

Blue Tenure: Regimes, Rights and Responsibilities

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Conference – Advantages and disadvantages of strong user rights in fisheries – Copenhagen, 16 -18 October 2023

Background: the Marine Tenure Initiative (MTI)



- Project to scope and design a *Marine Tenure Facility* focusing on Indigenous Peoples and small-scale fishing communities
- Funded by small group of philanthropic funders
- Consultation process to understand needs, priorities and challenges
- Led by a technical team under a steering committee
- 2024: establishment of the *Facility*

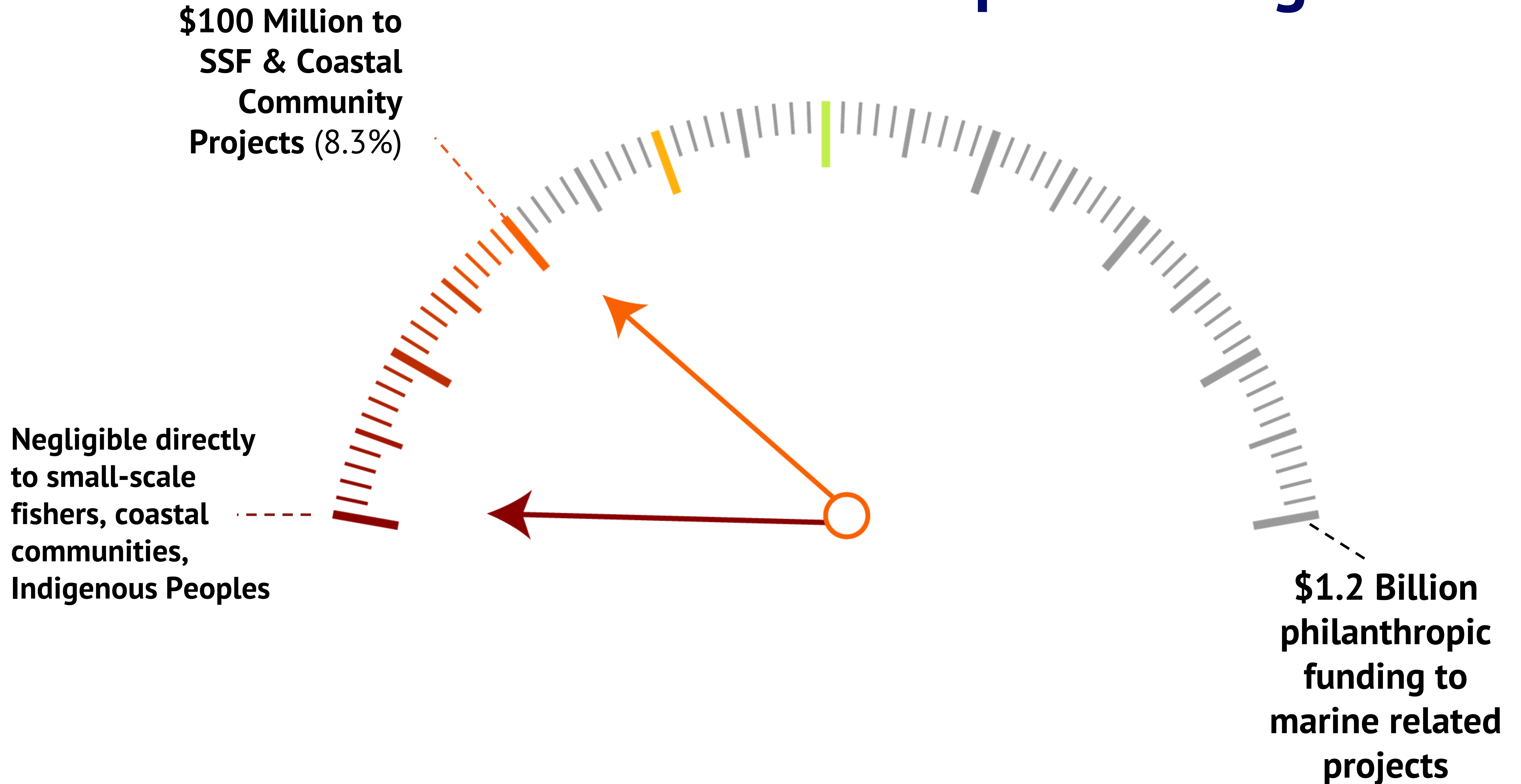


Rationale: the MTI Theory of change

The MTI is based on the premise that through more secure tenure rights, Indigenous Peoples, coastal communities and small-scale fishers will have greater capacity and agency to determine how coastal lands and marine and other aquatic areas, and the resources therein, are allocated, used and managed. This will result in more secure livelihoods, food security, management of resources and space, and access to cultural lands and practices.



Philanthropic funding 2020



Vision & Values

The objective of the MTI is to identify and design structures and processes that will increase technical and fiscal support flowing to the coasts that enable coastal communities, Indigenous Peoples, and small-scale fishers to secure, bolster and/or assert their rights to coastal and marine spaces.



- **Center power with Indigenous Peoples and small-scale fishing communities (our partners)**

