MARINE, COASTAL & SHORELINE TENURE

Photo by David Mills

Authorship
Philippa J Cohen, Brittany Tholan, Kama Dean Fitz, Sisir Pradhan, Vivienne Solis Rivera, Hugh Govan.

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Instructions
Return to the contents by pressing the icon with the house in the lower part of each page.

Contents

Executive Summary

Along the world's coasts of oceans, estuaries, lakes, and rivers, societies have relationships with fluid environments and the resources they hold. For centuries, these societies have defined and exercised rights and responsibilities over coastal ecosystems, determining who is allowed to use which resources, in what way, for how long, under what conditions, and how entitlements, responsibilities and cultural values are passed on. This is tenure. Tenure provides the foundation for livelihoods, food security, cultural identity, and environmental stewardship for small-scale fishers, coastal communities, and Indigenous Peoples.

Coasts, oceans, rivers and lakes hold rich biological diversity, provide a foundation of nourishment and wellbeing for millions of people, and offer vast developmental opportunities to society. These values have attracted the attention of governments, private enterprises, philanthropic organizations, and conservation organizations. Oceans and coasts are now subject to escalating demands and diverse visions for the future. Amid these escalating and powerful interests are coastal communities, Indigenous Peoples, small-scale fisheries, and their diverse tenure systems.

The objective of this report is to build knowledge and awareness about diverse tenure systems in an effort to empower and respond to rights-holders as partners. This report will prime an informed discussion among duty bearers and rights-holders on what recognizing and strengthening tenure entails in different coastal contexts, and for different people. This report is neither the complete nor final word on aquatic tenure. Instead, it draws together multiple perspectives and streams of knowledge to broaden the way in which we understand tenure. The intention is to stimulate action along

a path toward more equitable and secure aquatic tenure, where rights-holders experience greater certainty in the future existence of their rights. Progress and direction along this path must be led by rights-holders, but also enabled through effective partnership with, and accountability of, duty bearers, including philanthropic funders, intergovernmental organizations, overseas development assistance, national and state governments, and the research community.

"Local and indigenous views of tenure are more holistic, embed rights with responsibilities, and account for relationships between society and nature"

Aquatic tenure systems are diverse, varying substantially even within a single nation (see **Chapter 1: Marine, coastal and shoreline tenure: Rights, Responsibilities and Rights-Holders**). Western science, economics, and law often view tenure as a "bundle of rights," where communities hold full rights if they: (1) have the authority to access, withdraw, and manage resources, (2) decide who is included/excluded, (3) transfer their rights to others, and (4) experience the freedom and agency to transform the ways in which areas and resources are used. On the other hand, local and Indigenous views of tenure are more holistic, embed rights with responsibilities, and account for relationships between society and nature. Customary law and tenure may be informal and unwritten but exist nonetheless, often in parallel with formal legal systems of area and resource ownership, designation, and allocation.

Tenure security means rights-holders experience high certainty that their rights are known and will be upheld by society, the law, or other institutions. Tenure security is enabled by the completeness of the bundle of rights, their durability and robustness, and a rights-holder's access to due process and compensation. Each of these elements can be enshrined in the law, but (as we discuss in Chapter 4) it is rare to find all elements in any single country. On the other hand, tenure insecurity is fueled by corruption, poor governance, ambiguous or missing legal frameworks, legal pluralism (i.e., unreconciled formal and informal systems operating in parallel), lack of information and documentation, and rising competition for space and demand resources. The consequences of tenure insecurity are that rights-holders are overlooked and ignored in planning processes, physically marginalized from spaces and resources to which they hold rights, and may even be criminalized, arrested, and experience other human rights abuses as they exercise their rights to use resources or access coastal lands and seas.

The opportunity of centering, and the gravity of failing rights-holders is recognized in a suite of international commitments. In **Chapter 2: International Commitments to Tenure and Rights-Holders** we describe the commitments made in 15 such instruments. For example, international human rights instruments recognize the marine tenure rights of Indigenous Peoples as part of collective rights to lands, territories, and resources. Human rights and tenure rights are thus viewed as intertwined and mutually reinforcing. The Sustainable Development Goals (SDGs) target tenure equity and security as a precursor, and outcome, of poverty alleviation, food security, gender equity, and life below water. The United Nations (UN) recognizes secure tenure rights as necessary for effective climate action. The responsibilities and legal requirements for inclusive processes and decisions that respect existing tenure systems and rights-holders are strikingly abundant and clear. Despite these commitments, human rights and tenure rights abuses persist in ocean and coasts as competition for space and resources intensifies Meeting these commitments requires action beyond rhetoric, which entails greater accountability

within funding, legal, and policy environments, and transformative changes in how power and responsibility are distributed and maintained in the governance of coasts and oceans.

Tenure systems frequently interact with conservation and fisheries approaches (see **Chapter 3: Tenure, Fisheries, and Environmental Governance**). In this chapter, we examine some popular fisheries management and conservation tools to unpack how they relate to tenure and tenure security. When coastal and marine tenure is viewed for a particular objective (e.g., maintaining fish stocks and reducing fishing effort) the focus of funding, research, and/or practice tends to fall on a subset of rights and responsibilities. Withdrawal and access rights (i.e., two among the full bundle) are more frequently strengthened and limited through fisheries laws and tools e.g., Preferential Access Areas, Territorial Use Rights for Fisheries, catch shares). Nonetheless, the Illuminating Hidden Harvests study (2023) found that even access rights are rare, with 85% of countries and territories providing no formal protection of access rights for small-scale fisheries.

Community-based management and co-management are designed to deliberately invoke and strengthen management, and (more variably) an enforcement right. These approaches (and others, including Marine Protected Areas (MPAs), marine spatial planning, Other Effective area-based Conservation Measures (OECMs), and Territorial Use Rights for Fisheries (TURFs)) have the potential to clarify existing rights, and/or create tenure systems and rights where none existed previously. Yet, no matter the approach or process, poor design and implementation (i.e., ignorant of existing tenure and rights-holders) can undermine tenure security, disenfranchise rights-holders, and contravene national laws and global commitments. While interaction of tenure with fisheries management and conservation efforts is common, it is important to note that tenure security conveys a broader set of relationships, rights, responsibilities, and options (e.g., transformation rights) to rights-holders than fisheries and conservation approaches tend to provide.

National legal frameworks both represent and shape tenure, and how people experience their rights. **Chapter 4: Tenure and the Law** presents the results of a commissioned analysis conducted by the Environmental Law Institute. This study examined the diversity, depth, and trends in the way in which laws treat marine tenure and rights-holders. It found that customary and traditional tenure systems are recognized in the constitutions of many countries and receive further treatment in statutory law and regulations of some countries. Details on rights and responsibilities are found to be detailed in some laws, yet it was relatively rare to find clarity on government obligations toward rights-holders, the processes of ascertaining, recording, and registering rights, and the processes and mechanisms available for individuals or groups to appeal decisions or seek help in claims where rights were breached. Commitment of these procedural details to law and implementation would confer greater tenure security for rights-holders.

Even among neighboring nation states, marine tenure systems can be vastly different. Customary and traditional law and marine tenure are recognized (and even privileged) in the laws of many Pacific Island nations; yet in some countries, the state (i.e., national or sub-national government) must devolve rights (based on conditions) to communities. In Latin America and the Caribbean nations (exceptions are Guyana and Guatemala), the state often controls marine and coastal resources, but provides mechanisms for Indigenous Peoples, local communities, and/or fishing associations/cooperatives to apply for access, use, and (in some cases) management rights. In Sub-Saharan Africa, many constitutions recognize customary rights, and governments can additionally grant access rights through licenses or permits, withdrawal rights (through quotas or shares), and creation of designated areas for communities or other groups. In northern African nations, the state legally owns all natural resources, with no apparent exceptions or parallel rights systems. In any region, nations vary substantially in the ways in which they treat marine tenure in the law, and the mechanisms available to recognize or protect rights. Understanding

the legal conditions surrounding tenure in any country requires, at least, a national legal analysis such as those we provide for Belize, Colombia, Guatemala, Guyana, Panama, and for the Papua province of Indonesia.

Gender and other social attributes (e.g., age, religion, and race) affect how different individuals, in any social group, experience rights (see **Chapter 5: Tenure, Gender, and Women's Tenure Security**). A trend found across diverse contexts is that women (compared to men) experience less control over, and ownership of, productive assets, including land and natural resources. There are many examples of when controls on area access and resource use have tightened (including through management and conservation measures), and women have become (disproportionately) excluded from the areas and resources that had provided them with their livelihood. Global evidence shows that in addition to the intrinsic value of pursuing gender equity (i.e., justice and fairness as outcomes in and of themselves), increasing gender equity can improve natural resource governance, fisheries productivity, and food security and nutrition. Commitments to gender equity in ocean and coastal programming are widespread, yet assessments show these commitments frequently end at rhetoric. The tools and methodologies developed to ensure that land tenure practices and fisheries co-management are more equitable and provide important opportunities for duty bearers working in oceans and coasts to step up to their commitments to gender equity in practice. The risk of not doing so is that existing inequities remain unchanged or are exacerbated, and the opportunities for enhancing environmental and human wellbeing outcomes are lost.

Climate change generates an additional suite of challenges, opportunities, and tensions in coastal and marine systems (see **Chapter 6: Climate Change and Tenure**). The impacts of climate change will increase the vulnerability of 680 million people living in the low-lying coastal zone, shift species ranges, reduce

fisheries production in the tropics, and introduce new blue markets and climate mitigation infrastructure into coastal areas. The UN Convention on Climate Change recognizes tenure security as necessary for effective climate action and calls for secure land and resource rights for local communities, Indigenous Peoples, and other vulnerable groups. In this chapter, we identify and discuss opportunities at the nexus of climate and tenure to improve outcomes. These include: (1) increasing tenure literacy among climate mitigation and adaptation programs and investments, (2) legislating and supporting (through honest brokers) rights-holders' stewardship and values (including resistance) in blue carbon markets, (3) uplifting rights-holders' efforts and knowledge in restoring, managing, and conserving fishing grounds and habitats that aid mitigation and adaptation actions, (4) increasing recognition of tenure systems and rights in mitigation planning, and (5) designing insurance products appropriate to informal and group held rights.

Human rights and tenure rights are intertwined. Tenure rights and responsibilities also contribute to sustainable use of natural resources, food and nutritional security, and poverty alleviation (see **Chapter 7: Impacts of Secure Tenure on Society and the Environment**). The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services stated in 2022 that evidence was "well established" that tenure rights and equitable access to land, fisheries, and forests contribute to the sustainable use of wild species. Groups with secure tenure can establish cost-effective management strategies that (in many contexts) have higher compliance, are more adaptive, and can be more likely to realize positive environmental outcomes than state-controlled or open access systems. For example, bright spots in coral reef conditions are found alongside intact local tenure and other conditions that empower local actors as environmental stewards. While secure tenure alone is insufficient to improve food security and nutrition, it does allow families and communities to use, manage, and control land, fisheries, and forests in ways that enhance productivity and improve income. Conversely, when tenure is weakened, human rights, food and nutrition security, sustainable use and incentives for environmental stewardship are undermined – decreasing human wellbeing and the opportunity to improve environmental outcomes.

In **Chapter 8,** we draw together 11 published datasets to look at **'Global Reliance, Vulnerability and Opportunity'** in nations most reliant on coastal ecosystems. These datasets illustrate different countries' (1) reliance on coastal and marine resources for livelihoods and food security, (2) capacity or political orientation toward civil society freedoms and rights of coastal communities, Indigenous Peoples, and small-scale fishers, and (3) pressures and exposure along coastal lands and seas. Where all these conditions are high, or there is a high likelihood that they will increase in the future, this would suggest a particularly acute need and opportunity for improving tenure security. The purpose of these data is to contribute to discussions and decisions – in arenas where a range of knowledge and values are examined – about where supporting tenure security might be considered particularly urgent. In Chapter 8, we present some potential interpretations of data for illustrative and discussion purposes, but note these data become meaningful and actionable when paired with qualitative understandings and lived experiences of these contexts, including understanding partner capacity or emergent changes. The complete dataset and a full series of explorations is available ***here***.

Coastal communities are at the front line of ocean and coastal change; small-scale fishers represent the largest group of ocean users, and Indigenous Peoples have long histories of ocean custodianship. Yet, data we review in **Chapter 9: Institutional Landscape and Funding Trends** illustrate a dearth of direct funding to locally led efforts to enact rights and responsibilities that would support environmental stewardship and locally determined outcomes. There is growing recognition of the unequal power dynamics in the international aid and philanthropy systems and the resulting harm this does to local communities as well as long-term goals. Practitioners and donors recognize that shifting power cannot be done through the country offices of international non-governmental organizations as this serves only to further entrench colonial power dynamics by dominating development funding and displacing local organizations. Donors working on oceans and coasts

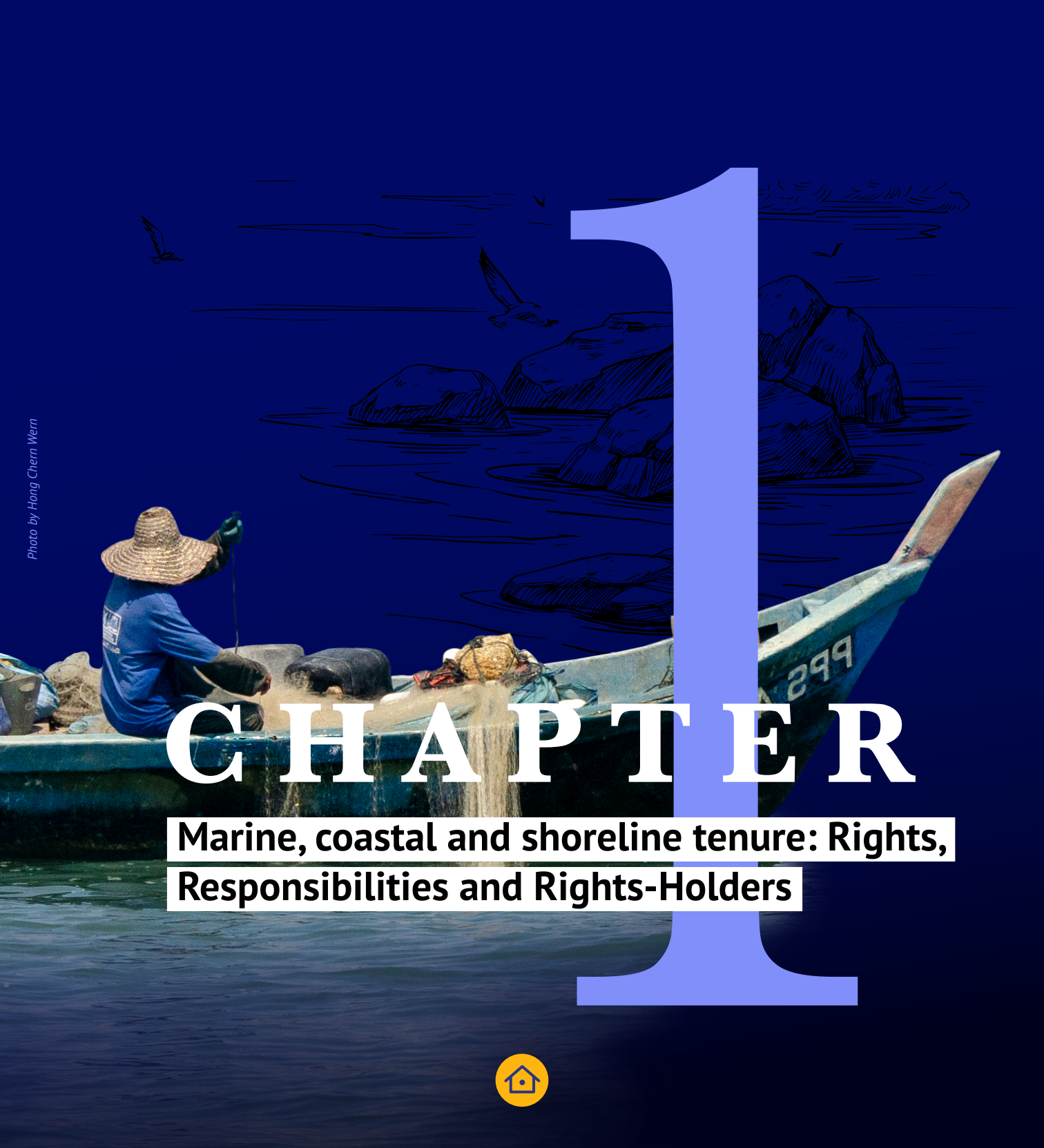
indicate intent to increase direct funding to the world's coastal dependents, and to level the playing field between institutions based in the Global North and rights-holders. In this chapter, we discuss funding trends and examine the attributes of regranting processes and facilities that successfully work in novel ways to "even the playing field" of funding and institutional support.

This report illustrates a range of factors and conditions that can improve tenure security. It also lays out some of the known consequences of secure tenure, and the risks of tenure insecurity.

Strengthening or building the conditions that enable tenure security simultaneously offers avenues for improved environmental stewardship, food and livelihood security, and greater social equity.

Tenure security will be enhanced by actions that lead rights-holders to experience a more complete and durable bundle of rights. This must be accompanied by rights-holders' experience of improved access to planning, documentation, and appeal processes. In many contexts, tenure security will be greater where the tenure regimes and rights of Indigenous Peoples, small-scale fisheries, and/or coastal communities are recognized within legal frameworks. To avoid risks of undermining current rights and rights-holders, planning processes and financial instruments need to be adjusted to better account for informal, traditional, and customary tenure rights that are held by groups. Recognition of the within-group differences (i.e., based on gender caste, and economic status) of how rights are experienced is a foundational step in ensuring that tenure security aligns with equity. Strengthening mechanisms of accountability to, and recognition of, diverse tenure systems and rights-holders will be key toward greater tenure security. This may be necessarily accompanied by increased awareness of rights and tenure systems among society, and particularly among powerful actors like government, NGOs, and the private sector.

Advancing tenure security can only be done in partnerships that center Indigenous Peoples, local communities, and small-scale fishers and their knowledge, agency, and rights.



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CHAPTER 1

Marine, coastal and shoreline tenure: Rights, Responsibilities and Rights-Holders

"Different ways of understanding what we mean can affect what actions follow."[1]

Marine and aquatic tenure

Tenure is a relationship that people and societal groups hold with areas and resources of land, sea and water. **Marine or aquatic tenure** is *"a set of rights and responsibilities in the marine and coastal environment as to who is allowed to use which resources, in what way, for how long, and under what conditions, as well as who is entitled to transfer rights (if any) to others and how."*[2]

Tenure systems refer to how tenure is governed, and the ways in which *"societies define and regulate people's access to land and other natural resources."*[3] Tenure systems vary significantly between nations and can differ substantially within a single nation. Western understandings of tenure define four categories of property: private property, common property, state property, and open access.[4] Whereas customary systems "*tend to embed tenure rights in social relationships and to place considerable emphasis on collective or communal rights, vesting tenure rights with often multiple, overlapping, and, therefore, 'nested' social units*."[5] Tenure frequently has a **spatial component** that defines the extent over which rules and responsibilities of certain societal groups apply. Yet, in most contexts these geographic boundaries are only one narrow part of understanding what tenure entails.

Indigenous And Customary Systems Of Tenure

Customary tenure refers to *"locally derived systems with norms, rules, institutions, practices and procedures that have evolved over time and use. Customary tenure systems have gained social legitimacy and are negotiated, sustained, and changed by local communities."*[5] International human rights instruments (see listed and detailed in Table 1) recognize the marine tenure rights of Indigenous Peoples as part of collective rights to lands, territories, and resources (e.g., the UN Declaration on the Rights of Indigenous Peoples).

Indigenous and customary tenure are holistic, inclusive of land and sea, and considerate of a range of social, cultural, and economic relationships between people, areas, and resources, and consider responsibilities and obligations in addition to rights.

"Indigenous people have a culture that relates to the land and sea in a holistic way that also includes connections to powerful and significant places. However, the emphasis that is now put on management of discrete sites can overlook and diminish Indigenous connections to the environment as a whole."

– [Australian] Indigenous Working Group, 2002[6]

"Sea Country" is a term used by Indigenous Australians and refers to *"any environment within their broader traditional estate that is associated with the sea or saltwater – including coastal areas, estuaries, beaches, marine areas, and islands. Sea Country is a contemporary shorthand for the cultural, social, and economic values of these environments held by the several hundred distinct coastal and island Indigenous groups around the Australian continent."*[7]

Take whenua refers to Māori (Indigenous Peoples of New Zealand) land tenure, and makes reference not only to land, but also the beds of lakes, rivers, and the sea. ***Mana whenua*** means the authority of a tribe over land. These rights could be gains through "discovery, conquest, gifting, and ancestry."[8]

In eastern Indonesia (i.e., Maluku and West Papua provinces) coastal communities recognize and practice ***sasi*** which refers to a "*set of rules applying to resources under control of a specific social group*."[9,10] Systems of ***sasi*** persist in parallel with national legislation that views nearshore marine resources as common property.[11]

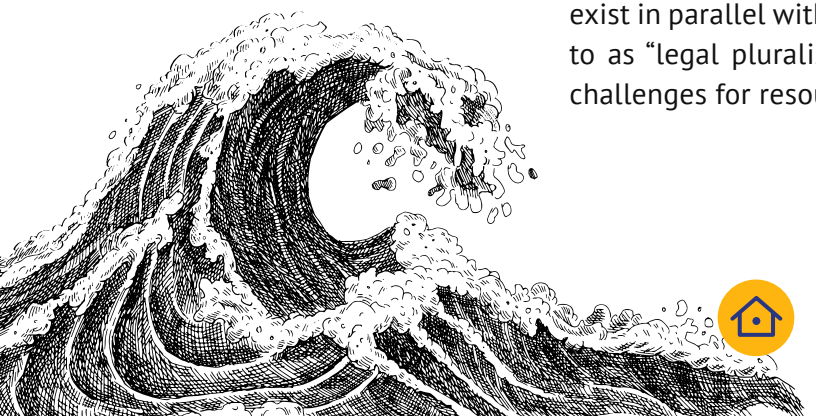
In Oceania, "*entitlements to sea space are not only characterized by rights to geographical space but can also encompass rights to specific habitats, technologies, and species, or a combination of these…Indigenous people in Oceania conceptualize their territorial estates holistically – i.e., sea and land space exist as a continuum, and Indigenous conceptualization of territorial estates does not dissociate these realms as Westerners do*."[12] Examples of this view that extends "*from mountain tops to the reef and beyond"* include the Hawaiian ***ahupua'a,*** the Fijian ***vanua***, and the Marovo [lagoon in Solomon Islands] ***puava***.[12]

In the Republic of Congo, customary tenure (traditional territories referred to as ***eboko***) applies over floodplains which are *"divided into many* [familial] *lineage territories owned and ruled by distinct water spirits."*[13] The water spirits, called *bwɛta*, are considered the true owners of the territory who can control natural resources. Family heads interpret the wishes of water spirits that inhabit temporary floodplain lakes.[13]

"Indigenous people in oceania conceptualize their territorial estates holistically – i.E., Sea and land space exist as a continuum, and indigenous conceptualization of territorial estates does not dissociate these realms as westerners do."

- Aswani, 2012[12]

Customary tenure persists in many countries, either as the main way in which coastal and ocean space is governed, as a system operating in parallel to ownership and governance by the state, or as remnants in, or lost to, a largely top-down, centralized governance regime. In many countries, formal written laws related to governing coastal areas and resources exist in parallel with customary law and tenure. This is referred to as "legal pluralism", which can provide opportunities and challenges for resource management.[14]



Tenure As A Bundle Of Rights

Contemporary resource economics frames tenure as a set of property rights that in sum provide *"the authority to undertake particular actions related to a specific domain"*[10] (citing Commons, 1968 "*Legal Foundations of Capitalism*").[15] This leads to a description of tenure as a "bundle of rights" (detailed below).[10] In different contexts, groups and individuals may experience a full bundle of rights, or (more frequently) only certain rights. For example, one might have a right to withdraw resources without having a right to manage them.

The Roman law system is an alternative way of categorizing tenure rights: usus is or the right to use the land (this includes access rights and withdrawal rights, as described below); abusus is the right to change the land (which includes management rights and transformation rights); and fructus, is the right to make profit and loss (which may include, but is greater than, alienation (or transferability)).[16]

The resource economics' "bundle of rights" is a popular and influential way to describe tenure, and it forms the basis of descriptions and definitions of (for example) community-based forest tenure,[17,18] co-management of coastal areas and fisheries,[18] and marine tenure in relation to small-scale fisheries management.[2] Despite the value and popularity of this framing, we highlight further elements of tenure that are overlooked or less visible when viewed this way.

- **Access rights** grant authorization to an area and/or resources. Access and withdrawal rights are often referred to together as "use rights." Tools to limit access include formal licenses/permits or other permissions.

- **Withdrawal rights** refer to one's right to withdraw or harvest "products" or resources within the area to which tenure extends. Withdrawal rights may include fisheries management measures such as catch limits and quotas.

- **Management rights** grant decision-making power and allow rights-holders to create the rules about how areas and resources are used and maintained. Management rights can be used to define allowed and disallowed activities (and their timeframes), including restrictions on fishing gear, catch, and vessels.

- **Exclusion rights** allow rights-holders to exclude or ban others from using certain resources and accessing areas.[19]

- **Alienation (or transfer) rights** refer to the ability and legitimacy to transfer existing rights to other individuals, groups, or entities. Transfer may take place through selling, leasing, or gifting, or other forms of exchange (e.g., customary payments and ceremony) or transfer (e.g., through descent systems or marriage).[19]

- **Enforcement rights** are the rights to enforce established rules in the area and apply sanctions in instances of non-compliance.[i] The right to enforce can provide protection from both internal and external violations. [2,18]

- **Transformation rights** refer to the right to change the land (area and resources) so that it has a different use.[16]

i. Not initially articulated as a separate right, but later added by researchers as a power,[18] and accepted by funders (e.g., USAID) as a right associated with marine tenure.[2]

Marine tenure is not only defined through a set of rights, but also by a set of (sometimes conditional) **responsibilities and obligations.** In some instances, these must be met and maintained for rights to continue (e.g., in instances where a government has devolved rights). In customary and traditional rights regimes, failure to meet responsibilities and obligations may lead to a cessation of certain rights or other consequences.

Figure 1

Types of rights, and the types of ownership or tenure under which they can be found. The degree of security is lower to the left, and increases toward the right (i.e., Categories 3 and 4). Categories 1 and 2 are referred to as "public" ownership, whereas Categories 3 and 4 are considered "private" ownership.[22] Not the presence of temporal and procedural elements (i.e., unlimited duration of rights, right to due process and compensation) in Category 3 and 4. *Adapted from the Rights and Resources Institute (2018).*

Spectrum of the bundle of rights

Most secure collective tenure

3 Owned by Indigenous Peoples and local communities

Communities hold all of the following:

- Access rights
- Withdrawal rights
- Management rights
- Exclusion rights
- Enforcement rights
- Unlimited duration of rights
- Right to due process and compensation
- Alienation rights
- Transformation rights

4 Privately owned by individuals and firms

Individuals and firms hold all of the following:

- Access rights
- Withdrawal rights
- Management rights
- Exclusion rights
- Enforcement rights
- Unlimited duration of rights
- Right to due process and compensation
- Alienation rights
- Transformation rights

Who Holds Tenure?

The rights to resources and areas (as described above) can be **held by groups, individuals, government, or private entities.** Marine tenure and the set of rights associated with tenure are frequently held by groups, and as such are referred to as "collective rights" or "community-based rights." Examples of such groups include an Indigenous community, a coastal community, a particular tribe or clan, a fishers' organization, or a certain group of licensed fishers (such as small-scale fishers or artisanal fishers). Individuals within any group frequently experience different types or levels of rights.

The allocation of rights (i.e., attainments, suspension, cancellation, or transfer) may occur directly through formal processes described in law, and/or may relate to other criteria, such as kinship and inheritance, historical use, residence, adjacency, and occupation, that might determine if one is a member of a group that holds rights, and/or may relate to meeting or maintaining a set of obligations and responsibilities. In any group of rights-holders, there are substantial variations in the degree to which different people experience rights or hold rights; these differences can be determined by norms and rules, including those associated with gender, age, and other determinants of social standing (discussed further in Chapter 5).

Tenure Security And Insecurity

> *"Tenure security is an important dimension of responsible tenure governance. It is the perception by users that their fisheries rights will be both recognized by others and protected from imposition, dispute, or approbation. Broadly speaking, it conveys the sense that investments of time, labor, and capital over a certain duration will produce benefits to the rights-holder."*
> – (Courtney et al., 2017)[2]

The more complete the bundle of rights held by any group or individual, the higher their tenure security.[20] The fields of both fisheries[21] and forestry[17] tenure mention durability and security as attributes that align with tenure security.[21] To avoid assumptions that all people in a group of rights-holders experience the same rights or security of rights, the component "individual or shared rights" brings an important understanding to move toward more equitable tenure.[16]

The more complete the bundle of rights held by any group or individual, the higher their tenure security.

Photo by Movilizatorio

Attributes of tenure security

- **Individual or shared rights:** To what extent are rights held individually or jointly and what are the relationships among the rights-holders?[16]

- **Completeness** of the bundle. How many and what kind of rights does a group and individuals within the group hold, and to what extent?[20]

- **Durability** refers to the time span of the rights and whether they are short-term, long-term, or the duration is unknown.[17] In practice, duration could "*range from virtually nothing or one season or year to perpetuity.*"[21]

- **Robustness** is determined by whether the rights are known by the holders, are accepted by the community, are enforceable (which may be a precursor to security), and is an outcome of the right to due process and compensation.

- **Security** refers to the ability of the holder of the right to maintain this right and not to have it challenged or revoked by other individuals, institutions, or the government.[21]

- **The right to due process and compensation.**[17] This may be a separate right or defined as a part of alienation.

