

# Towards a Sustainable Blue Economy for Namibia and Its Coastal Communities: A Contemporary Socio-Legal Perspective

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Online ISSN  
1727-3781

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## Date Submitted

28 November 2023

## Date Revised

4 February 2025

## Date Accepted

4 February 2025

## Date Published

23 June 2025

## Editor

Ms Nomthandazo Mahlangu

## Journal Editor

Prof Wian Erlank

## How to cite this contribution

Machaka CLA, Warikandwa TV  
"Towards a Sustainable Blue  
Economy for Namibia and Its Coastal  
Communities: A Contemporary  
Socio-Legal Perspective" *PER / PELJ*  
2025(28) - DOI  
<http://dx.doi.org/10.17159/1727-3781/2025/v28i0a17363>

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DOI <http://dx.doi.org/10.17159/1727-3781/2025/v28i0a17363>

## Abstract

Namibia's sustainable blue economy plan is influenced by the recognition that the typical single sector regulation approach to the aquatic ecosystem lacks synergies and coordination. The Blue Economy Agenda is a policy instrument for unifying and regulating economic activity for the benefit of Namibian citizens. The policy that provides for integrated sustainable management of the aquatic ecosystem seeks social inclusion, equitable distribution of natural resources, and prosperity for the public benefit. Such resource utilisation must be done in a way that promotes environmental health and sustainability. Namibia has laws in place that seek to regulate the blue economy and to ensure that policy objectives are met. However, such laws, in particular the *Marine Resources Act* 27 of 2000, exclude the recognition of marginalised coastal communities and small-scale fisheries sector from their scope. This exclusion is likely to undermine the need to promote social inclusion, the equal sharing of benefits, and of access to marine resources. This article addresses the prospects and challenges of fully utilising Namibia's aquatic ecosystems to meet the country's developmental agenda. Written from a socio-legal perspective, the article will argue for an integrated and/or comprehensive strategy to achieving a sustainable blue economy that is inclusive and beneficial to all Namibians, including the marginalised coastal communities and the small-scale fisheries.

## Keywords

Blue economy; sustainable development; socio-legal; aquatic ecosystem; marginalised coastal communities.

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# 1 Introduction

Namibia has joined the worldwide drive to ecologically, commercially and socially use its natural marine and coastal resources through the creation of a Blue Economy (BE)<sup>1</sup> policy within its borders.<sup>2</sup> Namibia's adoption of a BE policy which emanates from a constitutional mandate placed on the government of Namibia to ensure that it provides for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in Namibian society arising out of past discriminatory laws or practices<sup>3</sup> has arguably emerged as a "sustainable" alternative to the traditional ocean economy, with the potential to drive an inclusive and fair transformation that benefits the conservation of marine natural resources, the people whose livelihoods depend on them and the economic development of a country.<sup>4</sup> However, the BE encounters challenges such as illegal fishing, pollution, habitat degradation and climate change-related risks such as rising water temperatures, rising sea levels and ocean acidification. Most significantly, the BE challenges extend to an unequal sharing of benefits. Equal sharing of benefits is a critical issue in the context of Namibia's BE. Often marginalised coastal communities and the small-scale fisheries are excluded from the planning processes and from benefitting from the BE. Processes such as marine spatial planning (hereinafter MSP) often exclude marginalised communities. Therefore, it is important to discuss the BE concept in Namibia with a view to ensuring sustainable development and the equal sharing of the benefits of exploiting

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<sup>1</sup> The Namibia Blue Economy Policy was developed in accordance with the ideals of the United Nations Conference on Environment and Development, popularly known as the Rio Summit, held from June 3rd to 14th, 1992. In instance, Principle 4 of the Rio Declaration states that "in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it". In addition, Principle 5 of the Rio Declaration states that "All States and all people shall co-operate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world."

<sup>2</sup> See Jones 2022 <https://news.un.org/en/story/2022/06/1121562>. See also Namibia Blue Economy Policy, 2022-2031. See also Carver 2020 *Sustainability Science* 135.

<sup>3</sup> Article of 23(2) of the *Constitution of the Republic of Namibia*, 1990.

<sup>4</sup> UNCTAD 2022 <https://unctad.org/news/5-global-actions-needed-build-sustainable-ocean-economy>.

marine resources. Such an approach is likely to promote inclusive growth and participation in the BE by all Namibians.

The Namibia BE Policy 2022-2-31 places an emphasis on the ability of aquatic ecosystems to provide jobs, tourism opportunities, minerals, food, energy resources and transportation.<sup>5</sup> The BE is expressly captured in the United Nations (hereinafter UN) Sustainable Development Goal (hereafter SDG) 14, which aims to ensure the conservation and sustainable use of the oceans, the seas and marine resources for sustainable development.<sup>6</sup> The BE places an emphasis on the need to optimise the socio-economic benefits of sustainable development in the marine ecosystems through the participation of all stakeholders in resource use and management so as to foster societal inclusion by integrating women, children and marginalised coastal communities, alongside other inter-governmental stakeholders in the governance structure of marine ecosystems.<sup>7</sup> Beyond SDG 14 the BE provides an array of opportunities to contribute towards ending poverty (SDG 1), improving food security and eliminating hunger (SDG 2), gender equality (SDG 5), accessing clean water (SDG 6) and reducing inequalities (SDG 10).<sup>8</sup> These are critical issues which the BE in Namibia is yet to effectively address.<sup>9</sup>

Marine-based activities are projected to account for around 5% of global gross domestic product (GDP), and three million people, particularly coastal populations in poor nations, rely on marine and coastal ecosystems for food security and income.<sup>10</sup> According to Namibia's National Plan of Action for Small-Scale Fisheries (NPOA-SSF), small-scale fisheries (hereafter SSF)<sup>11</sup> play a significant role in socio-economic development and the requisite

<sup>5</sup> See the Namibia Blue Economy Policy, 2022-2031 7.

<sup>6</sup> See UN date unknown <https://unric.org/en/sdg-14/>. In summary, SDG 14 addresses marine pollution (14.1), healthy ocean (restoration of ecosystems) (14.2), ocean acidification (14.3), sustainable fishing (overfishing) (14.4), marine protected areas (14.5), fisheries subsidies (14.6), economic benefits for Small Island Developing States (SIDS) and Least Developed Countries (LDCs) (14.7), knowledge and technology (14a), small scale fishers (14b), and development and implementation of law (14c). SDG 14's focus on the biological and environmental perspective is thus quite evident, while it also considers the asymmetry between different states in the international system with specific reference to SIDS and LDCs.

<sup>7</sup> UNECA 2019 <https://nairobi-convention.org/clearinghouse/node/308>.

<sup>8</sup> UNECA 2019 <https://nairobi-convention.org/clearinghouse/node/308>.

<sup>9</sup> See the Namibia Blue Economy Policy, 2022-2031 17-18.

<sup>10</sup> Humanes *Just Sustainability Transitions* 1.

<sup>11</sup> Namibia's legal framework does not officially acknowledge the small-scale fisheries (SSF) industry. It is impliedly recognised in the *Inland Fisheries Act* 1 of 2003. However, in the vital marine sector the SSF are not acknowledged by the main legislation, the *Marine Resources Act* 27 of 2000 (MRA). As a result, the SSF is more closely related to recreational fishing than to mainstream economic activity. The cumulative result of this strategy is that the SSF does not allow marginalised coastal communities to fully participate in the economic mainstream.

economic transformation.<sup>12</sup> However, the SSF are not recognised by law and hence cannot participate and benefit from exploiting marine coastal resources.<sup>13</sup> It is estimated that the predominantly riverine<sup>14</sup> SSF sub-sector directly supports the livelihoods of over 280 000 Namibians in the form of income, employment, food and nutrition.<sup>15</sup> However, the SSF's contribution to poverty alleviation is often overlooked and denigrated from a policy perspective in favour of alternative BE sectors that are considered more profitable. Aside from the lack of recognition of the positive benefits that local communities have within Namibia's BE, other challenges occurring in the BE that may hamper the achievement of sustainable development include plastic pollution, illegal, unreported and unregulated fishing, poverty and unemployment, and climate change - all of which complicate the realisation of sustainable ocean development for significant benefits.<sup>16</sup> It becomes clear that in order to solve the problems facing the BE and achieve environmental sustainability, the attention must shift to supporting the adoption of sustainable development.