- **Uphold lived experience and traditional knowledge**

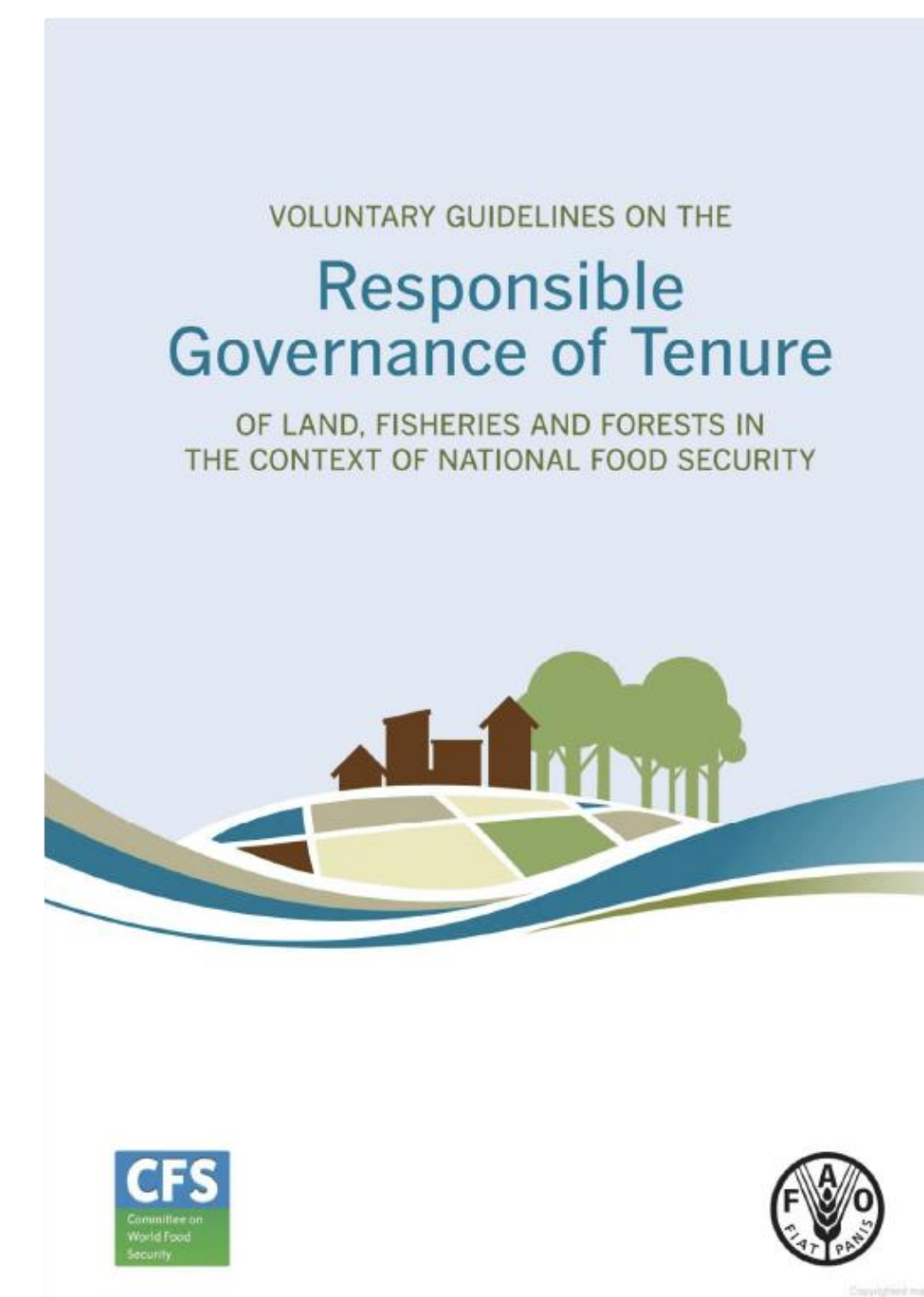
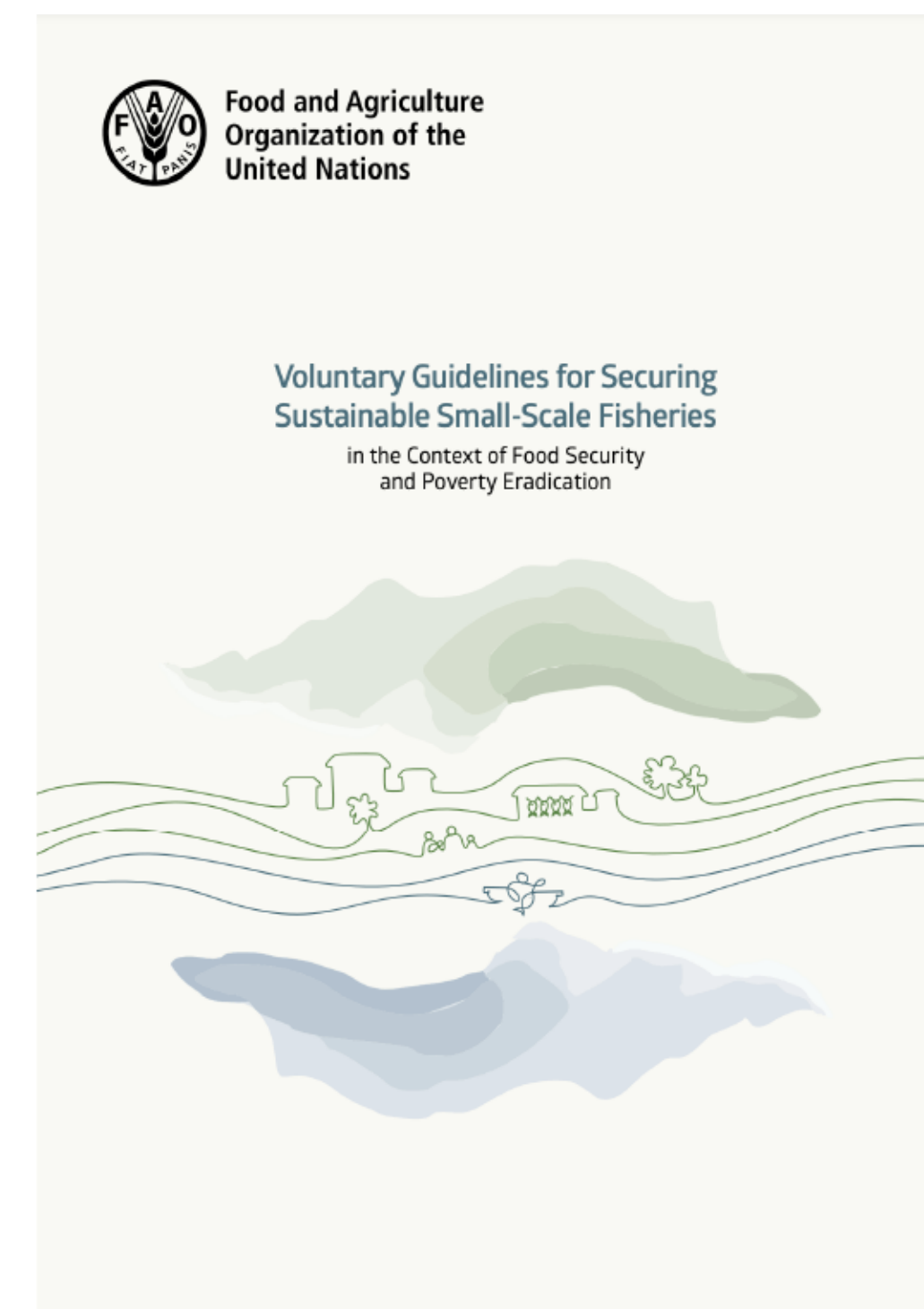