"*Whilst clarity of tenure rights is important, it is the social context in which rights operate that is important for tenure security. Multiple sources, such as law, titling, strong administration, social recognition, and ownership of independent assets, can contribute to a perception of strong security. The overall social, legal, and cultural legitimacy of the rights is key.*"
– (Courtney et al., 2017)[2]

The factors that contribute to **tenure insecurity** are corruption and poor governance, ambiguous or missing legal frameworks (further examined in Chapter 4), legal pluralism, lack of information and documentation, lack of government capacity to administer land and marine rights and associated processes, and rising demand on areas of land and sea.[23] Rising demand on oceans and coasts includes increasing pressure from industrial and large-scale commercial fisheries, commercial tourism, and other blue economy sectors.[24] In addition, certain legal instruments and approaches that are implemented in the name of reducing overfishing, abolishing illegal, unreported, and unregulated fishing, or improving conservation can eliminate traditional and small-scale fisher rights, and criminalize their exercise of their right to fish.[25] This can lead to arrests and detentions, and imposition of penalties, among others, and lack of access to justice by victims. While rights might be knowingly ignored in some instances, a low awareness of rights and limited understanding of local tenure systems also contribute to conditions that undermine tenure security.

Certain legal instruments and approaches that are implemented in the name of reducing overfishing, abolishing illegal, unreported, and unregulated fishing, or improving conservation can eliminate traditional and small-scale fisher rights, and criminalize their exercise of their right to fish.

Key Insights

- **Indigenous and customary tenure** is holistic, inclusive of land and sea, and considerate of a range of social, cultural, and economic relationships between people, areas, and resources.

- **The frequently used bundle of rights** tend to overlook procedural and temporal elements of rights that influence experiences of tenure security.

- **Tenure security** is likely higher when all rights are in place and there is clarity around individual and shared rights, procedures, and the duration of control.

- **Corruption and poor governance,** ambiguous or missing legal frameworks, confusion around overlapping jurisdictions, lack of information and documentation, lack of government capacity, and rising demand on areas of land and sea all contribute to tenure insecurity.

- **Legal, policy, or procedural reforms,** and increasing rights-holders, access to justice (including via legal support and due processes) offer an opportunity to increase tenure security in many coastal contexts, and for millions of rights-holders.

- **Tenure security** could be enhanced by increasing tenure literacy among influential government, private sectors, and non-government actors, while also addressing power imbalances between rights-holders and these actors.

Photo by Hong Chern Wern

CHAPTER 2

International Commitments To Tenure and Rights-Holders

"Indigenous peoples are often discriminated against and excluded from decision-making processes. This leads to additional risks that their rights are ignored or undermined by blue economy or conservation initiatives, such as the establishment of marine protected areas and market-based distribution of fishing quotas."

- Danish institute for human rights, 2021 [27]

Recognition of the rights of coastal communities, Indigenous Peoples, and small-scale fishers is commanded in binding and non-binding commitments. These are reflected in a growing number of internationally agreed upon instruments and agendas designed to steer sustainable and economic development, including (but not limited to) ocean conservation, fisheries management, and climate adaptation and mitigation (Table 1). These commitments illustrate that implementation of inclusive planning processes that are sensitive to existing tenure systems are far more than "*morally, the right thing to do*" [26] but are, in many instances, legal and societal obligations of the states and other actors.

Recognition of the rights of coastal communities, indigenous peoples, and small-scale fishers is commanded in binding and non-binding commitments.

The convention and agreements (Table 1) provide a framework to challenge and overturn environmental and human rights injustices. For example, Indigenous and Black communities in Colombia were able to leverage the International Labour Organizations' (ILO) Convention on Indigenous and Tribal Peoples (1989) and the 1993 Convention on Biological Diversity to reform the constitution, forming the basis for Indigenous Reserves and Afro-Colombian Lands.[28] In a recent case of the Saami people in Finland, these rights were upheld by treaty bodies, including the Committee on the Elimination of All Forms of Racial Discrimination.

Nonetheless, there are many instances where these commitments are not upheld, and people lose rights or exercising their rights becomes criminal in the face of legal changes related to environmental use (e.g., through area closures and fisheries bans). Frequently, commitment to human rights and gender equality principles appear rhetorically adopted by funders and actors working in coastal and ocean spaces, but are failing to change resourcing, capacity (e.g., to understand and implement gender-sensitive programming), and actions on the ground in any meaningful way.[29,30]

Table 1

A non-exhaustive list of international conventions and agendas that include commitments to Indigenous Peoples', coastal communities' and/or small-scale fishers' rights and representation, including respecting and upholding traditional and customary tenure rights with an emphasis on social and gender equity.

UN Declaration on the Rights of Indigenous Peoples (2007)
For example: Article 26 "(1) Indigenous Peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired; (2) Indigenous Peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired; (3) States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the Indigenous Peoples concerned." **Article 4** "Indigenous Peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs…" **Article 5** "Indigenous Peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions…" **Article 10** "Indigenous Peoples shall not be forcibly removed from their lands and territories."
UN Convention on the Law of the Sea (1982)
Speaks about the provisioning of territorial sea (12 nautical miles from the shorelines of a coastal state).
Sendai Framework for Disaster Risk Reduction 2015-2030
The emphasis is on reducing disaster risk in coastal areas and the participation of all relevant stakeholders, including Indigenous Peoples and local communities, in disaster risk reduction efforts.
The Blue Carbon Initiative
Recognizes the importance of secure tenure rights in supporting coastal ecosystem conservation and restoration efforts.

International Labour Organization's (#169) Indigenous & Tribal Peoples Convention and (#111) Traditional Occupations (including traditional fishing)

#169 "stipulates that States shall consult Indigenous Peoples, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly."[31]

#169 "stipulates that Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit."[31]

#111 requires that states "adopt and pursue a national equality policy to eliminate discrimination in employment and occupation, including discrimination faced by indigenous and tribal peoples as regards the exercise of their traditional occupations."[32]

Sustainable Development Goals (2015-2030)

SDG1.4 "Ensure all men and women, in particular the poor and vulnerable, have equal rights to economic resources…, ownership & control over land & other forms of property, natural resources…"

SDG2.3 "Double the agricultural productivity and incomes of small-scale food producers, in particular women, Indigenous Peoples, …& fishers, including through secure & equal access to land, other productive resources."

SDG5.A "Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance, and natural resources, in accordance with national laws."

SDG14.B "Provide access for small-scale artisanal fishers to marine resources and markets."

Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries & Forests (2012)[34]

For example: Recognize and respect all legitimate tenure rights-holders and their rights; safeguard legitimate tenure rights against threats and infringements; promote and facilitate the enjoyment of legitimate tenure rights; provide access to justice to deal with infringements of legitimate tenure rights; prevent tenure disputes, violent conflicts and corruption.

Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity (2004)[33]

Practical Principle 2 "Recognizing the need for a governing framework consistent with international national laws, local users of biodiversity components should be sufficiently empowered and supported by rights to be responsible and accountable for use of the resources concerned."

Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security & Poverty Eradication (2015)[35]

Refer to Chapter 5a "small-scale fishing communities need to have secure tenure rights to the resources that form the basis for their social and cultural well-being, their livelihoods and their sustainable development."

For example: Principle 5.3 "…ensure that small-scale fishers, fish workers and their communities have secure, equitable, and socially and culturally appropriate tenure rights to fishery resources (marine and inland) and small-scale fishing areas and adjacent land, with a special attention paid to women with respect to tenure rights."

High Level Panel for a Sustainable Ocean Economy (2018)[36]

To safeguard and mainstream equity in opportunities for action: "Recognise and respect pre-existing property rights, tenure and adjacency of coastal communities and Indigenous populations to areas of the ocean and marine resources; recognise the rights and needs of women, individuals with disabilities, small-scale fishers, Indigenous and other minority groups; recognise, protect and operationalise equity and access rights."

Paris Agreement (2016)

Parties to respect, promote, and consider their respective obligations on human rights, including the rights of Indigenous Peoples and local communities, in their climate change action framework.

REDD+

Recognizes the importance of secure tenure rights.

Convention on Biological Diversity (1993)

Article 8 (j) Provides of recognition of traditional knowledge, innovation and practices of Indigenous and local communities in the conservation and sustainable use of biodiversity.

Article 10 (c) Calls for full and effective participation of Indigenous and local communities in conservation and sustainable use of biodiversity.

Article 18 Stands for protection of traditional knowledge, practices, and respect for the rights of Indigenous and local communities over their land, territories, and resources.

Kunming-Montreal Global Biodiversity Framework (2022)

Target 3 In ensuring 30% of areas are effectively conserved and managed, it will recognize and respect "indigenous and traditional territories" and "the rights of indigenous peoples and local communities including over their traditional territories."

Target 22 "Ensure the full, equitable, inclusive, effective and gender-responsive representation and participation in decision-making, and access to justice and information related to biodiversity by indigenous peoples and local communities,respecting their cultures and their rights over lands, territories, resources, and traditional knowledge, as well as by women and girls, children and youth, and persons with disabilities and ensure the full protection of environmental human rights defenders."

Forest Carbon Partnership Facility

The FCPF is applicable to nearshore habitats. The partnership (governments, civil society and other stakeholders) recognizes the importance of secure tenure rights in achieving these goals and supports efforts to strengthen land tenure and resource rights in partner countries.

United Nations Framework Convention on Climate Change (1992)

The UNFCCC recognizes the importance the Kunming-Montreal Global Biodiversity Framework of secure tenure rights for effective climate action and calls for parties to take action to support secure land and resource rights for local communities, Indigenous Peoples, and other vulnerable groups.

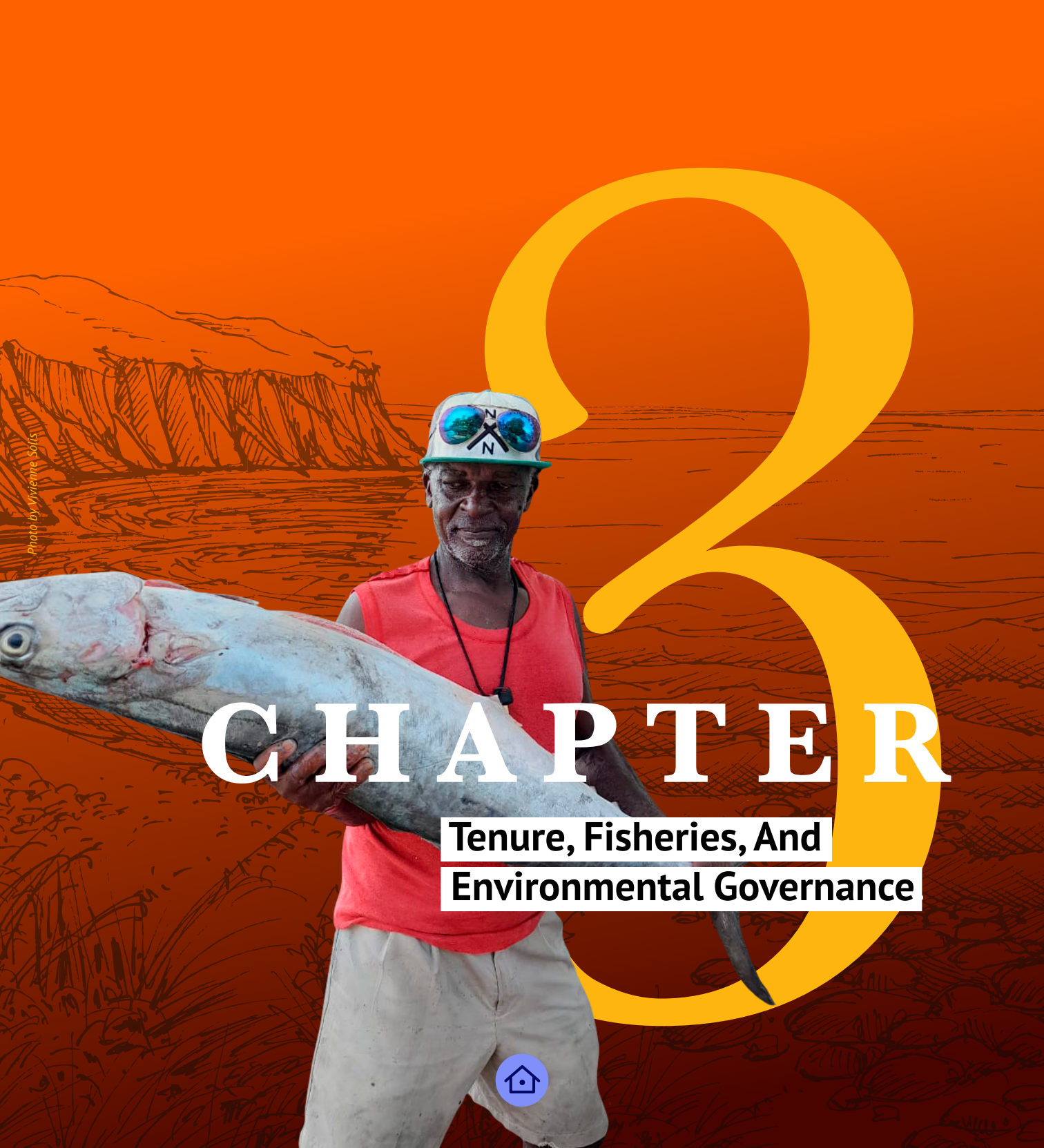
Key Insights

- **Governments, NGOs, funders, and other actors** working with climate, conservation, food security, fisheries, and livelihoods have made commitments to marine and coastal tenure rights-holders, including to small-scale fishers, coastal communities, and Indigenous Peoples.

- **Meeting these commitments** is very much a work in progress, and will require further change, and even transformation, in the ways in which coastal and ocean programming is funded and led (Chapter 9), positioning rights-holders as (at least) partners and leaders of ocean and coastal future.

- **Commitments articulated by funders, governments, and NGOs** must also be met with higher levels of responsible action, and new approaches to partnership and accountability.

Photo by Britton Tholen



CHAPTER 3

Tenure, Fisheries, And Environmental Governance

Contemporary environmental conservation, fisheries management, and coastal governance interact with existing formal and informal tenure systems. Whether these interactions are deliberate or accidental depends on the approach used, and the interpretation of that approach in practice. Cases from across the globe illustrate that tenure can be the foundation of community-based management (by definition), or (to differing degrees) co-management. These approaches may build upon existing formal or informal tenure, formalize informal tenure, activate (apparently) nascent tenure and/or prioritize the clarification, documentation, or other forms of delineation of certain tenure rights. For example:

> *"Pacific Island communities usually regard the traditional rights of ownership and access to resources as vital to their livelihoods, and indeed identity, and perceive that these are being eroded. Community based management may be seen as a means of re-asserting these rights."*
> – Govan et al. 2009[38]

Fisheries management and environmental conservation measures can (intentionally or unintentionally) override, marginalize, or reinforce existing tenure rights. Many approaches establish a novel tenure regime with substantial changes to how rights are allocated and experienced among people. In the most extreme examples, MPAs or marine reserves disenfranchise coastal communities, small-scale fishers, and Indigenous Peoples by preventing access to and use of coastal spaces.[38]

When tenure is viewed for a particular objective or ends (e.G., Management of fisheries resources) there is a tendency to focus only on a subset of rights.

When tenure is viewed for a particular objective or ends (e.g., management of fisheries resources) there is a tendency to focus only on a subset of rights (i.e., out of the full bundle), and bring a sharp focus to who does not hold rights, as much as who does. For example, tenure in fisheries "*defines who is a user and, therefore, who has a legitimate right to a resource and who does not.*" [21] Fishery management will "*focus on issues of access, harvesting and management itself – which involve use rights and management rights specifically*" (Figure 3).[84]

The illuminating Hidden Harvests study, a collaboration between the Food and Agriculture Organization of the UN, Duke University, and WorldFish, found that potentially "*most of the time, fishers have no say in decision making concerning various characteristics of access covered by the licenses, such as type of species, areas of operation, and when harvesting can take place.*"[40]

There is a range of contemporary conservation and management approaches and processes that are receiving substantial attention in the ocean and coastal policy and funding space. Below we surface some considerations, risks, and opportunities associated with each. We do not intend this to be an exhaustive list and comprehensive source; each of these approaches has a very rich literature of research and guidance.

"Most of the time, fishers have no say in decision making concerning various characteristics of access covered by the licenses, such as type of species, areas of operation, and when harvesting can take place."

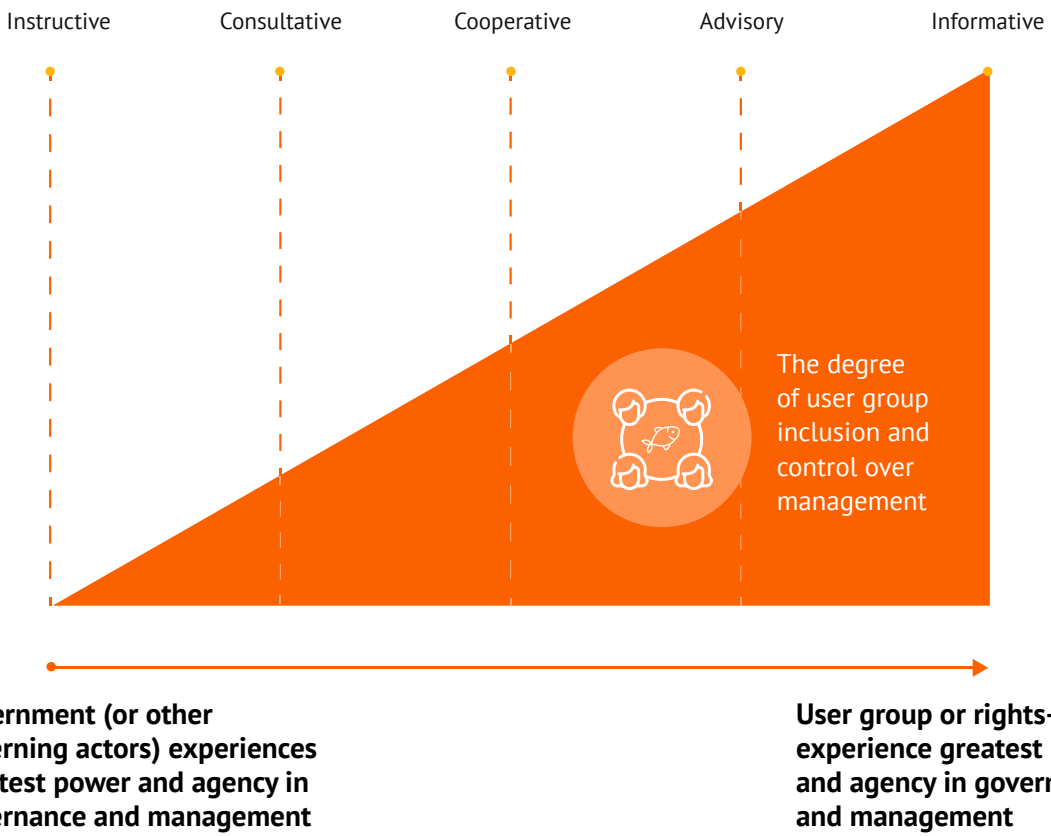
- Fao, duke university, worldfish, 2023

Community-based management is possible when tenure rights are already in place with any community group, or they are fully devolved (established or re-established) by governments to communities (right-hand side of Figure 2). Local communities lead in identifying, planning, implementing, and monitoring resource management activities that contribute to their own determined goals around sustainable use, livelihoods, food security, etc. Community-based management privileges and relies upon local knowledge, agency, and leadership.[41,42] If other actors recognize community-based management as legally and socially legitimate, then intact and active community-based management would correlate with tenure security.

Co-management or co-governance refers to the collaborative process of fisheries governance – a collaborative arrangement between management partners (most commonly a government body) who actively support, involve, and empower resource users and beneficiaries in designing, implementing, and regulating management arrangements.[43,44] Co-management is recognized and recommended by global fisheries commitments as the preferred strategy to achieve sustainability, food security, and other aspects of human wellbeing.[35] Co-management is distinctly different from centralized governance, which is where resource or area management is designed, implemented, and enforced by national or sub-national government agencies. In setting up for sharing responsibility and authority for management, the government may either recognize customary or traditional management rights, or delegate management rights to the community or another group (depending on how national laws recognize customary, traditional, or local governance and management rights (see Chapter 4)). The degree to which co-management partners exercise or experience power, authority, and responsibilities, in practice, varies substantially (Figure 2). Co-management may be a way in which existing tenure rights become better recognized and more secure through legal recognition of management plans. For example, in some instances one of the objectives of establishing co-management may in fact be to clarify and secure tenure claims.[45]

Figure 2

The relative roles, power, and agency of resource users or owners in coastal area or resource management. Co-management (or any other conservation or fisheries management measure) falls on a spectrum of governing responsibility and power. At one end is "instructive" management, where the government or other groups informs users and rights-holders on the decisions they plan to make. At the other is "informative" management, where the government delegates, or recognizes existing, authority of user groups or rights-holders to fully govern (i.e., community-based management (figure re-drawn from[46])), and where their 'upward' responsibility is simply to inform the government of the decisions taken and arrangement in place.



Other Effective area-based Conservation Measures (OECMs) are recognized as a complement to protected areas (PAs), in that they, whether intentionally or not, conserve biodiversity and potentially ensure governance and management rights are retained by local actors. An OECM is "*a geographically defined area other than a Protected Area, which is governed and managed in ways that achieve positive and sustained long-term outcomes for the in-situ conservation of biodiversity with associated ecosystem functions and services and where applicable, cultural, spiritual, socio–economic, and other locally relevant values*."[47]

While OECMs are considered a tool to achieve area-based and biodiversity targets (including the target to protect 30% of global lands and seas by 2030, or "30 by 30" – target 3 of the recently agreed upon CBD Global Biodiversity Framework), currently less than 0.1% of marine areas are designated as OECMs.[48] OECMs could be particularly relevant where communities have marine tenure rights that bestow them with the responsibility, legitimacy, and right to develop local fit-for-context solutions.[48] Yet, as with other policy tools, the design of OECMs is imperative. OECMs could be an opportunity to formalize, legitimize, and channel resources to customary tenure arrangements, but if they are poorly designed, they risk further marginalizing certain groups, reinforcing local power imbalances, or bounding fluid, adaptive traditional models to intentionally agreed upon areas that are difficult to change.

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Preferential Access Areas (PAAs) or Inshore Exclusion Zones (IEZs) are formally designated areas or zones of ocean space that extend from a shoreline to a specific depth or distance.[35] As such, PAAs are Category 1 (Government Administered) according to the Rights and Resources Institute's Spectrum of Rights (Figure 1). Establishing such areas is called for by Paragraph 5.4 of the SSF Guidelines[35] and would also be a notable contribution toward SDG14.b. In these areas, withdrawal and access rights are preferentially allocated to small-scale fishers, and large-scale fisheries (and potentially other uses or users) are excluded (the degree of preference and exclusion will depend on national interpretations, including in the law). A review of national laws, regulations, and policies on food, agriculture, and natural resources management revealed that of 185 coastal countries and territories (i.e., those with adequate data), there was evidence of PAAs in 39 countries.[49] The vast majority are in low-income and lower-middle income countries (where over 4% and 3% respectively of national waters were set aside as PAAs, compared to just under 2% for upper-middle income countries and less than 1% for high-income countries). The study found no evidence that management, exclusion, or alienation (i.e., transfer) rights were conferred to small-scale fishers through these arrangements, rather they only conferred access and withdrawal rights. However, securing access for small-scale fisheries was part of the explicitly stated goal for creating almost half of the PAAs. As PAAs only confer access and withdrawal rights, they are unlikely to offer fishers and other groups sufficient protection against escalating demands on ocean space (i.e., other than large-scale fisheries) and they do not, on their own, confer greater agency to Indigenous Peoples, coastal communities, or small-scale fisheries in ocean governance.

Catch shares are a contemporary fisheries management or conservation measurethat may relate to and interact with use rights. However, "*a total allowable catch (TAC) is a conservation control but not a use right, since setting a TAC makes no statement about the rights to catch the fish.*"[39] If a TAC is divided into shares or quotas, then these shares represent a form of withdrawal right as in their allocation to individual fishers, or groups (e.g., cooperatives or communities), and those groups then hold the right to harvest up to that amount.[39] Catch shares or quotas are most often applied to single (or few) species fisheries in high income

countries and administered by a central authority. Conversely, they are less prominent in low-income countries or in multi-species small-scale fisheries. The governance and allocation of catch shares can be done in ways that recognize historical use and existing tenure rights. In these instances, for example, rights-holders might be preferentially allocated catch shares and quotas. Chapter 4 presents some examples of laws that ensure preferential allocation of catch shares to Indigenous Peoples and/or other rights-holders.

Territorial Use Rights for Fisheries (TURFs) are clearly defined geographic areas in which individuals or a collective group has the right of exclusion (to limit or control access to the territory), the right to determine the amount and kinds of use, and the right to extract benefits.[50] TURFs can be formal or informal, and in theory incorporate customary marine tenure rights.[50] In practice, however, the term is more regularly associated with arrangements in Chile, Mexico, and in Japan, where it usually refers to formal co-management arrangements in well-defined *marine* areas. The literature tends to overlook the concept of TURFs being implemented as temporary measures, in inland contexts, or in association with customary tenure.[51] A recent global study found that 15 out of the 63 tenure systems identified had previously been classified as TURFs in the literature, and for these, the right of access, withdrawal, management and/or exclusion were evident (see Appendix 1).[52] TURFs have led to the formalization of some aspects of customary marine tenure, while also introducing or overlaying Western fisheries management strategies (e.g., the Comcáac Indigenous Territory in the Gulf of California, Mexico).[52] In some places, however, TURFs have overshadowed and interfered with Indigenous tenure (e.g., in Chile).[51]

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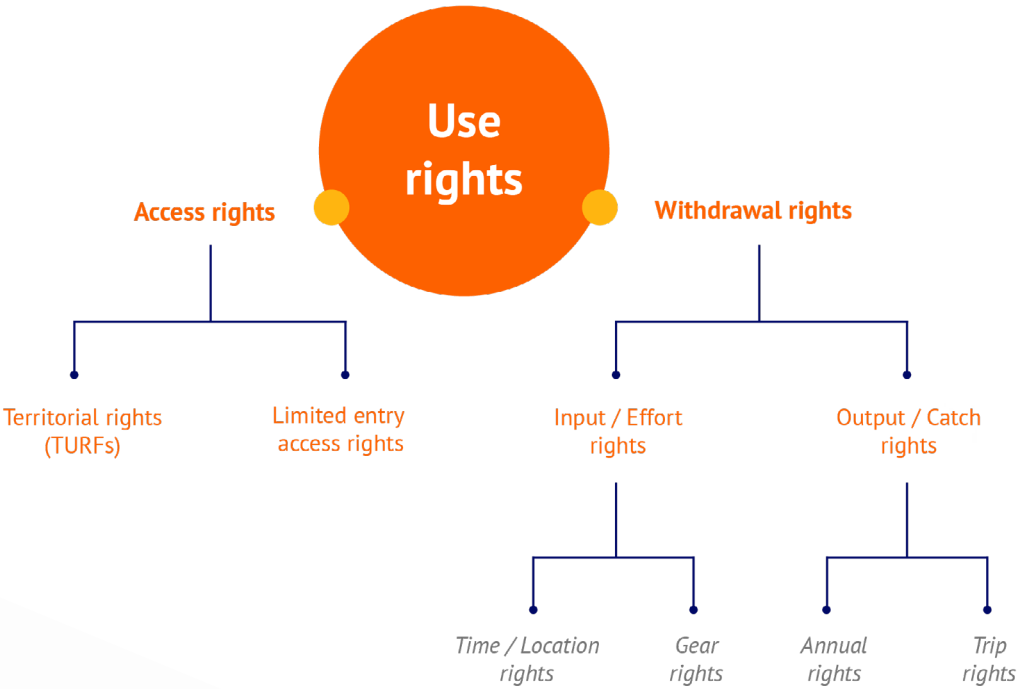
Figure 3

The use rights (just two of the full bundle of rights illustrated in Figure 1) that are frequently the focus of fisheries management and conservation approaches (adapted from Charles 2002),[39] and how they sit among the more complete bundle of rights.

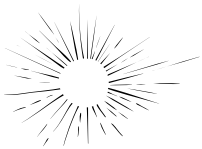


A **PA is** "*a clearly defined geographical space, recognized, dedicated, and managed through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values.*"[53] Unlike OECMs (which can incidentally conserve biodiversity), protected areas require an explicit objective of conservation.[54] "Protected Areas can be top-down" (i.e., created by government/conservation NGOs) or bottom-up (i.e., enlisted by local communities, often called "community-based" or "voluntary"). Marine protected areas (MPAs) can overlap with, border, encompass, or within areas under local, traditional or customary tenure. The establishment of (especially community-based) protected areas may be able to strengthen tenure claims. Conversely, poorly designed top-down protected areas can displace people and fishing effort, leading to ineffectiveness, conflict, and socioeconomic disturbances that can act to degrade community resilience.[55,56] Large, powerful entities that create protected areas may choose to ignore or simply not know about existing local or customary marine tenure, further marginalizing vulnerable groups from resources, livelihoods, and culture.[57,58] Communities that are unable to adapt (i.e., have limited spatial, gear, or occupational mobility) face the most dire consequences.[32]

Large, powerful entities that create marine protected areas may choose to ignore or simply not know about existing local or customary marine tenure, further marginalizing vulnerable groups from resources, livelihoods, and culture.

Planning processes impacting coastal areas and resources

There is a range of contemporary and legally framed processes through which tenure may be clarified, described and bolstered, or overlooked, overridden and undermined. These include coastal zone mapping (CZM) and marine spatial planning (MSP), which are decision-making processes and tools that are increasingly used to organize different sectors, uses, and users in the ocean space in a sustainable manner.