Namibia's recent BE Policy recognises the nexus between BE and promoting sustainable development, and therefore proposes to facilitate sustainable development through the BE governance framework, among other methods.<sup>17</sup> To this end, Namibia's BE Policy guides the coordination and promotion of sustainable and equitable economic opportunities in accordance with the principle of sustainable development by integrating the three pillars, namely environmental protection, economic sustainability and social equitability throughout the blue economy sectors.<sup>18</sup> Predecessors to the Policy, which include Article 95(1) of the Namibian Constitution, also recognise the nexus between BE and sustainable development by stating that "the state shall actively promote and maintain the welfare of the people

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<sup>12</sup> Section 1 of the Namibia National Plan of Action for Small-Scale Fisheries, 2022-2026.

<sup>13</sup> The MRA expressly excludes the SSF from its scope. A legal definition for the SSF has not been adopted in Namibia. This implies that the SSF cannot formally be recognised for the purposes of exploiting marine resources.

<sup>14</sup> The sole "commercial" coastal-based SSF operations in Namibia are the Hanganeni Artisanal Fishing Association (HAFA), which is headquartered in Henties Bay in Namibia's Erongo area, and a new organisation that emerged in Lüderitz in October 2023. Hanganeni, which means "getting together", was founded with the goal of bringing together local artisanal fishers to reduce illicit fishing and trading caused by the SSF's absence from the MRA's framework. HAFA was established as a Trust in 2008 to assist all artisanal fishermen in coastal communities to prepare their daily catches and offer excellent products to the market at reasonable costs.

<sup>15</sup> Section 8 of the Namibia National Plan of Action for Small-Scale Fisheries, 2022-2026.

<sup>16</sup> Ibrahim *Harnessing the Potentials of Blue Economy* 3.

<sup>17</sup> Section 14 of the Namibia National Plan of Action for Small-Scale Fisheries, 2022-2026.

<sup>18</sup> Section 14 of the Namibia Blue Economy Policy, 2022-2031.

by adopting policies that include the maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilisation of living natural resources on a sustainable basis for the benefit of all Namibians". It can be inferred that the wording of Article 95(1) sets the scene for sustainable development. The nexus between BE and sustainable development is exhibited in the BE Policy as it provides that it is aligned with Vision 2030, the Fifth National Development Plan (NDP5) and the Harambee Prosperity Plan II as follows:<sup>19</sup>

Vision 2030 in Chapter 5 calls for the sustainable utilization of Namibia's aquatic resources for the benefit of current and future generations. Harambee Prosperity Plan II Pillar 2 which calls for economic advancement to strike a balance between pursuing inclusive socio-economic and requisite economic transformation to achieve the industrialization goals enshrined in Vision 2030. The Fifth National Development Plan calls for the development and implementation of the blue economy governance framework that sustainably maximizes economic benefits from marine resources and ensures equitable marine wealth distribution to all Namibians.

This article will discuss the BE in Namibia with a specific focus on the blue fisheries sector, from a socio-legal perspective. Applicable principles in the *Rio Declaration on Environment and Development*, 1992 will be used as criteria in a principled assessment of Namibian law and policy applicable to the BE in order to ascertain the legal principles that would promote an environmentally sustainable BE.

In so doing, the next section of this article will engage in a brief discussion of Namibia's BE and the opportunities and challenges it is facing from a socio-legal perspective. It sets out the context from which to conceptualise the underlying thesis of this article, which is that there is a need to ensure an environmentally sustainable approach to exploiting marine resources for the benefit of all Namibians. This will be followed by a discussion on sustainable development as a strategy for promoting social inclusion and equity in Namibia's blue fisheries industry. This discussion will involve an examination of international, regional and national legislation, policy and jurisprudence relevant to the blue fisheries sector, in order to determine the extent to which this legal framework recognises and supports social inclusion and equity in the BE. Thereafter, recommendations and conclusions will be offered.

## **2 Namibia's blue economy - opportunities and challenges**

Namibia has vast marine and aquatic resources. The country's coastline spans 1,570 kilometres and includes BE activities such as mining, fisheries, aquaculture, transportation and logistics, tourism and water desalination, among others. In concept this aquatic ecosystem presents several

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<sup>19</sup> Section 8 of the Namibia Blue Economy Policy, 2022-2031.

prospects for Namibia's growth. With Namibia's land largely classed as arid, the BE and the ocean's productive capacity are critical for long-term economic growth and intergenerational equality. However, here is where Namibia's socio-legal difficulties emerge. From a social standpoint the BE is supposed to solve issues of pervasive poverty (particularly in marginalised coastal communities), economic inequality and unemployment. Regardless of the BE's possibilities, Namibia's poverty and inequality ratio remains high. Marine plastic pollution, wastewater discharge and dangerous chemicals remain major issues in Namibia. From a legal standpoint Namibia's *Marine Resources Act 27 of 2007* (MRA), which is the primary legislation governing marine resources, does not recognise marginalised sectors such as the SSF and instead focusses on the commercial fishing industry. This has led to illicit fishing by underprivileged populations, a development which poses a threat to marine resource conservation owing to overfishing.

It is, therefore, evident that Namibia's BE is not inclusive and is not characterised by equal access to and the sharing of benefits from exploiting marine resources. Marginalised coastal communities such as the SSF and Topnaar are excluded from participating and exploiting marine resources. The MRA expressly excludes the SSF and marginalised coastal communities from accessing and benefitting from the exploitation of marine resources. If the status quo has to change, deliberate efforts must be aimed at amending the MRA to recognise the SSF and/or marginalised coastal communities. Further, the SSF and the marginalised coastal communities must be allowed to participate in processes such as marine spatial planning, in which their interests in the BE can be spelled out. There is, therefore, a need to address how best Namibia's BE policy and the existing legal framework can be revised to offer solutions to the challenges currently facing Namibia's BE in order to realise an environmentally sustainable BE.

The BE originated at the Rio+20 UN Conference for Sustainable Development in 2012, when the Small Island Developing Countries (hereafter SIDS) coined the term to draw attention to marine and coastal ecosystems in discussions about sustainable development at an event where the green economy was the main agenda item. Blue ecosystems are essential for the economic growth, food security and the livelihoods of coastal communities in small island developing states.<sup>20</sup>

The BE has gained prominence in the recent decade as a sustainable alternative to the traditional economy. It is a strategy that aims to balance ocean-based growth prospects with environmental care.<sup>21</sup> This is through promoting increased awareness of the social-ecological linkages between

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<sup>20</sup> Humanes *Just Sustainability Transitions* 5.

<sup>21</sup> Humanes *Just Sustainability Transitions* 5.

human activity and the health of ocean systems.<sup>22</sup> The terms "blue economy" or "blue growth" refer to the economic strategy of the "sustainable use of ocean resources for economic growth, improved livelihoods, and jobs while preserving the health of the ocean ecosystem".<sup>23</sup> This article will thus discuss the prospects and challenges of Namibia's BE and offer plausible solutions to ensure sustainable development in the country. The article adopts a socio-legal approach, which centres on foregrounding the social concerns relative to Namibia's current BE agenda and the law as it is currently framed. In principle the article examines the prospects and challenges of leveraging the full potential of Namibia's aquatic ecosystems in order to address the country's socio-economic needs. The article thus argues for an integrated and/or holistic approach to a sustainable blue economy agenda from a socio-legal perspective.

## **2.1 Opportunities in Namibia's blue economy**

Namibia is endowed with extensive marine and aquatic resources. The country's inshore and exclusive economic zone (hereinafter EEZ) sea surface area is around 580,000 square kilometres, accounting for approximately 65 per cent of the land surface area.<sup>24</sup> The ocean water in the EEZ supports marine life at depths of more than 4,000 meters. Namibia's coastline is approximately 1,570 km long. Most of the coastal land is designated as a protected area.<sup>25</sup> The coastline passes through places of unparalleled beauty, including sand dunes that meet the ocean, several recreational areas where windsurfing, angling, and swimming are popular, and areas of worldwide historical value.<sup>26</sup>

A country with a blue economy policy, Namibia boasts of considerable economic activity in the following BE sectors: fisheries and aquaculture, mining, transport and logistics, water desalination and tourism.<sup>27</sup> The aquatic ecosystem also possesses potential as the coastal winds, green hydrogen, tidal and wave energy, hydro-power, marine biotechnology and bioprospecting, carbon sequestration and carbon trading present opportunities for expansion and growth.<sup>28</sup> The traditional and emerging sectors of Namibia's BE are supposed to be beneficial to the country's economy through the provision of jobs, food, minerals, transportation, energy resources, ecological services and tourism opportunities.<sup>29</sup>

<sup>22</sup> Humanes *Just Sustainability Transitions* 5.