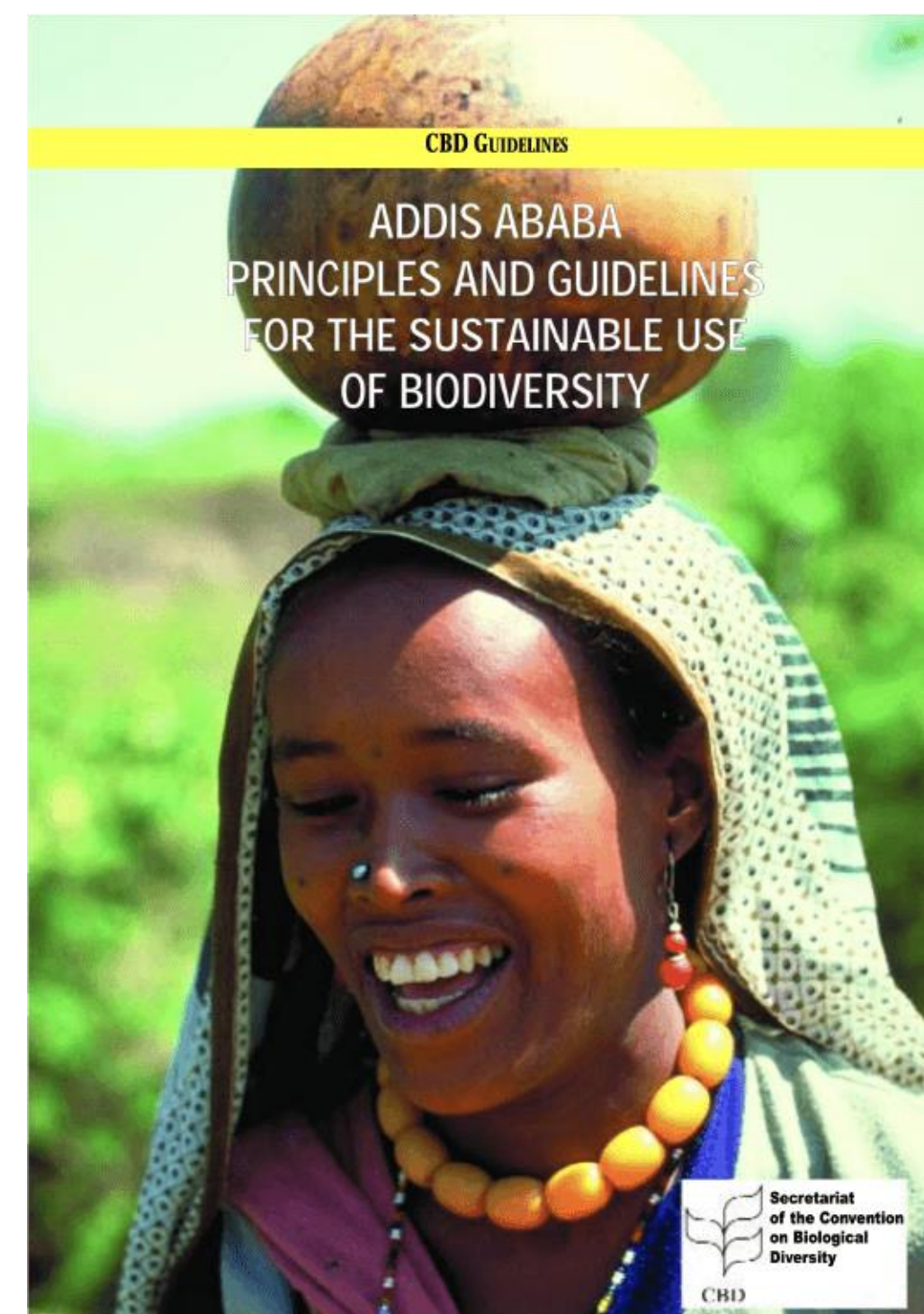
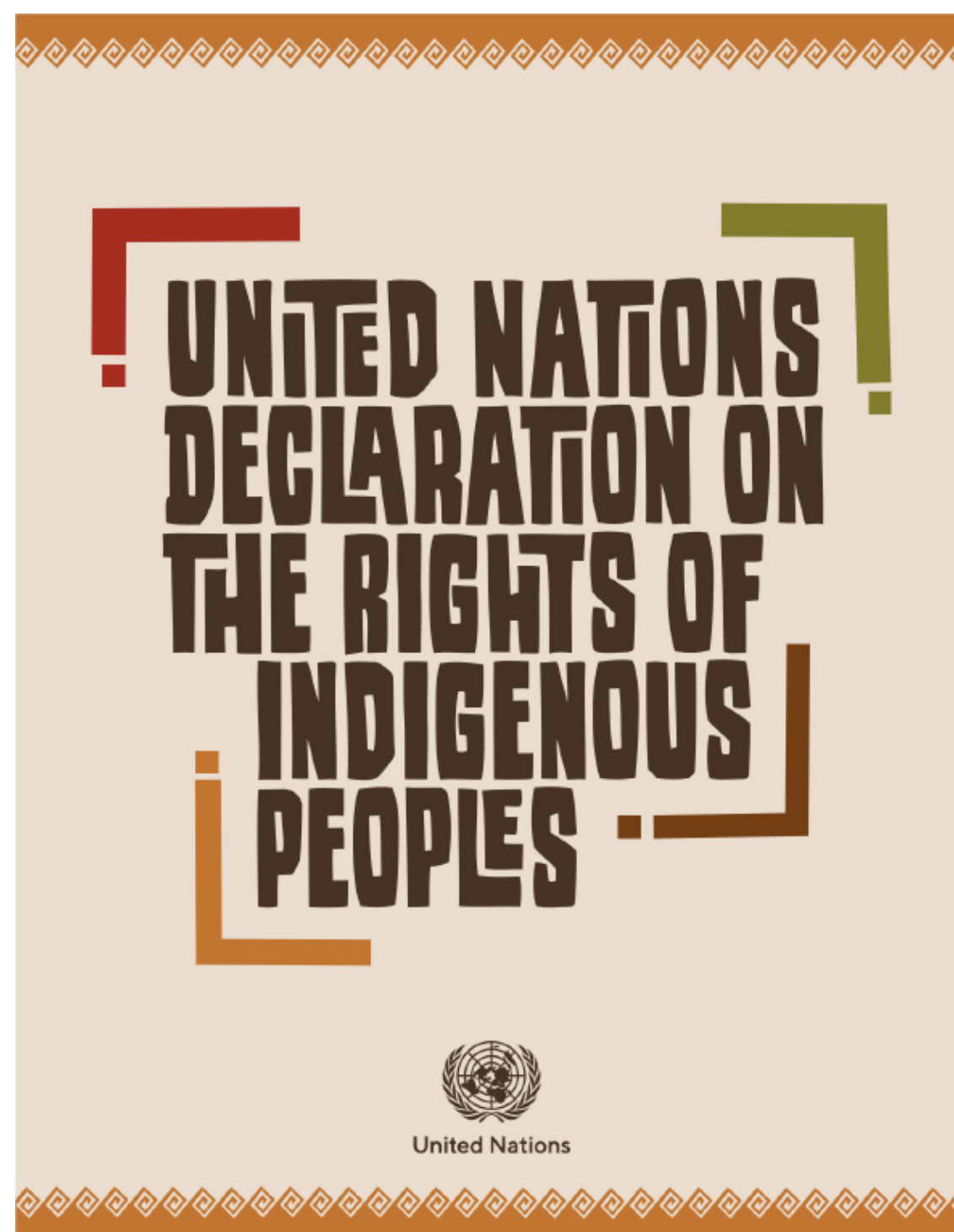
- **Base our work on trust, responsiveness and service**