"Marine spatial planning [and CZM are] *practical strategies to manage multiple uses, but there are risks in how* [processes and] *spatial allocation plays out politically. These risks include marginalization of small-scale fishers from decision processes, and in the allocation of space for tourism and conservation. Technical or evidence-based approaches are valuable to planning yet can be* [deliberately or inadvertently] *misused."*[24]

For example, the concerns fishers raised that customary and traditional areas had not been included on CZM maps (that instead were mapped as being "unused" or "unowned" areas that were ripe for development) were repeatedly ignored despite representations by fishers' federations in India.[59] Inclusive and effective MSP and CZM will require that tenure and rights are well understood, and rights-holders are included in the process. Well-drafted MSP laws can ensure that genuinely participatory or inclusive planning processes are enforceable, effective, and conducted in a participatory manner. In addition to general provisions related to public participation, MSP laws can include language that requires that coastal dependents, customary rights-holders, and/or traditional users are not merely consulted but are fully engaged in the drafting of the marine spatial plan to ensure that their rights are met (see Appendix 2; also see Environmental Law Institute's "Designing Marine Spatial Planning Legislation for Implementation: A Guide for Legal Drafters.")[60]

Key Insights

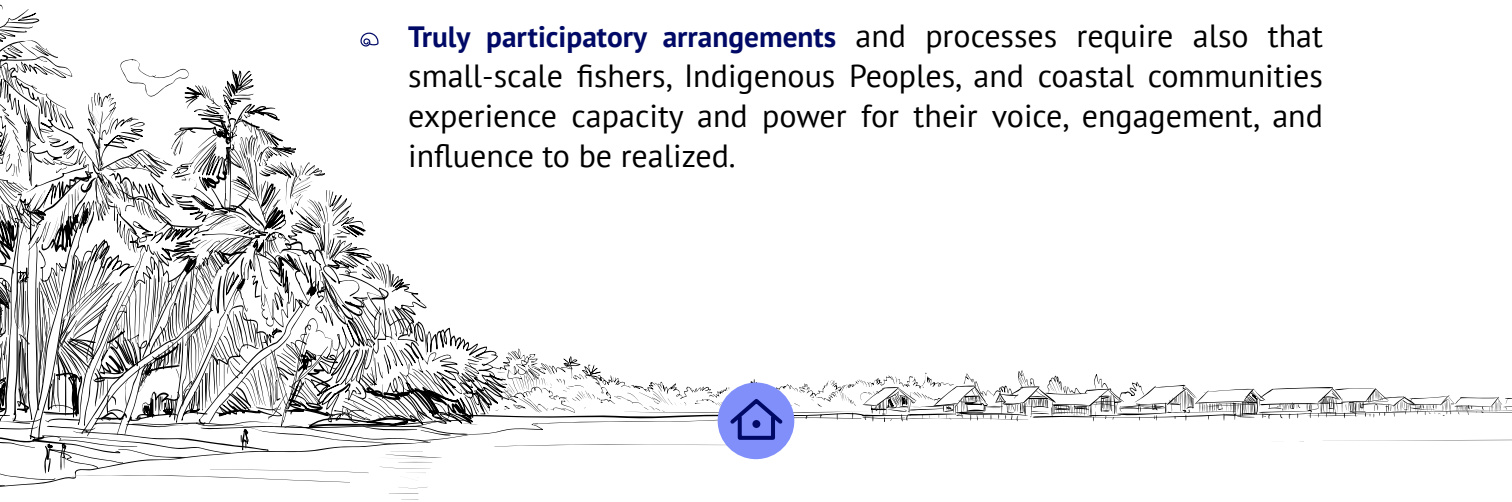
- **Marine and coastal tenure rights** extend further than fisheries management or conservation arrangements but are frequently foundational, preceding, or emergent with those measures.

- **Inclusive fisheries** management and conservation arrangements do not, on their own, necessarily confer greater agency to Indigenous Peoples, coastal communities, or small-scale fisheries in ocean governance.

- **Poorly designed** fisheries management and environmental conservation measures can overlook and override existing tenure rights and marginalize rights-holders from areas, resources, and decision-making processes.

- **Well-designed fisheries** and conservation measures and associated planning processes go above and beyond "participation" or "consultation," and recognize existing rights and knowledge, enable co-creation of new knowledge and responses, and bolster management rights of rights-holders, while adding durability, security, and robustness.

- **Truly participatory arrangements** and processes require also that small-scale fishers, Indigenous Peoples, and coastal communities experience capacity and power for their voice, engagement, and influence to be realized.



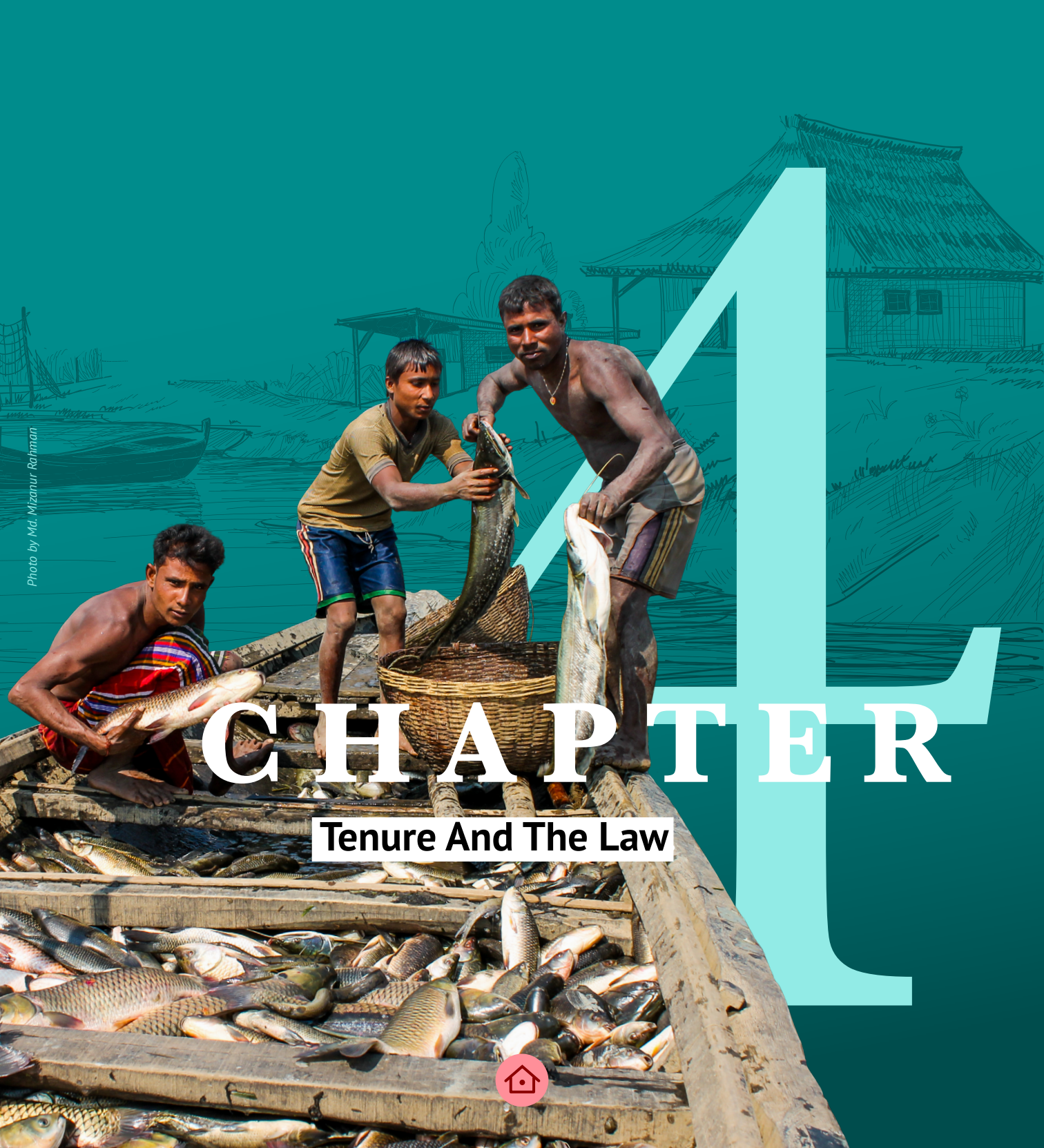


Photo by Md. Mizanur Rahman

CHAPTER 4

Tenure And The Law

This chapter summarizes analysis prepared by the Environmental Law Institute that examines how marine tenure and, in particular, the rights of Indigenous Peoples and local communities are treated in the law 2). By describing various levels of tenure (in) security in various national contexts, we identify a few pathways that, together with local participation, may strengthen tenure in coastal communities.

We analyzed constitutions, national laws, and regulations (and some local laws) from Pacific Island countries and territories, Asia, Latin America and the Caribbean, Europe, Northern Africa, and Sub-Saharan Africa. Given the volume of legal instruments addressing marine tenure and the fact that this is a general overview, this chapter does not contain information about marine tenure in every single country. Instead, the analysis focuses on commonalities and some key distinctions observed in different regions and provides examples of marine tenure arrangements in those regions (see regional summaries below). Six case studies discuss in greater detail the marine tenure arrangements in the Papua province of Indonesia, Belize, Colombia, Guatemala, Guyana, and Panama (Appendix 2).

Countries' laws vary significantly regarding the clarity and detail they provide about marine tenure arrangements.

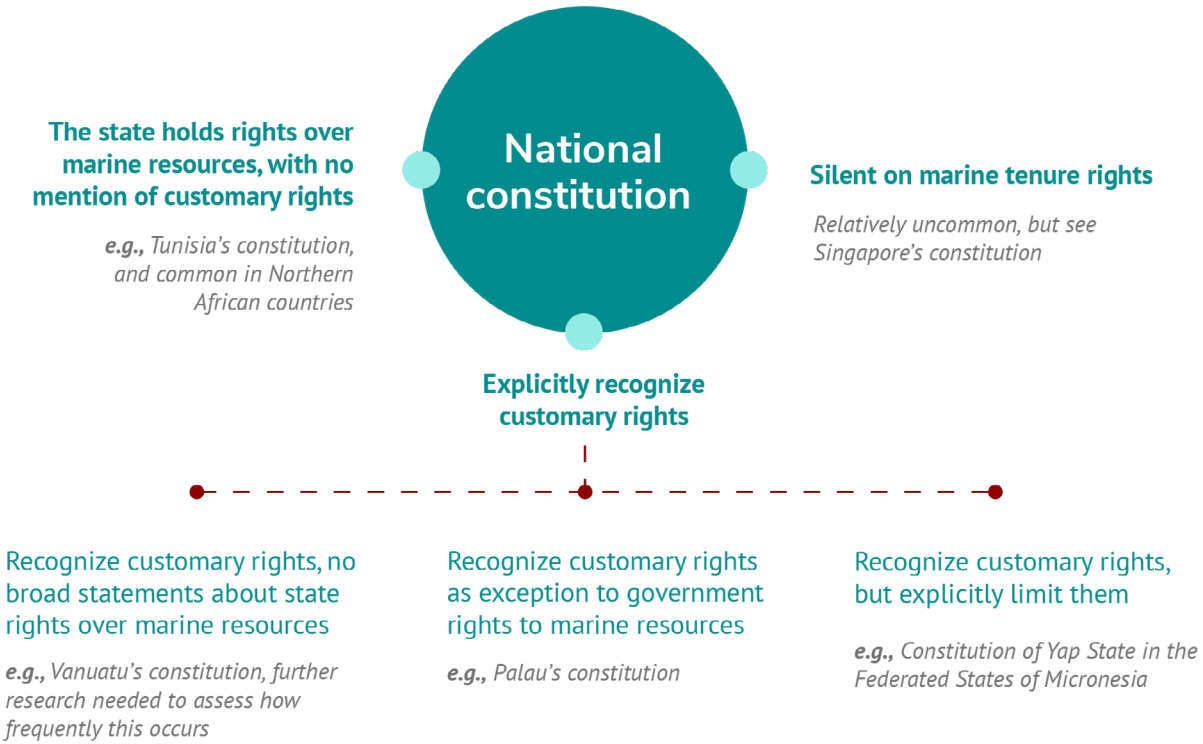
Marine tenure appears in the law in many forms. Reference to the rights of Indigenous Peoples and local communities (e.g., through terms such as customary rights, customary use, traditional use, historical use, etc.) can include rights to marine spaces, resources, and customs, even if not explicit. General recognition of customary rights is common around the world, with the exception of Northern Africa.[ii] Language about ownership can also indicate marine tenure. In some national laws, it is made clear that the state owns, and thus holds all tenure rights to, all natural resources. Without further elaboration or exceptions, this tends to indicate a top-down natural resource management system and the absence of formal coastal tenure. Alternatively, the law (usually national statutory law) may devolve certain tenure rights to certain groups or describe various legal tools/processes to claim certain tenure rights.

Of particular importance is the language in the constitution. These are the fundamental principles that govern a country, and they require substantial political, social, and bureaucratic effort to change. We found five ways in which national constitutions can address marine tenure (Figure 4). Note that even when customary rights are recognized in national constitutions, further action and arrangements are required for rights-holders to fully understand, experience, and protect their rights. Additionally, if customary rights are not recognized in the constitution, they can still be codified in statutory law.

ii. Our research has revealed that constitutions in Northern African countries did not mention customary, traditional, or Indigenous rights.

Figure 4

Ways in which constitutions address marine tenure, customary rights, and governments' rights to marine areas and resources.



Our research revealed that countries' laws **vary significantly regarding the clarity and detail** they provide about marine tenure arrangements. Some laws only contain vague references to rights; others contain provisions describing those rights in greater detail and setting forth various processes that secure and protect the rights (Box 1).

Box 1

Types of details provided in legal provisions. that have the potential to strengthen marine security

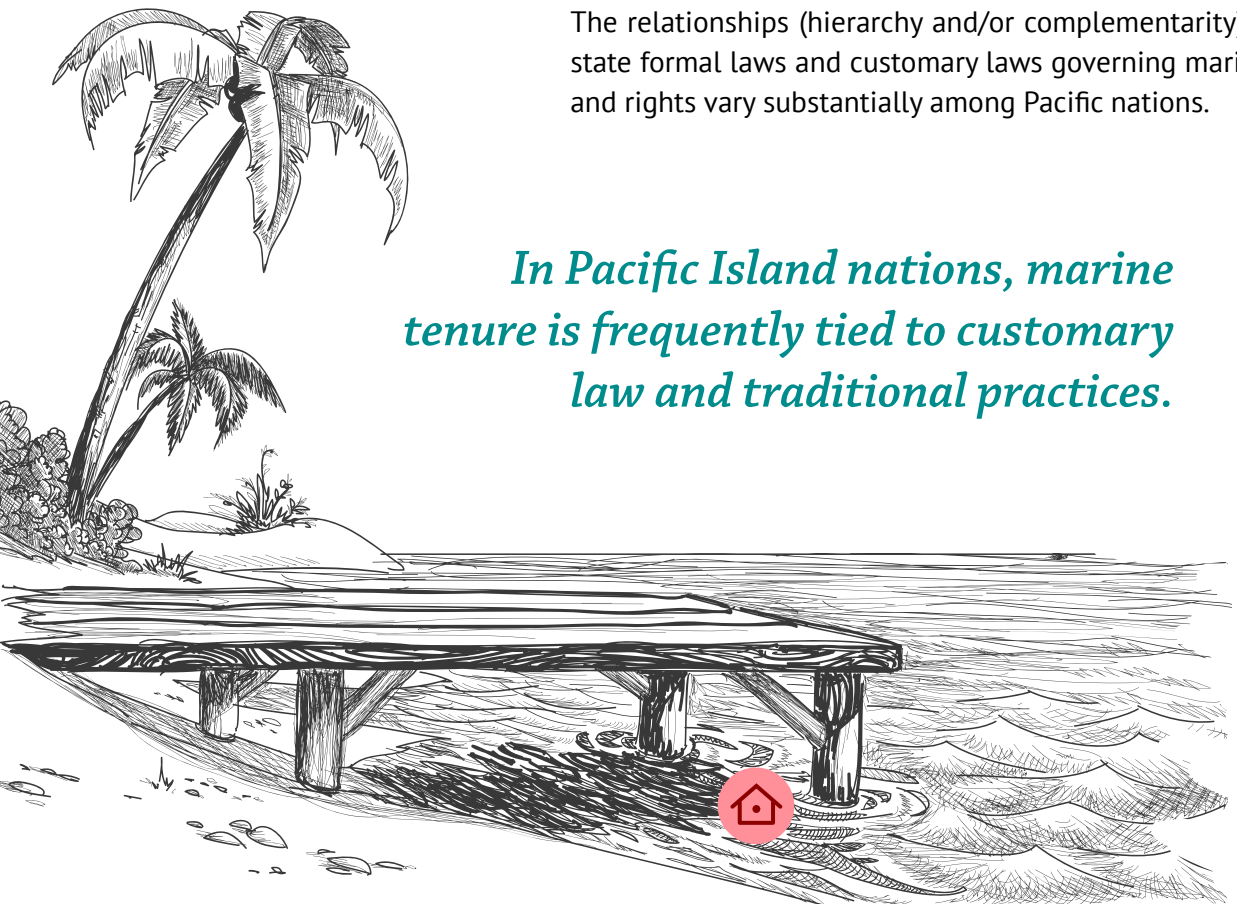
- **Who** holds tenure rights (what are the characteristics of or prerequisites for groups or individuals, or the process for identifying rights-holders).
- **How** tenure is acquired, such as through birth or membership in a specific organization, and whether there are procedural requirements, such as registration.
- **Whether** there is a limitation on the length of tenure.
- **Which** particular tenure rights exist (e.g., access, withdrawal, exclusion of users, transferability/alienation, management, and enforcement).
- **What** the obligations or responsibilities of tenure rights-holders are, if any.
- **Location** of the area where tenure rights are held, who decides that location, and how (whether there is a land/marine resources connection).
- **What** help or responsibilities, if any, the government is obliged to provide with regards to tenure rights (e.g., enforcement of rules, support with conflict resolution where claims are competing).
- **How,** and with what level of detail, customary tenure rights will be ascertained, recorded, and registered, and issuance of titles.
- **How** areas to which rights apply will be recorded, mapped, or demarcated.
- **What** processes and mechanisms are available to individuals or groups to appeal decisions made with regard to their rights and to address conflicts related to their rights.

In the laws we examined, **references to customary, traditional, and/or Indigenous marine tenure rights are** quite common. Yet, there is substantial difference in the level of details provided about these rights and about the existence of mechanisms that protect them. Creation of such mechanisms would ensure accurate identification of rights and rights-holders, demarcation of borders within which there are rights, registration of rights, appeal process, receipt of titles, process to resolve conflicts, and process to enforce. In some cases, legal language may be vague or confusing with regard to whether the community or the government has certain rights. Clarification of such language would be important to ensure that communities' rights are protected, and all parties know and act according to their responsibilities (see Environmental Law Institute's "Law and Governance Toolkit for Sustainable Small-Scale Fisheries.")[61]

National laws of many nations refer to customary, traditional, and/or indigenous marine tenure rights.

Marine Tenure In Pacific Island Nations

In Pacific Island nations, marine tenure is frequently tied to customary law and traditional practices, and customary marine tenure was likely "*the norm in most coastal communities*" in the Pacific Islands, "*with the exception of perhaps the relatively few areas where marine resources did not play an important role in life.*"[37] The relationships (hierarchy and/or complementarity) between state formal laws and customary laws governing marine tenure and rights vary substantially among Pacific nations.



In Pacific Island nations, marine tenure is frequently tied to customary law and traditional practices.

Many countries recognize customary rights and laws for communities in their constitutions. For example, Palau protects customary fishing rights in the constitution with no apparent exception: "*[e]ach state shall have exclusive ownership of all living and non-living resources…provided, however, that traditional fishing rights and practices shall not be impaired.*"[iii] Yap State similarly protects and privileges customary rights, with an exception: "*[n]o action may be taken to impair these traditional rights and ownership, except the State Government may provide for the conservation and sustainable development of natural resources . . .*."[iv] Many countries vest ownership and control over marine resources to the government, while allowing for customary rights with more limits. In addition to constitutional recognition, customary rights are recognized by some countries in their statutory and local laws (e.g., in Fiji,[v] Kiribati,[vi] Tuvalu, [vii] and Solomon Islands.[62])

Many countries have mechanisms (sometimes in addition to or lieu of reference to traditional or customary rights) that enable governments and communities to share management responsibilities over fishing areas and the resources therein; these include descriptions of *Village Fisheries Management Areas* in Samoa,[viii] *Special Management Areas* in Tonga,[ix] *Locally Managed Marine Areas* in Papua New Guinea,[x] and in Solomon Islands, a *Community Fisheries Management Plan* "that relates to a '*customary rights area or areas*.'"[xi]

iii. Palau's constitution at §2. | **iv.** Yap constitution, Art. XIII, § 5. | **v.** Fiji. Fisheries At 1941, § 13. | **vi.** Kiribati. Fisheries Act 2010, § 18. | **vii.** Tuvalu. Laws of Tuvalu Act 1987, Schedule 1. | **viii.** Samoa. Fisheries Management Act 2016, § 19. | **ix.** Tonga. Fisheries Management Act 2002, §§ 13-16. | **x.** Tuvalu. Conservation Areas Act 1999, § 9. | **xi.** Solomon Islands. Fisheries Management Act 2015, § 2.

Other rights communities may possess are:

- **exclusive rights,** see Tuvalu[xii]
- **preferential use rights** to marine resources, see Kiribati[xiii]
- **rights to exclude** others, see Solomon Islands[xiv]
- **rights to participate** in management committees, see Tonga[xv]
- **rights to participate** in the development of by-laws, see American Samoa[xvi]
- **enforcement rights** are rarely provided for in the law, but see, for example, Tiaki Ra'ui enforcing Ra'ui Management Plans in Cook Islands.[xvii]

While laws in the Pacific Islands region frequently mention customary laws or rights, often they do so without describing (a) a procedure that would allow one to ascertain what those rights might entail and how eligibility is determined, and (b) a mechanism for customary rights-holders to appeal government decisions or enforce their rights.

xii. Tuvalu. Laws of Tuvalu Act 1987, Schedule 1. | **xiii.** Kiribati. Fisheries Act 2010, § 18. | **xiv.** Solomon Islands. Fisheries Management Act 2015, § 2. | **xv.** Tonga. Fisheries (Coastal Communities) Regulations 2009, §§ 5, 6. | **xvi.** American Samoa. Regulations, Title 24, Ch. 10 (Community-Based. Fisheries Management Program), § 24.1006. | **xvii.** Cook Islands. Environment (Atiu and Takutea) Regulations 2008, § 22.

Photo by Pip Cohen

A reef under customary tenure in Solomon Islands with a traditional market that signals the reef is closed to fishing.

Marine Tenure In Asia

There is substantial variation in the degree to which Asian nations recognize marine tenure.[63] Ownership of marine resources, exclusion of users, as well as the creation and enforcement of laws and regulations, typically remain with the state (see expanded statements from often Maldives, China, and Oman in Appendix 2). South Korea's constitution, for example, does not claim state *ownership* but does claim management rights over natural resources, with the ability to grant licenses to "*exploit, develop or utilize . . . marine resources, . . . for a period of time as prescribed by law.*" [xviii]

There is substantial variation in the degree to which asian nations recognize marine tenure.

xviii. Republic of Korea Constitution of 1948 with Amendments through 1987, Art. 120, https://www.constituteproject.org/constitution/Republic_of_Korea_1987.pdf?lang=en

There is increasing prevalence (via decentralization agendas) of local and Indigenous ownership and management rights being reflected in laws, particularly in Southeast Asia.[64] Marine tenure rights that belong or devolve to groups most commonly involve access, withdrawal, management rights, and (relatively rarely) enforcement rights.

Where constitutions do recognize customary laws, there are likely potential or actual limitations on those rights. For example, the Philippines' constitution "*recognizes and promotes the rights of Indigenous cultural communities within the framework of national unity and development.*"[xix] The constitution further requires that the state protects such "*rights of Indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.*"[xx] However, it also states that "*Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.*"[xxi] Further analysis of statutory laws and regulations would be needed to assess the extent to which customary rights are experienced and by whom.

xix. Constitution of the Philippines (1987), Art. II, §22, constituteproject.org/constitution/Philippines_1987?lang=en. | **xx.** Constitution of the Philippines (1987), Art. XIII, §6 | **xxi.** Constitution of the Philippines (1987), Art. XIII, §6

Marine Tenure In Latin America And The Caribbean

Most written regulations of marine and coastal resources in Latin America and the Caribbean suggest a top-down approach, namely, the state, by default, holds rights but provides mechanisms for groups (of Indigenous Peoples, local communities, and fishing associations/cooperatives) to apply for access, use, and (in some cases) management rights to areas and resources. While in many countries in this region national laws recognize rights of Indigenous Peoples, their rights to marine resources (specifically) are often not specified, or mentioned at all.

Most written regulations of marine and coastal resources in latin america and the caribbean suggest a top-down approach.

To attain rights, groups are commonly required to make a formal application, develop a management plan, and meet certain demographic, residence, or historical use requirements. For example, fishing associations in Costa Rica and Belize may apply to co-manage particular areas.[65][xxii] In Ecuador, the law stipulates that, before receiving a 10-year concession for sustainable use, ancestral communities and traditional users must partner with a public institution, NGO, or a consultant to prepare a management plan of their traditional mangrove habitat.[xxiii] Coastal Indigenous communities in Brazil and Colombia can apply for the exclusive right to access, withdraw, and manage resources in their territories (which can include aquatic and coastal zones).[xxiv] In addition, people of Afro-Colombian descent have collective rights to access, withdraw, and manage "barren lands [or "land of black communities"] located along the riverbanks in rural riparian areas of the Pacific Basin." [xxv]

In addition, countries may protect or privilege access rights of small-scale fishers through PAAs. For example, Colombia has an Exclusive Artisanal Fishing Zone in Chocó Province.[xxvi] In Ecuador the area between two and eight nautical miles from the shoreline is reserved for artisanal fishing (the first nautical mile from the shoreline is a nursery area in which all fishing activities are prohibited).[66]

xxii. Belize. National Biodiversity Strategy and Action Plan (2016-2020) | **xxiii.** Ministerial Agreement 129, 2010. | **xxiv.** Brazil. Law No. 9.985, Art. 18; Colombia. Decree No. 2333 of 2014. | **xxv.** Colombia. Law No. 70 of 1993 | **xxvi.** Colombia. Resolution No. 2724 of 2017

Marine Tenure In Europe

Marine tenure rights in Europe predominantly extend to access and withdrawal (typically obtained through licenses and permits), and occasionally management rights. Ownership of marine resources, management of resources, exclusion of users, and enforcement of laws generally remain with the state.

A very few constitutions including in France, Greece, Russia, and Spain recognize customary law, traditional, or Indigenous rights;[xxvii] The laws we examined rarely provide coastal communities, small-scale fishers, or Indigenous Peoples with exclusive or preferential rights over resources (but see examples in Chapter 3). In the laws we examined ,we found Norway recognizes marine tenure rights (codifying preferential access) of traditional users (i.e., historical use), stating that *"village associations that have fished with permanent fishing from ancient times shall have the right of way to such fishing over others."*[xxviii] Recognition of the marine and coastal tenure rights of the Indigenous People of Norway, Finland, and Sweden are to be found in other laws that we did not examine here.

xxvii. France. Constitution, Art. 77. | **xxviii.** Norway. Act No. 31 relating to the exploitation of rights and entitlements in state commons (the Mountain Act), Sec. 28

Marine tenure rights in europe predominantly extend to access and withdrawal (typically obtained through licenses and permits), and occasionally management rights.

Russia is also a striking exception – the law of the "*Russian Federation on Guarantees to Indigenous Small-Numbered Peoples*" protects independent ethnic communities (which it states are fewer than 50,000 people) who are "*living on the territories of traditional settlement of their ancestors, preserving traditional ways of life, economy and trades.*"[xxix] Under the law, these Indigenous Peoples have (seemingly unrestricted) rights to use *"the lands of various categories necessary for the implementation of their traditional economic activities and traditional trades,"* as well as to *"participate in managing the use of lands of various categories required for traditional economic activities and traditional trades."*[xxx]

xxix. Russian Federation. Federal Law No. 82-FZ on Guarantees to Indigenous Small-Numbered Peoples of the Russian Federation, 1999, Art. 1. | **xxx.** Russian Federation. Federal Law No. 82-FZ on Guarantees to Indigenous Small-Numbered Peoples of the Russian Federation, Amended 2008, Art. 8.

Marine Tenure In Northern And Sub-Saharan Africa

In countries of Sub-Saharan and Northern Africa, marine tenure rights predominantly involve access, withdrawal, and sometimes management rights. Ownership of marine resources, management of resources (for the most part), exclusion of users, and enforcement of laws frequently remain with the state.

In Sub-Saharan Africa, governments generally have the power to manage marine resources, but multiple constitutions also recognize customary law (albeit with actual or potential limitations on rights). For example, Namibia's constitution states that customary law is recognized to the extent it does not contradict the constitution or any statutory law, and that *"any part of such customary law . . . may be repealed or modified by Act of Parliament."* [xxxi] Namibia's constitution also states that *"natural resources . . . within the territorial waters"* belong to the state *"if they are not otherwise lawfully owned."* [xxxii] Thus, if marine resources are already owned by customary rights-holders, it appears that ownership would continue (unless it is limited or repealed by laws). However, the state holds the power to manage resources.

In countries of sub-saharan africa, marine tenure rights predominantly involve access, withdrawal, and sometimes management rights.

xxxi. The Constitution of Namibia, Art. 66. | **xxxii.** The Constitution of Namibia, Art. 100.