<sup>23</sup> See Acerbi date unknown <https://www.worldbank.org/en/programs/mena-blue-program/overview>.

<sup>24</sup> Section 6.1 of the Namibia Blue Economy Policy, 2022-2031.

<sup>25</sup> Section 6.1 of the Namibia Blue Economy Policy, 2022-2031.

<sup>26</sup> Section 6.1 of the Namibia Blue Economy Policy, 2022-2031.

<sup>27</sup> Section 6.1 of the Namibia Blue Economy Policy, 2022-2031.

<sup>28</sup> Section 6.1 of the Namibia Blue Economy Policy, 2022-2031.

<sup>29</sup> Section 1 of the Namibia Blue Economy Policy, 2022-2031.

However, tangible benefits are yet to substantially accrue to the SSF sector and the marginalised coastal communities. The MRA does not recognise the SSF and the marginalised coastal communities are excluded from participating in crucial processes such as marine spatial planning, in which key decisions on exploiting marine resources are taken.

### *2.1.1 Social inclusion*

One of the guiding principles of Namibia's blue economy policy is that it seeks to advance the social inclusion of all groups in society especially, those from previously disadvantaged communities, which include economically marginalised groups such as the SSFs who are currently not recognised by Namibian law and policy applicable to the governance of marine resources as crucial stakeholders, including women, the youth and those living with disabilities.<sup>30</sup> The promotion of social inclusion in Namibia's BE policy is enunciated as the third objective of the BE policy, which is to promote social economic transformation and economic inclusivity through the BE.<sup>31</sup> One of the strategies meant to lead to achieving this objective is to address the challenge of the lack of active participation of coastal populations in the use, access and management of marine resources. The object is to "ensure the inclusion of previously disadvantaged Namibians, especially women, youth, people with disabilities and economically marginalized communities in the blue economy activities".<sup>32</sup> Social inclusion is recognised as being amongst one of the targets of SDG 14, and should lead to the provision of access for small-scale artisanal fisheries to marine resources and markets.<sup>33</sup> It can thus be argued that in terms of SDG 14, there is an understanding that sustainable development can be achieved through the conservation and sustainable use of marine resources, as well as the recognition of SSF as decision-makers in marine resource governance and resource stakeholders who should have access to marine resources as a source of livelihood.

This is based on the reasoning that how humans value and perceive marine resources is integrally linked to their rights to access, use and engage in the management of such resources.

### *2.1.2 Social equity*

Namibia's BE policy should promote social equity with respect to marine resources.<sup>34</sup> However, due to the challenges already outlined in this article,

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<sup>30</sup> Section 9 of the Namibia Blue Economy Policy, 2022-2031.

<sup>31</sup> Section 11 of the Namibia Blue Economy Policy, 2022-2031.

<sup>32</sup> Section 11 of the Namibia Blue Economy Policy, 2022-2031.

<sup>33</sup> Target 14.b of SDG 14 at UN date unknown <https://unstats.un.org/sdgs/metadata/?Text=&Goal=14&Target=14.b>.

<sup>34</sup> Section 9 of the Namibia Blue Economy Policy, 2022-2031.



there is a need for more to be done to ensure that the SSF and marginalised coastal communities equally benefit from participating in the economic mainstream through exploiting these marine resources. Namibia's fishing sector is generally difficult to access, particularly for the marginalised coastal communities, who are poor and disadvantaged. This is why the Namibianisation of the fisheries sector was welcomed by many Namibian indigenes. The BE sector in Namibia has largely been foreign owned but is currently argued to be 90-95% owned by Namibians. However, critical questions have to be raised concerning whether or not the policy has been implemented in such a way as to maximise ordinary people's access to and ability to benefit from fisheries resources. Further questions have been raised as to whether or not the Namibianisation of the fisheries sector has not produced fertile ground for corruption, as characterised by the Fishrot scandal, which is *sub judice* at the time of the writing of this article.

Further to the Namibianisation of the fisheries sector, Namibia adopted The New Equitable Economic Empowerment Framework (NEEEF) in 2015. The NEEEF was adopted with the objective of promoting socio-economic transformation to improve equality, social justice and the empowerment of the previously disadvantaged majority. However, in the same year new fishing rights holders were given preference for quotas, resulting in job losses among local fishermen. Achieving social equity is contingent on the progress of social inclusion, since social justice may include redressing existing social disparities so that members of disadvantaged social groups enjoy a more equitable share of economic, cultural, and economic advantages than they did previously.<sup>35</sup> According to Österblom<sup>36</sup> what amounts to "fair distribution" is subjective and needs to be understood in relation to the social beliefs, values, practices and institutions of different cultures and societies.

### 2.1.3 *Employment and revenue generation*

Currently, the challenge with the BE sector in Namibia is that while the fisheries sector is perceived as employing "many people", questions have been raised as to whether this position is the best that can be obtained from the fisheries sector or if more should be done to ensure access to fisheries resources by the marginalised communities in Namibia. The BE undoubtedly generates job opportunities in a range of blue sectors. Namibia's BE strategy identifies the fishing sector as the country's third largest economic sector, accounting for an average of 3.9% of GDP (hereinafter GDP), or N\$ 6.9 billion.<sup>37</sup> The marine based fishing sector employs around 16, 970 people, with the majority working in land-based

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<sup>35</sup> Österblom *et al Towards Ocean Equity* 486.

<sup>36</sup> Österblom *et al Towards Ocean Equity* 486.

<sup>37</sup> Section 6.2.1 of the Namibia Blue Economy Policy, 2022-2031.

factories (63% women) and on fishing vessels.<sup>38</sup> Furthermore, commercial aquaculture is still in its early stages, yet it provides major job opportunities.<sup>39</sup> In terms of revenue, the fishing sector is said to account for around 14.3% of Namibia's overall exports, making it one of the country's primary sources of foreign earnings.<sup>40</sup>

Furthermore, Namibia's BE policy states that diamond and salt mining in coastal and marine areas employs around 3780 people,<sup>41</sup> and contributes around N\$10.84 billion per year to the fiscus.<sup>42</sup> Namibia ratified the Work in Fishing Convention No. 188 of 2007.<sup>43</sup> However, there are still poor working conditions that have prompted strike actions, which have often seen questions about the legitimacy of policy initiatives to increase access to the BE by the marginalised, disadvantaged and poor in Namibia. This prompts the conclusion that policies aimed at the Namibianisation of the BE sector of Namibia have benefitted the wrong persons, who do not appreciate the significance of ensuring the equitable sharing of marine resources and ensuring maximum benefits for all in the country. It appears that politically connected elites and their cronies currently benefit from the BE, which is characterised by overfishing and little resource conservation. These parties wield significant influence in the executive and legislature. They have the power to influence the drafting of policies and laws as well as to shape how such laws are implemented. This group of African elites collaborating with foreign actors thus undermines efforts to ensure access and equitable benefiting from fisheries resources. Such people also frustrate efforts to amend the MRA to extend its coverage to the SSF sector and the marginalised coastal communities. This needs to change if the BE sector is to be inclusive and sustainable.

#### 2.1.4 Food security

As noted earlier in this article, the BE contained in SDG 14 leads towards the fulfilment of other SDGs, such as SDG2, which focusses on improving food security and eradicating hunger. It can be argued that by incorporating social inclusion and equity into the management of Namibia's BE, SSF's contribution to socioeconomic development and the necessary economic transformation for fisheries dependent communities can be promoted, ensuring sustainable fishing practices and the achievement of SDG 2 in Namibia. However, the SSF's contribution will remain minimal as long as

<sup>38</sup> Section 6.2.1 of the Namibia Blue Economy Policy, 2022-2031.