- **Prioritize transparency and accountability**

- **Foster solidarity and protect civic spaces**



United Nations Framework Convention on Climate Change



Future support



Increasing marine
tenure literacy



Legal supports, due
process, conflict
negotiation



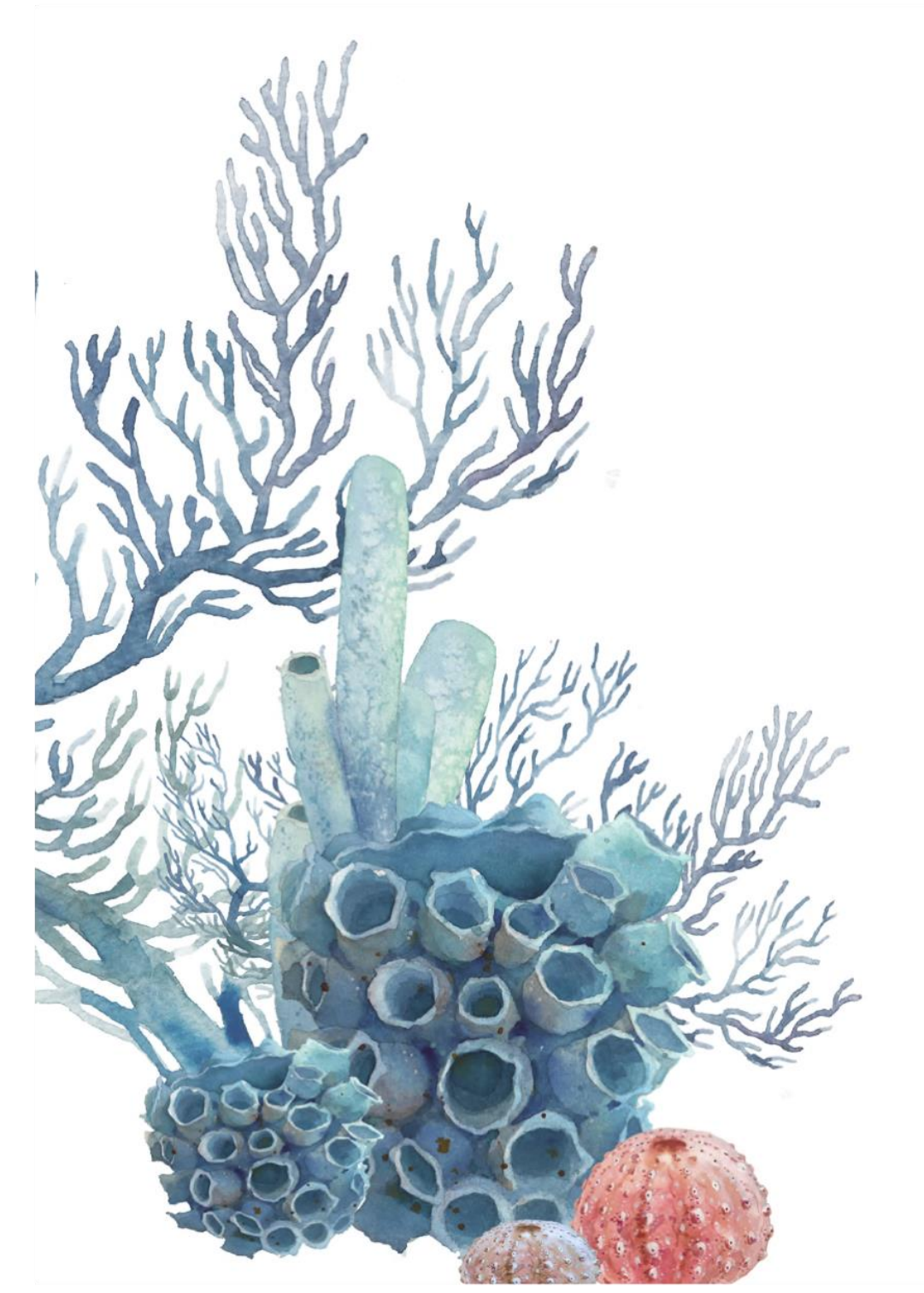
Representation in decision-
making processes



Conflict negotiation



Uplift rights holders' efforts
and knowledge in restoration,
management and research





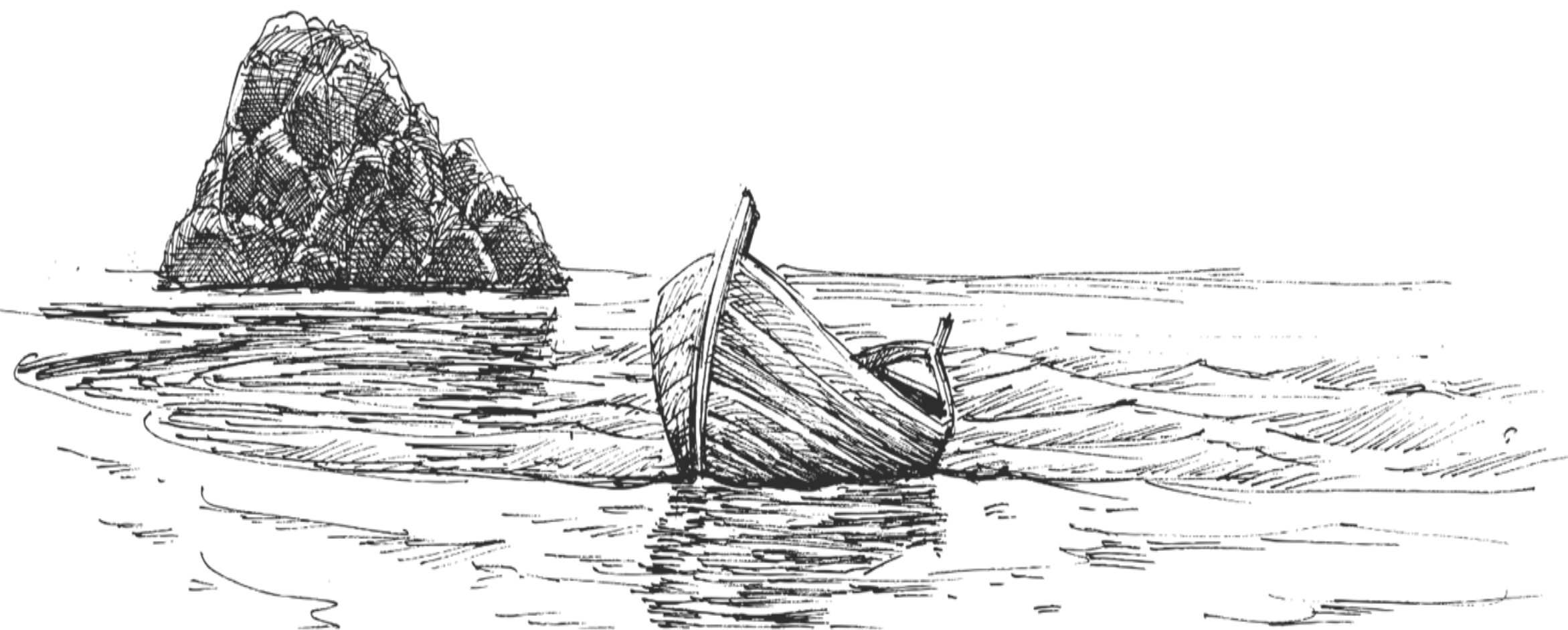
Scoping report

1. Marine Tenure: Rights, Responsibilities and Rights-holders
2. International Commitments to Tenure and Rights-holders
3. Tenure, Fisheries and Environmental Governance
4. Marine Tenure and Law
5. Tenure, Gender and Women's Tenure Security
6. Climate Change and Tenure
7. Impacts of Secure Tenure on Society and the Environment
8. Global Reliance and Vulnerability
9. Institutional Landscape and Funding Trends

Tenure

is the ways in which societies (and the law) define and regulate people's relationship and rights associated with land, oceans, shores, aquatic spaces and associated resources.