There are multiple examples of preferential protection of traditional access and withdrawal rights. Sierra Leone's law states that *"[n]o person shall, by carrying out aquaculture activities, deprive a local community of its traditional access to fishing grounds without good cause."*[xxxiii] Punishment for committing such an offense can carry a fine or a term of imprisonment, as well as restoration of local community's traditional access.[xxxiv,xxxv] Some countries, including Liberia,[xxxvi] and Mozambique[xxxvii] have areas reserved for subsistence, artisanal and/or small-scale fishers (as well as scientific research, recreational and sport fishing in the case of Mozambique). [xxxviii] In the case of Liberia, there is an option for an adjacent community whose members have had traditional/historical use to apply for co-management rights.[xxxix]

In addition to recognition of customary rights, there are many examples in this region where rights to access and withdraw marine resources are granted through licenses or permits (including with preferential access), quotas or shares (e.g., in Angola, Ghana, Namibia, Sierra Leone and South Africa),[xl] and creation of designated areas for communities or groups (e.g., in Gambia, Mozambique, Sierra Leone, and South Africa).[xli] Cooperatives and other entities are sometimes given marine tenure rights.

xxxiii. Sierra Leone. Fisheries and Aquaculture Act, 2018, Art. 53. | **xxxiv.** Sierra Leone. Fisheries and Aquaculture Act, 2018, Art. 53. | **xxxv.** South Africa. Marine Living Resources Amendment Act, 2014 (No. 5 of 2014), Sec. 19. | **xxxvi.** Liberia. Fisheries and Aquaculture Management and Development Law of 2019, Art. 3.2. | **xxxvii.** Mozambique. Fisheries Law No. 22, 2013. Art. 27. | **xxxviii.** Mozambique. Fisheries Law No. 22, 2013. Art. 27. | **xxxix.** Liberia. Fisheries and Aquaculture Management and Development Law of 2019, Art. 3.2. | **xl.** See Namibia, Marine Resources Act, 2000; South Africa, Sea Fishery Act 1988 (No. 12 of 1988); Angola, Law No. 6-A/04 on Aquatic Biological Resources; Ghana, Fisheries Act, 2002 (Act No. 625 of 2002); Sierra Leone, Fisheries and Aquaculture Act, 2018 (No. 10 of 2018), Art. 10. | **xli.** See Gambia. Fisheries Act, 2007, Art. 14; Mozambique, Fisheries Law No. 22/2013, Art. 20; Sierra Leone, Fisheries and Aquaculture Act, 2018 (No. 10 of 2018), Arts. 1, 3; South Africa. Marine Living Resources Amendment Act, 2014 (No. 5 of 2014), Sec. 19 and Marine Living Resources Act: Regulations relating to small-scale fishing (No. 229 of 2016), Sec. 2(6).

While reference to (a restricted set of) customary and traditional rights are relatively common in this region, descriptions of rights, what they entail, how rights are ascertained and registered, and the mechanisms to appeal decisions or resolve conflicting claims are frequently vague or absent.

Northern Africa (specifically constitutions of Algeria, Egypt, Libya, Morocco, Sudan, and Tunisia) have no mention of customary law, traditional rights, or Indigenous rights. Natural resources in these countries belong to all the people, are held as public property, and are managed by the government "in the name of the people"[xlii] (Tunisia) or the "national community"[xliii] (Algeria). Marine tenure rights in Northern Africa are the least (constitutionally) recognized and the least secure among all the regions we have examined. Northern Africa appears to have the lowest and least frequent constitutional recognition of local tenure rights.

Marine tenure rights in northern africa are the least (constitutionally) recognized and the least secure among all the regions we have examined.

xlii. Tunisia's Constitution, Art. 13. | **xliii.** Algeria's Constitution, Art. 19.

Key Insights

- **Recognition of rights** in the law can confer greater security of rights for different people and groups - yet the experiences of tenure security will depend substantially on how these laws are applied in practice.

- **In national constitutions,** laws, and regulations, references to customary, traditional, and/or Indigenous rights are common, but not universal. Yet, laws vary significantly regarding clarity and detail about the nature of marine tenure arrangements and rights, and the mechanisms to protect them.

- **Customary marine tenure** and customary law are well recognized and even privileged in the laws of many Pacific Island nations. Whereas in others the state must devolve rights (based on conditions) to communities through novel tenure arrangements.

- **The state tends to regulate** marine and coastal resources in Latin America and the Caribbean, but provides mechanisms for groups (of Indigenous Peoples, local communities, and fishing associations/cooperatives) to apply for access, use and (in some cases) management rights to areas.

- **Very few constitutions** in Europe recognize customary rights.

- **In Sub-Saharan Africa,** many constitutions recognize customary rights, and additionally grant rights through licenses or permits, quotas, or shares, and creation of designated areas for communities or groups.

- **In some countries** (particularly Northern Africa) the state legally owns all natural resources, with no apparent parallel rights systems.

CHAPTER 5

Tenure, Gender, And Women's Tenure Security

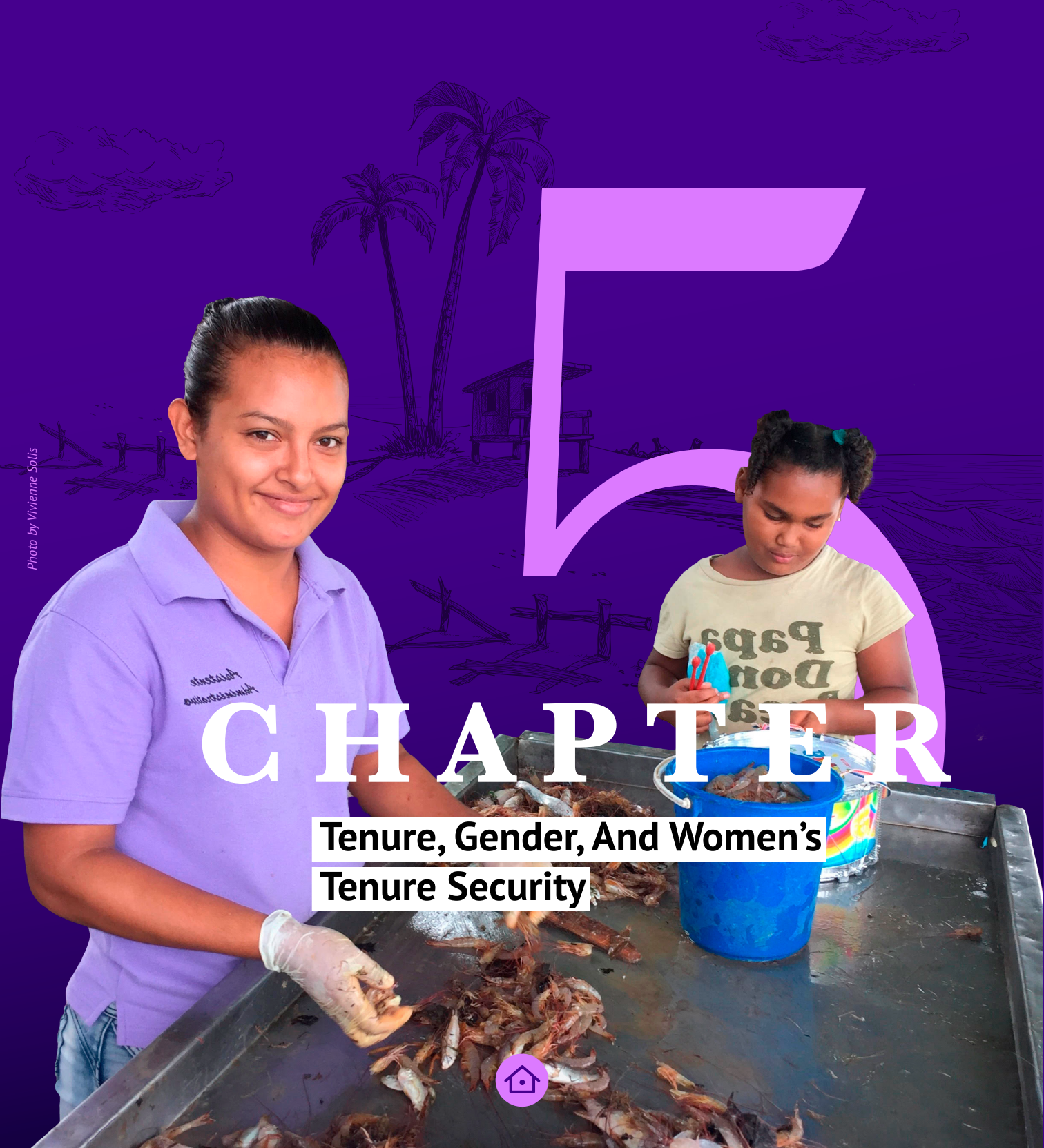


Photo by Vivienne Solis

Gender equality and equity are key to achieving global sustainability goals and are outcomes of, and precursors for,, for an "ecologically safe and socially just space."[67,29] Gender equality is achieved when all people experience equal rights, responsibilities, and opportunities no matter their gender. Yet, data repeatedly reveal that in many contexts, women experience lower recognition, voice, agency, and opportunity than their male counterparts. In response, two Sustainable Development Goals (SDG 2.3 and 5.A) focus on empowering women with regards to tenure, and other SDGs (e.g., 1.4) strongly signal the need to recognize gendered and other forms of equity (see Table 1).

In addition to the intrinsic value of pursuing gender equity (i.e., justice and fairness as outcomes in and of themselves), gender equity has a range of instrumental values (i.e., to achieve or enhance economies, environmental conditions, and fisheries improvements).

- **Equitable engagement** of women, as well as men, in natural resource governance can enhance social and environmental outcomes,[68,69] including food security[70] and the effectiveness of resource management interventions such as MPAs.[71]

- **If women were to gain equal access to land**, technology, financial services, education, and markets in rural areas as men, the resulting increase in agricultural production (estimated by the Food and Agriculture Organization) would reduce the number of hungry people by 100–150 million.

- **Women's empowerment** is a recognized pathway to improve nutrition, as well as child and maternal health.[72]

Research on the gendered elements of land tenure (e.g., ownership, power in decision making, and access to, use of, and control over land as an asset) is a solid body of research.[73,74] A common finding across diverse social and geographic contexts is that women (compared to men) experience less control over, and ownership of, productive assets (including, but not limited to, land, natural resources, and finance).[75] In any group of rights-holders, different people will experience rights and responsibilities associated with marine and coastal tenure differently. These differences are frequently observed to be based on gender, but can also be based on migrant status, marital status, age, kinship group, ethnicity, or social or economic standing.

It is reasonable to expect that the gendered dimensions of land tenure may also be observed in tenure of coastal lands and waters. But in comparison to research on terrestrial systems, there is a relatively small body of work on the gendered aspects of marine and coastal tenure. Findings include that decision-making in small-scale fisheries tends to be gender-imbalanced, with men's concerns, voices, and priorities more strongly reflected in management and conservation decisions.[71] With regards to marine rights, (most) gender research tends to focus on access and withdrawal, finding there are marked gender differences in areas fished, gear used, and species caught.[76] If these gendered differences are not accounted for as tenure systems and rights are used and changed (for example, in the establishment of management tor conservation measures) women's or men's access and withdrawal rights (at least) may be differentially bolstered or diminished.

The human rights perspective on ocean and coastal tenure also recognizes that customary, traditional, local, or novel tenure systems that pertain to specific groups will almost inevitably reflect an "*uneven distribution of fishing rights. [And] even within the 'in-group' of who is allowed to fish, rights may be unequally distributed. Women's rights may be ignored or constrained, certain races, religions, or socio-economic classes may be favored for group membership.*" (Song et al., 2019)[77] Therefore in many contexts there there is a need to prioritize "*the rights and participation of vulnerable and marginalized communities over and above other groups.*"[78]

"Even within the 'in-group' of who is allowed to fish, rights may be unequally distributed. Women's rights may be ignored or constrained, certain races, religions, or socio-economic classes may be favored for group membership."

- Song et al., 2019[77]

Women and men also experience substantially different voice, agency, and efficacy in their management rights. In the Philippines, this played out to the extent where MPAs were considered to be just men's business.[71] Where engagement processes have been inequitable (i.e., the interests and needs of marginalized resource users are underrepresented), women have lost access and withdrawal rights to fishing grounds to which they held traditional rights. This has happened in instances, for example, of poorly designed no-take reserves.[79] While contemporary management and conservation efforts might seek to work in sync with local governance and tenure systems, in doing so they can inadvertently amplify existing inequalities, further exacerbating marginalization of many to also further empowering local elites.

"Customary governance systems are not always inclusive and accountable but are sometimes highly unequal with regard to gender and corrupted by local elites. They are often flexible and evolve continuously to respond to changes in political, social and environmental circumstances."

- Fao, 2019[5]

Gender can be a determinant of who can transfer, and who benefits from, the transfer of a subset of rights or full ownership of an area under tenure. In some contexts, land and marine tenure rights are inherited. These inheritance and descent systems can be matrilineal (i.e., where property and kinship pass through the female members of a group) or patrilineal (i.e., where property and kinship pass through the male members of a group). Within any single country, multiple descent systems can operate simultaneously (e.g., Solomon Islands and Papua New Guinea). However, research has challenged the common assumption that matrilineal descent systems transmit greater decision-making power to women. In practice it has been found that irrespective of inheritance systems, men tend to act as negotiators and spokespeople in decisions related to use, management, and transformation of marine and terrestrial areas and resources.[19,80,73]

While there are high-level donor and organizational commitments to gender equity in the fisheries, conservation, climate change, and blue economy sectors, these commitments are failing to translate into meaningful action and improved human development outcomes for women and men.[29] Although enthusiastic in progressing gender equity, these sectors are plagued with outdated assumptions, including that increasing the presence of women in decision-making arenas (commonly referred to as "add women and stir" approaches) will lead to more equitable outcomes.[30] However, such approaches are widely critiqued as they fail to account for the wider socio-cultural structures, including differences in tenure rights, which affect the power and agency of women and men.

Addressing gender equity, and other social goals, alongside any intervention deliberately or inadvertently influencing marine and coastal tenure requires careful design and resourcing from the outset. Working in partnership with national governments may necessitate developing legal and policy frameworks that are non-discriminatory, in that they promote the implementation and enforcement of women's tenure rights and/or provide adequate protection for women if laws do not recognize such rights.[81]

While there are high-level donor and organizational commitments to gender equity in the fisheries, conservation, climate change, and blue economy sectors, these commitments are failing to translate into meaningful action and improved human development outcomes for women and men.

- Lawless et al., 2021

Key Insights

- **Gender equity** is integral to sustainable development, is an end goal in and of itself, but also enables, or is a precursor to, outcomes associated with human and environmental wellbeing.

- **Different women and men** can experience vastly different access, withdrawal, exclusion, management, and transfer rights and responsibilities.

- **To account** for gender differences, tenure must be understood in terms of the extent to which rights are held individually or jointly, how different individuals experience rights, and the societal norms and rules that create and reinforce those differences.[16]

- **Dispute resolution services** need to address tenure problems in ways that advance gender equity. Specifically, these services need to be accessible to all, ensuring women as well as men are included from the outset.

- **The tools and methodologies** developed to ensure land tenure practices and fisheries co-management are more equitable and provide important opportunities for duty bearers in ocean and coasts to advance gender equity and avoid risks of maintaining or exacerbating existing inequities.

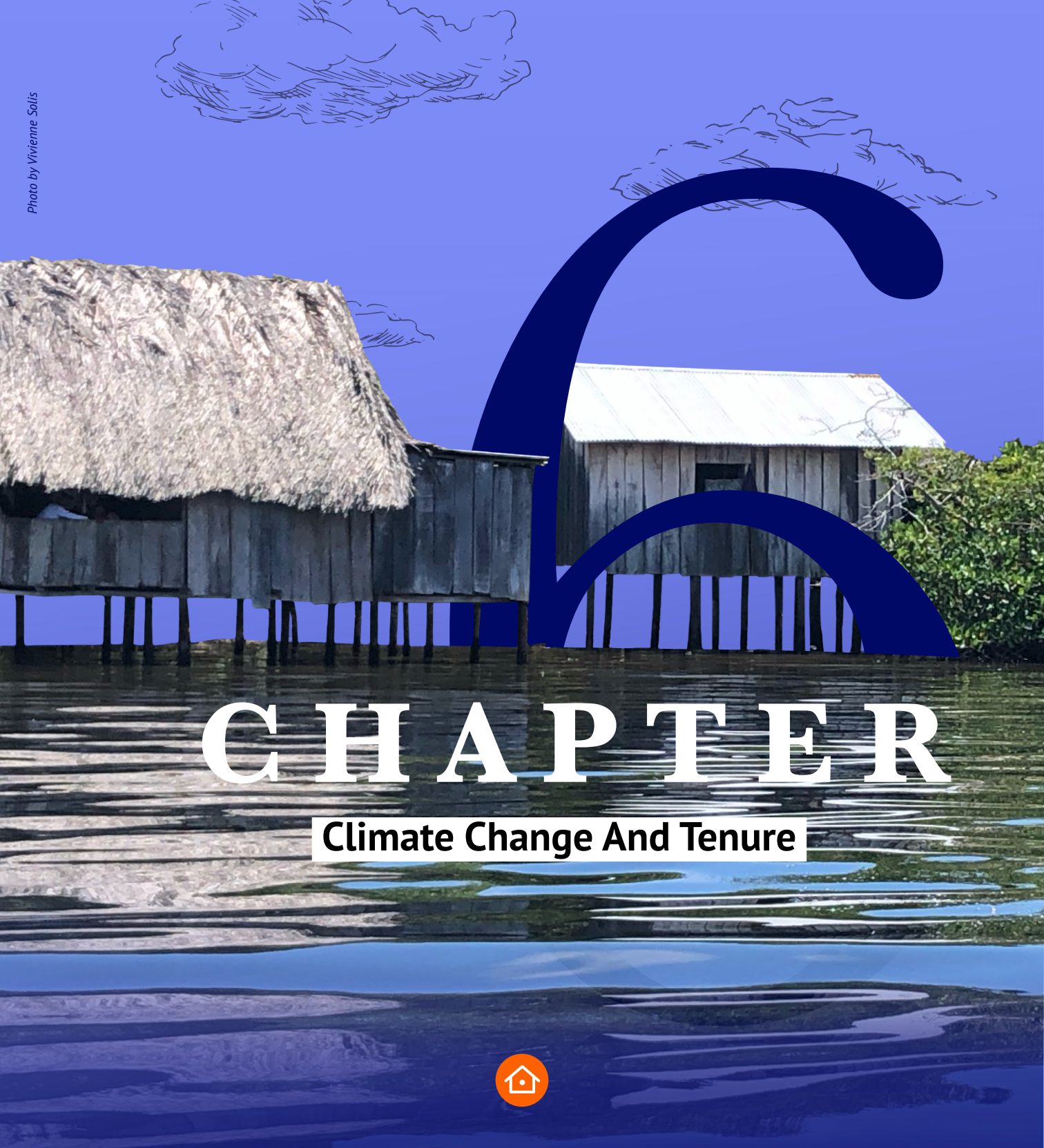


Photo by Vivienne Solís

CHAPTER 6

Climate Change And Tenure

"Terrestrial forest governance is already promoting interlocking social and political approaches to limit carbon emissions, reinforce indigenous and community efforts to overthrow exploitative and extractive systems, and prevent wider degradation, but these efforts have not yet translated to the coastal zone."

- Tiffany morrison, climate and Inclusive governance researcher, 2023

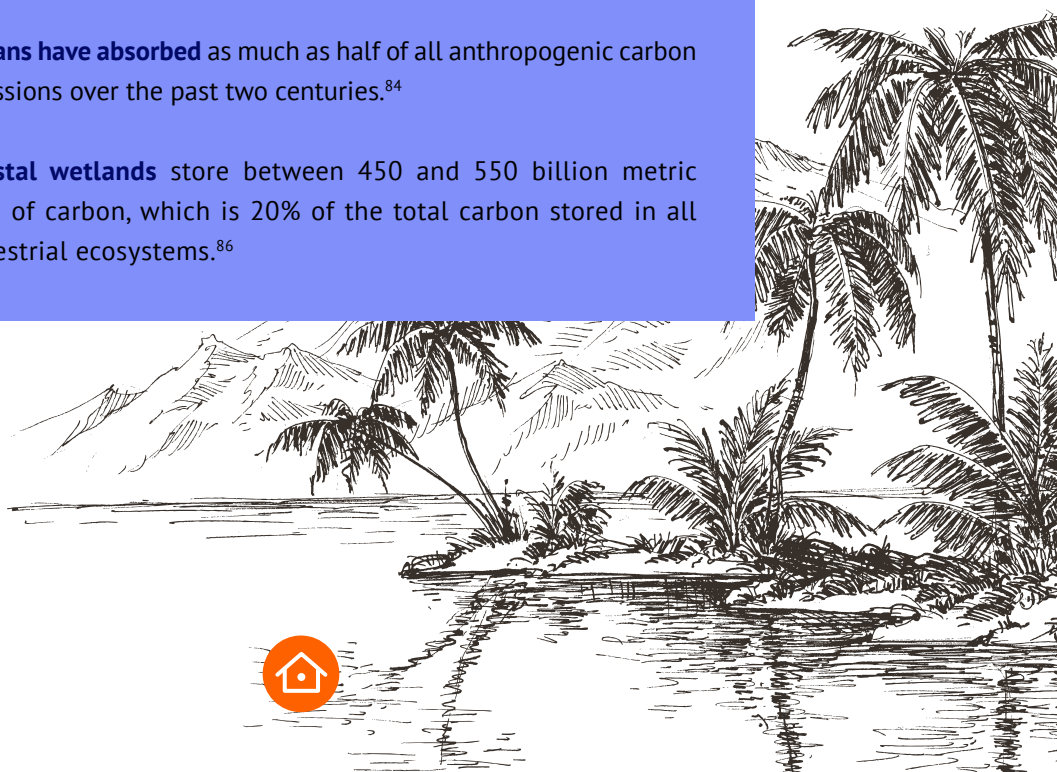
Climate Change Impacts And Responses

For the societies and environments connected to coastal lands and waters, climate change will generate an additional suite of challenges. Climate change will increase the vulnerability of 680 million people living in the low-lying coastal zone[82] and the 37% of the global population who depend on marine resources for their daily living.[83] Climate change will also generate challenges for groups who are not traditional rights-holders, such as urban settlers in coastal cities and migrant fishers. The United Nations Framework Convention on Climate Change has recognized the importance of secure tenure rights for effective climate action and called for action to support secure land and resource rights for local communities, Indigenous Peoples, and other groups who are particularly exposed to the impacts of climate change.

Box 2

Climate change and mitigation in tenured coasts and shorelines.

- **More than one billion people** will be living in the low-lying coastal zone by 2050.[82]
- **Ten percent of the global population** live in coastal areas that are less than 10 meters above sea level.[84]
- **Mangroves are a an important part** of the carbon cycle and cover around 150,000 square kilometers across 123 countries.[85]
- **Twenty percent** of global mangroves have been lost since 1980.[83]
- **Coastal wetlands** are disappearing at a rate of 1% per year globally, with some areas experiencing much higher rates of loss.[82]
- **Oceans have absorbed** as much as half of all anthropogenic carbon emissions over the past two centuries.[84]
- **Coastal wetlands** store between 450 and 550 billion metric tons of carbon, which is 20% of the total carbon stored in all terrestrial ecosystems.[86]



Future programming to shape the ways in which oceans and coasts are governed, allocated, and used must increasingly consider how different tenure configurations might impact the capacity of communities to adapt to climate change. Similarly, climate adaptation and mitigation programming must consider how they will deliberately, or inadvertently, interact with the tenure rights of coastal groups. At a deeper level, addressing how the exploitative injustices of the past are now being experienced as "climate coloniality" will require interactive programming across tenure and climate programs to fundamentally transform human–human and human–nature relationships.[87]

Through interviews with climate and governance program managers, researchers, and funders, we have identified five dimensions through which climate change and tenure interact with flow on impacts to human wellbeing, environmental sustainability, and the efficacy of climate mitigation and adaptation (Figure 5).

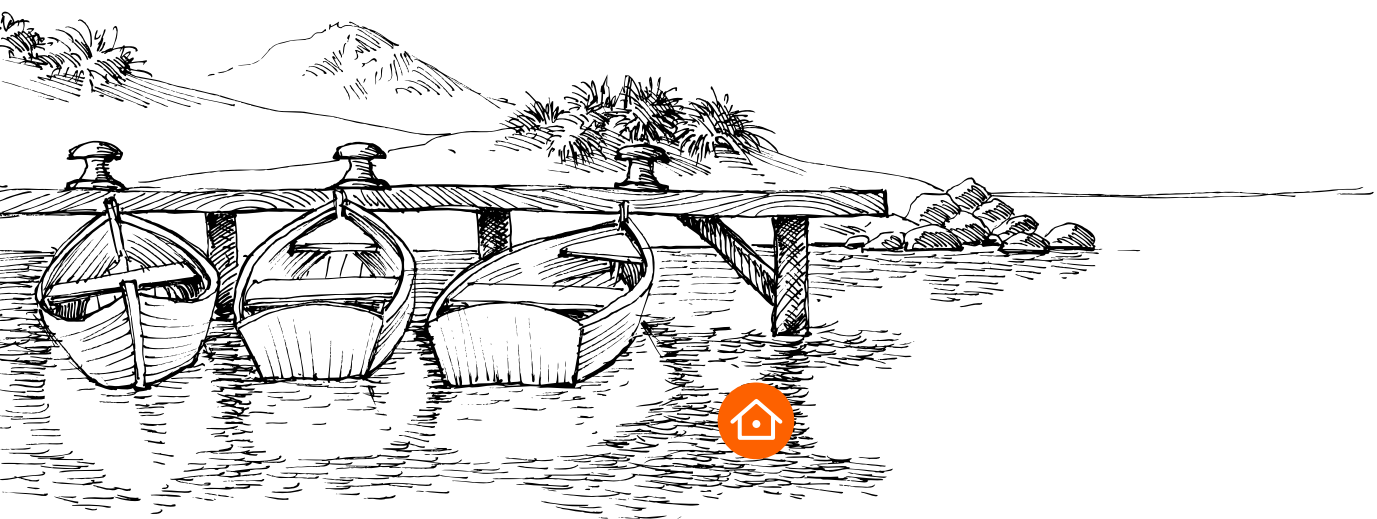


Figure 5

Climate change impacts and responses that implicate tenure, tenure security, and the rights, agency, and livelihoods of people who hold informal or formal tenure rights over coastal lands, seas, and resources. The information contained in this figure is explored more deeply in the following sections.

Impact	Current scenario	Areas of caution	Opportunities for, and via secure tenure
Increased frequency and intensity of extreme events in coastal areas	Tenure exists over habitats that provide critical coastal defense	Built infrastructure pursued over protection of natural defenses	Secure tenure can also translate to secure environmental defense
Coastal erosion and salinization make coastal lands uninhabitable	Migration and temporary or permanent displacement/ disconnection from areas to which they hold tenure	Rehabilitation and resettlement overlook tenure and human rights considerations	Secure tenure can help in better negotiation and social-ecological connections
	People migrate into areas where marine tenure is secure for the current inhabitants	Few ways and means for tenure holders to renegotiate tenure, resolve conflicts, and mitigate overexploitation	Tenure can better negotiate with climate conflicts
New markets for blue carbon and green investments	Areas under marine tenure contain resources that have newly, highly tradeable commodities – bringing new opportunity and tensions	Communities have low capacity to negotiate against large corporates in confusing, complex, and dynamic markets	Secured tenure with negotiation support will help build community agency and stewardship in carbon markets and open new opportunities for negotiation
Increased investment in mitigation and adaption impacts coasts	Top-down, motivated by technology fix and market models, patchy and fractured local action	Mitigation actions/developments proceed in shared ocean space or coasts under tenure, sidelining true stakeholders	Recognition of tenure/rights-holders as stakeholders in climate mitigation that impacts coasts
		Disenfranchisement of local communities, climate solutions might face undesired outcomes	Tenure can improve multilevel governance, build and enabled other adaptive capacities at local levels
Changes in distribution of marine species	Marine tenure and access agreements between and within countries have been negotiated on historical (not new) distribution patterns	New access, use and benefit distribution patterns emerge, and current tenure arrangements have not been accounted for	Possibility in renegotiation on access and use rights in more equitable ways – reliant on place-based knowledge building

Extreme weather events and coastal habitats under tenure

Coastal reefs, mangroves, and wetlands provide protection from episodic cyclone, hurricane, and flooding events – acting as the first line of natural defense for at least 76 million people.[88] These Twenty percent of the world's mangroves have been lost since 1980[83] and 60% of reefs are threatened.[84] At the same time the frequency of intensity of storms has increased by 40% since 1980.[82]

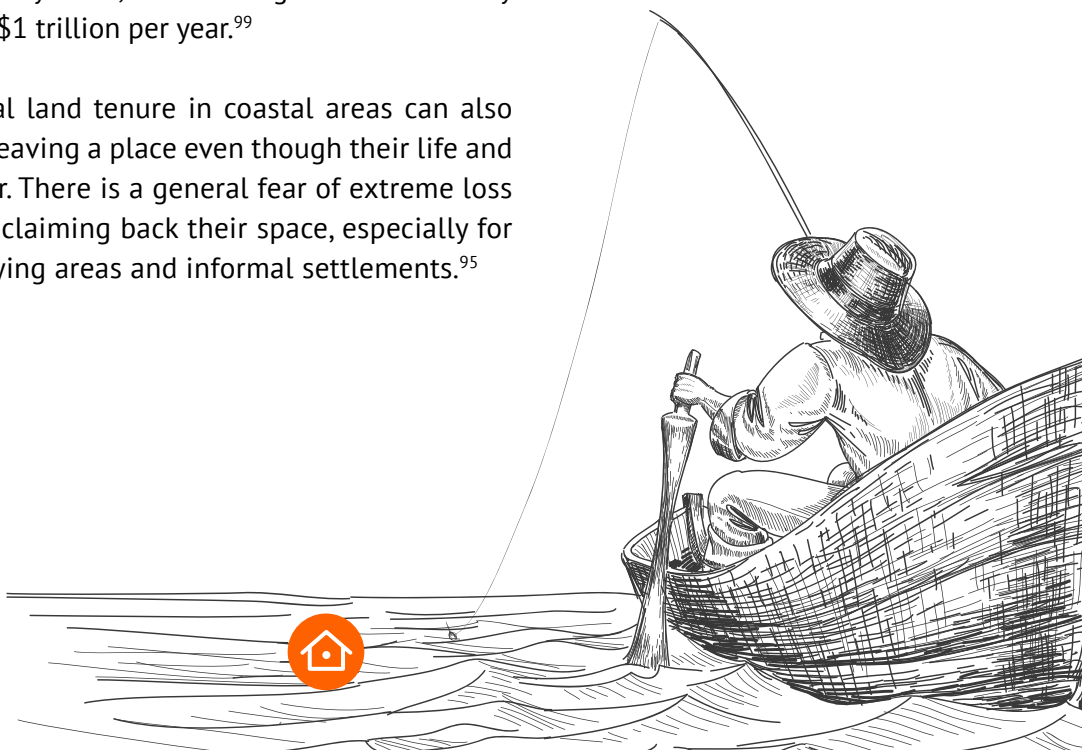
The response by national governments and other actors to increasing frequency of extreme weather events needs to work beyond hard infrastructure and centralized emergency response and give greater attention to habitat preservation or rehabilitation with, and for, coastal communities.[90] Tenure rights that extend over coastal lands and nearshore habitats are known to be a precursor, and in many instances provide an incentive for the engagement of communities in conservation efforts.[91,92] Communities with formal tenure (i.e., tenure rights recognized in legislation) may have better preparedness to recover from extreme weather events as they have a foundation upon which to access insurance, emergency response funds, and other resources. Tenure also provides greater political power and influence to seek higher accountability of government toward disaster preparedness and effective consideration of human rights, which are often overlooked in disaster response programs.[93] However, there are many issues with the governance and tenure of habitats at the land-sea interface that need resolving.[94]

Communities with formal tenure (i.E., Tenure rights recognized in legislation) may have better preparedness to recover from extreme weather events as they have a foundation upon which to access insurance, emergency response funds, and other resources.