<sup>39</sup> Section 6.2.1 of the Namibia Blue Economy Policy, 2022-2031.

<sup>40</sup> Section 6.2.1 of the Namibia Blue Economy Policy, 2022-2031.

<sup>41</sup> Section 6.2.3 of the Namibia Blue Economy Policy, 2022-2031.

<sup>42</sup> Section 6.2.3 of the Namibia Blue Economy Policy, 2022-2031.

<sup>43</sup> The *Work in Fishing Convention* No 188 of 2007 provides that there is need to ensure that "fishers working on commercial fishing vessels enjoy decent working and living conditions".

their recognition in the MRA remains non-existent. There has been general reluctance to recognise the SSF in the legal framework as there are fears that their recognition would lead to overfishing and marine resources depletion. However, if equal access to resources and benefit sharing are to materialise, there is a need to amend the MRA to recognise the SSF. A positive development in this direction has been the adoption in 2022 of the National Plan of Action (NPOA) for the SSF. The NPOA-SSF recognises the significance of the contribution of the SSF to Namibia's economy. It also offers a definition to what the SSF is. However, policies are not laws and may thus not be binding but simply persuasive. There is, therefore, a need to amend the MRA in such a way as to recognise the SSF and ensure inclusive and sustainable development in Namibia.

## **2.2 Challenges in Namibia's blue economy**

Namibia is currently facing challenges due to a lack of consensus across BE sectors regarding an appropriate definition of BE that can be applied across sectors.<sup>44</sup> The BE sectors advance a "blue growth" understanding of the BE that seeks only to promote economic activities related to the marine ecosystem, regardless of whether or not these activities are sustainable and socially equitable.<sup>45</sup> Such economic activities include but are not limited to phosphate mining, which may benefit Namibians economically in terms of job creation but has devastating effects on the marine ecosystem.<sup>46</sup>

Proponents of "blue degrowth", on the other hand, want the BE to recognise a balance of the environmental, social, economic and cultural pillars of sustainability by promoting sustainable use and ensuring that local coastal

<sup>44</sup> Carver 2020 *Sustainability Science* 135 states that: "While the Fifth National Development Plan speaks of a blue economy (BE) that capitalises on, and equitably distributes, the economic benefits of its Exclusive Economic Zone (hereafter EEZ) and resources therein key actors (those directly involved in the formalisation or implementation of the blue economy) hold various and sometimes dichotomous definitions to be true. Given actor's preferred definitions are often dependent on the industry that they represent(ed) or are/were otherwise involved with. For example, mining industry representatives spoke of economic potential and explained that the BE had been introduced to them as a means of getting resources out of the sea. However, representatives of the fishing industry spoke of a BE that prioritises sustainability and protection of Namibia's EEZ—a prioritisation that they view as incongruous with activities such as seabed mining. Similarly, local development NGOs understood the blue economy to be a strategy through which the social-economic potential of the ocean could be realised, but explained that associated activities must not deplete the ocean. Environmental NGOs, on the other hand, spoke of the need to recognise the protection of biodiversity as a priority. This ambiguity over definitions reduces Namibia's marine environment to a space, which actors can exert influence over and apportion in accordance with their own agendas, leaving the blue economy as a concept merely utilised to justify emerging projects." Also see Lee, Noh and Khim 2020 *Environment International* 1.

<sup>45</sup> Carver 2020 *Sustainability Science* 135.

<sup>46</sup> Carver 2020 *Sustainability Science* 132.

communities actively participate in marine resource decision making and use.<sup>47</sup> Further, challenges affecting Namibia's blue fishing economy include the limited recognition of coastal community members of the possible contribution they can make in governing the marine ecosystem, plastic pollution,<sup>48</sup> illegal, unreported and unregulated fishing, poverty and unemployment, and the impacts of climate change<sup>49</sup> which have an impact on marine ecosystem resource.<sup>50</sup>

Considering that different stakeholders in Namibia's BE lack consensus on what the BE entails, and each sector seeks to define it in terms of the economic gains it perceives for the country, a conflict between the blue mining and fisheries sectors over the different views of the advantages and disadvantages of phosphate mining is anticipated. Furthermore, the conflict between traditional blue sectors and blue de-growth proponents over defining BE, as well as the exclusion of marginalised stakeholders, combined with other environmental challenges affecting BE in the face of climate change, necessitates a paradigm shift from "blue growth" to a "sustainable blue economy" to reduce the cumulative impacts of ocean-based economic activities.<sup>51</sup> A sustainable BE should protect human rights, improve human well-being, promote social inclusion and equity, and ensure an equitable distribution of economic, social and cultural benefits for current and future generations while restoring and protecting the intrinsic value and

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<sup>47</sup> Carver 2020 *Sustainability Science* 139.

<sup>48</sup> UNECA 2019 <https://nairobi-convention.org/clearinghouse/node/308> states the following with respect to plastic pollution: "Threat 3: Plastic pollution has been identified as a major threat to both aquatic and marine ecosystems. Plastic production has indeed increased exponentially since the early 1950s and reached 322 million tonnes in 2015." "Future production is likely to double by 2025 if no effective actions and policies are taken. It has been estimated that in 2010, between 4.8 million and 12.7 million tonnes of plastic waste entered the oceans." "Moreover, a proportion of the materials used in fisheries and aquaculture may become marine debris. This affects fish production and other marine organisms and it also affects humans. Furthermore, the scenic beauty and tourism sector is greatly affected by waste pollution."

<sup>49</sup> UNECA 2016 [https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering-social-inclusion\\_en.pdf](https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering-social-inclusion_en.pdf) state the following with respect to climate change: "Threat 1: Climate change and environmental mismanagement are growing threats to the integrity and sustainability of the aquatic and marine resources on which the Blue Economy is based. Wide areas of Africa have seen climate changes, sea levels rise, coastal erosion, saltwater intrusion, warming seawaters, ocean acidification, coral bleaching and an upsurge of invasive species as a result of global warming. Threat 2: Climate change by causing physical and biological changes poses significant threat to fish yield; fish production, displacement of fish species, reduced fish production for export and a reduction of resilience of coastal communities and infrastructures."

<sup>50</sup> Section 6.1 of the Namibia Blue Economy Policy, 2022-2031.

<sup>51</sup> Das 2023 *Studies in Social Science Research* 40.

functionality of coastal and marine ecosystems in accordance with sustainable development principles.<sup>52</sup>

In the next section of this article a description of the elements of social inclusion and social equity in terms of a sustainable BE will be attempted. This analysis will entail a discussion of sustainable development as it applies to the blue fisheries sector in Namibia through the relevant principles in the *Rio Declaration on Environment and Development*, 1992 (hereafter the *Rio Declaration*) and applicable international, regional and national law and policy.

### **3 Sustainable development as a pathway to foster social inclusion and equity in Namibia's blue fishing sector**

The concept of sustainable development was formally established in 1987 by the well-known Brundtland Report, which defines it as "development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs".<sup>53</sup> Sustainable development rests on three pillars that must be integrated, namely the environment, and economic and social development.<sup>54</sup> Du Plessis and Brits<sup>55</sup> also consider culture as the fourth pillar on which sustainable development rests and affirm that sustainable development will not be reached if all four pillars are not integrated when considering environmental authorisations. An internationally recognised definition of culture is that it is: "a set of distinctive spiritual, material, intellectual and emotional features of society or a social group, that encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs".<sup>56</sup> Article 19 of the Namibian Constitution recognises the right to culture and states that:

Every person shall be entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and further subject to the condition that the rights protected by this Article do not impinge upon the rights of others or the national interest.

The concept of sustainable development has also been endorsed by various international law instruments such as the *Rio Declaration*. The

<sup>52</sup> Österblom *et al Towards Ocean Equity* 485.

<sup>53</sup> *Our Common Future: Report of the World Commission on Environment and Development* UN Doc A/42/427 (1987) 24. Also see Sands *International Courts* 147; Kotze *Legal Framework for Integrated Environmental Governance* 155.

<sup>54</sup> Feris 2010 *PELJ* 80.

<sup>55</sup> Du Plessis and Brits 2007 *TSAR* 263. Also see Du Plessis and Rautenbach 2010 *PELJ* 31.