- Western views of tenure emphasize the relationship of property and landlord, and separate land and marine tenure at the high tide mark. Western science, economics and law often view tenure as a “**bundle of rights**”
- **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.



Different ways of understanding what we mean can affect what actions follow

Blue tenure

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

“**Licensing on its own** is least likely to empower fishers and fishworkers, and thus their ability to participate in decision-making processes concerning their fisheries is limited.”

Preferential Access Areas do not confer management and decision-making rights to small-scale fishers.



Illuminating Hidden
Harvest (2023)

Tenure security and insecurity

“Tenure security is an important dimension of responsible tenure governance. It is the perception by users that their fisheries [and other] 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 fisheries²¹ and forestry¹⁷ 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 Movilizarario



Risks to tenure

Insecure tenure is fueled by:

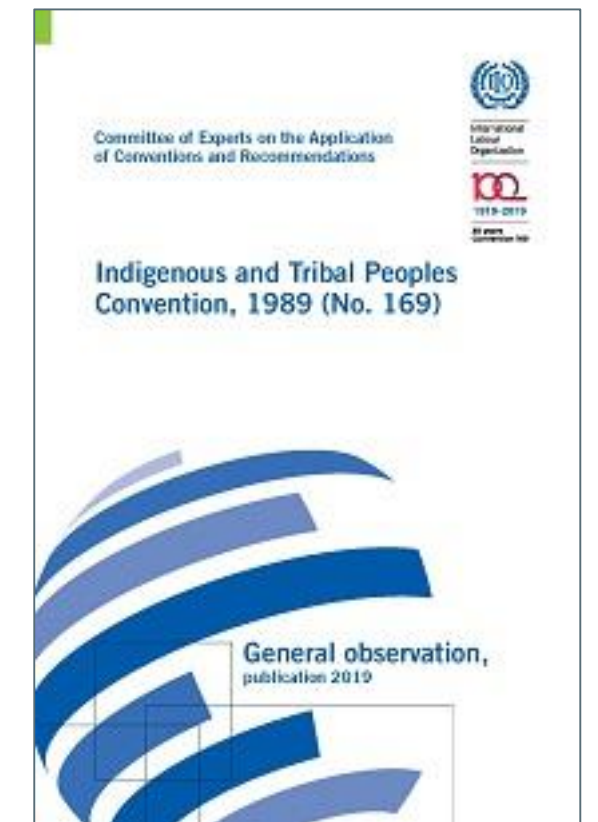
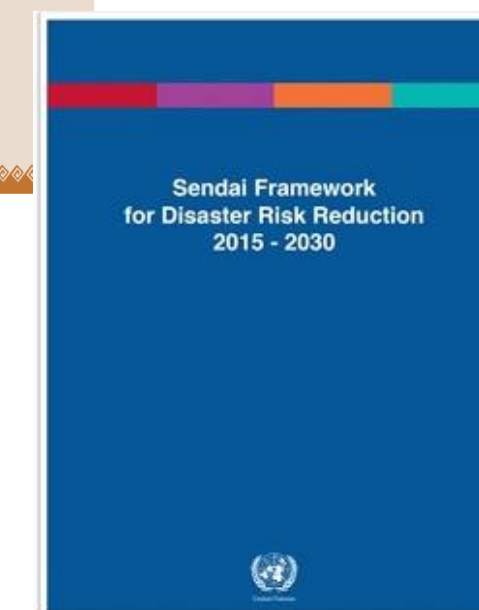
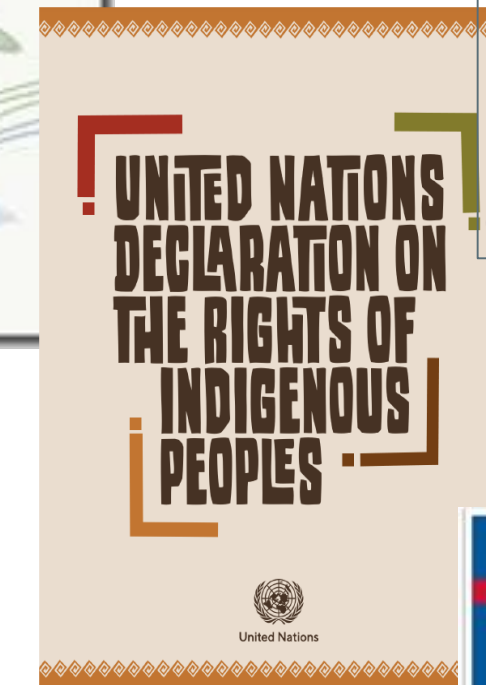
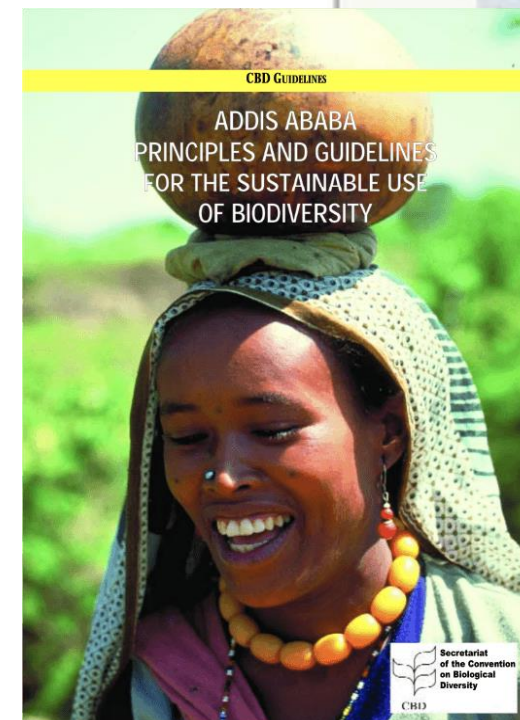
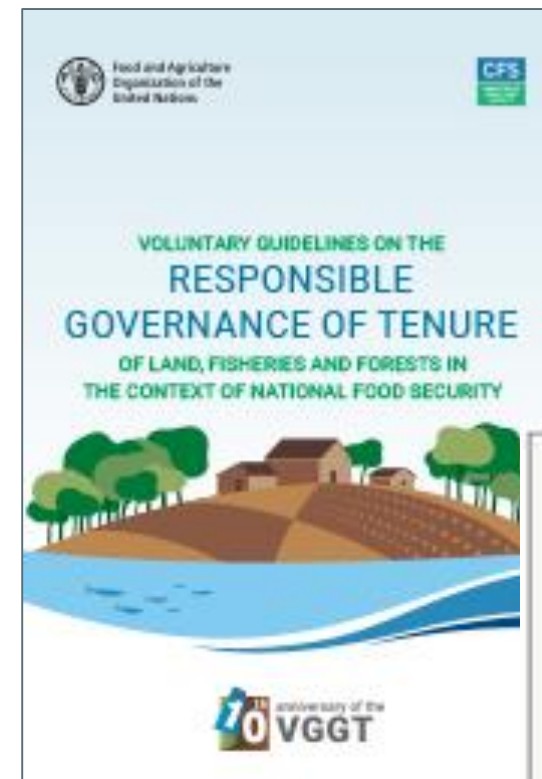
- Corruption
- Poor governance
- Ambiguous or missing legal frameworks
- Legal pluralism (unreconciled formal and informal systems)
- Rising competition for resources for space and resources (Blue Economy)