Climate induced displacement and migration of coastal populations

Erosion, flooding, and salinization (i.e., the intrusion of salt water into arable lands and water sources) driven by sea level rise and extreme weather events will make some low-lying coastal areas uninhabitable; this will in turn force migration and displacement of coastal communities (e.g., Satbhaya Village, Box 3). By 2100, 56% of counties could be affected by sea level rise-related emigration and/or immigration.[96] According to a 2019 report by the United Nations Environment Program, 30% of the world's coastlines are highly vulnerable to erosion and inundation, and up to 1.2 billion people are at risk of coastal flooding and related impacts.[97] Seas are foreseen to rise from one to six meters, inundating areas of between one to two million square kilometers, which would affect between 100 to 430 million people.[83,98] By 2050, flood damages exacerbated by climate will cost USD $1 trillion per year.[99]

The absence of formal land tenure in coastal areas can also prevent people from leaving a place even though their life and property are in danger. There is a general fear of extreme loss and low assurance of claiming back their space, especially for people living in low lying areas and informal settlements.[95]



The movement of people in and out of coastal areas within which groups hold (informal or formal) tenure is not new. However, the impacts of climate change will amplify the forced movement of people and push these trends to a scale and at a pace never seen before. Prior experiences illustrate the need for increased access to conflict resolution, negotiation, and ultimately the creation of novel institutions that can handle increased claims to areas, and increased access and utilization demands. Where people experienced secure tenure, tenure may become newly contested, and rights to manage and enforce are likely to be far more difficult to maintain.

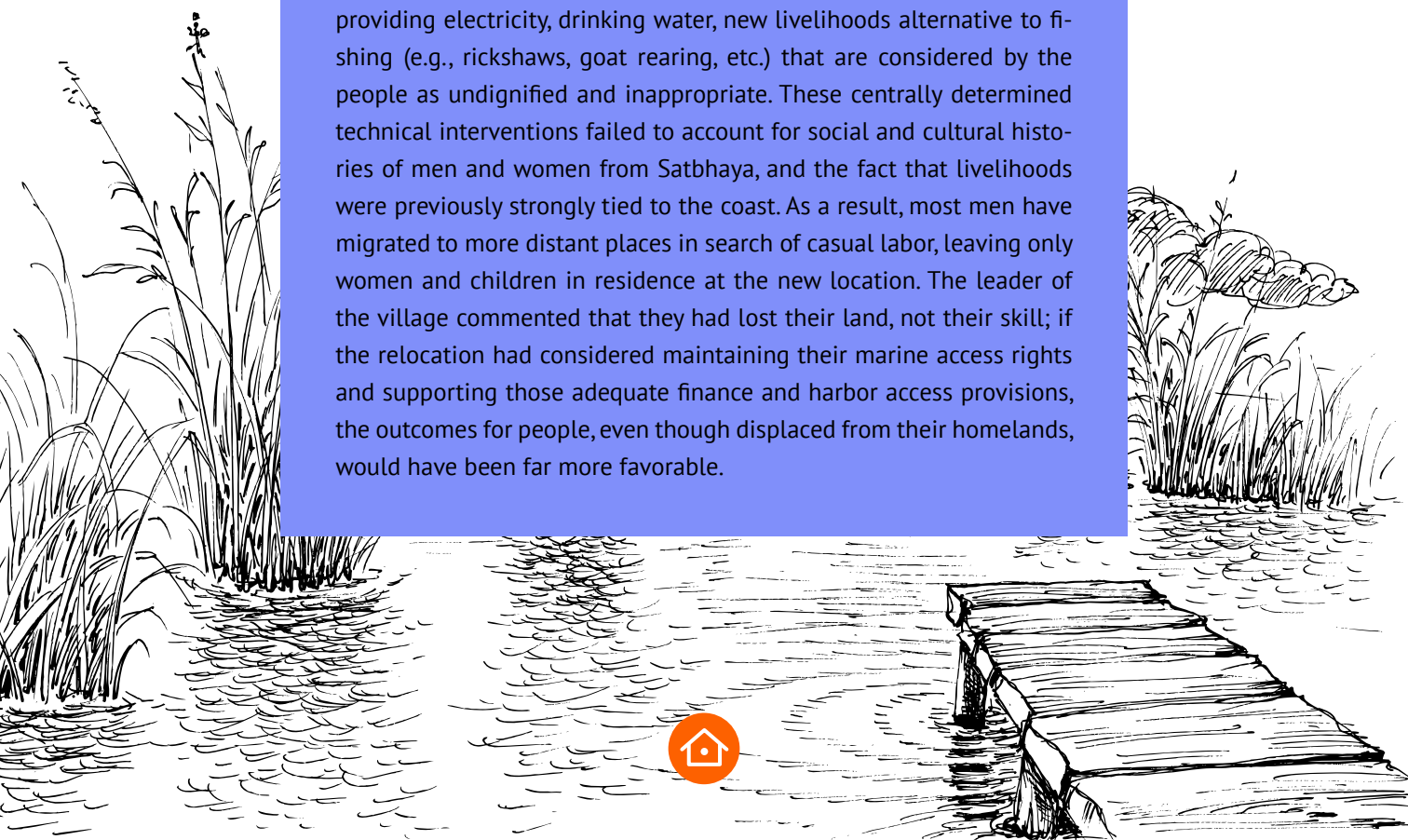
People with informal tenure will face (arguably, the most) acute challenges, as they may lack legal recognition and protection needed to access compensation or secure new land and access to resources in new locations. Displacement can also lead to conflict and tension (particularly in urban centers) over land and marine areas, especially where resources are already scarce. Emigration and immigration also have the potential for disputes over land uses (both for human settlement, and for creation of infrastructure for disaster preparedness, such discharge and drainage systems, tourism, and blue carbon investments). Therefore, it is important to address tenure issues both in the displaced populations and destination locations and societies to minimize conflict, to respect existing tenure rights, but while also avoiding further marginalization and vulnerability of displaced persons.

People with informal tenure will face (arguably, the most) acute challenges, as they may lack legal recognition and protection needed to access compensation or secure new land and access to resources in new locations.

Box 3

An example of displacement of a coastal community, and livelihoods implications of the relocation to a new area, where relocation has considered technical concerns but failed to address changes to tenure, socio-cultural wellbeing, and livelihood preferences.

The village of Satbhaya was based in the northern part of the Bay of Bengal which is in Odisha State of India. Due to erosion accelerated by the impact of climate change, the people of Satbhaya were relocated to the Bagapatia rehabilitation colony which is 12 kilometers away. While the people of Satbhaya had tenure to their original coasts and seas, they do not have land tenure in the new location and now have no physical access or access rights to the sea. The Government of Odisha is supporting the relocation in a range of ways, such as providing electricity, drinking water, new livelihoods alternative to fishing (e.g., rickshaws, goat rearing, etc.) that are considered by the people as undignified and inappropriate. These centrally determined technical interventions failed to account for social and cultural histories of men and women from Satbhaya, and the fact that livelihoods were previously strongly tied to the coast. As a result, most men have migrated to more distant places in search of casual labor, leaving only women and children in residence at the new location. The leader of the village commented that they had lost their land, not their skill; if the relocation had considered maintaining their marine access rights and supporting those adequate finance and harbor access provisions, the outcomes for people, even though displaced from their homelands, would have been far more favorable.



Green investments and blue carbon markets

Coastal habitats (particularly, but not limited to, mangrove forests, tidal marshes, and seagrass beds) are natural carbon sinks, and as such provide climate change mitigation services. There has been growing attention globally toward green investments and carbon markets as a key (but hotly debated) pathway to achieve net zero commitments and nationally determined contributions. Carbon markets are presented as new, potentially lucrative, opportunities that will emerge for those groups and people who hold tenure.

While carbon markets might translate to a new opportunity for some, there are three broad risks associated with coastal tenure. First, secure tenure may not be coupled with sufficient capacity of groups to negotiate and navigate new, complex, and dynamic market systems (i.e., meaning they miss out or are exploited by high-capacity negotiators). Second, tenure is present but in many cases not secure, formal or documented, and with commodification comes competition and competing claims. Third, tenure insecurity and a lack of recognition of community stewardship by the market creates disincentives for communities to participate and take advantage of carbon markets. Each of these three risks, also represent areas to build community capacity to effectively participate in, or ward off, emerging markets and intensifying interests.

Inclusive and effective climate mitigation and adaptation on coastal lands and seas

Climate governance has taken center stage in national, regional, and global policies, conventions, treaties, and negotiations. Climate governance is marked by top-down decision-making, technological intervention and Western science-driven policies and practices. Climate change impacts play out across multiple levels and are experienced most acutely at the community level. Nevertheless, governments are increasingly adopting economic, conservation, and development models in which coastal community voice, agency, and rights are absent, or marginal.[100] Science and technology are critical to mitigating, and adapting to, climate change. Yet, sidelining place-based knowledge and social-ecological connections can cause serious impediments in climate adaptation and mitigation pathways, including by worsening existing social, political, and economic inequities.

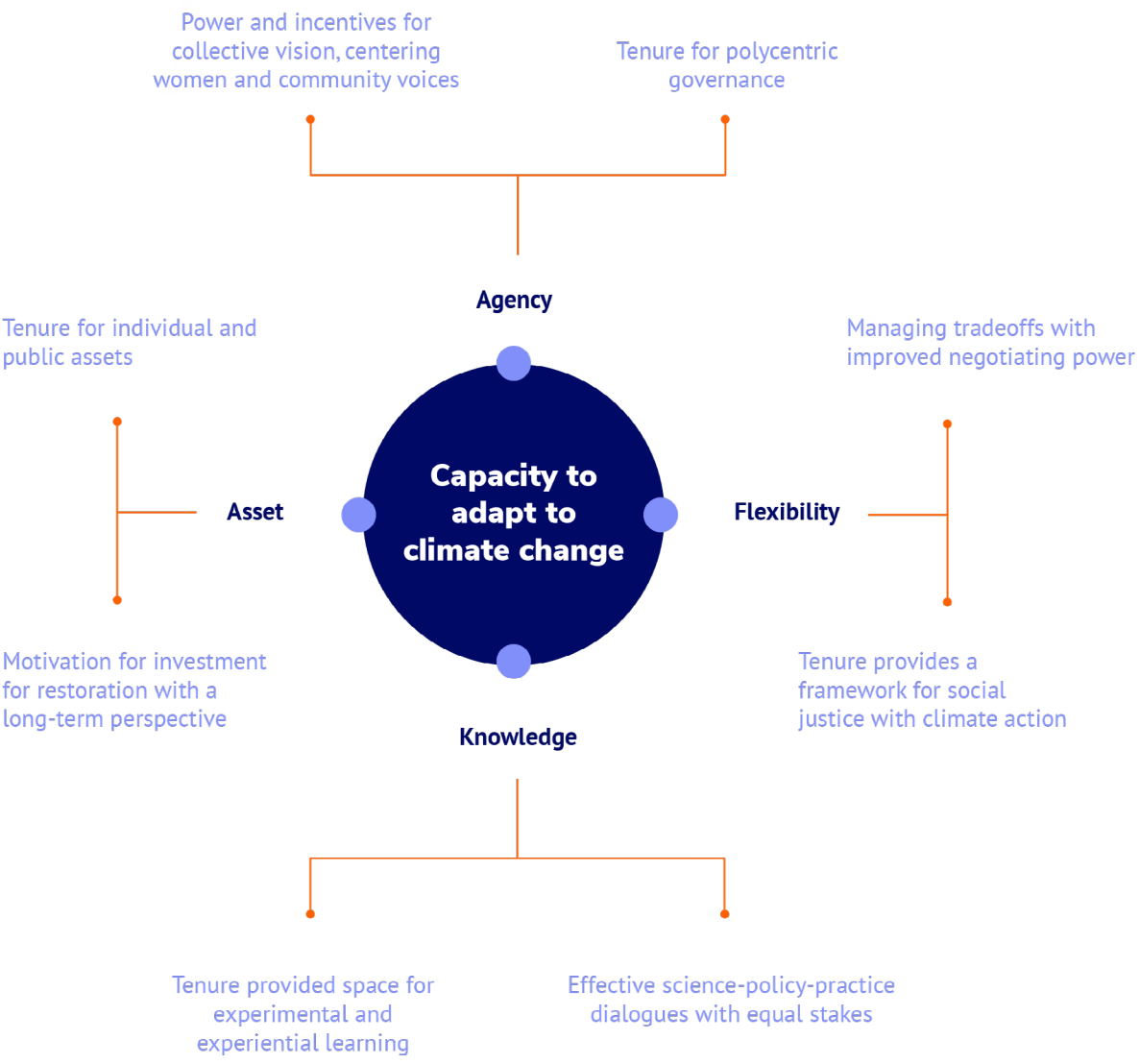
Climate governance is marked by top-down decision-making, technological intervention and Western science-driven policies and practices.

Large, government or private sector led mitigation actions are increasingly utilizing coastal and ocean space – increasing the squeeze on coastal lands and seas and intensifying competing uses. Greater investment will be needed to increase the degree to which coastal communities, Indigenous Peoples and small-scale fishers who hold (formally or informally) coastal tenure are considered as key stakeholders and decision-makers in the design and development of mitigation measures.

The way in which tenure is governed and experienced will significantly impact coastal groups' capacity to adapt to climate change – directly impacting agency, knowledge, flexibility, and assets (Figure 6). Secure tenure acts as an incentive to protect and manage blue carbon ecosystems like mangroves, beaches, coastal plantations, wetlands, seagrasses, and intertidal zones. Secure tenure and improved tenure governance has enabled better climate adaptation and mitigation in, for example, Bangladesh, Sri Lanka (e.g., mangrove protection), Philippines (e.g., community-based forest management), and Pacific Island nations (e.g., customary land rights and community managed marine areas in Vanuatu).

Figure 6

Implications of tenure security on the capacity of communities to adapt to climate change.[101, 102, 103, 104]



Marine species distribution changes and tenure

Climate change processes have both direct and indirect impacts on marine biodiversity, including fish stocks and movements of pathogens. Direct effects act on physiology and behavior and alter growth, development, reproductive capacity, mortality, and distribution. Indirect effects alter the productivity, structure, and composition of the ecosystems.[105]

For each degree of climate warming, global fisheries catches will decrease by three million metric tons.[106] Climate change will substantially shift the ranges of high-value, migratory fish – making some territories relatively more productive, while others (particularly the tropics) less productive/lucrative. Analysis in one region predicted that by 2100, spawning grounds of 10% (and up to 60% in a 4.4-degree hotter world) of fish species would not be viable due to elevated water temperature.[83] Climate change impacts on fisheries will exacerbate nutrition vulnerability (i.e., the sensitivity of a nation to the loss of fishery-derived nutrients) of many, particularly tropical and island, nations.[107]

These changes in fisheries viability and species distribution can introduce new complexities into national and local marine tenure systems. As resource availability decreases, potential for conflict between different resource users (e.g., commercial fishers, recreational anglers, and Indigenous Peoples) increases. As species ranges shift, there may be competition for access to those resources, and existing tenure arrangements may not be equipped to deal with elevated interests and potential conflicts. In addition, habitat and ecological change may undermine prevailing cultural norms and methods of traditional resource management practices. For example, Indigenous fishers who traditionally rely on certain marine species for cultural or subsistence purposes may find that those species are no longer available in their traditional territories, or that they are now subject to new regulations that restrict their use. The mobility of marine species due to climate change could also create opportunities for new forms of tenure systems that are more adaptive and flexible, such as opportunities for collaborative governance arrangements between different users of marine resources that are designed to address the challenges posed by species mobility and climate change more broadly.

The Barriers To Strengthen Tenure, And Benefit From Tenure Security, In Climate Responses

- **Fractured and fragmented climate action with low engagement, voice, and agency** of rights-holders.[87] Lack of recognition of tenure systems (i.e., other than state or private ownership models) by governing and funding bodies perpetuates this barrier.

- **Climate change adaptation and mitigation** actions are preliminary **top-down, technological and Western science-driven.**[108] There are compelling cases of small-scale, radical climate change interventions challenging exploitative and extractive systems; often they go unnoticed in the larger discussion on global climate actions. This imbalance sidelines the solution space available at local levels, undermines human rights, and ignores resource governance rights and abilities of local rights-holders.

- **The techno-economic priorities** for climate action (e.g., blue carbon programs, blue economy investments) tend to dominate investment, but these **can undermine environmental justice, local innovation, and cultural adaptiveness** – particularly when they fail to empower rights-holders with tools and opportunity to engage in new markets.

- **Inadequate mechanisms to improve local capacity** or assure vulnerable populations of their rights and appropriate support to deal with growing uncertainty in the physical and social environment (e.g., increased frequency of extreme weather events, sea level rise, and climate mitigation actions with competing land uses in coasts).

Pathways To Break Down Barriers To Tenure Security In Climate Responses

Increasing the sensitivity of climate programming to tenure and in-building climate sensitivity to efforts that strengthen tenure are both key pathways toward better outcomes. Actions that could mutually benefit tenure security and climate agendas include the following:

- **Improve policy-practice interactions on tenure and climate change mitigation and adaptation action.**

  Bridging across and leading knowledge co-creation across diverse groups engaged in community-based climate adaptation programs and processes (e.g., marine spatial area planning, national climate action planning, sea level rise, and flood and erosion management planning) will contribute critical guidance to policy and practice. These changes are critical to create an environment that enables, and not undermines, tenure security and capacity to adapt to climate change.

- **Support novel tools, collective capacities, and downward accountability in policy and implementation frameworks.**

  There is substantial opportunity to increase the downward accountability of powerful actors (e.g., funders, governments, and the private sector) to policy commitments and provisions made at the climate change and tenure interface. This will necessarily be complemented by building tenure (and other) rights literacy, open-information technology and platforms (e.g., Tenure Tracking Database), strategic communications, and media engagement. Creating public

goods and strengthening civic spaces are of immense importance to enhance rights-holders, agency and voice. There are examples of the development of such public goods and tools (e.g., the use of participatory coastal habitat planning tools in the United Arab Emirates,[109] the legal assessment tool for gender-equitable land tenure by FAO, secure land tenure and property rights tools by USAID, and climate change monitoring and verification tools by multiple agencies). Yet, there is a need for greater consideration of coastal tenure in these tools as well as customized tools (such as a coastal tenure index, climate vulnerability, and a coastal tenure status report) that build reflection, accountability, and drive learning and adjustment.

- **Ensure greater accountability and level the playing field by improving community stewardship of blue carbon finance markets.**

  While the emerging carbon finance markets appear promising in some circles, ensuring benefits flow to rights-holders will require investment that leads rights-holders to have both capacity and agency to navigate those markets. Lessons from terrestrial carbon markets illustrate the challenges and failures in achieving this. This might be achieved via honest intermediaries who work for rights-holders and support project development, verification, certification, and sale of carbon credits in favor of tenure holders. Certain countries have legislation that can (in principle) allow community rights over blue carbon ecosystems (e.g., Kenya Forest Act, 2005, and Tanzanian Forest Act, 2002). There is still a need to build the capacity of government and non-government initiatives to ensure those rights are realized, and to also meet the accreditation in the voluntary carbon market.[110]

  A caution that this line of investment must simultaneously account for other values and rights of local users over coastal habitats (see below) given that "*the latest dominant governance discourse tying mangroves to blue carbon signifies a departure from catering to coastal people's interests and rights in mangroves.... the blue carbon framing of mangroves poses a fundamental disadvantage to local users of mangroves.*"[111]

- **Enable rights, restoration, and management of common property resources that support local values, and aid mitigation and adaptation.**

  Perhaps more mainstream in the coastal management and conservation space, there is a continued need to support rights-holders to pursue their goals and their responsibilities (i.e., as defined through their system of tenure) in the restoration, management, and conservation of common property resources like fishing grounds, peat lands, sea grass, and coastal wetlands that aid mitigation and adaptation actions.[112] In these efforts, it is critical to center place-based knowledge and social-ecological connections that will be richest among rights-holders. Such efforts will not only strengthen tenurial rights of local user groups but also help protect and even generate employment for local communities.

- **Support financial instruments such as insurance to facilitate reclaiming tenure during disasters and climate events.**

  Climate change insurance has the potential to recognize and safeguard tenure rights, which in turn would help communities and individuals to manage risks and maintain their ownership on land and properties. United Nations Framework Convention on Climate Change Parties include insurance as a potential element in both disaster risk reduction strategies and risk transfer mechanisms.[113] Insurance for climate change impact and adaptation will rely on documentation of tenure among diverse rights-holders in coastal spaces, and in turn such documentation will encourage the insurance sector to develop products fit for common assets and properties. Some insurance products have been developed that are tailored toward local communities (e.g., the Global Index Insurance Facilities).[114]

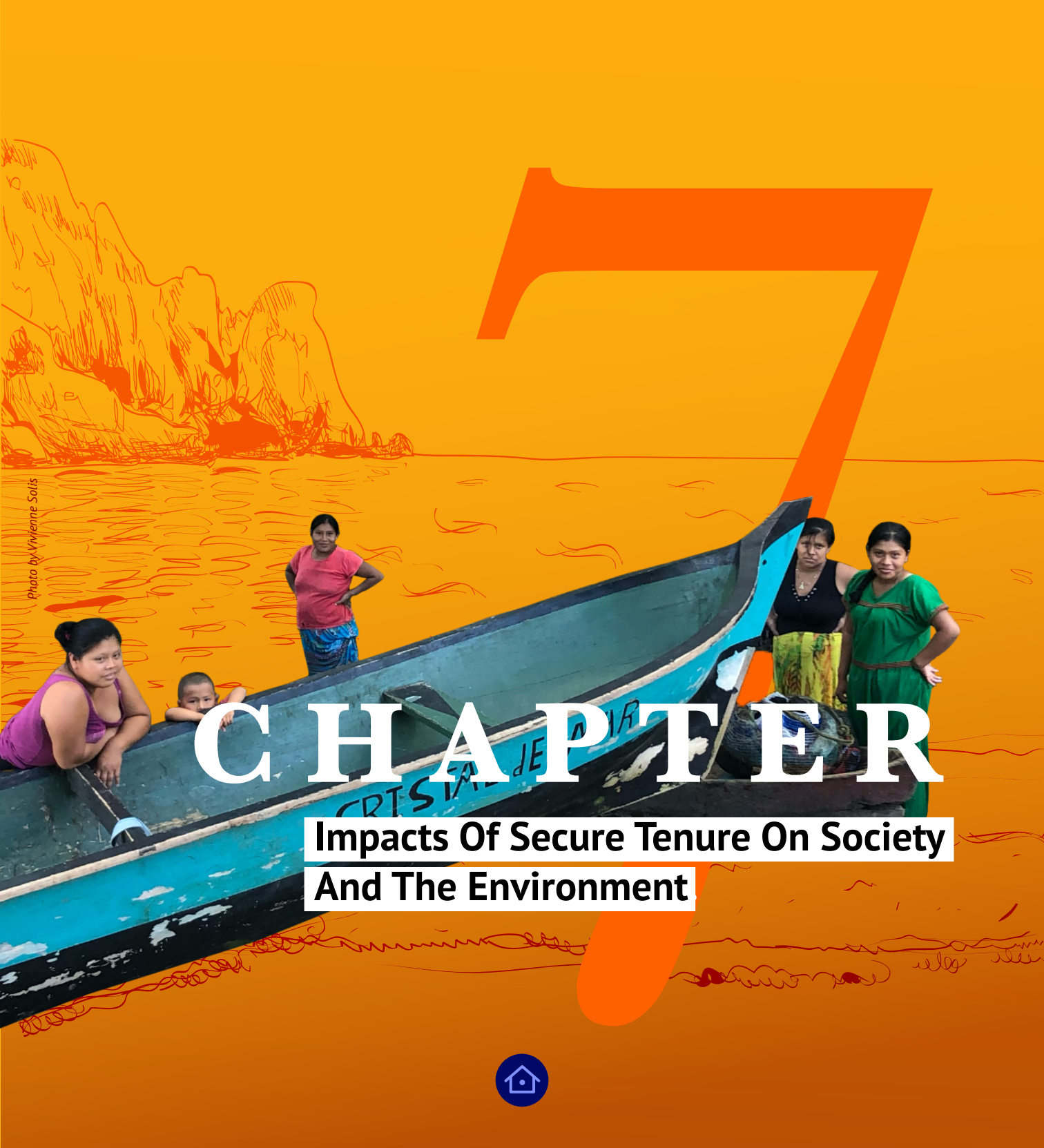


Photo by Vivienne Solis

CHAPTER 7

Impacts Of Secure Tenure On Society And The Environment

"The primary cause of poverty of small-scale fisheries is not necessarily related to the availability of natural resources (fish, land) and technology (fishing and processing assets). Instead, poverty in small-scale fisheries may be caused by the lack of rights or means to access these resources."

– Svein jentoft, 2018[115]

In this chapter, we examine how tenure security relates to the realization of human rights, environmental improvements, and enhanced food and nutrition security. The relationship between tenure security and other outcomes is two directional. Secure tenure may lead to positive outcomes, and certain outcomes might bolster or secure tenure. In fact this is one reason assessing the evidence on the impact of tenure security is difficult.

When tenure is weakened, human rights, food and nutrition security, environmental sustainability, and/or livelihoods can be undermined – decreasing human wellbeing and the opportunity to improve environmental outcomes.

Tenure security and human rights

"When customary rights and traditional fishing practices are undermined, poor indigenous fishers are at high risk of becoming victims of exploitive labour practices in the fishing industry, including hazardous work, child labour, and forced labour."

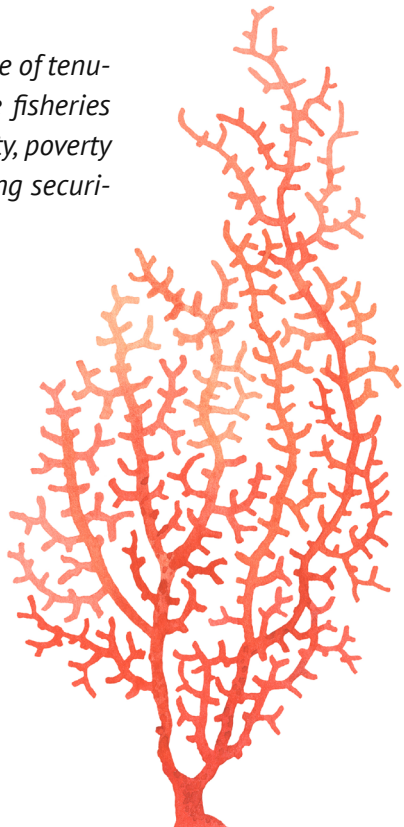
– Danish institute for human rights, 2021[27]

Human rights are universal, inalienable, indivisible and interdependent (in that one set of rights cannot be fully enjoyed without others), and non-discriminatory (meaning that all humans have equal rights).[116] Rights that determine how coasts and oceans are accessed, resources are used, and how benefits are distributed, all have implications on broader human rights. People's experiences of tenure rights will interact with the right to an adequate standard of living, just and favorable work conditions, and the right to participate in cultural life and in government.

"The evidence is clear that tenure rights are both supported by and have the power to enhance human rights in fishing communities through the reduction of poverty and preservation of social, cultural, and ecological services."[78, 115]

This also means that there may be an infringement of human rights where use, management, and governance of coasts and oceans changes in ways where existing tenure is not recognized or is extinguished. For this reason, multiple commitments and conventions are in place to hold actors to account for human rights recognition or abuse (see full list in Table 1).

"All parties should recognize that responsible governance of tenure of land, fisheries and forests applicable in small-scale fisheries ***is central for the realization of human rights****, food security, poverty eradication, sustainable livelihoods, social stability, housing security, economic growth and rural and social development."*
– Food and Agriculture Organization, 2015[35]



Tenure Security And Conservation Outcomes

The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services stated that evidence was "well established" that tenure rights and equitable access to land, fisheries, and forests contribute to the sustainable use of wild species. Where tenure security had been improved, there was also "*evidence of improved food security and positive conservation outcomes for wild species*."[117] Nonetheless, there is less research and evidence around these connections in marine and coastal spaces, relative to terrestrial environments.