<sup>56</sup> See UNESCO's *Declaration on Cultural Diversity* (2001). This definition of culture is said to be in line with the conclusions of the World Conference on Cultural Policies (MONDIACULT, Mexico City, 1982) of the World Commission on Culture and Development (*Our Creative Diversity*, 1995) and the Intergovernmental Conference on Cultural Policies for Development (Stockholm, 1998). See Du Plessis and Rautenbach 2010 *PELJ* 32.

Declaration includes social inclusion and social equity among some of its principles and these will be discussed in detail to ascertain the degree to which they foster a sustainable BE. However, the BE sector appears to negate the cultural heritage of marginalised coastal communities such as the Topnaar. The indigenous knowledge systems of marginalised coastal communities such as the Topnaar have been significantly disregarded and their connection to the coast which is the source of their livelihood has become distant as they are continuously moved far from the coastline. Even SSF are excluded from exploiting the vast fisheries resources due to their exclusion from the scope of the MRA. This implies that social inclusion and social equity remain a pipe dream for marginalised coastal communities and the SSF.

### **3.1 Social inclusion in the BE at international level**

As mentioned in the preceding paragraphs, social inclusion is a benefit of sustainable BE, which SDG 14 strives to enhance and is represented in Namibia's BE policy. A variety of definitions of social inclusion are used. The World Bank describes social inclusion as "the process of improving the terms for individuals and groups to take part in society" and as "the process of improving the ability, opportunity, and dignity of people, disadvantaged on the basis of their identity, to take part in society".<sup>57</sup> Social inclusion is defined by the United Nations as "the process of improving the terms of participation in society for people who are disadvantaged based on age, sex, disability, race, ethnicity, origin, religion or economic or other status, through enhanced opportunities, access to resources, voice and respect for rights".<sup>58</sup>

According to the European Commission, social inclusion is a process that ensures that those at risk of poverty and social exclusion have access to the opportunities and resources they need to fully participate in economic, social, political and cultural life, as well as to enjoy a standard of living that is considered normal in their community. It guarantees that people have a stronger say in decisions that impact on their lives and their fundamental rights.<sup>59</sup> Aligned to social inclusion is inclusive decision-making, which in the context of SDG 14 is defined as decision-making processes that provide marginalised coastal communities with an opportunity to "have a say", that is, to voice their demands, opinions and/or preferences to decision makers, and responsive decision-making, which is defined as decision-making

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<sup>57</sup> See UN date unknown <https://unric.org/en/sdg-14/>.

<sup>58</sup> See UN 2016 <https://www.un.org/esa/socdev/rwss/2016/chapter1.pdf>.

<sup>59</sup> UN 2016 <https://www.un.org/esa/socdev/rwss/2016/chapter1.pdf>.

processes where politicians and/or political institutions listen to and act on people's stated demands, opinions and/or preferences.<sup>60</sup>

To realise the BE's full potential all societal groups must be effectively included, particularly women, the youth, local communities and marginalised groups.<sup>61</sup> In terms of economic growth, these groups frequently confront restricted access to opportunities and public services, insufficient legal standing, few possibilities to contribute to value addition, minimal rewards, and a lack of acknowledgment of their distinctive and vital role in society.<sup>62</sup> In the case of women, despite their significant contribution to the society they frequently have restricted access to natural resources, limited or no property rights, and get lower-value benefits than their male counterparts.<sup>63</sup> Women work in a variety of BE sectors, and in the SSF sector they play an important part in post-harvest operations such as processing and marketing.<sup>64</sup> However, much of women's contribution to fisheries is "invisible".<sup>65</sup> Gender discrimination arises from the low value placed on women's work, which is reinforced by their limited access to financing, processing technologies, storage facilities and training.<sup>66</sup>

The African continent is experiencing a massive demographic crisis, with a big and growing proportion of young people under the age of thirty.<sup>67</sup> Furthermore, many of these young people prefer to migrate to rapidly growing cities rather than to pursue rural livelihoods in their native areas.<sup>68</sup> To reap the benefits of the BE, young people will need education, training and employment opportunities related to the BE.<sup>69</sup> Their successful engagement in the BE might be critical to guaranteeing its long-term success. Foreign-owned enterprises continue to dominate the fishing

<sup>60</sup> UNECA 2016 [https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering\\_social\\_inclusion\\_en.pdf](https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering_social_inclusion_en.pdf).

<sup>61</sup> UNECA 2016 [https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering\\_social\\_inclusion\\_en.pdf](https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering_social_inclusion_en.pdf).

<sup>62</sup> UNECA 2016 [https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering\\_social\\_inclusion\\_en.pdf](https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering_social_inclusion_en.pdf).

<sup>63</sup> UNECA 2016 [https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering\\_social\\_inclusion\\_en.pdf](https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering_social_inclusion_en.pdf).

<sup>64</sup> UNECA 2016 [https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering\\_social\\_inclusion\\_en.pdf](https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering_social_inclusion_en.pdf).

<sup>65</sup> UNECA 2016 [https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering\\_social\\_inclusion\\_en.pdf](https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering_social_inclusion_en.pdf).

<sup>66</sup> UNECA 2016 [https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering\\_social\\_inclusion\\_en.pdf](https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering_social_inclusion_en.pdf).

<sup>67</sup> UNECA 2016 [https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering\\_social\\_inclusion\\_en.pdf](https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering_social_inclusion_en.pdf).

<sup>68</sup> UNECA 2016 [https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering\\_social\\_inclusion\\_en.pdf](https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering_social_inclusion_en.pdf).

<sup>69</sup> UNECA 2016 [https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering\\_social\\_inclusion\\_en.pdf](https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering_social_inclusion_en.pdf).

industry. Even though the Namibian government is now actively promoting "Namibianisation" of the fishing industry through affirmative action by limiting the number of licences granted to foreign trawlers to fish in Namibian waters, and encouraging joint ventures between foreign and local entities, marginalised coastal communities and the SSF continue to receive few benefits. The Ministry of Fisheries and Marine Resources (MFMR) receives hundreds of applications for fishing rights but grants only a handful. For example, in 2021 the MFMR gave just 298 fishing rights out of thousands of applicants. This has frequently resulted in sector-wide industrial action over quota allocation difficulties. This is due to the fact that when large fishing companies and marginalised communities are unable to get fishing quotas, workers, including young people, are frequently laid off, leading to the furtherance of financial exclusion, poverty and the underdevelopment of the marginalised coastal communities.

The growth of the BE in Namibia must foster SSF community livelihoods as well as the preservation of the cultural legacy of groups like the Topnaar, who have historically relied on fishing for a living. For many fishing communities these livelihoods are more than just a source of cash; they are an integral part of their identity.<sup>70</sup> In recent years many of these communities have been forcibly displaced or have lost their livelihoods as a result of land use changes and the prioritisation of other BE sectors such as mining, energy and commercial fishing, which are deemed more beneficial to the economy for employment and revenue generation.<sup>71</sup> This has sometimes resulted in conflict as well as the loss of cultural traditions, especially indigenous wisdom, which is always valuable but continually underestimated.<sup>72</sup>

The *Rio Declaration* recognises the social exclusion of women, youth, indigenous peoples and local communities from active participation in natural resource management and development, and it contains principles that seek to foster the social inclusion of women,<sup>73</sup> youth,<sup>74</sup> indigenous peoples and local communities (hereafter IPLCs)<sup>75</sup> as it provides that their

<sup>70</sup> UNECA 2016 [https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering\\_social\\_inclusion\\_en.pdf](https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering_social_inclusion_en.pdf).

<sup>71</sup> UNECA 2016 [https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering\\_social\\_inclusion\\_en.pdf](https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering_social_inclusion_en.pdf).

<sup>72</sup> UNECA 2016 [https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering\\_social\\_inclusion\\_en.pdf](https://archive.uneca.org/sites/default/files/PublicationFiles/blue-economy-policy-handbook-1.3-fostering_social_inclusion_en.pdf).

<sup>73</sup> See principle 20 of the *Rio Declaration* which states that: "Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development."

<sup>74</sup> See principle 21 of the *Rio Declaration* which states that: "The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all."

