public roads to insure public access to the sea and tidal areas.

2. Ensure that all communities and individuals can meaningfully participate in the drafting of new policies and programmes, particularly regarding marine resources management. This could be done by promoting community-based approaches based on local and traditional practices.
3. Convene in-depth consultation with local communities at all levels about how the government's strategy on responsible tourism can help strengthen their human rights, including access to livelihoods.
4. Organise a participatory review of existing legislation covering coastal fishers, including laws creating MPAs and the PNMS.
5. With legislators, discuss ways for economic, social and cultural rights, especially the right to an adequate standard of living, to be incorporated into current national legislation on protected areas, including PNC Titles 27 and 35, as well as state level legislation creating protected areas.
6. Organise discussions and input sessions on how the EIA procedure could be improved to ensure better access to information and more public participation, especially by those who may be affected by the proposed action, and provide for effective legal remedies (Human Rights Council 2018).
7. Collect data on child labour, the incidence of hazardous child labour, and working conditions, disaggregated by age, sex, geographical location and socio-economic background, and how it affects access to education (CRC Committee 2018b).
8. Assess how social security, including social assistance, can be accessible to all communities; the government could also investigate funding possibilities that include progressive taxation, particularly regarding tourism.
9. Track the implementation of human rights law for small-scale coastal fishers and fish workers through existing national mechanisms for reporting and follow-up. This should also feed into international review mechanisms, such as the human rights treaty bodies and the Universal Periodic Review, as well as reporting on the UN SDGs implementation at the High-level Political Forum on sustainable development.

Medium-term legislative changes

10. Ratify all human rights treaties, especially the ICESCR, ICCPR and CEDAW.
11. Enact legislation ensuring and protecting freedom of information.
12. Amend relevant legislation, including on fisheries and the environment, to recognise economic, social and cultural rights, and the right to free, prior and informed consent of customary indigenous rights holders, as well as the participation of other communities in decision-making.
13. Review the EIA process and extend it to cover human rights in accordance with the guidelines on businesses and human rights, including by amending any relevant legislation.

Long-term constitutional changes

14. Amend the constitution to:
 - (i) require that all customary practices, including traditional fishing, comply with all human rights as contained in the UDHR;
 - (ii) explicitly prohibit both direct and indirect discrimination, as well as discrimination based on sexual orientation and gender identity;
 - (iii) protect fully the right to life as including positive obligations to ensure a life in dignity; this includes access to food (Human Rights Committee 2019: para 26);
 - (iv) guarantee ESCR, especially the rights to an adequate standard of living – including food – a healthy environment, social security and work; and
 - (v) recognise the right to FPIC for indigenous communities and the right to participation for all.

6. FINAL REMARKS

6.1 Conclusions

Under international human rights law, governments are obligated to respect, protect and guarantee human rights through all policies and legislation. It is not a matter of conservation or economic development *versus* human rights but a question of how to secure human rights when ensuring conservation and economic development. In the Pacific region, many communities rely on coastal fishing for livelihoods, often due to limited employment and poor agricultural soil. Governments, however, are facing many challenges to ensuring the rights of such communities. These challenges are, to a large degree, similar throughout the region and include climate change reducing available land, changing demographics with increasing migration to the main islands and people living outside of their traditional areas, overfishing, pollution and environmental damage.

In Pacific Island countries, most governments combine customary and formal legal systems to ensure both protection of indigenous culture and the human rights of every individual as required under human rights law. Most constitutions to some degree recognise and protect human rights, although this is mostly limited to civil and political rights and many are silent on ESCR, such as the right to an adequate standard of living. Moreover, most include only a limited understanding of the right to life which does not include the country's positive obligations to ensure a life in dignity that includes access to food (Human Rights Committee 2019: para 26)

In Micronesia, countries and individual states have protected traditional rights that include fishing rights in marine areas but this is not enough to ensure secure access to livelihoods. In some cases, the formal protection of rights may be dependent on being regarded as subsistence fishers that could lead to some people being excluded with the increasing monetisation of economy. Other traditional fishing rights derive from clans holding adjacent land rights during the Japanese occupation (follows the maternal line). This can exclude people who have moved from their villages of origin. Moreover, even when rights are constitutionally protected, countries have created no-take marine protected areas (Pohnpei in FSM and Koror in Palau). Including ESCR in the countries' constitutions would also help ensure better human rights safeguards with regard to: (i) land acquisition by the government; (ii) development of the foreshore for tourism; and (iii) protection against the acts of third parties, such as pollution by large scale fishing, that can have a detrimental impact on health and livelihoods.