Decades of natural and controlled experiments identify secure tenure rights as a precursor to sustainable and effective resource management and conservation.[118, 119] For example, global analysis of coral reefs suggests a correlate of "bright spots" (i.e., higher than expected condition of coral reefs) may be intact alongside local tenure and other conditions that empower local actors as environmental stewards.[118,120] Analysis of the impacts of property rights systems on environmental outcomes found that community-based tenure frequently, in 22 out of 30 cases, demonstrated more positive environmental outcomes than open access systems.[121]

Rights-holders with secure tenure have a certain degree of clarity on the benefits they will receive from their coasts and oceans. Because of this certainty in a return on investment, secure tenure is reported to incentivize sustainability; by contrast tenure insecurity can create a panic and incentivize short-term overexploitation.[122] Tenure rights are necessary for groups to experience the agency, legitimacy, and/or incentive to establish management, which can then lead onto improved environmental status (see evidence in Appendix 3). For example, when local fishers in the Gulf of California gained management and exclusion rights, they used these rights to establish no-take zones within an area that was once open access. A range of improvements from fish biomass, richness, and diversity were observed within reserves, with stable fisheries catches outside reserves.[123] Traditional tenure (and specifically management rights) became recognized and enabled by the government in Tonga and Samoa, which in turn enabled communities to establish and enforce a range of access and withdrawal limits.[124] In Aceh, Indonesia, *Panglima Laut* (a type of customary marine tenure) enabled the ban of destructive fishing practices; subsequently in these sites there were four times more coral cover than in open access sites that had remained exposed to destructive fishing.[125]

Box 4

The attributes of a tenure system that research suggests correlate with improved environmental conditions.[126, 127, 128, 129]

- Rights-holders are adjacent to tenured areas.
- There is high compliance with rights, and restrictions to rights applied.
- Rights-holders have used rights to implement restrictions or bans on destructive fishing practices , such as periodically harvested area closure.
- There is relatively low pressure from markets or populations.
- Monitoring of use and outcomes is in place.
- Rights are clearly defined, including the areas and people to which they apply.
- There is government recognition of tenure, and support for management implementation and enforcement.

Tenure, Food Sovereignty, And Food and Nutrition Security

Food is a basic human right. Food security is "*when all people, at all times, have physical and economic access to sufficient safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life*"(Food and Agriculture Organization, 1996).[130]

Fish and other aquatic foods from marine, coastal, and aquatic environments play a niche role in the diets and health of around 500 million people.[88] The nutrients found in high concentrations in fish could substantially improve the nutritional status of some of the most nutrient-deficient countries in the world.[131]

> "*Secure tenure rights that allow families and communities to use, manage and control land, fisheries and forests play a crucial role in reducing food insecurity and malnutrition through agriculture growth, enhanced productivity and improved income.*"
> - Food and Agriculture Organization, 2017[132]

Food sovereignty is a pathway toward food security, but emphasizes agency, self-determination, and nutrition of peoples. Food sovereignty is only possible when tenure rights are in place and people experience the right to produce food on their own territory.

Food sovereignty refers to *"the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems."* This entails *"full rights to land, defends and recovers the territories of Indigenous Peoples, [and] ensures fishing communities' access and control over their fishing areas and eco-systems"* (Forum for Food Sovereignty, 2007).[133]

Photo by Hong Chern Wern

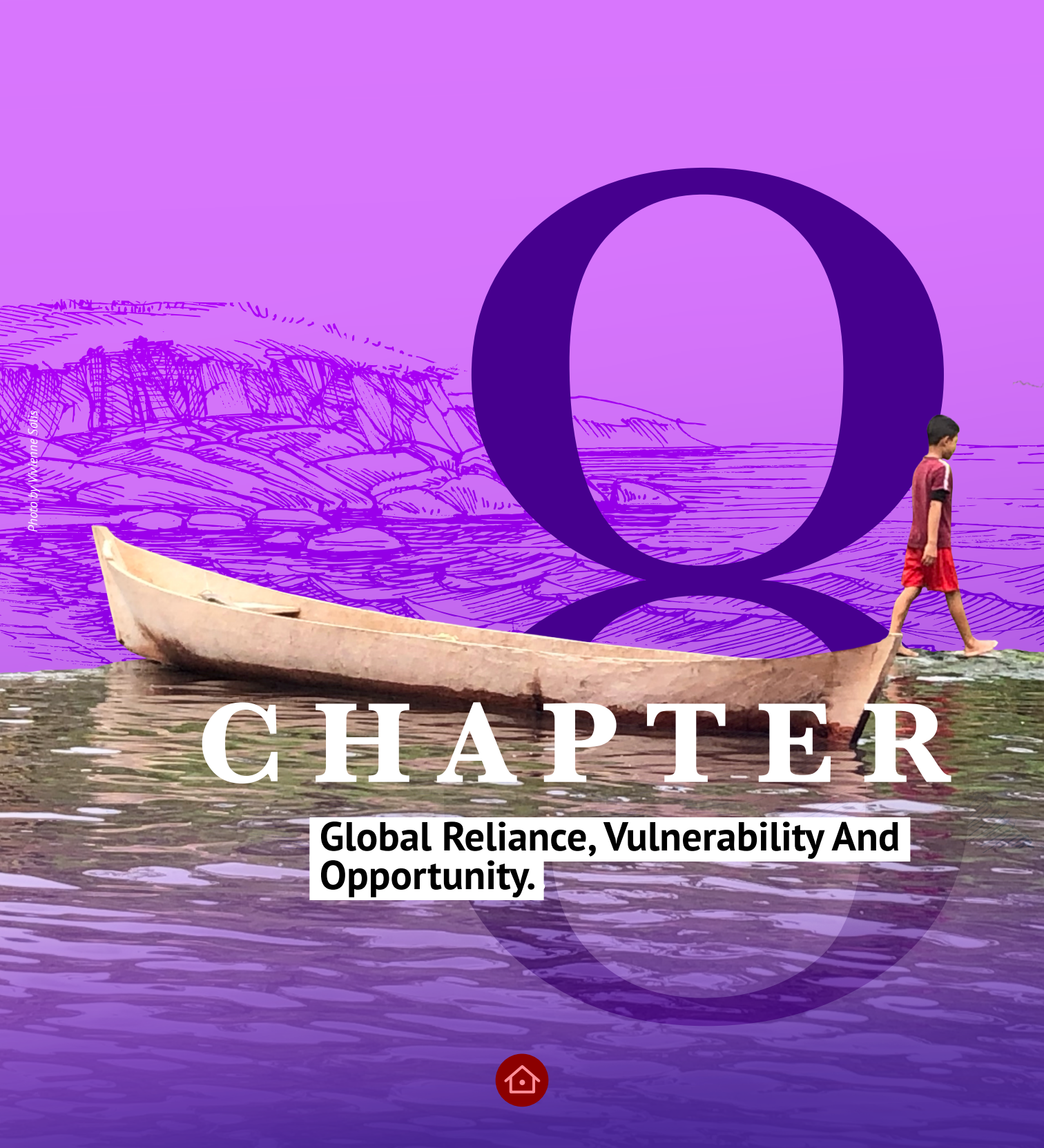
Key Insights

- **Human rights** and tenure rights are intertwined and in many instances mutually reinforcing.

- **In many contexts,** when tenure security and rights are undermined, the foundation for human rights, food and nutrition security, environmental stewardship, and/or livelihoods may also be undermined – decreasing human wellbeing and the opportunity to improve environmental outcomes.

- **Tenure rights** are a basis for social capital, which ensures the sustainability of livelihoods for prolonged food and nutrition security.

- **When tenure is secure,** people are more confident and likely to invest money, time, and effort to safeguard resources.[134]



9 CHAPTER

Global Reliance, Vulnerability And Opportunity.

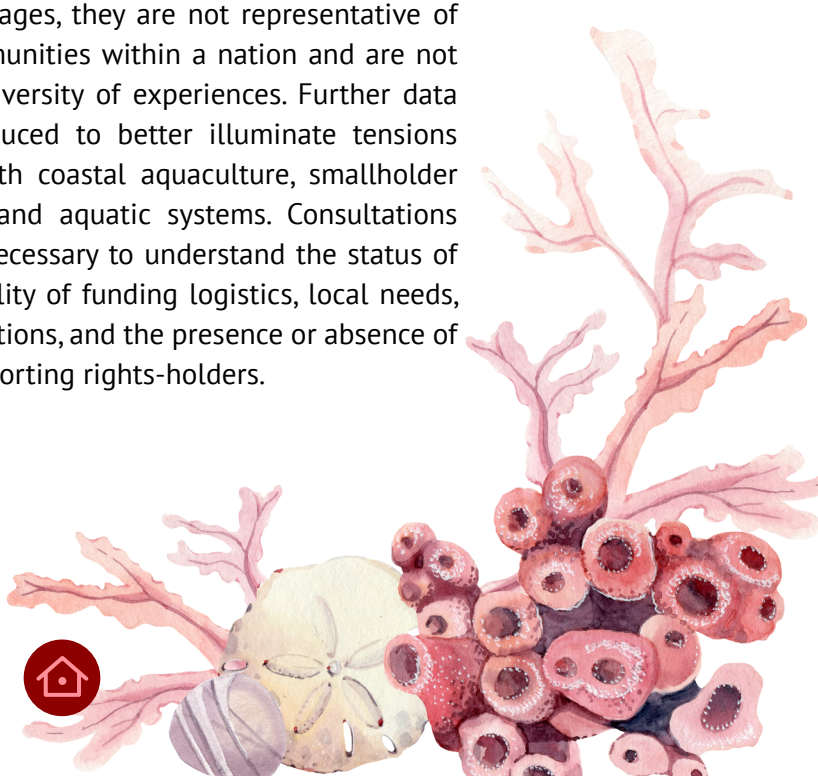
In this chapter, we turn to qualitative and quantitative country-level data to understand the urgency and the scale of impact of improved tenure security, and conditions that might enable (or disenable) such actions. Tenure security is high when people have some certainty in a world of uncertainty: when they know their rights will be recognized and upheld in the face of changing conditions, competing claims, and increasing competition. Conversely, competing pressures and interests in coastal and marine spaces[13] and low government capacity and accountability to civil society and rights-holders contribute to experiences of tenure insecurity.

Based on this broad premise, we examine 11 published datasets that illustrate different countries' (1) reliance on coastal and marine resources for livelihoods and food security, (2) capacity or political orientation toward civil society freedoms and rights of coastal communities, Indigenous Peoples, and small-scale fishers, and (3) pressures and exposure along coastal lands and seas (Table 3). We provide the complete dataset and a fuller series of explorations ***here***, and present a subset within this chapter.

Where all these conditions are high, or there is a high likelihood that they will increase in the future, this would suggest a particularly acute need for improving tenure security. These conditions *might* indicate that improving tenure security may lead to high return for human wellbeing and environmental improvements, relative to business as usual. Of course, these outcomes are reliant on a myriad of factors in practice.

The purpose of this assessment is to contribute to discussions and decisions – in arenas where a range of knowledge and values are examined – about where investments in building tenure security might be considered particularly urgent, and what they might entail. These data become meaningful and actionable when paired with qualitative understandings and lived experiences of these contexts. We present here some potential interpretations of data for illustrative and discussion purposes.

This is a rapid, relatively uncomplicated approach to collate and explore data to efficiently surface high-level trends. On their own, the data explored here are limited in a number of ways. Nationally comparable data are inappropriate to understand the diverse intrinsic relationships people have with coasts and oceans, namely cultural, spiritual, religious values, and benefits. As with any national averages, they are not representative of all geographies and communities within a nation and are not able to reflect the true diversity of experiences. Further data would need to be introduced to better illuminate tensions and values associated with coastal aquaculture, smallholder farming, tourism, and inland aquatic systems. Consultations within each country are necessary to understand the status of coastal tenure, the feasibility of funding logistics, local needs, relevant governance conditions, and the presence or absence of concurrent initiatives supporting rights-holders.



1. Dependence on coastal areas and resources

Tenure security is critically important for people and societies that have high reliance on coastal and marine resources for livelihoods and food security. Loss of tenure rights would mean livelihoods and food security are undermined, in some cases for millions of women and men who have access to few alternatives. We examined four ways in which people are reliant marine on coastal areas and marine resources. We illustrate: a composite measure of the reliance of national populations on marine ecosystems for food and livelihoods; the reliance on fish to provide the protein portion[1] of diverse and healthy diets; the size of the small-scale fisheries sector relative to a country's population; and the number of people whose livelihood depends on fisheries (Table 3).

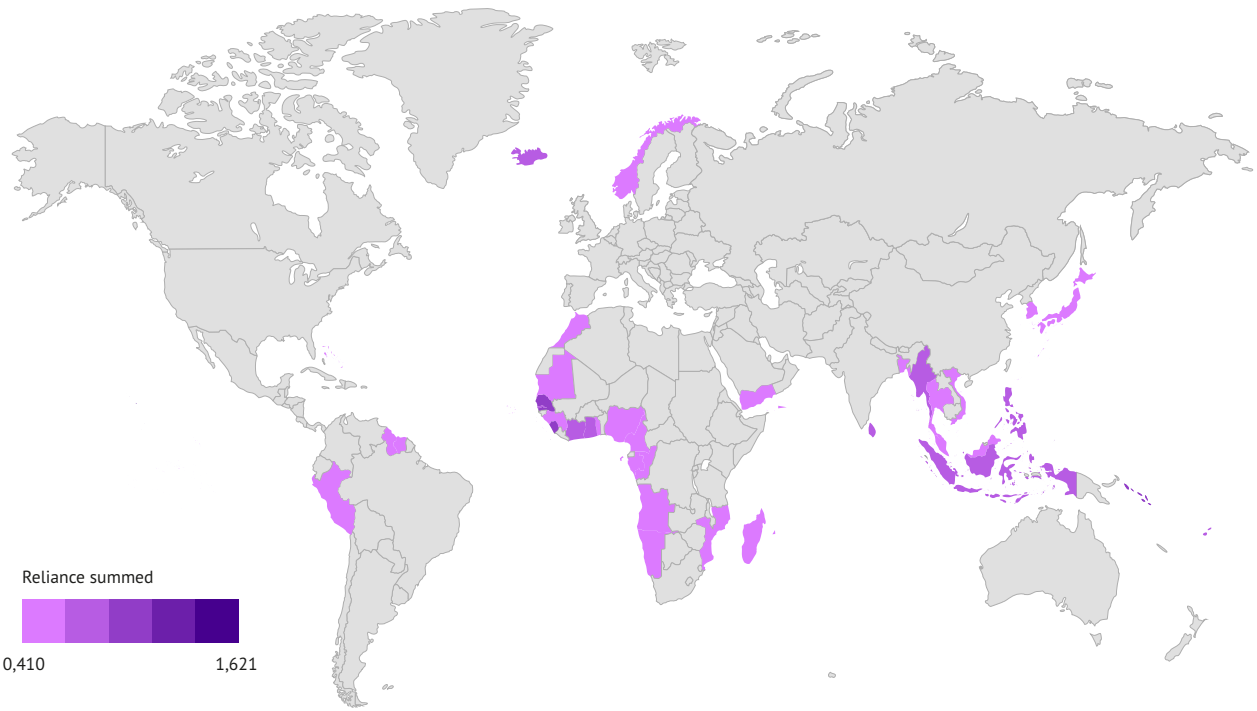
As one of the groups concerned with secure tenure, small-scale fisheries must have at least access and withdrawal rights to be viable, and potentially exercise additional rights (such as management, exclusion, and transfer) that denote tenure. Compared to countries where large-scale fisheries are important, those that rely on small-scale fisheries may indicate a greater need to protect informal, collective, traditional, and other less-recognized rights, as well as stronger ties between fisheries and local food security and livelihood outcomes.

The most reliant countries are those in Sub-Saharan Africa (36%), the Pacific (22%), Asia (20%), and Latin America and the Caribbean (16%). Of the 50 countries most reliant on marine resources for livelihoods and food security (Figure 7), 47 are in the tropics, where fisheries productivity is projected to decrease due to climate change. Many of these are Small Island Developing States (or Large Ocean States) with large portions of their populations residing in low-elevation coastal zones (Figure 9A).

1. While data for protein are relatively easily available, it is in fact the (often irreplaceable) micronutrients and fatty acids that fish provide that make them particularly critical in the diets of many people, particularly those who are nutritionally vulnerable – children and pregnant and lactating women.

Figure 7

The 50 countries with the highest relative reliance on marine resources for nutrition and livelihoods. Darker shades indicate higher reliance. Countries in gray are those that fall out of the 50 most reliant; data for these countries can be found in the original source (Selig et al., 2017).[88] Note that data for Small Island Developing States displays poorly in this resolution. For an interactive version of this figure ***click here***.



2. Governance capacity and political orientation toward rights

Tenure security is likely to be higher, or more readily improved, in instances where governments have higher capacity and will to protect the rights of coastal communities, Indigenous Peoples, and small-scale fishers. We examine these conditions with independent and globally standardized measures of governance. The CIVICUS score represents the degree to which countries protect their citizens' rights to assembly, association, and expression (categorized as being: open, narrowed, obstructed, repressed, or closed). The "Voice and Accountability" indicator illustrates citizens' agency and freedoms (a scale up to 2.5), or lack thereof (down to -2.5), in expression, association, and in selecting their government. For consideration alongside these scores for each of the 50 most reliant nations, we also include the votes nations took on the UN Declaration on the Rights of Indigenous Peoples (either yes, no, abstain, or did not vote) (Table 3).

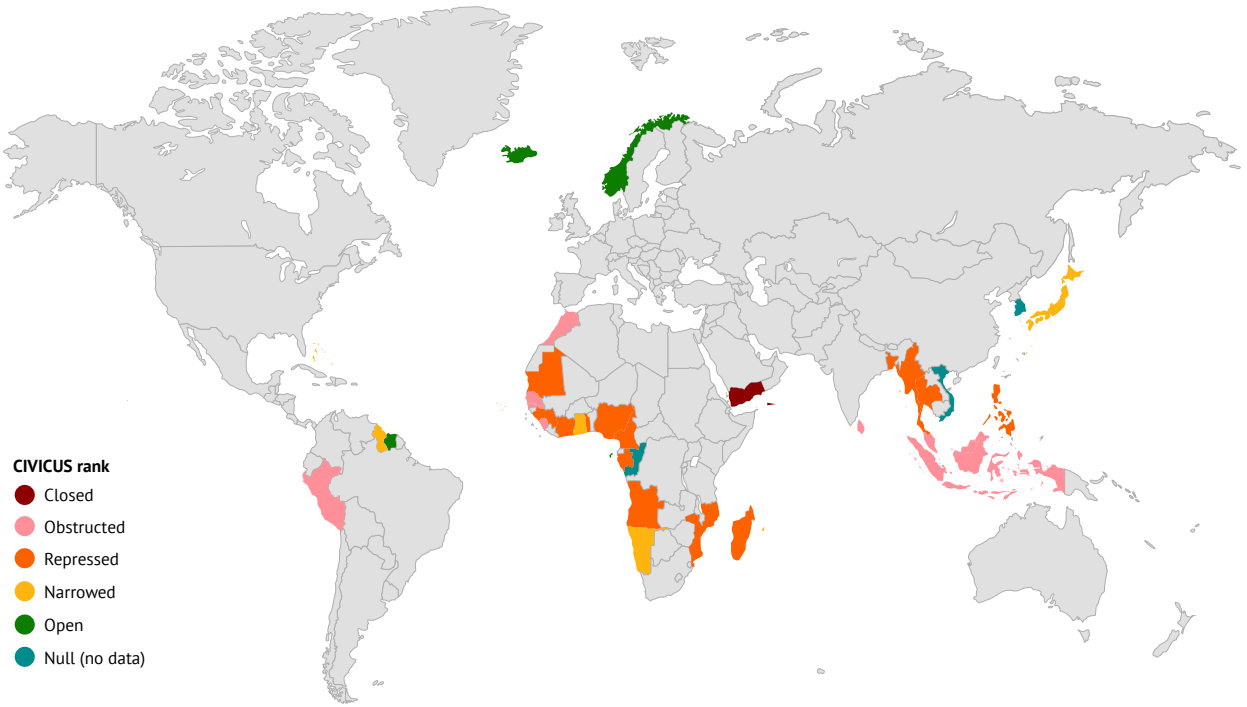
In these data, we see, for example, that among the 20 countries most reliant on marine ecosystems, eight nations (Iceland, Tuvalu, Palau, Kiribati, Vanuatu, Solomon Islands, Ghana, and Guyana) have conditions enabling both civil society action and (what might be interpreted as) opportunity for partnerships

with government (Figure 8). For these countries, the coincidence of high reliance suggests a need a for tenure security at scale, with conditions that might enable civil society and government to improve the conditions for tenure security, including collaborating to strengthen due process, legal or procedural reform, and building tenure literacy among all actors.

Conversely, the governance conditions of a range of countries suggest any windows of opportunity to improve tenure security are obstructed or closed. In fact, 26 of the 50 countries most reliant on marine ecosystems have governance environments considered as closed, repressed, or obstructed. In these countries, civil society is constrained and progress to build the voice of and accountability to rights-holders faces many political barriers. These governance conditions potentially indicate the greatest threats to tenure rights. Building the conditions that underpin tenure (e.g., making planning processes more inclusive, and due process more accessible) in these contexts would likely require longer-term investment to support government capacity and deep partnerships with local advocacy organizations.

Figure 8

Conditions for civil society to operate (CIVICUS Monitor categories) in the 50 countries most reliant on marine resources for nutrition and livelihoods. The category assigned is based on a comprehensive assessment that indicates the degree to which countries protect their citizens' rights to assembly, association, and expression. For an interactive version, please ***click here***.



3. Intensity of pressures and interests in coasts and oceans

Tenure insecurity is higher where there are more interests in areas and resources. In marine and coastal contexts, this includes conservation interest, economic growth, and anthropogenic demands and change. As elaborated in Chapter 6, pressures on coastal resources and societies are also intensified by the impacts of climate change. For example, people residing in low-lying areas may be forced to move from their lands and coastal areas due to the impacts of climate change, and this introduces a new or compounded suite of issues and concerns around tenure insecurity and human wellbeing.

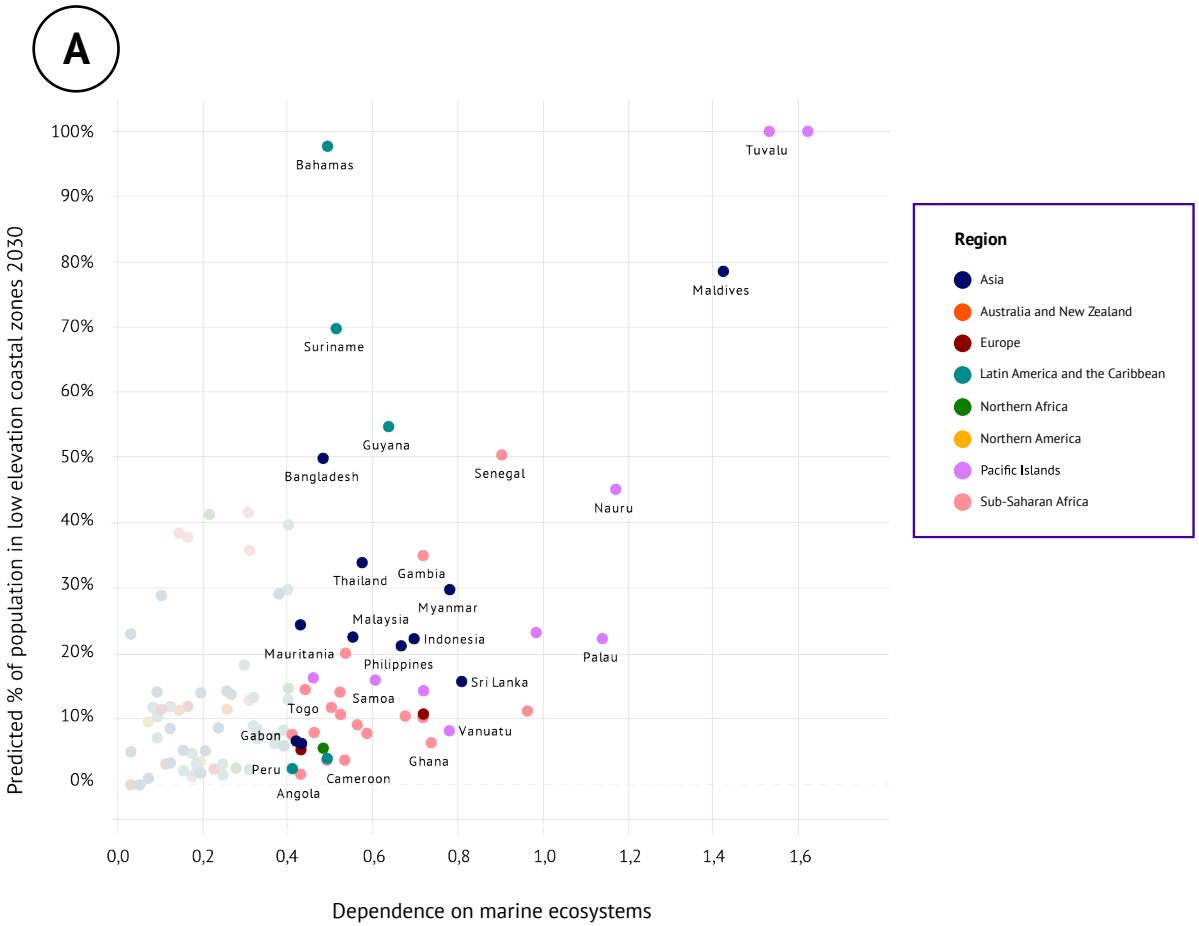
To understand where these pressures coincide, we drew together four types of data: the number of people exposed to the impacts of climate change through residence in low-elevation coastal zones; the proportion of EEZ in a high biodiversity marine area; a measure of national commitment to conserve marine and coastal areas, and; a composite index of 14 human stressors (e.g., pollution, fishing, shipping, and sea surface temperature) on marine ecosystems (Table 3).

Indonesia and Senegal are examples of countries that are simultaneously highly reliant on coastal resources (Figure 9A) and with very high numbers of people living in the low-elevation coastal zone (projected in 2030 to be >61 million and >8.5 million respectively). In both Indonesia and Senegal, governance is considered obstructed or repressed (Figure 8). While this suggests building the conditions that enhance tenure security may be relatively difficult, the conditions for civil society freedom and action are relatively favorable (Table 2). We could interpret these conditions as showing that building tenure security alongside capacities to adapt to climate change are extremely urgent, with a reasonable chance of traction and progress.

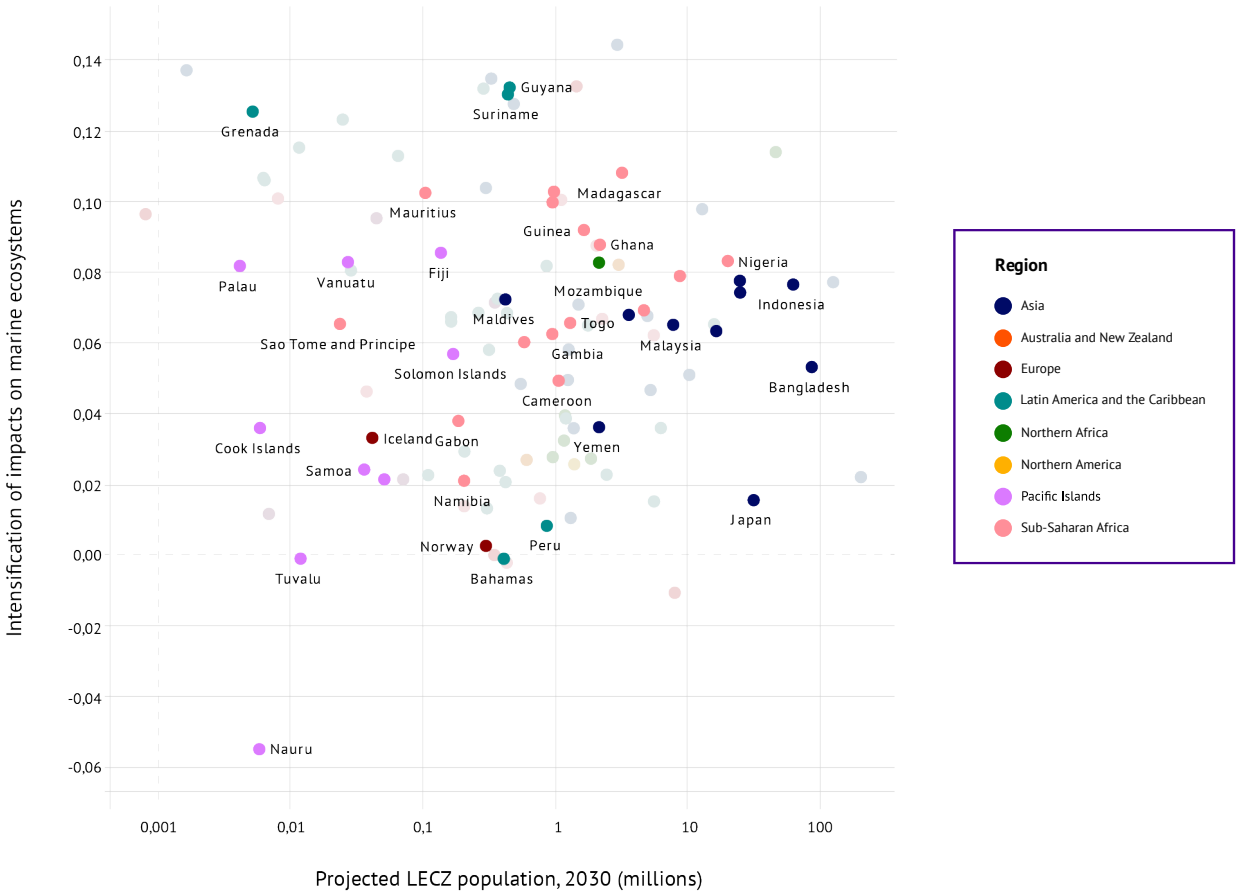
By 2030, Bangladesh and Indonesia will each have more than 60 million people living in low-elevation coastal zones that will be particularly exposed to the impacts of climate change. These countries also experience rapidly increasing anthropogenic stressors (e.g., pollution, fishing, shipping, ocean acidification and, sea level rise) on marine ecosystems (Figure 9B). Addressing tenure security may well be urgent in many parts of Bangladesh and Indonesia, but in these countries in particular, such changes and hoped-for outcomes will be situated among hugely challenging demographic, climatic, and anthropogenic pressures on human and environmental wellbeing.