<sup>75</sup> See principle 22 of the *Rio Declaration* which states that: "Indigenous people and their communities and other local communities have a vital role in environmental



participation in environmental management and development is crucial in the achievement of sustainable development. In the context of Namibia a sustainable BE necessitates the inclusion of the aforementioned previously disadvantaged groups in the management and development activities that take place in the BE, as one of the guiding principles of the BE policy.<sup>76</sup> The UN *Declaration on the Rights of Indigenous Peoples* recognises the human right of IPLCs to "maintain and strengthen their distinctive spiritual relationship with their traditionally occupied and otherwise used lands, territories, waters and coastal seas and other resources".<sup>77</sup> Similar reflections apply in so far as SSF communities self-identify as "traditional communities" under the UN *Framework Principles on Human Rights and the Environment*, as states are required to recognise and protect their rights to the lands, territories and resources that they have traditionally owned, occupied or used; and consult with them and obtain their free, prior and informed consent before relocating them or taking or approving any other measures that may affect them.<sup>78</sup> Namibia currently has merely a draft White Paper on Marginalised Communities, which does not address any issues related to the BE sector. Furthermore, marginalised coastal communities are excluded from marine spatial planning procedures, preventing them from participating in the economic mainstream and benefiting from access to marine resources.

The *Convention on Biological Diversity* (hereinafter CBD) acknowledges the relevance of SSF communities in so far as they are "traditional communities" involving women and adolescents who may be engaged in accomplishing its objectives.<sup>79</sup> The Convention recognises the SSF and their participation in the governance of the BE through the recognition of traditional knowledge in its preamble, as it recognises "the close and traditional dependence of many IPLCs embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components". The inclusion of IPLCs in BE is also promoted in Article 8(j) of the CBD, which obliges Namibia and other member parties subject to their national legislations to

respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for

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management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development."

<sup>76</sup> Section 9 of the Namibia Blue Economy Policy, 2022-2031.

<sup>77</sup> Article 25 of the *UN Declaration on the Rights of Indigenous Peoples* (2007).

<sup>78</sup> Principle 15 on the *Framework Principles on Human Rights and the Environment* (2018).

<sup>79</sup> *Convention on Biological Diversity* (1992).

the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices ...

This should be read in conjunction with Article 10(c) that requires all parties to "protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements".

Furthermore, the social inclusion of IPLCS, which includes women and youth, is recognised in the *Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication* (hereafter *SSF Guidelines*).<sup>80</sup> In this regard one of the objectives of the Guidelines is "to enhance public awareness and promote the advancement of knowledge on the culture, role, contribution and potential of small-scale fisheries, considering ancestral and traditional knowledge, and their related constraints and opportunities".<sup>81</sup> The *SSF Guidelines* apply a human-rights based approach that seeks to empower people to know and claim their rights and enhance the ability and accountability of duty-bearers of human rights.<sup>82</sup> This means giving people greater opportunities to participate in shaping the decisions that impact on their lives and human rights.<sup>83</sup> Applying a human-rights based approach, Principle 2 of the *SSF Guidelines* advances participation in decision-making pertaining to marine ecosystems with special emphasis on women, as it advocates

respect of cultures: recognizing and respecting existing forms of organization, traditional and local knowledge and practices of small-scale fishing communities, including indigenous peoples and ethnic minorities encouraging

<sup>80</sup> *Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication* (2014) (Rome, 31st Session of the FAO Committee on Fisheries, 9-13 June 2014). Also see Nakamura 2022 *International Journal of Marine and Coastal Law* 69, which provides that: "the SSF Guidelines, despite being voluntary and non-binding, have legal force and normative significance for three main reasons: (i) the legitimate, participatory, transparent and multi-stakeholder process of development and adoption of the guidelines; (ii) the normative content of the Guidelines, reinforcing existing international obligations and their applicability in the SSF context; and (iii) the Guidelines' law-making effects, having influenced policy and legal developments at international, regional, and national levels". Also see ss 2.1-2.2 of the *SSF Guidelines*, that provide that the Guidelines have a global scope, apply to SSF in marine and inland areas, and include both men and women involved in all fisheries activities ranging from preparation and capture fishing to processing and trade.

<sup>81</sup> See s 1.2 of the *SSF Guidelines*. Also see Willman *et al Human Rights-Based Approach in Small-Scale Fisheries* 15.

<sup>82</sup> Willman *et al Human Rights-Based Approach in Small-Scale Fisheries* 15.

<sup>83</sup> Willman *et al Human Rights-Based Approach in Small-Scale Fisheries* 15.

women leadership and taking into account Art. 5 of the Convention on the Elimination of All Forms of Discrimination Against Women.<sup>84</sup>

Similarly, the recognition of SSF participation in decision making is to be found in principle 6 of the Guidelines, which has to do with consultation and participation, and emphasises the active and meaningful participation in decision making pertaining to the BE of SSFs.<sup>85</sup>

Furthermore, the active and meaningful participation of SSF in decision-making pertaining to marine ecosystems is recognised in the *SSF Guidelines* as they call for developing specific spatial planning approaches including MSP.<sup>86</sup> Marine and coastal planning is based on the ecosystem approach to management, adaptation, zoning, and the frameworks of integrated coastal and marine area management.<sup>87</sup> When MSP follows this, retaining a comprehensive, science-supported and area-based character, taking into account social, cultural and traditional uses, this helps promote sustainable development.<sup>88</sup>

Furthermore, in the regional sphere MSP, blue growth agendas and the increased demand for ocean space and marine resources is increasing on the African continent, especially with initiatives like the 2050 Africa's Integrated Marine Strategy (hereafter AIM Strategy) and the Africa Blue Economy Strategy.<sup>89</sup> Within the 2050 AIM Strategy, MSP is recommended as a means to balance frequently competing sector-based interests and enable: a) the efficient and sustainable use of marine resources, b) knowledge-based decision-making and, c) greater legal certainty for investors to encourage blue economic development in Africa.<sup>90</sup> With the overall aim of sustainably developing Africa's economic growth through the ocean economy, the African Blue Economy Strategy also encourages

<sup>84</sup> Also see the sections that seek to promote the recognition of SSF cultural rights in marine ecosystems: 11.4, 11.6 and 11.7.

<sup>85</sup> Section 3 of the *SSF Guidelines*.

<sup>86</sup> Section 10.2 of the *SSF Guidelines* provides that: "States should, as appropriate, develop and use spatial planning approaches, including inland and marine spatial planning, which take due account of the small-scale fisheries interests and role in integrated coastal zone management. Through consultation, participation and publicizing, gender-sensitive policies and laws on regulated spatial planning should be developed as appropriate. Where appropriate, formal planning systems should consider methods of planning and territorial development used by small-scale fishing and other communities with customary tenure systems, and decision-making processes within those communities."

<sup>87</sup> Rajagopalan *Handbook on CBD* 42.

<sup>88</sup> Rajagopalan *Handbook on CBD* 42.

<sup>89</sup> Rivers *et al* 2022 *Frontiers in Marine Science* 5. AU 2019 [https://www.aubiar.org/sites/default/files/202010/sd\\_20200313\\_africa\\_blue\\_economy\\_strategy\\_en.pdf](https://www.aubiar.org/sites/default/files/202010/sd_20200313_africa_blue_economy_strategy_en.pdf).

<sup>90</sup> Rivers *et al* 2022 *Frontiers in Marine Science* 5. AU 2019 [https://www.aubiar.org/sites/default/files/202010/sd\\_20200313\\_africa\\_blue\\_economy\\_strategy\\_en.pdf](https://www.aubiar.org/sites/default/files/202010/sd_20200313_africa_blue_economy_strategy_en.pdf).