Many of the countries under review are moving towards a community-based fisheries management (CBFM) approach that to some degree operationalises the right to participation. One such is the Marshall Islands' *Reimaanlok* framework¹⁵² but the right to participation has not been fully entrenched in legislation. Moreover, without an explicit right to participation, the decision-making process may follow customary norms, and women could be side-lined, since such processes are mainly managed by men, even in a matrilineal society.¹⁵³ This should also be accompanied by more detailed regulations about how these rights can be practically recognised and implemented within the CBFM approach.

All these issues are further complicated by the constitutional protection of customs. Many countries, with the exception of Palau, have placed customs above human rights guarantees, although in the Marshall Islands this is limited to those customs governing tenure issues. This means that, even if the constitution recognises ESCR, such customary practices can often breach human rights without those affected having access to remedy. Countries must therefore require customary practices to comply with IHRL as recognised in the UDHR. This is increasingly relevant for Micronesian countries, given the complexity of the traditional rights system with the different categories of rights and the decision-making power of chiefs in many regions. Pacific Island countries are clearly making great progress, especially regarding indigenous communities' control over and access to resources. With the challenges they face, it is imperative that their respective constitutions recognise and protect all human rights, especially ESCR and key human rights principles, including the right to participation and access to remedy. Human rights standards can help provide guidance about how legislation and policy can be improved to address the specific situation of coastal fishers, including the access and management rights of all communities to marine resources.

¹⁵² A national framework for the planning and establishment of community-based conservation areas in the Marshall Islands (*Reimaan* National Planning Team 2008).

¹⁵³ See CEDAW Committee, 2018: para 40.

6.2 Recommendations

1. Enshrine economic and social rights in the constitution to ensure better human rights safeguards regarding land acquisition by the government and development of the foreshore and coastal areas. This would also help ensure that excluded communities can challenge any practices that undermine their access to the resources they depend on for livelihoods.
2. Formally require customary law to respect the rights contained in the constitution. Currently, in many countries, the protection of customary practices means they can often breach human rights without those affected having access to remedy.
3. Include an explicit right to FPIC for indigenous communities and a right to participation for all, including non-indigenous communities and women. For strong community-based fisheries management, enact a legal basis that enables transparent and inclusive decision-making. Legislation should enable local communities to manage their resources and participate in enforcing their management measures.
4. Prohibit all discrimination against women by developing a comprehensive definition of discrimination against women that covers all prohibited grounds and encompasses direct and indirect discrimination in the public and private spheres in line with article 1 of CEDAW. Pacific Island countries must also ensure that women have equal rights to land ownership and land inheritance, and eliminate discriminatory customs and traditional practices that affect the full enjoyment of those rights. When drafting fisheries and aquaculture legislation, states should also make sure they use gender-neutral language and ensure non-discrimination (both direct and indirect) regarding eligibility criteria for any authorisation or appointment procedure. Carefully consider the suitability of positive discrimination measures in each context.
5. Introduce legislation that requires the environment impact assessment process to cover possible and potential impacts of development projects on the enjoyment of human rights in accordance with the guidelines on businesses and human rights.
6. Introduce legislation requiring customary management processes to take a human rights approach, and comply with relevant standards and principles, such as gender equality and non-discrimination, and the right of everyone to an adequate standard of living, including those living in landlocked villages.
7. When regulating access to fisheries resources for conservation purposes, states must ensure that local small-scale fishers are not subject to unnecessary restrictions, thus safeguarding their right to food and sustainable livelihoods; when sanctioning behaviours, fines should not be unjustifiably high and should not undermine human rights, including the right to food.
8. Regulate safety at sea for small fishing boats and help small-scale fishers to comply; licensing, registration, and renewal should be free or at least affordable for coastal fishers, and states should help them obtain the necessary safety equipment.
9. Ensure access to social security for all small-scale fishers, including non-contributory social assistance.

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APPENDIX 1: INTERNATIONAL DOCUMENTS

All documents can be downloaded from the UN Official Documents System that can be accessed from <https://treaties.un.org/>, <https://documents.un.org/> and <https://digitallibrary.un.org/>, unless another link is provided.