- Approaches for reducing overfishing or for conservation can infringe on traditional and small-scale fishers' rights.
- Where rights are with a community or group, individuals may experience different types or levels of rights, e.g., women



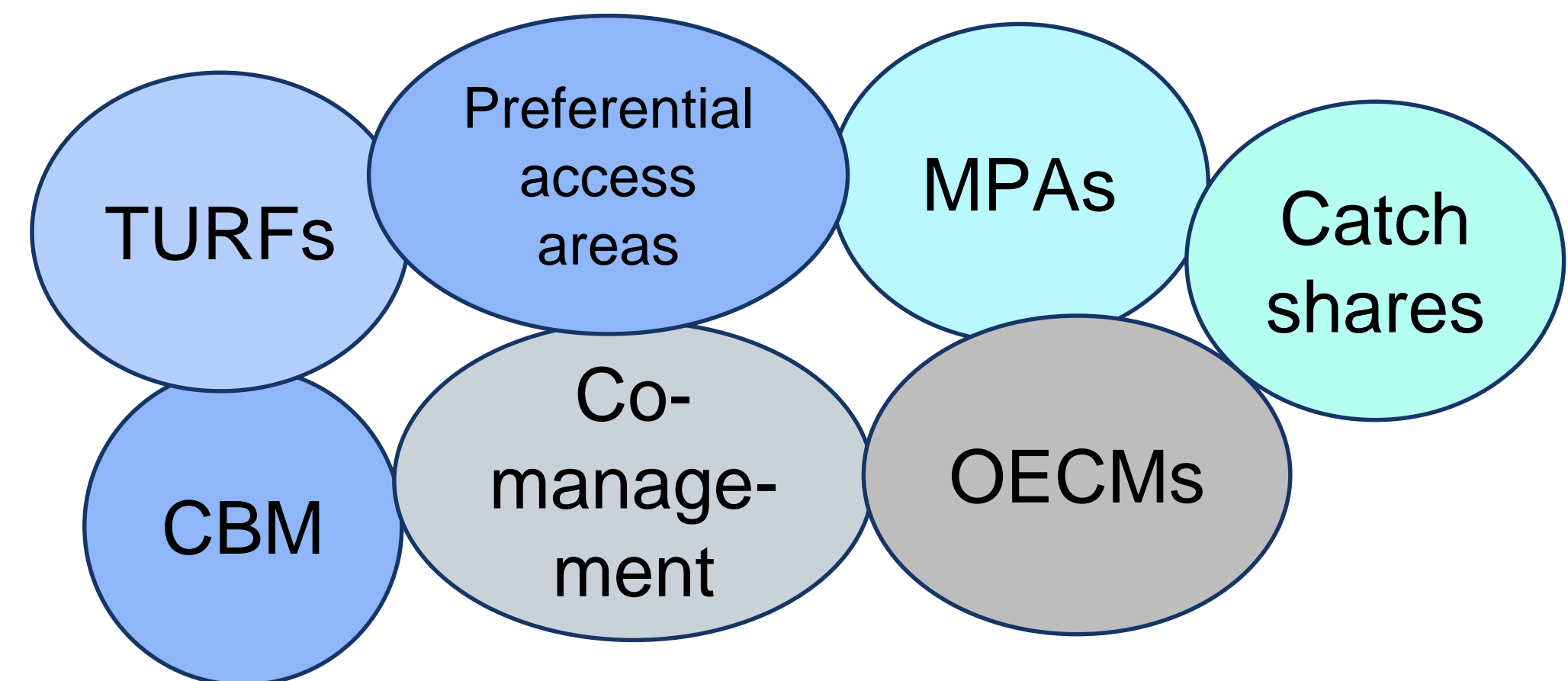
International commitments

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.



Fisheries and environmental governance

- Tenure rights extend further than fisheries management or conservation arrangements and are part of the governance framework and frequently foundational for management measures.
- 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, whilst adding durability, security, and robustness.