African states to institutionalise MSP as an ocean governance tool "to balance sustainable use and conservation imperatives and mitigate conflicts and create synergies amongst the users".<sup>91</sup>

In order to achieve a sustainable BE that promotes social inclusion to achieve sustainable development, Namibia's legal framework applicable to the governance of marine ecosystems will have to reflect the following provisions gathered from an analysis of international instruments: (a) the meaningful and active participation of all local community members including women and youth with respect to decision-making pertaining to the management, use of and access to marine ecosystems through integrating traditional knowledge alongside scientific and other forms of knowledge in processes such as MSP; (b) the free, prior and informed consent of a local community before engaging in any development on marine ecosystems; (c) the equitable sharing with local community members of the economic, cultural and social benefits arising from marine resources; and (d) the recognition of SSF in the MRA as well as their inclusive participation in MSP. Currently marginalised communities are largely excluded from accessing and benefitting from marine resources and are thus financially and socially excluded.<sup>92</sup>

### 3.1.1 Social inclusion in the BE at African regional level

It can be argued that social inclusion is recognised in *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of the Endorois Welfare Council v Kenya* (the *Endorois case*). In the matter the African Commission considered the principle of public participation.<sup>93</sup> The Commission's interpretation of Article 22 on the right to

<sup>91</sup> Rivers *et al* 2022 *Frontiers in Marine Science* 5. See also AU 2019 [https://www.au-ibar.org/sites/default/files/202010/sd\\_20200313\\_africa\\_blue\\_economy\\_strategy\\_en.pdf](https://www.au-ibar.org/sites/default/files/202010/sd_20200313_africa_blue_economy_strategy_en.pdf).

<sup>92</sup> Warikandwa, Shakalela and Libebe "Financial Inclusion and the Small-Scale Fisheries Sector" 289-322.

<sup>93</sup> *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* (ACHPR) Application No. 276/2003 (4 February 2010) (the *Endorois case*). ESCR-Net 2010 <https://www.escr-net.org/caselaw/2010/centre-minority-rights-development-kenya-and-minority-rights-group-international-behalf> states the following: "In the 1970s, the Kenyan government evicted hundreds of Endorois families from their land around the Lake Bogoria area in the Rift Valley to create a game reserve for tourism. The Endorois, an indigenous people, had been promised compensation and benefits, but these were never fully implemented, and the community's access to the land was restricted to the discretion of the Game Reserve Authority. This prevented the community from practicing their pastoralist way of life, using ceremonial and religious sites, and accessing traditional medicines. Complainants (Centre for Minority Rights Development, Kenya and Minority Rights Group International on behalf of the Endorois Welfare Council) submitted this claim before the African Commission on Human Rights after domestic legal efforts and action failed to constitute an effective remedy for the violations alleged. The Commission found that the Kenyan

development recognises the participation of affected communities.<sup>94</sup> Further, the African Commission not only acknowledged the right of communities to participate but emphasised that such participation should be effective.<sup>95</sup> The Commission further explained that mere notice of an impending project cannot be regarded as effective, as the affected community would not have had the opportunity to influence the outcome.<sup>96</sup> The African Commission also noted that an equal bargaining position is a requirement for effective community participation in decision making.<sup>97</sup> The Commission also stated that literacy and an understanding of the project at hand were seen as key ingredients in providing an equal bargaining position during public participation.<sup>98</sup> The Africa Commission provided further important guidance to be considered in applying the principle of public participation through the following explanation: this duty requires the State to both accept and disseminate information, and entails constant communication between parties. These consultations must be in good faith, conducted through culturally appropriate procedures and with the objective of reaching an agreement.<sup>99</sup>

It can be argued that social inclusion was also recognised in the case of the *African Commission on Human and People's Rights v Republic of Kenya* (the *Ogiek* case)<sup>100</sup> in the African Court on Human and Peoples' Rights (hereafter the African Court), in interpreting Article 14 (the right to land) and Article 22 (the right to development) of the *African Charter on Human and Peoples' Rights*, which the Kenyan government allegedly violated. In this case "the Kenyan government issued an eviction notice to the Ogiek

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government had violated the Endorois' rights to religious practice, to property, to culture, to the free disposition of natural resources, and to development, under the African Charter (Articles 8, 14, 17, 21 and 22, respectively). The Commission stated that lack of consultation with the community; the subsequent restrictions on access to the land; and the inadequate involvement in the process of developing the region for use as a tourist game reserve, had violated the community's right to development under the UN Declaration on the Right to Development. Also, the Commission found that the Kenyan Government's Trust Land System violated the Endorois' right to property. The system allowed gradual encroachment onto Endorois land, and even though the system allowed for compensation, it nevertheless violated property rights by effectively causing forced evictions. For these violations, the Commission recommended that the government recognize rights of ownership, restate to the Endorois' their ancestral lands, compensate their losses, and ensure the Endorois benefit from the royalties and employment opportunities within the game reserve."

<sup>94</sup> *Endorois* case para 289. Also see Scholtz "Human Rights and the Environment" 401 and Ntoubandi and Adjovi "Wider Human Rights Spectrum" 265-266.

<sup>95</sup> *Endorois* case para 281. Also see Lubbe *Straddling Border and Legal Regimes* 102.

<sup>96</sup> *Endorois* case para 281. Also see Lubbe *Straddling Border and Legal Regimes* 102.

<sup>97</sup> *Endorois* case para 282. Also see Lubbe *Straddling Border and Legal Regimes* 102.

<sup>98</sup> *Endorois* case para 289. Also see Lubbe *Straddling Border and Legal Regimes* 102.

<sup>99</sup> *Endorois* case para 289.

<sup>100</sup> *African Commission on Human and People's Rights v Republic of Kenya* (ACtHPR) Application No. 006/2012 (26 May 2017) (the *Ogiek* case).

community living in the Mau forest".<sup>101</sup> Allegedly, although the eviction was ostensibly aimed at protecting the environment, its ultimate purpose was to initiate large-scale logging.<sup>102</sup> The Kenyan government had failed to effectively consult with the Ogiek community before evicting them from their ancestral lands in the Mau forest.<sup>103</sup> As in the position taken by the African Commission in *Endorois*, the African Court in *Ogiek* submitted that Article 22 of the *African Charter* should be interpreted in a manner recognising the participation of affected communities as it is associated with the right to development.<sup>104</sup> The ruling in both the *Endorois* and *Ogiek* cases, although they applied to the terrestrial ecosystem, make it clear that Namibia and other members of the African Union should consider the social inclusion of IPLCs in decision-making pertaining to the BE within marine ecosystems too, as they are also environments which local communities have historically relied upon and in which they still need to be engaged in order to fulfil their basic human rights.

Furthermore, there is *Resolution 489 on the Recognition and Protection of the Right of Participation, Governance and Use of Natural Resources by Indigenous and Local Populations in Africa*, which was taken by the African Commission on Human and Peoples' Rights.<sup>105</sup> Article 21(3) of the Charter guarantees the right of all peoples to freely dispose of their wealth and natural resources.<sup>106</sup> Article 22(1) upholds the right to peoples' economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.<sup>107</sup> As a result, *Resolution 489* urges African states to respect indigenous peoples' and communities' rights to the conservation, control, management and sustainable use of their natural resources, including their maritime resources.<sup>108</sup>

It can be argued that Article 12 of the *SADC Protocol on Fisheries* recognises social inclusion. To this end, the article makes provision for artisanal, subsistence and SSF engagement and places a duty on Namibia and member states to

ensure a rational and equitable balance between social and economic objectives in the exploitation of living aquatic resources accessible to artisanal and subsistence fishers by facilitating broad based and equitable participatory

<sup>101</sup> *Ogiek* case para 22. Ntoubandi and Adjovi "Wider Human Rights Spectrum" 266.

<sup>102</sup> *Ogiek* case para 22. Ntoubandi and Adjovi "Wider Human Rights Spectrum" 266.

<sup>103</sup> *Ogiek* case paras 131 and 210.

<sup>104</sup> *Ogiek* case para 22. Ntoubandi and Adjovi "Wider Human Rights Spectrum" 266.

<sup>105</sup> *Resolution on the Recognition and Protection of the Right of Participation, Governance and Use of Natural Resources by Indigenous and Local Populations in Africa* Doc ACHPR/Res489(LXIX) (2021).

<sup>106</sup> Machaka 2022 <https://www.resourceafrica.net/cbnrm-african-commission-support/>.

<sup>107</sup> Machaka 2022 <https://www.resourceafrica.net/cbnrm-african-commission-support/>.