A. Treaties and conventions

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted by the United Nations General Assembly on 10 December 1984, and entered into force 26 June 1987.
- Convention on the Elimination of Discrimination against Women. Adopted by the United Nations General Assembly on 18 December 1979, and entered into force as an international treaty on 3 September 1981.
- Convention on the Elimination of Racial Discrimination. Adopted by the United Nations General Assembly on 21 December 1965 and entered into force on 4 January 1969.
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Adopted by the United Nations General Assembly on 18 December 1990, and entered into force on 1 July 2003.
- Convention on the Rights of the Child. Adopted by the United Nations General Assembly on 20 November 1989, and entered into force on 2 September 1990.
- Convention on the Rights of Persons with Disabilities. Adopted by the United Nations General Assembly on 13 December 2006, and entered into force on 3 May 2008.
- Convention for the Protection of All Persons from Enforced Disappearance. Adopted by the United Nations General Assembly on 20 December 2006, and entered into force on 23 December 2010.
- International Covenant on Economic, Social and Cultural Rights. Adopted by the General Assembly on 16 December 1966 and entered into force on 3 January 1976.
- International Covenant on Civil and Political Rights. Adopted by the General Assembly on 16 December 1966 and entered into force on 23 March 1976.

B. Declarations, guidelines and recommendations

- FAO Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines). Adopted by the Food and Agriculture Organization of the United Nations in 2014. Retrieved from: <https://www.fao.org/policy-support/tools-and-publications/resources-details/en/c/421738/>
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- ILO Recommendation 204 on Transition from the Informal to the Formal Economy Recommendation. Adopted by the International Labour Organization in 2015. Retrieved from: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204
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OHCHR Guiding Principles on Human Rights and Extreme Poverty. Adopted by the Human Rights Council in 2012. Retrieved from: https://www.ohchr.org/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf

OHCHR Guidelines for states on the effective implementation of the right to participate in public affairs. Adopted by the Human Rights Council in 2018. Retrieved from: https://www.ohchr.org/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs_web.pdf

UN Declaration on the Rights of Indigenous Peoples. Adopted by the United Nations General Assembly in 2007. UN Doc. A/RES/61/295.

UN Declaration on the Rights of Peasants and Other People Working in Rural Areas. Adopted by the United Nations General Assembly in 2018. UN Doc. A/RES/73/165.

C. Other official UN documents

CEDAW Committee 2016. General Recommendation No. 34 on the rights of rural women. UN Doc. CEDAW/C/GC/34.

CEDAW Committee 2016. State Party report Combined initial to third periodic report (Marshall Islands). UN Doc. CEDAW/C/MHL/1-3.

CEDAW Committee 2017. Concluding observations on the combined initial to third periodic reports of the Federated States of Micronesia. UN Doc. CEDAW/C/FSM/CO/1-3.

CEDAW Committee 2018. Concluding observations on the combined initial to third periodic reports of the Marshall Islands. UN Doc. CEDAW/C/MHL/CO/1-3.

CEDAW Committee 2018. General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change. UN Doc. CEDAW/C/GC/37.

CESCR 1999. General Comment No. 12: The Right to Adequate Food (Art. 11). UN Doc. E/C.12/1999/5.

CESCR 2008. General Comment No. 19: The Right to Social Security (Art. 9). UN Doc. E/C.12/GC/19.

CRC Committee 2018. Concluding observations on the combined third and fourth periodic reports of the Marshall Islands. UN Doc. CRC/C/MHL/CO/3-4.

CRC Committee 2018. Concluding Observations on the second periodic report of Palau. UN Doc. CRC/C/PLW/CO/2.

CRC Committee 2020. Concluding observations on the second periodic report of the Federated States of Micronesia. UN Doc. CRC/C/FSM/CO/2.

Human Rights Committee 2019. General Comment on the Right to Life. UN Doc. CCPR/C/GC/36.

Human Rights Council 2012. Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Calin Georgescu - Addendum - Mission to the Marshall Islands (27-30 March 2012) and the United States of America (24-27 April 2012). UN Doc. A/HRC/21/48/Add.1.

Human Rights Council 2013. Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, Mission to Kiribati (23-26 July 2012), UN doc. A/HRC/24/44/Add.1.

Human Rights Council 2018. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, on the relationship between children's rights and environmental protection. UN Doc. A/HRC/37/58

Human Rights Council 2018. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, in which he presents framework principles on human rights and the environment. UN Doc. A/HRC/37/59 (Framework Principles on Human Rights and the Environment)

- Human Rights Council 2021. Compilation on Palau: [Universal Periodic Review]: Report of the Office of the United Nations High Commissioner for Human Rights. UN Doc. A/HRC/WG.6/38/PLW/2.
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D. Regional documents