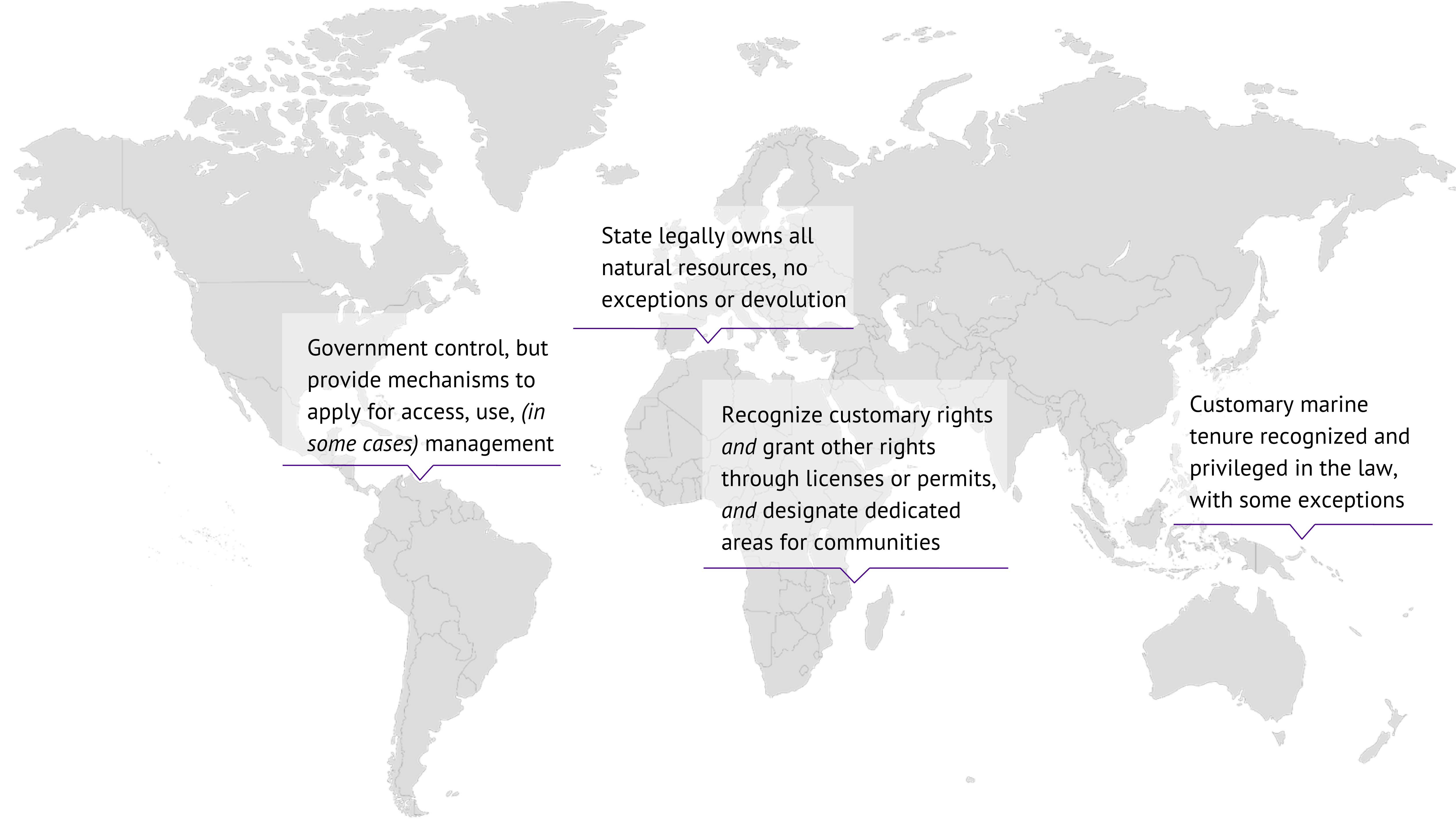


Tenure and the law

- 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.



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



State legally owns all
natural resources, no
exceptions or devolution

Government control, but
provide mechanisms to
apply for access, use, (*in
some cases*) management

Recognize customary rights
and grant other rights
through licenses or permits,
and designate dedicated
areas for communities

Customary marine
tenure recognized and
privileged in the law,
with some exceptions

Gender and women's tenure security

- 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 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.

Whilst 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



Climate change

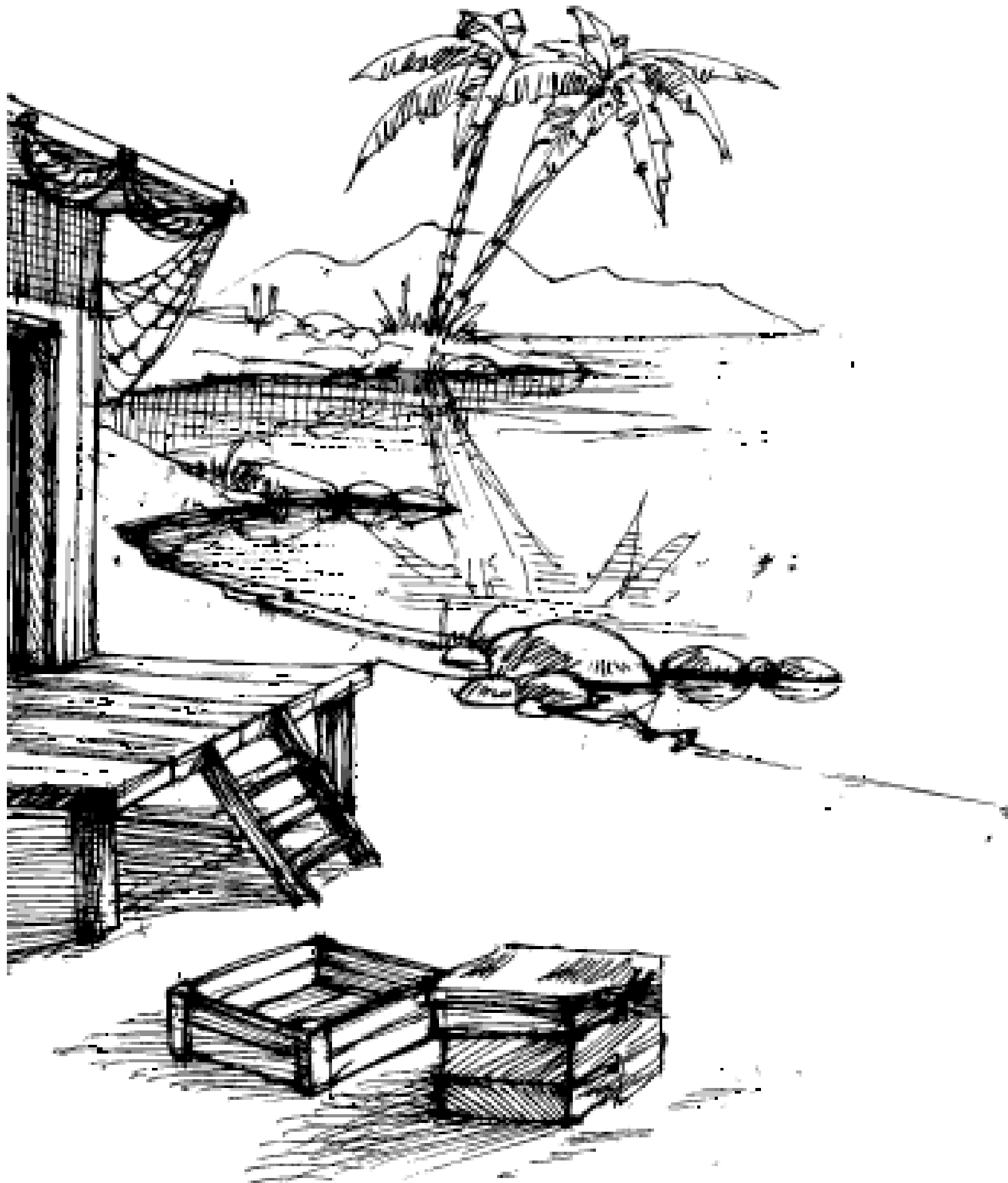
People with informal tenure will face (arguably, the most) acute challenges, as they may lack legal recognition and protection needed to access compensation or secure new land and access to resources in new locations.



- ☞ **More than one billion people** will be living in the low-lying coastal zone by 2050.⁸²
- ☞ **10% 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
- ☞ **20 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

Impacts on society and the environment

- 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 ensure sustainability of livelihoods and prolonged food and nutrition security.
- When tenure is secure, people are more confident and likely to invest money, time, and effort to safeguard resources.