Figure 9

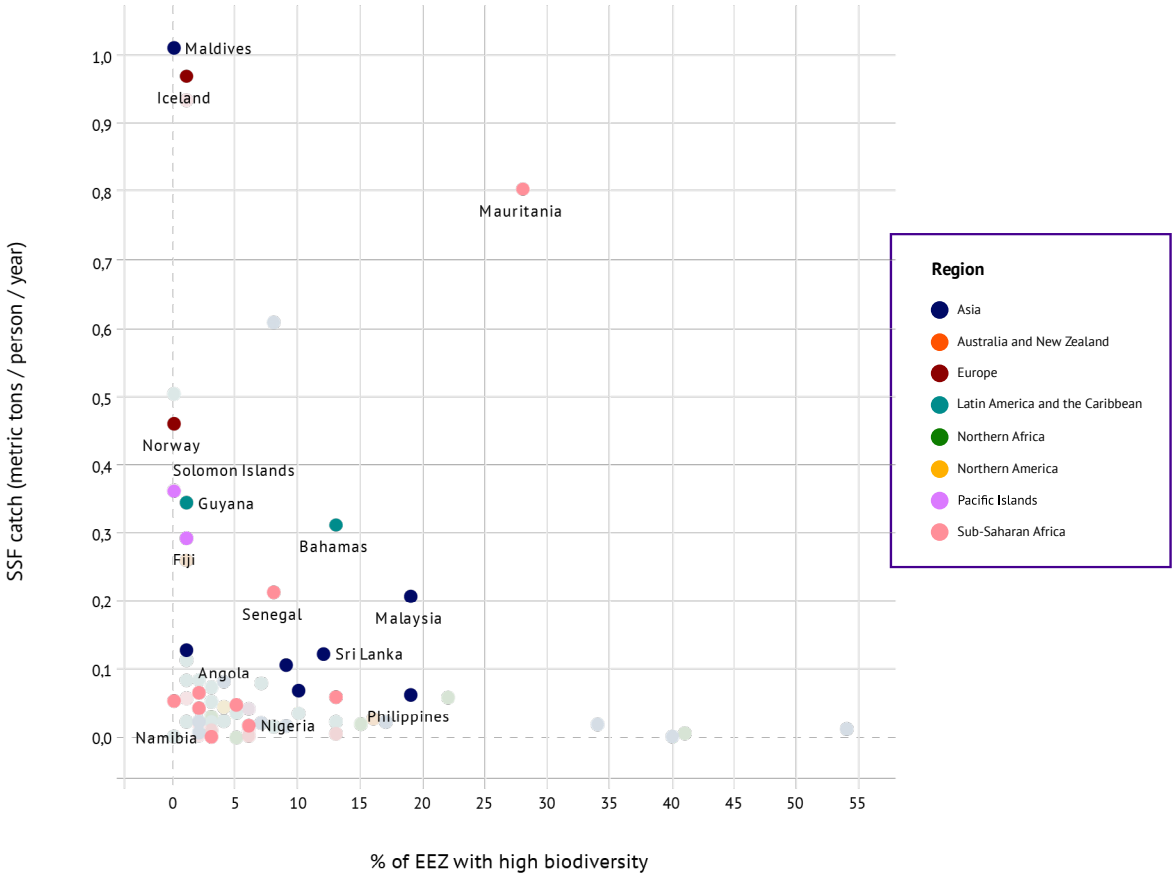
The 50 countries most reliant on marine resources for nutrition and livelihoods (bolded) and the coincidence of their (A) reliance and exposure of their populations to the impacts of climate change, (B) exposure to the impacts of climate change and the cumulative impacts on marine ecosystems from pollution, fishing, and climate change, and (C) proportion of EEZ with high marine biodiversity and the size or importance of the small-scale fisheries sector.



B


Intensification of impacts on marine ecosystems
0,14
0,12
0,10
0,08
0,06
0,04
0,02
0,00
-0,02
-0,04
-0,06
0,001
0,01
0,1
1
10
100
Projected LECZ population, 2030 (millions)
Guyana
Suriname
Grenada
Madagascar
Mauritius
Guinea
Ghana
Nigeria
Palau
Vanuatu
Fiji
Mozambique
Indonesia
Maldives
Togo
Malaysia
Sao Tome and Principe
Gambia
Solomon Islands
Bangladesh
Cameroon
Cook Islands
Iceland
Gabon
Yemen
Samoa
Namibia
Japan
Norway
Peru
Tuvalu
Bahamas
Nauru
Region
Asia
Australia and New Zealand
Europe
Latin America and the Caribbean
Northern Africa
Northern America
Pacific Islands
Sub-Saharan Africa

C

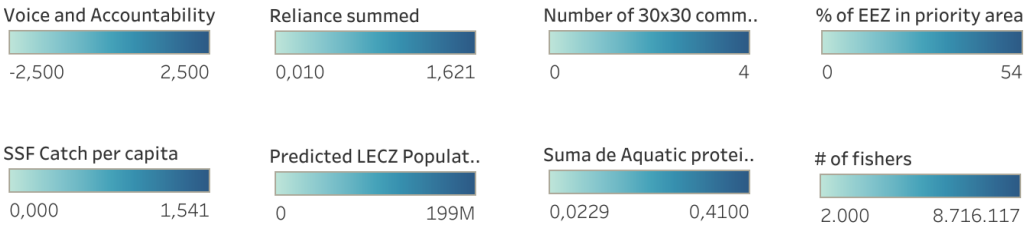

Maldives
Iceland
Mauritania
Norway
Solomon Islands
Guyana
Bahamas
Fiji
Senegal
Malaysia
Sri Lanka
Angola
Philippines
Nigeria
Namibia
1,0
0,9
0,8
0,7
0,6
0,5
0,4
0,3
0,2
0,1
0,0
0
5
10
15
20
25
30
35
40
45
50
55
SSF catch (metric tons / person / year)
% of EEZ with high biodiversity
Region
Asia
Australia and New Zealand
Europe
Latin America and the Caribbean
Northern Africa
Northern America
Pacific Islands
Sub-Saharan Africa

Of the top 20 most reliant countries, the Philippines, Sri Lanka, Indonesia, and Senegal have high-biodiversity EEZs (>8% in a high biodiversity area) (Table 2). These countries are also among some of the world's most reliant on coasts and oceans for livelihoods and food. In these countries, there may be a particularly strong need to ensure investments that will flow into these countries to progress area-based conservation targets that are balanced with appropriate support to rights-holders to represent their rights, responsibilities, and interests in planning and implementation.

Table 2

A heat map chart of environmental, political, and demographic measures of the top 20 most marine resource-reliant countries. An interactive heat map for all countries is. See Table 3 for descriptions of the data and sources.

Country	CIVICUS rank	Vote on UN Declaration..	Voice and Accountability	Reliance summed	Suma de Aquatic protein reliance (Normalized)	SSF Catch per capita	# of fishers	Predicted LECZ Population, 2030	% of EEZ in priority area	Number of 30x30 commitments
Côte d'Ivoire	Repressed	Did Not Vote	-0,47	0,68	0,23	0,02		2.896.216,92		
Fiji	Obstructed	Did Not Vote	-0,15	0,72	0,13	0,29		133.323,00	1,00	2,00
Gambia	Obstructed	Did Not Vote		0,72	0,04	0,34		926.662,36		
Ghana	Narrowed	Yes	0,47	0,74	0,15	0,07	253.826,00	2.122.942,15		1,00
Guyana	Narrowed	Yes	0,25	0,64		0,34		441.096,39	1,00	1,00
Iceland	Open	Yes	1,37	0,72	0,23	0,97	3.730,00	40.435,87	1,00	
Indonesia	Obstructed	Yes	0,16	0,70	0,17	0,07	2.812.291,00	61.233.420,70	10,00	1,00
Kiribati	Open	Did Not Vote	1,10	1,62		1,54	18.307,00	137.088,31		1,00
Maldives	Obstructed	Yes	-0,24	1,42	0,14	1,01		409.781,00	0,00	2,00
Myanmar	Repressed	Yes	-1,66	0,78		0,08	2.719.534,00	16.079.178,44		
Nauru	Obstructed	Did Not Vote	0,43	1,17		0,33		5.658,46		
Palau	Open	Did Not Vote	1,06	1,14		1,24		4.035,37		2,00
Philippines	Repressed	Yes	-0,15	0,67	0,04	0,06	1.988.435,00	24.232.395,83	19,00	
Sao Tome a..	Open	Did Not Vote		0,72		0,45		23.014,74		
Senegal	Obstructed	Yes	0,19	0,90	0,08	0,21	85.369,00	8.523.065,33	8,00	2,00
Sierra Leone	Obstructed	Yes	-0,06	0,96	0,13	0,31	69.572,00	953.307,12		1,00
Solomon Isl..	Narrowed	Did Not Vote	0,47	0,98		0,36		165.066,04	0,00	
Sri Lanka	Obstructed	Yes	-0,07	0,81	0,40	0,12	283.653,00	3.507.333,48	12,00	2,00
Tuvalu	Open	Did Not Vote	1,16	1,53		1,41		11.607,00		
Vanuatu	Narrowed	Did Not Vote	0,69	0,78		0,24		26.463,95		1,00



Key findings

- Global data presented here illustrate risks to tenure security, the urgency and scale for addressing tenure security, and the governance conditions that might enable (or hinder) progress toward tenure security.

- Efforts to build tenure security may be particularly urgent and impactful in contexts where people have high reliance on coastal and marine resources, in countries where political conditions are attuned to the protection of tenure rights, and in coastal and ocean areas experiencing escalating pressures and exposure.

- Certain governance conditions (openness, accountability, and sensitivity to tenure rights and other human rights) may indicate there is a window of opportunity for government, rights-holders, and other partners to progress toward tenure security. Progress toward tenure security in contexts with poor or authoritarian governance, and with low sensitivity to rights, may be similarly urgent, but will also be particularly challenging.

- Given the diversity of national situations, there is no uniform way of building the conditions that foster tenure security.

- The global datasets prepared here are intended to contribute to discussions and decisions in arenas where a range of knowledge, values, and interpretations are examined.

Table 3

Data and sources that indicate reliance, vulnerability, and tension in coastal systems, and support the exploration of risks and opportunities associated with programming in support of more security tenure.

Governance capacity and political orientation toward rights	
Indicator type (units), and data source	**Description and assumptions**
CIVICUS civil society indicator (civil society is ranked as: open, narrowed, obstructed, repressed or, closed) CIVICUS Monitor, 2023	CIVICUS determines the degree to which countries protect their citizens' rights to assembly, association, and expression. A ranking of "open" may suggest that governance has a high sensitivity to human rights, is enabling of the agency and voice of rights-holders, and has higher downward accountability to rights-holders. A ranking of obstructed or repressed indicates civil society is constrained and that progress to build the voice of and accountability to rights-holders would be extremely fraught.
UN Declaration on the Rights of Indigenous Peoples (country votes included yes, no, abstain, or did not vote), United Nations, 2023	The declaration is a comprehensive statement addressing the human rights of Indigenous Peoples. Countries that have signed the declaration are presumed to have a commitment to the rights and tenure of Indigenous Peoples to live in dignity, to maintain and strengthen their own institutions, cultures, and traditions, and to pursue their self-determined development, in keeping with their own needs and aspirations.
Worldwide Governance Indicators Voice and Accountability (normalized scale from -2.5 to 2.5) WorldBank, 2023	The Voice and Accountability metric "captures perceptions of the extent to which a country's citizens can participate in selecting their government, as well as freedom of expression, freedom of association, and a free media." A higher score (up to 2.5) can suggest a governance environment that enables responsiveness to rights-holders and potential to advance tenure security. A low score (down to -2.5) may indicate a hostile governance environment in which the advancements of tenure security are very constrained.

Dependence on coastal areas and resources	
Indicator type (units), and data source	**Description and assumptions**
Dependence on marine ecosystems for food security and livelihoods (ranked from high to low) Selig et al., 2019.	The study estimates where people are relatively more dependent on marine resources for nutritional and economic benefits based on 11 sub-indicators: percentage of marine dietary protein to all protein, percentage of underweight children under 5 years old, protein diversity, fat diversity, GDP, percentage of GDP from fisheries revenues, percentage of fisheries jobs to all jobs, GDP trend, unemployment rate, education, and governance. Areas of high marine dependence are less resilient to disturbance(s), indicating an urgency to support local communities.
Proportion of aquatic dietary protein to all other animal protein (grams per person each day) Hicks et al., 2019	This indicates the reliance on marine fish to fill a nutrition gap. Areas with high nutritional dependence on marine protein may indicate greater risk to human health and wellbeing or a shift to more environmentally intensive food production methods if tenure rights are lost or threatened.
SSF catch per capita (metric tons of fish landed per person per year) Pauly et al., 2020	Small-scale fishery (SSF) landings per capita allow for standardized comparisons for country-level dependence on SSFs. Areas with high SSF landings per capita indicate where protection of SSF access and withdrawal rights (at least) are particularly important to ensure food and livelihood benefits for many.
Total number of fishers (total number of women and men working full time or part time in fisheries) FAO, 2021	This indicates the number of people reliant on marine and inland SSF for at least part of their income and/or livelihood. Areas with high numbers of fishers have a higher number of people who can be impacted by decisions that implicate coastal tenure.

Intensity of pressures and interests on coasts and oceans	
Indicator type (units), and data source	**Description and assumptions**
Projected low-elevation coastal zone population (LECZ) in 2030 (people) Tighchelaar et al., 2021	The total LECZP in 2030 indicates the near-term national-level aquatic food system climate risk. Areas with high exposure to climate risks reflect an urgency to support coastal communities.
Proportion of EEZ that is high biodiversity (%) Selig et al., 2014	This study uses modeled spatial distribution data for nearly 12,500 species to quantify marine biodiversity based on species richness, rarity, and proportional range rarity. It includes but is not limited to accepted priorities for marine conservation. The proportion used here is the percentage of the EEZ that overlaps with these high biodiversity areas. EEZs with high biodiversity may already be or soon become priority areas for marine conservation, especially in the context of "30 by 30."
Number of 30x30 commitments (# of commitments made from 0-4) Blue Leaders, 2022; Global Ocean Alliance, n.d.; High Ambition Coalition, n.d.; Ocean Panel, n.d.	The commitment of countries to "30 by 30" through the Blue Leaders, the High Ambition Coalition, the Global Ocean Alliance, and/or the High Level Panel for a Sustainable Ocean Economy signals a national commitment to accelerating or rapid delineation of MPAs. High interest in MPA establishment (i.e., membership in three or four coalitions) can be viewed as a potential tension with marine tenure, unless rights-holders are enabled to represent their interests, including through a suite of safeguards, capacities, and processes that ensure accountability and representation of rights-holders. Countries that have joined all four coalitions may reflect an urgency to empower coastal communities through tenure security.
Intensification of impacts on marine ecosystems (-0.05-0.18) Halpern et al., 2019	This analysis combined high resolution data on 14 human stressors on marine ecosystems (i.e., pollution, fishing, shipping, sea surface temperature, ocean acidification, and sea level rise) to assess the annual pace of change of anthropogenic stressors on the coastal (0-3nm) regions of each country's EEZ from 2003 to 2013. The scale ranges from -0.05 to 0.18, with higher positive values indicating accelerating human impact. Negative values indicate a deceleration of human impact.

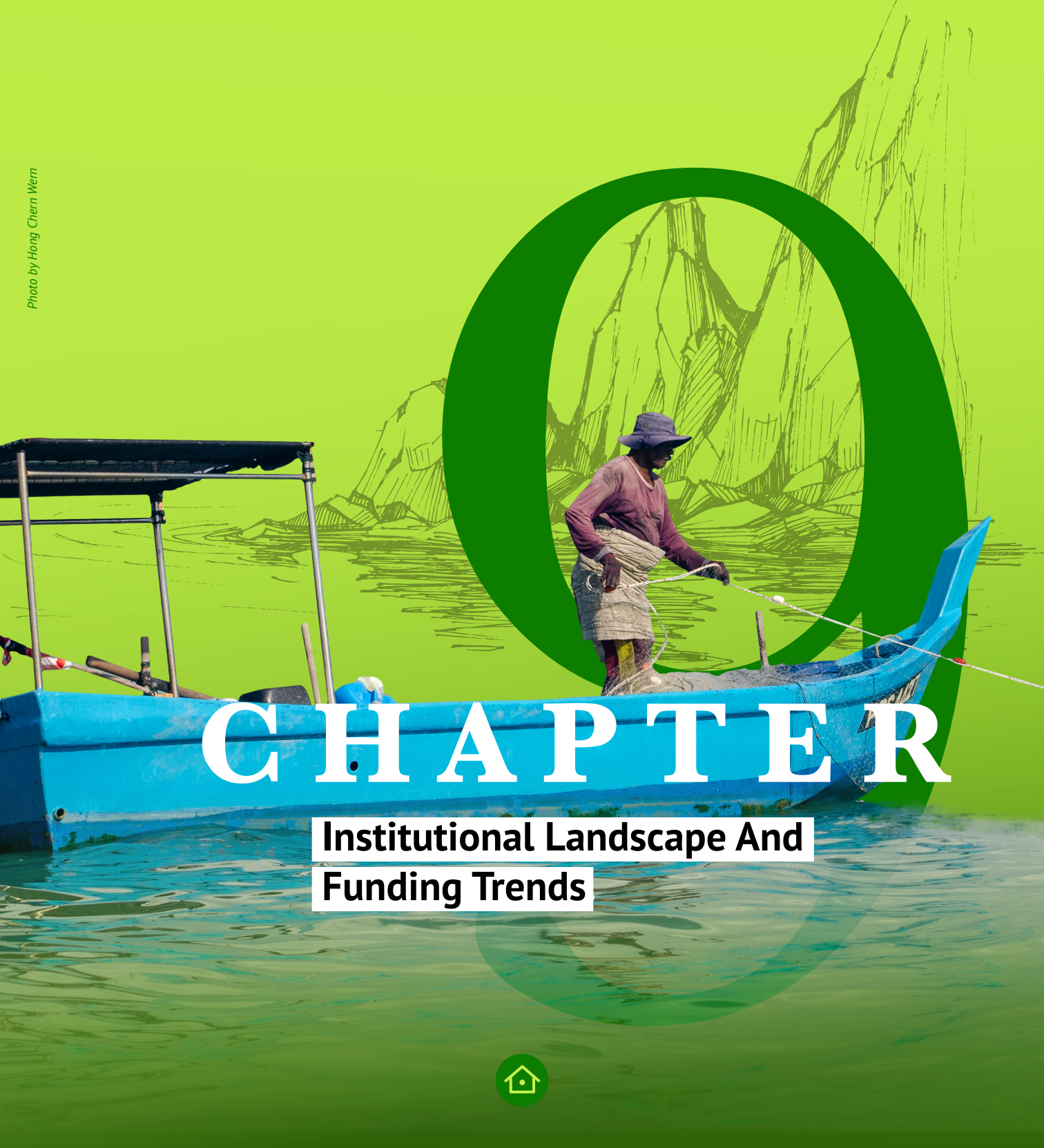


Photo by Hong Chern Wern

CHAPTER 0

Institutional Landscape And Funding Trends

Grantmaking must "ensure that the people closest to the pain are the people closest to the power to address it."[149]

- Alandra washington vice president at w.K. Kellogg foundation

Allocation Of Coastal Aid And Philanthropy

Coastal communities are at the front line of ocean and coastal change, small-scale fishers represent the largest group of ocean users, and Indigenous Peoples have long histories of ocean custodianship. These groups have been shown as effective, and appropriate, stewards and beneficiaries of diverse and dispersed ocean and coastal space and resources. Yet, there is a dearth of direct funding to locally led efforts to manage and conserve coasts and oceans.

"Much less attention has been given to local environmental stewardship and environmental defenders in the marine and coastal environment. The idea of ocean stewards or defenders is frequently associated with individuals or organizations far from the ocean, not directly affected by the degradation of marine environments, and peripherally engaged in on-the-sea actions to protect the ocean. Yet, those most actively involved in and impacted by ocean protection are groups or communities who live near, have rights to, or rely on the ocean for subsistence, livelihoods, and wellbeing."[142]

- Bennett et. al., 2022

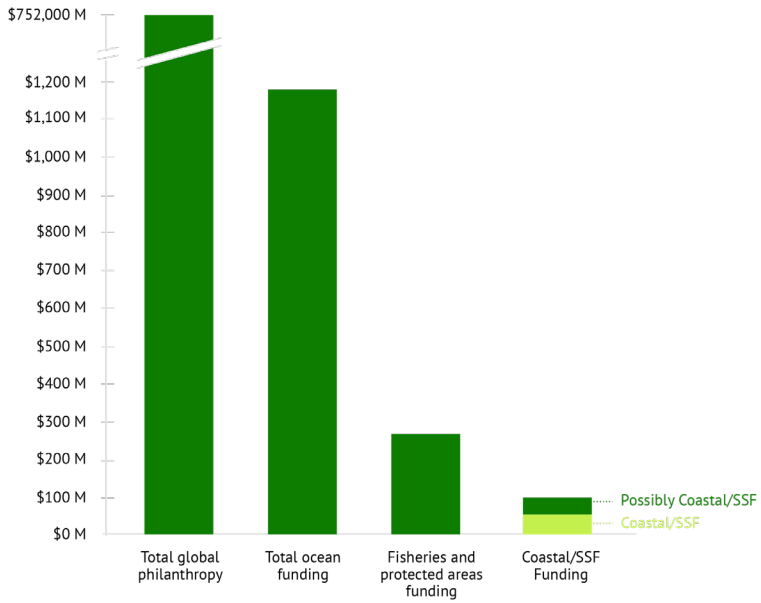
What is more, the funding that does make it to frontline communities is almost always laced with power imbalances, with most of the philanthropic and aid funding flowing through international NGOs or other institutions based in the Global North.

> ***"Many indigenous organizations have experienced that their own priorities clash with those of donors or intermediaries. This happens when funding is prioritized for certain countries, ecosystems or themes, which do not correspond with Indigenous Peoples' holistic long-term visions for development, or the way they have structured their institutions and networks."***
>
> - Charapa Consult, 2022[143] 'Directing Funds to Rights. Principles, standards and modalities for supporting Indigenous Peoples' tenure rights and forest guardianship'

Oceans and coasts, and particularly the subset of funding targeting coastal/community-based issues and small-scale fisheries, has historically been low. In 2020, marine related projects and activities received approximately $1.2 billion in philanthropic funding.[144] Of this funding, approximately $100 million (8.3%) directly targeted coastal community-based projects and/or small-scale fisheries (Figure 10).[144] It is important to acknowledge that this figure is from 2020, prior to MacKenzie Scott's giving in this area, which was substantial and most likely impacted the annual aggregate and percentage amounts. Official development assistance (ODA) demonstrates a similar trend. From 2010 to 2020, fisheries (both large-scale and small-scale) received an average of 18% of marine ODA funding annually.[144]

Figure 10

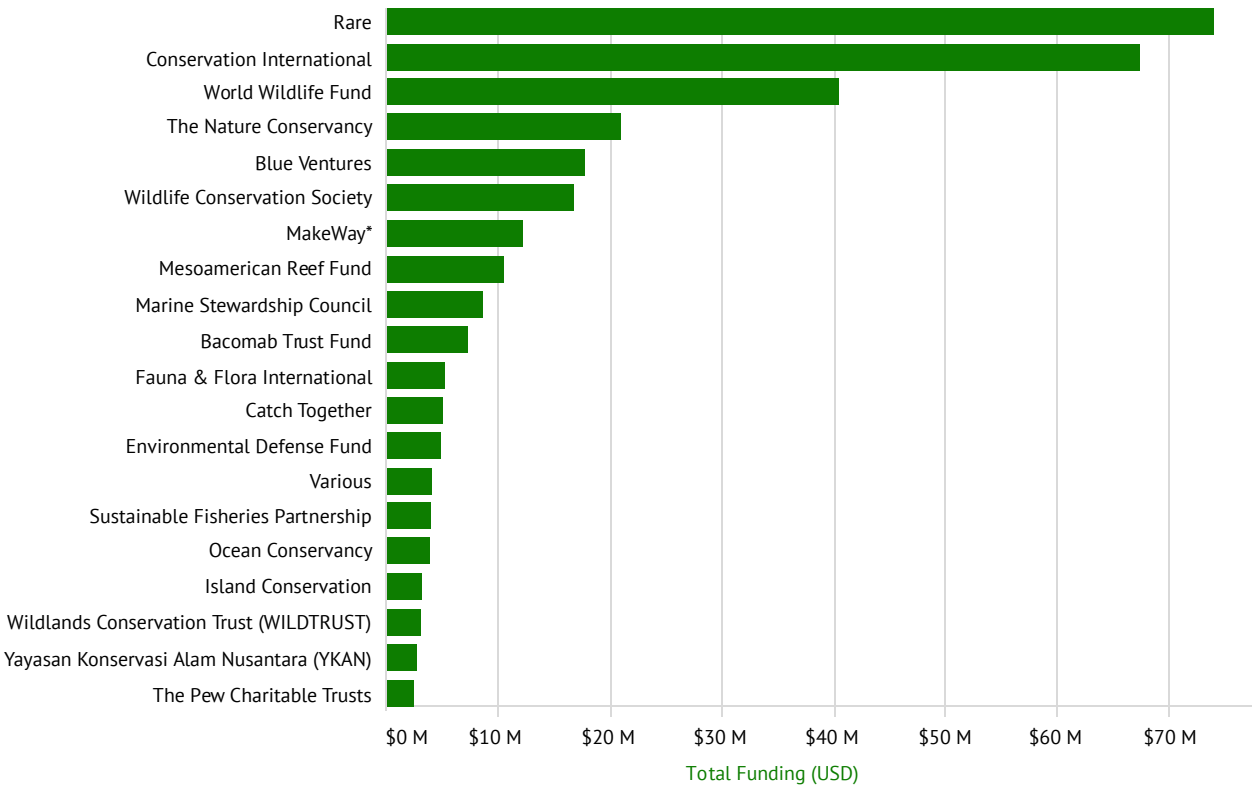
Ocean funding is a small percentage of philanthropic funding (2020), and within it coastal issues and small-scale fisheries are an even smaller percentage (reproduced with permission).[144]



Philanthropic and aid funding for work in the Global South for the most part flows through international NGOs based in the Global North. Of the top 20 recipients that received philanthropic support for coastal community-based projects and/or small-scale fisheries between 2010 and 2020, 19 were international NGOs based in the Global North and one was a national-level affiliate of an international NGO (Figure 11). Additionally, over 95% of ODA flows to (or at least through) institutions based in the Global North, and less than 5% of overall aid is given directly to national organizations.[145] For example, African non-profit organizations receive approximately 11% of philanthropic funding on the continent.[146] Indigenous Peoples and local communities receive even less – receiving an estimated 0.74% of ODA dollars directed to climate.[147]

Figure 11

A course analysis of coastal and small-scale fisheries philanthropic funding recipients (2010 to 2020). The top recipients of philanthropic funding labeled as being directed toward "coastal" actions or "small-scale fisheries," illustrating that six international NGOs receive around 75% of the total funding that is (documented and) flowing to coastal and small-scale fisheries issues. Reproduced with permission.[144]



Indications Of Change

There is growing recognition of the unequal power dynamics in the international aid and philanthropy systems and the resulting harm to local communities and impacts on long-term goals. Leading organizations in the humanitarian field, such as Peace Direct, Adeso, Alliance for Peacebuilding, Women of Color Advancing Peace and Security, and others, have documented and become increasingly vocal about the ways in which power and resources remain dominated by certain organizations and relationships largely based in the Global North.[148] There is also a growing recognition by practitioners and donors alike that shifting power cannot be done through the country offices of international NGOs, which can serve to entrench colonial power dynamics by dominating development funding and displacing local organizations.[148]

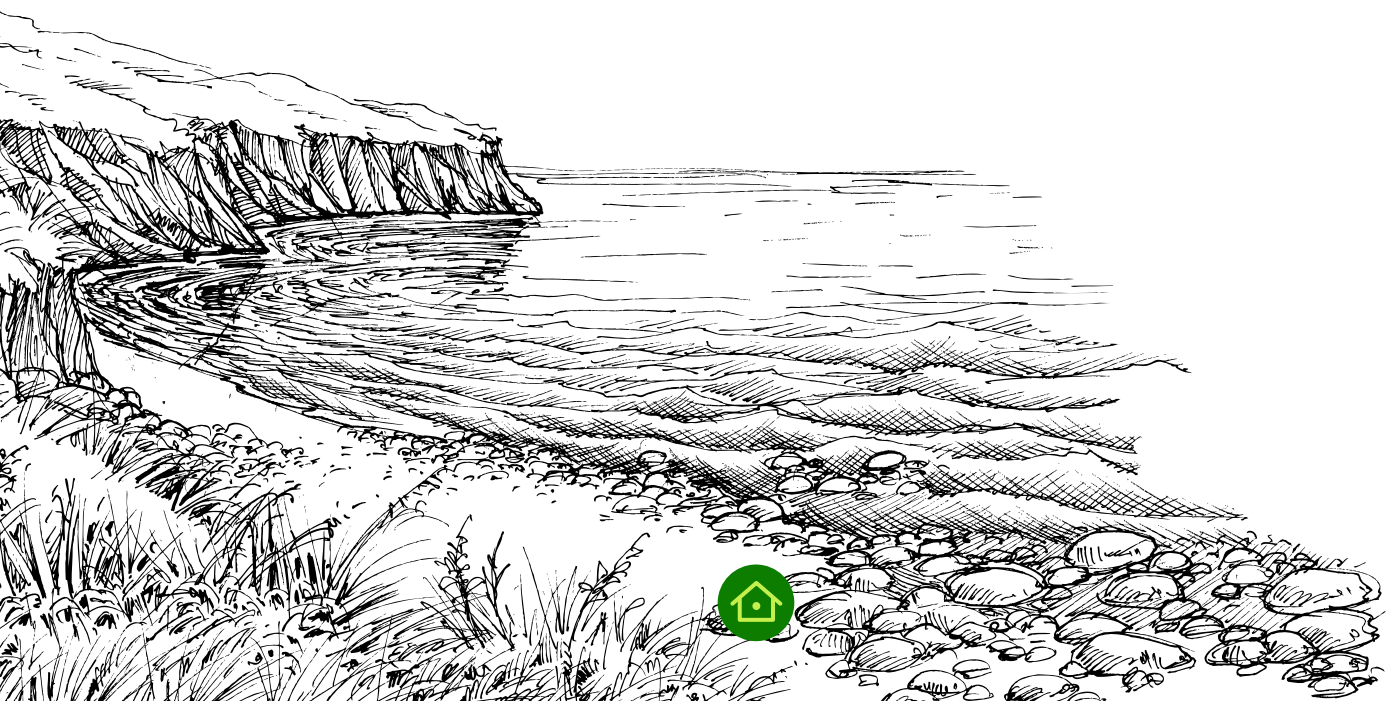
"We fully recognize the importance to meaningfully engage communities, Indigenous people and local grassroot organizations to achieve 30x30 and to address existing power imbalances in marine conservation space. However, public funders' administrative, financial as well as international environmental and social safeguard requirements make it extremely difficult to directly partner with smaller organizations. The public funding landscape must change if promises and expectations to fund smaller, more local or Indigenous groups are to be met."