- Apia Policy 2008. Pacific Islands Regional Coastal Fisheries Management Policy and Strategic Actions (Apia Policy) 2008–2013. Developed and endorsed by Heads of Fisheries in the Pacific Region during the special session conducted from 11 to 13 February, 2008, Apia, Samoa. Noumea, New Caledonia: Pacific Community. Retrieved from: <https://www.spc.int/digitalibrary/get/fmc3e>
- PIFS 2022. 2050 Strategy for the Blue Pacific Continent / Pacific Islands Forum Secretariat. Suva, Fiji: Pacific Islands Forum Secretariat, 2022. Retrieved from: <https://www.forumsec.org/2050/>
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- SPC 2021. Pacific Framework for Action on Scaling up Community-based Fisheries Management: 2021-2025. Noumea, New Caledonia: Pacific Community. 22 p. Retrieved from: <https://www.spc.int/digitalibrary/get/yr5yv>

APPENDIX 2: NATIONAL DOCUMENTS

A. National legislation

Most of this legislation, especially that concerning fisheries, can be found on SPC's legal database REEFLEX, available at: <https://www.spc.int/CoastalFisheries/Legislation/>. The list below reports the year of adoption of each piece of legislation and refers to the most recently amended version known to be in force in each country at the time of writing.

Each Act has been codified into the national and/or state code in a particular title and chapter. This is indicated in the brackets after the title of the Act with the first number giving the number of the title, and the last number giving the chapter.

Federated States of Micronesia

Constitution of the Federated States of Micronesia

Government Property Acquisition (56 FSM Code 1). Retrieved from: <http://fsmllaw.org/fsm/code/code2014/pdf/FSMCode2014Tit56Chap01.pdf>

Law on Social Security of 1983 (53 FSM Code 6) as amended. Retrieved from: <http://fsmssa.fm/files/laws/PublicLaw2-74.pdf>

National Maritime Act of 1997 (19 FSM Code 1)

Public Lands and Resources (67 TT Code 4)

Chuuk

Constitution of the State of Chuuk

Coastal Fisheries Protection Act of 2016

Fishery Zone Act of 1983 (25 CSC 1)

Kuop Atoll Marine Protected Area (Amendment) Act of 2017

Protected Areas Network Act of 2017

Tidelands (24 CSC 1)

State Lease Agreements (24 CSC 7)

Kosrae

Constitution of the State of Kosrae

Development Review Commission Act (7 KSC 4)

Regulations for Development Projects of 1994

Fishing and Marine Wildlife Act (19 KSC 2)

Protected Areas Act of 2010, as amended by the Protected Areas Amendment Act 2018 to establish the Mahkontowe Conservation Area (19 KSC 8)

Mahkontowe Conservation Area Regulations of 2018

Pohnpei

Constitution of the State of Pohnpei

Conservation and Resource Enforcement Act of 1982 (26 PSC 1)

Environmental Protection Act of 1992 (27 PSC 1)

Fisheries Protection Act of 1995 (29 PSC 1)

Marine Resources Conservation Act (26 PSC 6)
Marine Sanctuary and Wildlife Refuge Act of 1999 (26 PSC 5)
Port Authority Act of 1981 (32 PSC 1)

Yap

Constitution of the State of Yap
Deed of Trust Law (29 YSC 2). Retrieved from: http://fsmlaw.org/yap/code/title29/T29_Ch02.htm
Environmental Quality Protection (18 YSC 15)
Regulations on Environmental Impact Assessment of 1995
Fishery Authority Act of 1979 (18 YSC 1)
Fishery Zone Act of 1980 (18 YSC 2)
Mortgage Law (29 YSC 1). Retrieved from: <https://www.ecolex.org/details/legislation/chapter-1-of-title-29-of-the-yap-state-code-yap-state-mortgage-act-of-1987-lex-faoc079270/>
Wildlife Conservation Act (18 YSC 10)