Global reliance and vulnerability

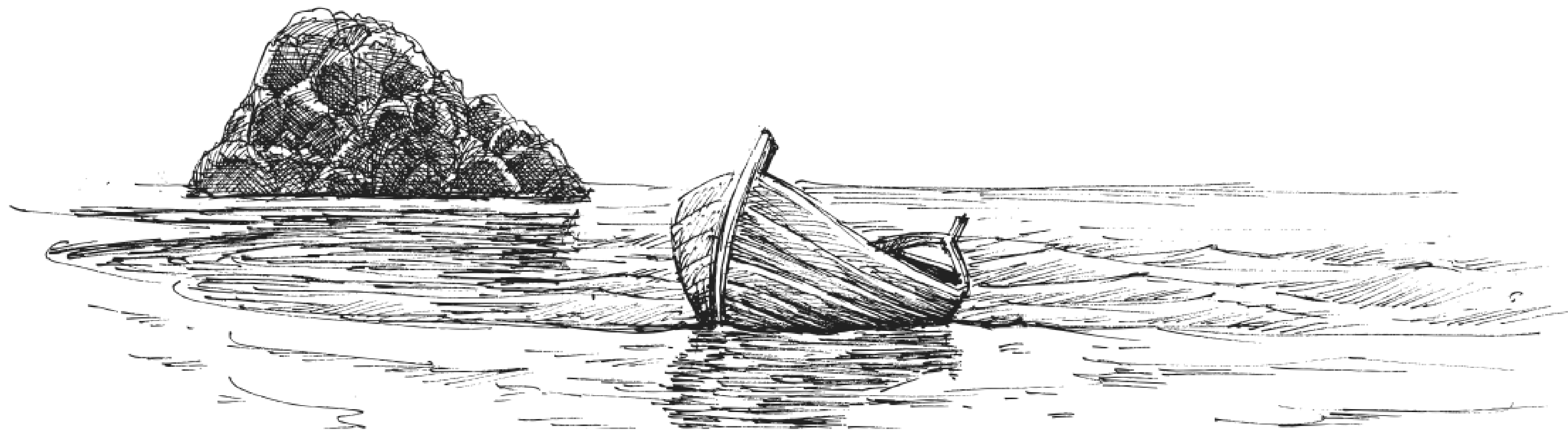
- Efforts to build tenure security may be particularly urgent and impactful in contexts where people have high reliance on coastal and marine resources, in countries where political conditions are attuned to the protection of tenure rights, and in coastal and ocean areas experiencing escalating pressures 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 tenure security.
- Given the diversity of national situations, there is no uniform way of building the conditions that foster tenure security.

Pulling together information from different data sets on reliance on coastal and marine resources, civil society freedoms and rights, and pressures on coastal lands and seas can contribute to discussions on where securing tenure rights is urgent



Institutional landscape and funding trends

- 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. Principals, standards and modalities for supporting Indigenous Peoples have been developed in the land and forest tenure space, and provide valuable direction to funders and rights-holders seeking partnership in the marine realm.
- 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 regrant funds.



Summing up

- There is a need to improve ‘blue tenure literacy’ and create awareness and recognition of how secure tenure is key to environmental, economic and social sustainability
- Tenure right systems in favour of Indigenous Peoples and fishing communities need to underpin participatory fisheries and environment management arrangements
- There is a need for a better understanding of the interactions and exposure of conservation, development and climate change for coastal and shoreline communities and their tenure rights
- Decision-making and funding need to be channeled to Indigenous Peoples and fishing communities in the global south to support their rights and roles as stewards of the aquatic resources they depend on and as agents for their future.





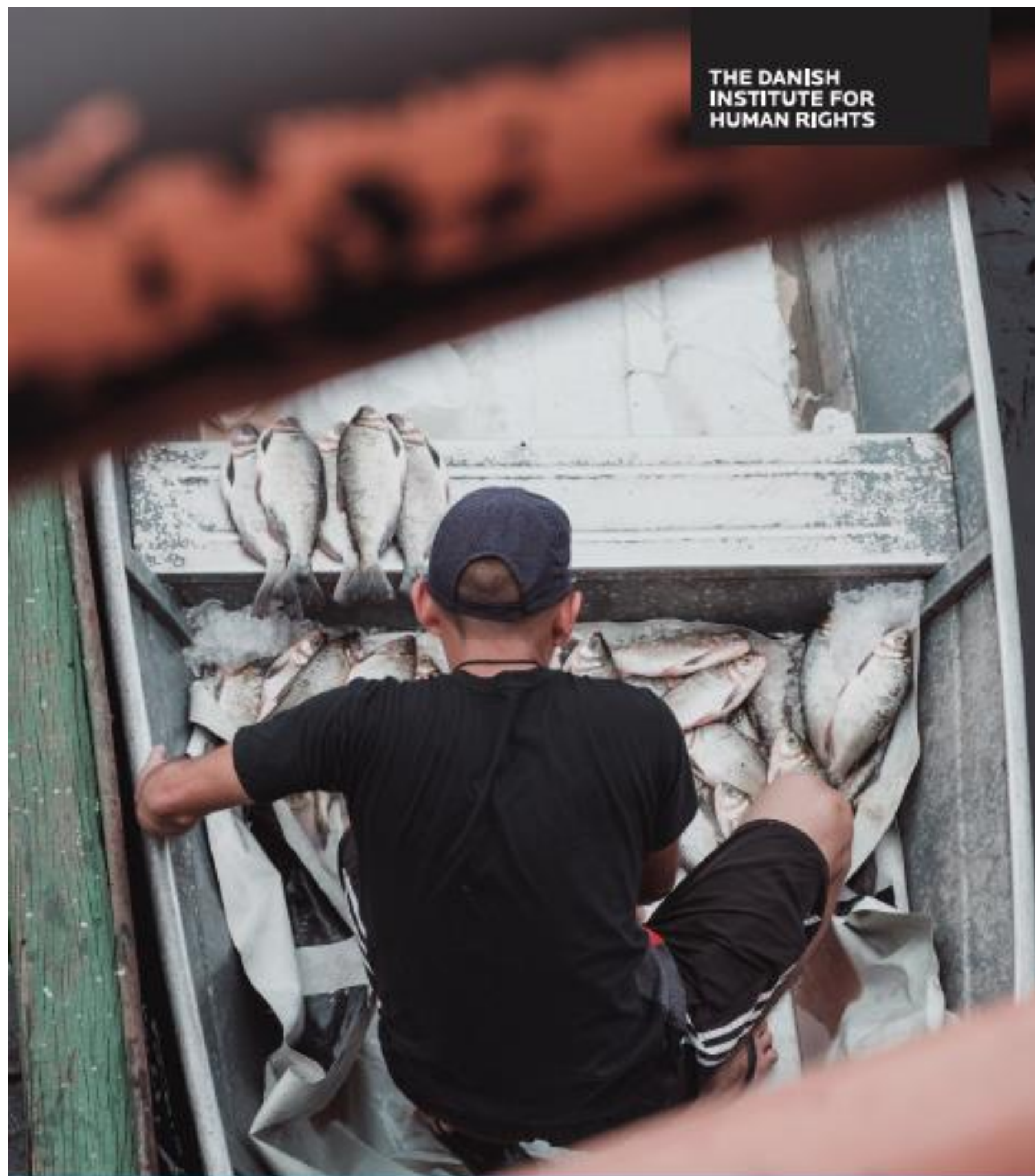
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HUMAN RIGHTS



**INDIGENOUS PEOPLES' CUSTOMARY FISHING RIGHTS:
KEY ISSUES AND INPUT FROM THE EXPERT MEETING
ON INDIGENOUS PEOPLES AND FISHERIES, 2023**

JUNE 2023

THE DANISH
INSTITUTE FOR
HUMAN RIGHTS



**CASES CONCERNING INDIGENOUS PEOPLES' RIGHTS
AND FISHERIES**



THANK YOU!

We are happy to share more information
and look forward to further discussions

Please reach out to
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