- Markus Knigge, Executive Director, Blue Action Fund, 2023

In 2016, the international aid community agreed that in order to have the most potential for system-wide transformative impact on the humanitarian ecosystem, greater support needs to go to local leadership, as well as participation of affected communities; and there needs to be more long-term, flexible support to frontline responders.[150] Under the Grand Bargain, announced at the 2016 World Humanitarian Summit, the five biggest humanitarian organizations and six largest UN Agencies committed to address inequities in the system.[150] Additionally, in 2021, USAID committed to increase its share of aid dollars (i.e., from 6% to 25% over the course of five years) going directly to national organizations in low- and middle- income recipient countries.[151]

There is also reason to believe that philanthropic donors working on oceans and coasts are committed to increasing direct funding to the world's coastal dependents, and to level the playing field between institutions based in the Global North and stakeholders based in coastal communities around the globe. Maliasili, together with Synchronicity Earth, stated that "*improving funding practices in ways that provide greater funding to the point of impact, at the local scale, is a critical yet underappreciated issue*."[152] In addition, giving strategies (internal documents) by some of the leading foundations in this space (e.g., Builders Initiative, and Packard Packard) explicitly name direct support to national and local groups as a giving priority.

Donors have also begun to make a shift, albeit slowly, in how they do their grantmaking. Since 2016, some country-level donors (e.g., Denmark, the Netherlands, and Ireland) have released more flexible funding. However, while the volume of flexible funding has increased, as a proportion of total ODA funding, it has not.[145] On the philanthropic front, while there is no collective effort to track the field's giving practices, a few examples appear to show a shift in the giving approaches of some funders. For example, the Health and Environmental Funders Network reported that capacity building and general operating grants more than doubled in 2020, likely due to an increase in unrestricted grants given by its members.[153] Additionally, MacKenzie Scott's giving made headlines not just due to the size of giving, but due to her grantmaking practices. Half of Scott's grants went to organizations based outside of the U.S; all have few or no strings attached and center on race, gender, equity, and localized decision-making.[154]



Putting Commitments Into Practice: Exploring The Alternatives

There is a need and a growing desire to ensure more power and agency resides with coastal dependents and their representative institutions in determining and governing coastal and ocean spaces and resources. Below is a suite of established and emerging practices in aid and philanthropy that strive to center power and control to local communities through grantmaking. Here, we distill the principles and lessons from each of these approaches to ensure funds are allocated in ways that are appropriate, effective, and empowering of coastal dependents.

Fit for purpose grantmaking

The Rights and Resources Initiative defines "fit for purpose" as "*an approach whereby climate, conservation, and rights funding is channeled in ways that are relevant and appropriate for Indigenous Peoples and Local Communities, and ensures funding engagements are led by their organizations, flexible and long-term, gender-inclusive, timely and accessible, and mutually accountable.*"[155] This must include Indigenous Peoples, coastal communities, and small-scale fishers at every stage of the process, significantly increase funding to women's groups, lower the administrative burden, and increase funder transparency.[155]

Quality funding

Through the Grand Bargain, a significant portion of the international aid community committed to enhance "quality funding."[156] Quality funding is characterized by "multi-year, collaborative and flexible planning" and a commitment to progressively reduce earmarking (i.e., move away from project- and country-directed funding and toward region- or strategic-based funding, or better yet, fully flexible core contributions).[156,157]

Localizing giving

As explained above, international development aid and philanthropy mainly flows from the Global North to the Global South via large, relatively powerful organizations based in the Global North. These organizations (predominantly) utilize Western legal and financial structures, design and monitor programs based on Western practices, and often rely heavily, if not exclusively, on science conducted by researchers from the Global North. Often, these organizations have leadership and boards comprised exclusively of representatives from the Global North. Even if co-design processes are in place, ultimate decision-making power remains centralized in the Global North. As such, these practices are viewed by many as a perpetuation of colonization.[148]

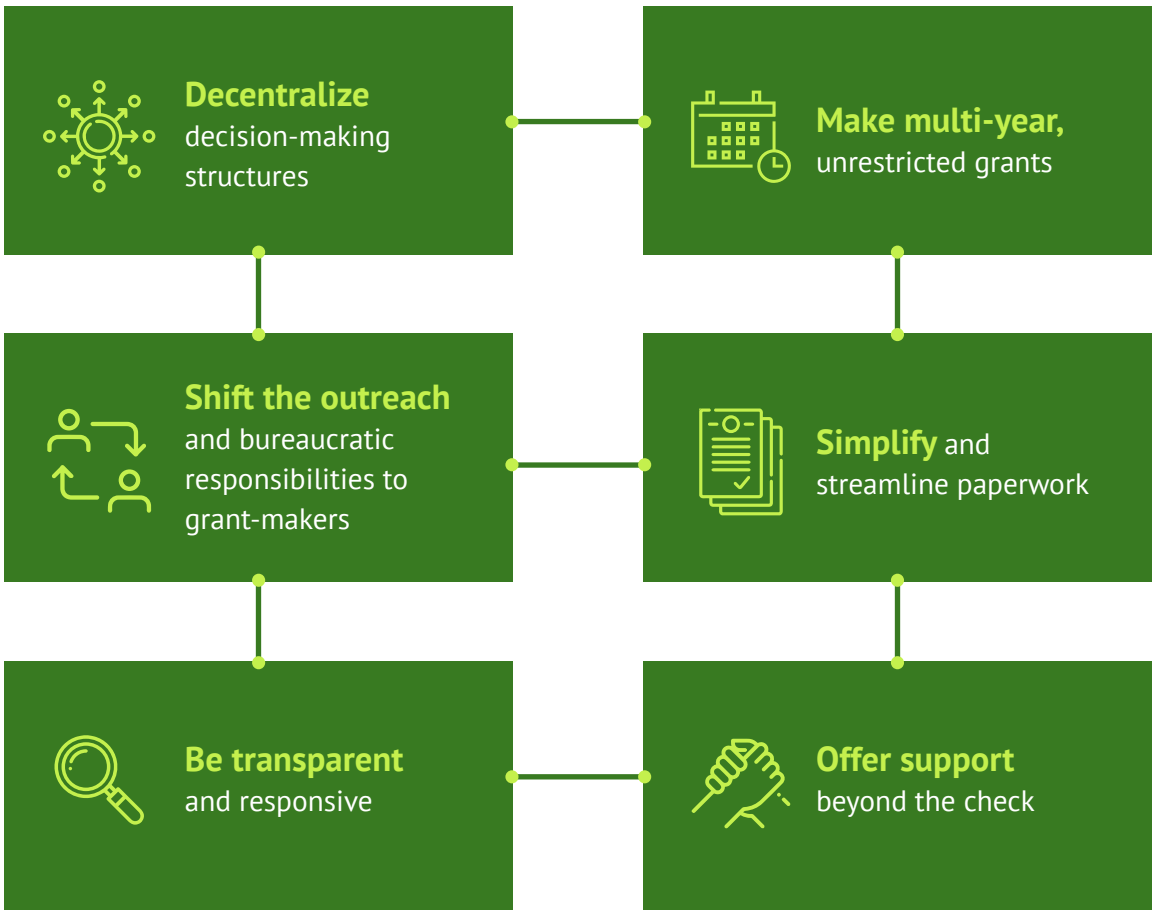
The idea behind localized giving, also referred to as "decolonizing aid," is about undoing the structural biases that favor Global North-based institutions and others that know how to "play the game" to unlock international funding. For donors, localizing the allocation of their funds may take the form of acknowledging power dynamics from the start, pursuing recipients beyond the usual suspects, and trusting in-country partners to take the lead, develop their own theories of change, and track progress using diverse ways of knowing.[148] At its core, commitments to localizing funding mean that direct recipients of support (a) are rooted in the places and cultures where the work is taking place, (b) experience the agency to utilize funds, and (c) use and/or develop capacity in self-determined ways.

Trust-based philanthropy

Trust-based philanthropy emerged as a guiding practice for donors committed to confronting the ways the philanthropic sector has contributed to systemic inequities, both in the ways wealth is accumulated and in the ways its dissemination is controlled. At its core, trust-based philanthropy works to address the inherent power imbalances between foundations and nonprofits. It is rooted in a set of values that help advance equity, shift power, and build mutual accountable relationships. The trust-based values guide four key dimensions of an organization's work: culture, structures, leadership, and practices.[159]

Key elements of trust-based philanthropy

Adapted from Trust-Based Philanthropy Project, 2021 [159]



Collective or participatory grantmaking

in "collective grantmaking" or "participatory grantmaking," stakeholders, rather than funders, propose priorities and a theory of change, help identify potential grantees, and help decide which grants ultimately get funded. For example, Global Greengrants Fund's grantmaking process is led by 24 regional and thematic advisory boards that each create their own annual strategy and identify potential grantees, often groups rooted in the places in which they are working (e.g., a group of traditional singers in Micronesia who can influence Parliament to protect sea cucumbers through song).[160,161] participatory grantmaking encompasses a range of models, methods, challenges, and insights. At its core, this approach to funding cedes decision-making power about grants, and oftentimes strategic approaches, to the communities impacted by funding decisions. The theory behind participatory grantmaking is the belief that when individuals and communities have more decision-making power, they can better identify strategies and partners that will have the greatest impact on their collective goals.

Investing in local civil society and leadership

A small, but growing, number of international donors, including the Ford, Oak, and Packard foundations, recognize the need to invest deeply in local civil society in order to realize systems change and reach end goals. Research from the Packard Foundation's Civil Society and Leadership initiative revealed that several donors have articulated theories of change that define success such that the capacities and conditions in which organizations and movements operate (i.e., "how" systems change is achieved) is as important as issue- and place-based outcomes (i.e., "what" systems change is achieved). Many donors and their partners want to achieve systems change that is deeply embedded such that it self-perpetuates, and they recognize that local civil society, with the capacities to protect and sustain change over time, is the best way to ensure that the impact from philanthropic and aid investments endures.

Institutional Landscape Analysis: Existing Infrastructure To Support Coastal Dependents

In order to gain a deeper understanding of the current state of the institutional infrastructure available to support Indigenous Peoples, coastal communities, and small-scale fishers, we undertook a high-level scan of intermediaries in the field. This was not an exhaustive search, but rather a preliminary scan of those organizations that had been mentioned through conversations, events (webinars and meetings), industry newsletters, and the technical team's network. The sample we examined had been reported as being: relatively more responsive to local levels and groups that legitimately represent local levels, using more participatory forms of grantmaking pooling funds for redistribution to resource dependents, and/or actively minimizing bureaucracy flow onto grantees.

The landscape analysis included 23 regranting facilities (Table 4). For each institution, a rapid scan of the grantmaking strategy and services offered was conducted using information readily available on the website, in the most recent annual or strategic report and, in a few cases, informational interviews.

Table 4

An asterisk denotes no English strategic/annual report available; only information on the website was analyzed. A question mark denotes services that may be offered, although when they were mentioned in a report they appeared to be led by partner organizations.

	Grantmaking practices		Supportive services				
	Participatory grant-making	Grant access, low bureaucratic burden	Strategic communications/advocacy support	Research to build the evidence	Legal advice, legal support	Negotiation support	Conflict resolution
Adeso	●	●	●				
Blue Ventures			●	●			
CLIMA Fund		●	●		?		
Climate Justice Resilience Network	●		●				
FAO Flexible Voluntary Contribution			●	●			
Firelight Foundation	●						
Fondo Acción Solidaria (FASOL)*	●				●		
Fondo Socio-Ambiental CASA	●		●				
Give2Asia							
Global Fund for Community Foundations	●			●			
Global Fund for Women	●	●	●				
Global Greengrants Fund*	●	●					
KCDF Kenya	●		●				
Mama Cash	●		●		?		
NEAR Network	●	●	●				
Podaali*							
Rights and Resources Institute	●	●		●			
Star Ghana			●	●		●	?
Start Community Network	●	●	●				
Syncronicity Earth		●	●	●			
The He Yi Institute*							
The Tenure Facility	●				?	?	?
Thousand Currents			?	?			
TOTAL	14	8	13	6	1	1	0

Headquarters location		Geographic focus			Thematic focus		
Global North	Global South	Global	Regional	Single nation	Highly aligned	Moderately aligned	Little to no alignment
	●		●			●	
●		●			●		
●		●				●	
●		●				●	
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	●			●			●
●		●				●	
●		●				●	
14	9	14	5	4	3	14	6

Fourteen out of the 23 regranting facilities exemplified one or more of the concepts of trust-based and/or participatory **grantmaking** (i.e., partners help develop a grantmaking strategy, identify potential grantees, and/or advise on award decisions). Often, rather than explicitly naming participatory grantmaking or trust-based philanthropy, organizations described one or more characteristic practices. For example, the Global Fund for Community Foundations practices "community philanthropy," which it states shifts power to the community level. About one third (8/23) of the re-granting facilities we identified described an explicit goal to increase grant access and/or reduce the bureaucratic burden for communities.

The most frequent **services offered** by far were strategic communications/ advocacy support, led by 13 out of 23 facilities (a further two facilities stated they did not hold internal capacity, but partnered with organizations to offer these services). Six of the 23 facilities conducted research for the purpose of building the evidence base for sector-based advocacy. Another facility – Fondo Acción Solidaria – offers legal support. Another facility, STAR Ghana, gave an example of negotiation support. Evidence of conflict resolution was not apparent in any of the facilities (although some of their partners may offer these services).

In examining **geographic focus and headquarters location,** we found the majority of the institutions were global in scope and based in the Global North. Only two global institutions – Global Fund for Community Foundations and NEAR Network – were based in the Global South. All four of the nationally focused institutions and three out of the five regionally focused institutions are based in the Global South.

The **thematic focus** of each institution was analyzed for alignment with rights to lands, water, resources, human rights, small-scale fisheries, Indigenous Peoples, coastal communities, and oceans and coasts. Three institutions were highly aligned; these included Blue Ventures' proposed Frontline Climate Fund, Global Greengrants Fund, and Synchronicity Earth. Of the other organizations, 14 were moderately aligned and six had little to no alignment.

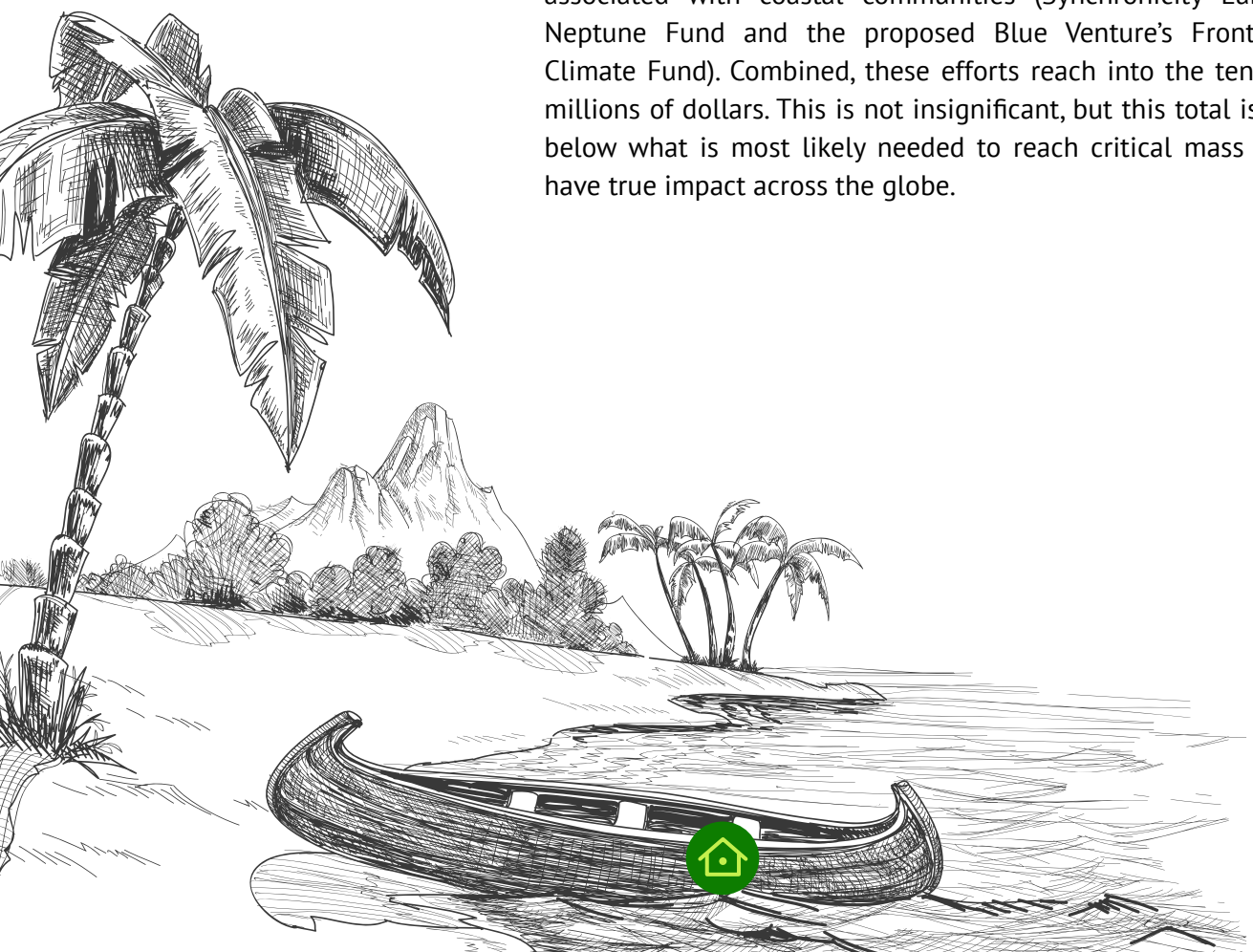
A need for an ecosystem of support

In this section we start to interpret what we have learned about the current state of the field in the marine and coastal space, as compared with the land and forest space, to understand the size of overall giving that might make a substantial contribution toward marine and coastal tenure security. The land and forest space, has been building the infrastructure to support Indigenous Peoples and communities in defense of their lands and territories for close to a decade. Today, the largest institutions supporting land tenure are rooting their strategies in the direct, or at least more proximate, support of Indigenous Peoples and local communities. Many large institutions, including CLUA, Forests for People and Climate (comprised of several large funders), Nia Tero, the International Tenure Facility, and the Rights and Resources Initiative, among others, are committing hundreds of millions of dollars – while actively working to reach fundraising targets into the billions of dollars – for the protection of Indigenous lands and tenure rights. In asking if these institutions are competing with each other for operating space, we heard that it is unlikely that any single initiative can effect change at the scale necessary; the funding and momentum of the whole is a necessity, rather than illustrating duplication or competition.

"It is not a question of a single initiative, or how large that initiative should be, but how the ecosystem contains multiple initiatives that reach a critical mass to effectively move the needle."[149]

- David kaimowitz., The international land and forest tenure facility, 2023

In comparison, this same effort in the oceans and coasts funding space is nascent. There are a few small donors that focus their giving directly to coastal communities and marine tenure rights, and a handful of larger donors that include grants to organizations for Indigenous Peoples, coastal communities and small-scale fishers. There are a couple other funds in the works designed to funnel resources and support to local organizations associated with coastal communities (Synchronicity Earth's Neptune Fund and the proposed Blue Venture's Frontline Climate Fund). Combined, these efforts reach into the tens of millions of dollars. This is not insignificant, but this total is far below what is most likely needed to reach critical mass and have true impact across the globe.



Key Insights

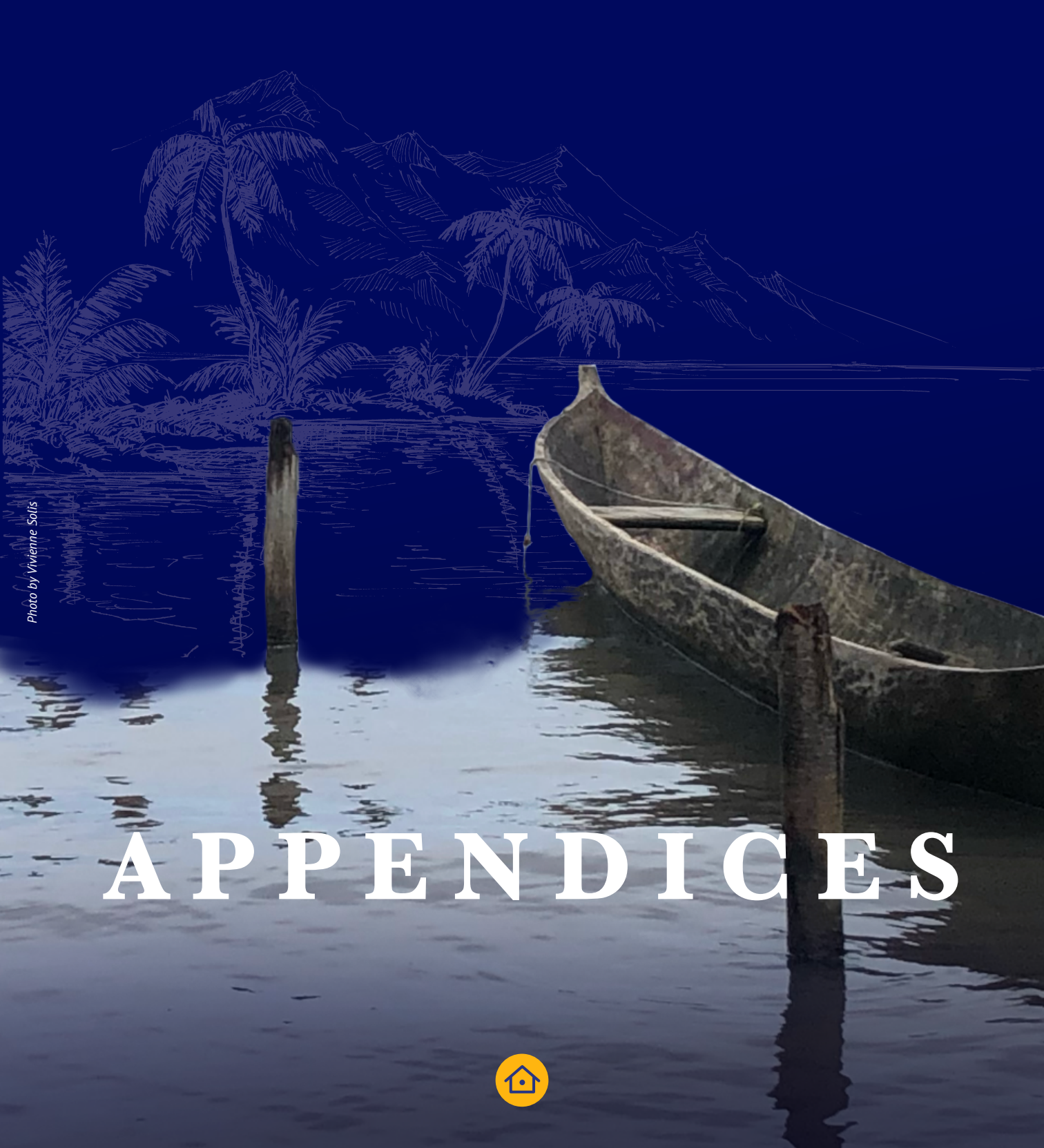
- While **there is growing recognition of the need** to directly support local organizations, or make giving more proximate, critical barriers must be overcome to put commitments into practice. Principles, standards, and modalities for supporting Indigenous Peoples have been developed in the land and forest tenure space,[143] and provide valuable direction to funders and rights-holders seeking partnership in the marine realm.

- There is **a variety of organizations that are considered trailblazers** in terms of using inclusive processes, sharing power, and enabling local organizations to lead from which marine donors and initiatives can learn.

- **Most re-granting institutions are based in the Global North.** Of the re-granting institutions that identified their work as global in scope, only two are based in the Global South; most philanthropies, aid agencies, and re-granting facilities are based in the Global North and work through institutions based in the Global North.

- **We identified only three institutions** that strongly aligned with the themes (rights to lands, water, resources, human rights, small-scale fisheries, Indigenous Peoples, coastal communities, and oceans and coasts), suggesting there is little funding attention in this space that employs the principles examined here.

- **There is a need to better understand and invest** in regional, national, and local networks of intermediaries and end recipients – this must include organizations and networks of Indigenous Peoples, association/networks of traditional/small fishers, and their capacities to manage and re-grant funds.



APPENDICES

List Of Appendices

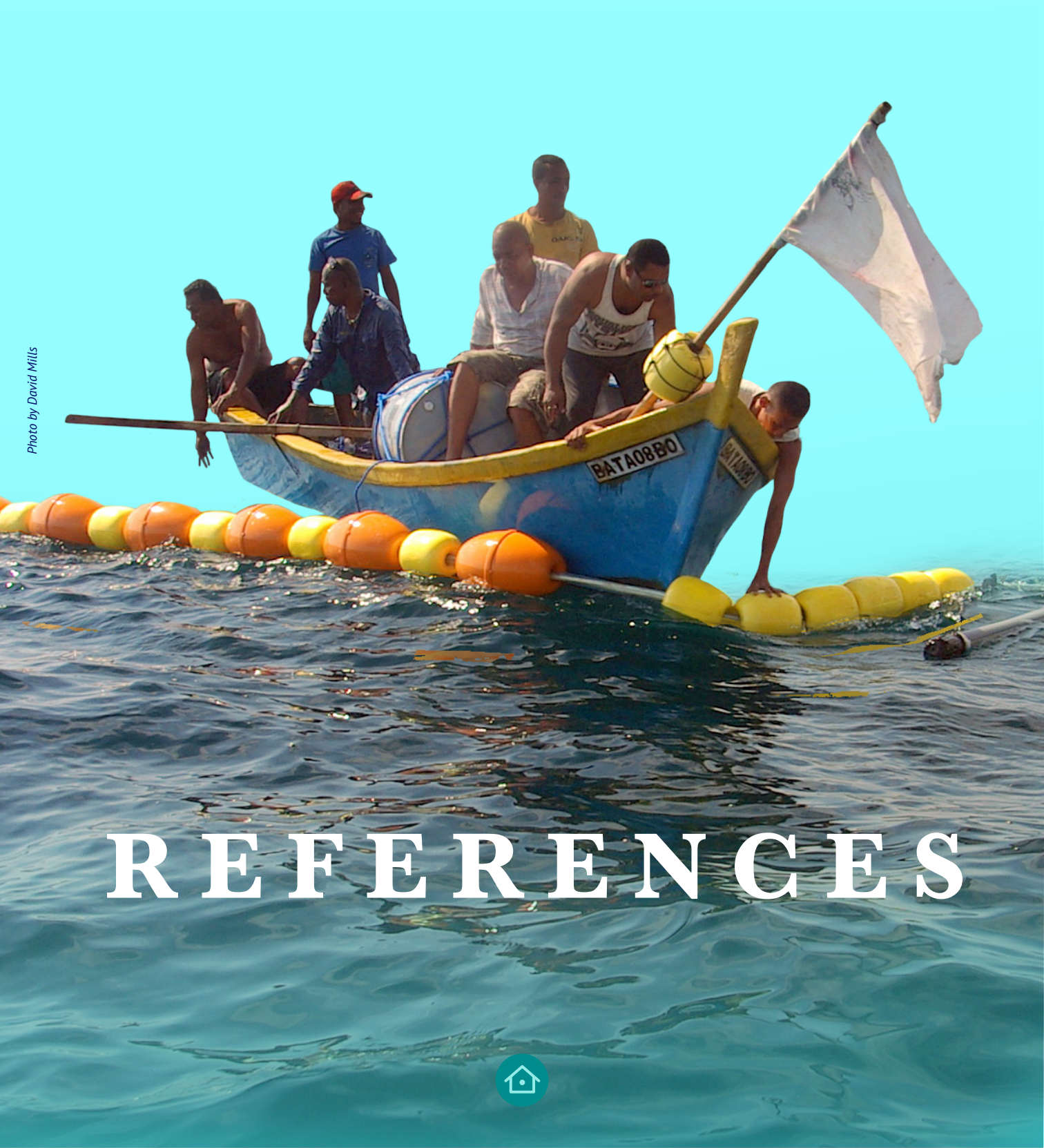


Photo by David Mills

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