Marshall Islands

Constitution of the Republic of the Marshall Islands
Administrative Procedure Act of 1979 (6 MIRC 1). Retrieved from: http://www.paclii.org/mh/legis/consol_act_2012/apa1979285/
Coast Conservation Act of 1988 (35 MIRC 3)
Documentation and Identification of Vessels Act (47 MIRC 2). Retrieved from: http://www.paclii.org/mh/legis/consol_act_2012/daiova1990415/
Domestic Water Crafts Act of 1992 (47 MIRC 9)
 Domestic Water Craft Regulations (no date)
Environmental Protection Act of 1984 (34 MIRC 1)
 Environmental Impact Assessment Regulations of 1994
Fisheries Act of 1997 (51 MIRC 1)
Fish Harvest Regulations of 2020
Fisheries Enforcement Act of 1997 (51 MIRC 5)
Gender Equality Act of 2019 (26 MIRC 7). Retrieved from: https://rmiparliament.org/cms/images/LEGISLATION/PRINCIPAL/2019/2019-0116/GenderEqualityAct2019_1.pdf
Land Acquisition Act of 1986 (9 MIRC 2). Retrieved from: <https://www.ecolex.org/details/legislation/land-acquisition-act-1986-lex-faoc035397/>
Land Recording and Registration Act of 2003 (24 MIRC 4). Retrieved from: <https://www.ecolex.org/details/legislation/land-registration-authority-act-2003-lex-faoc064879/>
Land Registration Authority (Amendment) Act of 2015 (PL. 2015-43). Retrieved from: <https://www.ecolex.org/details/legislation/land-registration-authority-amendment-act-2015-pl-2015-43-lex-faoc147513/>
Marine Resources Act of 1997 (51 MIRC 1)
 Aquarium Fishery Regulations of 2016
 Aquaculture Regulations of 2019
 Sea Cucumber Regulations of 2012

Maritime Administration Act of 1990 (47 MIRC 1)

Maritime Regulations (M1-108) of 2021. Retrieved from: www.register-iri.com/wp-content/uploads/MI-108.pdf

Marshall Islands Marine Resources Authority Act of 1988 (33 MIRC 4)

Protected Areas Network Act of 2015 (35 MIRC 5)

Protected Areas Network Regulations of 2020

Social Security Act of 1990 (49 MIRC 1)

Workers Compensation Act of 2016 (16 MIRC 7)

Palau

Constitution of the Republic of Palau

Admiralty and Maritime (7 PNCA)

Open Ship Registry Act (7 PNCA 6)

Maritime Regulations of 2012

Environmental Quality Protection Act of 1981 (24 PNCA 1)

Environmental Impact Statement Regulations of 1996

Protected Areas Network Act of 2003 (24 PNCA 34). Retrieved from: <https://palaulegal.org/palau-national-code/titles-20-29/title-24-environmental-protection/>

Amendment to Protected Areas Network and Micronesia Challenge (RPPL 7-42 2008). Retrieved from: <http://extwprlegs1.fao.org/docs/pdf/pau147780.pdf>

Fishing and Palau National Marine Sanctuary (27 PNCA)

Marine Protection Act (27 PNCA 12)

Executive Order 395 of 2017 Restructuring the Palau National Marine Sanctuary and its Executive Committee

Presidential Declaration No. 10-14 of 2010 on the Establishment of a Marine Mammal Sanctuary

Public Lands (35 PNCA). Retrieved from: http://www.paclii.org/pw/legis/consol_act/plt35163/

Social Security System Act (41 PNCA 7). Retrieved from: http://www.paclii.org/pw/legis/consol_act/sst41226/

Kayangel

Constitution of the State of Kayangel

Koror

Constitution of the State of Koror

Boat Registration Act of 1999 (KSPL No. 86-99-99)

Boat registration Act of 2007 (KSPL No. K8-184-2007)

Fishing License & Fees Act of 1990 (KSPL No. K3-42-90)

No Fishing Zone (Ngemelis Area) Act of 2010 (KSPL No. K9 - 230 - 2010)

Ngarchelong

Constitution of the State of Ngarchelong

Ebiil Channel Conservation Act of 2000 (Ngarchelong State Public Law No. 87)

Ngarchelong State Public Law No: 03-002 to amend Public Law No. 87

Ngarchelong State Public Law No. 04-007 of 2003 to amend Public Law No: 03-002 to establish the Ebiil Channel and the surrounding reefs as permanent conservation areas

Ngarchelong State Resolution No: 13-19 to endorse and ratify the Protected Area Network (PAN) Regulations (April 11, 2008)

USA

2010 Palau Compact Section 432 Review Agreement, Signed September 19, 2018

B. Jurisprudence

FSM

Case law has been retrieved from: <http://fsmlaw.org> and <http://www.paclii.org>

FSM supreme court

Berman v. Pohnpei Legislature, 16 FSM R. 492, 496 (Pon. 2009).

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Pacific
Community

Communauté
du Pacifique

BP D5 • 98848 NOUMEA CEDEX
NEW CALEDONIA

Telephone: +687 26 20 00
Facsimile: +687 26 38 18
Email: cfpinfo@spc.int

BP D5 • 98848 NOUMÉA CEDEX
NOUVELLE-CALÉDONIE

Téléphone : +687 26 20 00
Télécopieur : +687 26 38 18
Courriel : cfpinfo@spc.int

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