<sup>108</sup> Machaka 2022 <https://www.resourceafrica.net/cbnrm-african-commission-support/>.

processes to involve artisanal and subsistence fishers in the control and management of their fishing and related activities.<sup>109</sup>

Furthermore, it can be argued that the *Fisheries Protocol* recognises social inclusion by requiring member states, including Namibia, to work toward harmonising their national legislation on appropriate traditional resource management systems, taking into account indigenous knowledge and practice.<sup>110</sup>

In order to achieve a sustainable BE that promotes social inclusion to achieve sustainable development, Namibia's legal framework applicable to the governance of marine ecosystems will have to reflect the following provisions gathered from an analysis of African regional jurisprudence and policy: (a) the meaningful participation of local community members with respect to any decision-making taking place within their shared marine ecosystems; (b) the prior and informed consent of local community members should be obtained before engaging in any development on shared marine ecosystems, and traditional knowledge should be recognised in the given prior and informed consent by a local community group surviving on shared marine ecosystem; (c) an equal bargaining position should be a requirement for effective community participation in decision-making in the BE, and local community members should be able to understand the project to be undertaken; (d) traditional marine ecosystem management systems and indigenous knowledge should be integrated in the management, use and access to marine resources through MSP.

### 3.1.2 Social inclusion in the BE in Namibian law and policy

It could be argued that provisions recognising and promoting social inclusion are recognised in the *Environmental Management Act*, 2007 (hereafter EMA) among the principles of environmental management that require local community members including SSF to be involved in the management of marine natural resources, that they should benefit from the use of the resources, and that decision making within the BE should consider the interest, values and needs of SSF who rely on marine ecosystems for their livelihood.<sup>111</sup>

In the case of the MRA, which is the principal law pertaining to marine resources, it could be argued that social inclusion in its narrow sense is recognised under the provisions in the Act's regulations that allow SSF to access marine resources only through fishing for recreational purposes.<sup>112</sup>

<sup>109</sup> Article 12(1)(a) read with (6) of the *SADC Protocol on Fisheries* (2001).

<sup>110</sup> Article 12(7) of the *SADC Protocol on Fisheries* (2001).

<sup>111</sup> Section 3(2)(b) and (c) of the *Environmental Management Act* 7 of 2007 (EMA).

<sup>112</sup> Section 1 of the Marine Resources Regulations (GN No 153 of 2001) define "recreational purposes" as fishing for the purpose of sport, leisure or subsistence. See s 5 for the provisions on recreational purposes.

This is the only provision in the MRA which gives the opportunity to SSF to engage in fishing as a source of livelihood, income and nutrition. This limited access to resource use fails to promote the active and meaningful participation of these economically marginalised communities in marine use, access and governance, which accords with the principle of social inclusion as it is reflected in the BE policy. But fishing for recreational purposes only does not amount to a fair distribution of economic, social and cultural benefits of the BE as reflected in the principle of social equity recognised in Namibia's BE policy.

Namibia has adopted MSP, a participatory decision-making process that guides where and when human activities occur in marine spaces, allowing for comprehensive, integrated and complementary planning and management across all sectors for all ocean uses, thereby enabling sustainable development.<sup>113</sup> MSP is considered to be a tool for facilitating the development of a sustainable BE, as recognised by the National Development Plan 5, which benefits all Namibians and the environment equally. Namibia presently lacks MSP legislation but is in the process of establishing or revising existing BE-related laws to include MSP provisions.<sup>114</sup> It could be argued that the implementation of MSP in Namibia is a vehicle for promoting social inclusion, because it is a collaborative, participatory and integrative approach that engages all stakeholders (marine users and regulators) to ensure and enable a process in which they cooperate in working toward agreed-upon MSP(s).<sup>115</sup> According to MSP-related working documents in Namibia, an MSP stakeholder is defined as any individual or group having an interest or stake in the coastal and marine environment.<sup>116</sup> These stakeholders are namely the government,<sup>117</sup> industry<sup>118</sup> and local community groups, including the SSF, which are listed as civil society members.<sup>119</sup>

### **3.2 Social equity in the BE at international level**

<sup>113</sup> MFMR date unknown <https://mfmr.gov.na/fi/marine-spatial-planning>.

<sup>114</sup> MFMR date unknown <https://mfmr.gov.na/fi/marine-spatial-planning>.

<sup>115</sup> See in general the outline of MSP strategy in Namibia. MFMR date unknown <https://154.0.193.130/documents/411764/430830/Data+and+information+Strategy.pdf/fb9a5760-4c42-1223-75eb-641c7b396570>.

<sup>116</sup> The general scope of recognised MSP stakeholders tends to exclude marginalised communities in Namibia. This is an issue that needs to be reviewed when the MSP framework for Namibia is finally adopted. The proposed framework is still under review and consideration by the MFMR. An inclusive MSP framework would ensure equal access to marine resources. MFMR date unknown <https://154.0.193.130/documents/411764/430830/Data+and+information+Strategy.pdf/fb9a5760-4c42-1223-75eb-641c7b396570>.

<sup>117</sup> MFMR date unknown <https://mfmr.gov.na/fi/marine-spatial-planning>.

<sup>118</sup> MFMR date unknown <https://mfmr.gov.na/fi/marine-spatial-planning>.

<sup>119</sup> MFMR date unknown <https://mfmr.gov.na/fi/marine-spatial-planning>.



As argued in the paragraphs above, social equity is a benefit of a sustainable BE as reflected by the objectives SDG 14 as it is recognised in Namibia's BE policy.<sup>120</sup> Social equity in relation to the sustainable BE includes a focus on a fair distribution of social, cultural and economic benefits to members of previously disadvantaged communities such as SSF, women, youth, people with disabilities and the economically marginalized, as stated in Namibia's BE policy.<sup>121</sup> However, what constitutes fair distribution is subjective and needs to be understood in relation to the social beliefs, values, practices and institutions of different cultures and societies.<sup>122</sup> Inequality in ocean governance has manifested itself, for instance, in the unfair distribution of commercial fish catches to the detriment of the livelihoods of SSFs and the limited political power of SSF, particularly women and other minority groups.<sup>123</sup> In a bid to resolve this inequity the *Rio Declaration* in principle 3 seeks to promote equity even as it extends to the BE, as it states that "the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations". In a manner similar to that expressed in principle 3, the *SSF Guidelines* "recognise the need for responsible and sustainable use of aquatic biodiversity and natural resources to meet the developmental and environmental requirements of present and future generations".<sup>124</sup> Principle 3 reflects two aspects of the principle of equity, the first of which is intergenerational equity, which relates to the conservation and sustainable use of the marine environment in a manner that ensures the ability of future generations also to reap its benefits.<sup>125</sup> The second aspect of the *Rio Declaration* principle 3 is that of intragenerational equity, which is concerned with ensuring the equitable distribution of benefits and resources within the current generation.<sup>126</sup> It calls for solidarity in uplifting those who are marginalised and underprivileged.<sup>127</sup> This second aspect is pertinent to attaining a sustainable BE in Namibia as reflected in its BE policy. In order to advance equity as reflected in principle 3 of the Declaration the *SSF Guidelines* state that "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".<sup>128</sup> Further promoting equity, the Guidelines advocate the "equitable distribution of the benefits yielded from responsible management of fisheries and ecosystems, rewarding small-scale fishers and fish workers,

<sup>120</sup> Section 9 of the Namibia Blue Economy Policy, 2022-2031.

<sup>121</sup> Section 9 of the Namibia Blue Economy Policy, 2022-2031.

<sup>122</sup> Österblom *et al Towards Ocean Equity* 492.

<sup>123</sup> Österblom *et al Towards Ocean Equity* 492.

<sup>124</sup> Section 5.1 of the *SSF Guidelines*.

<sup>125</sup> Tladi *Sustainable Development* 40.

<sup>126</sup> Tladi *Sustainable Development* 48.

<sup>127</sup> Tladi *Sustainable Development* 40.

<sup>128</sup> Section 5.1 of the *SSF Guidelines*.

both men and women".<sup>129</sup> In doing so, the Guidelines highlight the need for benefit-sharing with ecosystem stewards as part of an ecosystem approach. The *SSF Guidelines* also view benefit-sharing as an incentive for environmental stewards to make a beneficial contribution to human well-being through the ecosystem services they offer, maintain or restore.<sup>130</sup> Benefit-sharing may also be seen as an acknowledgement of SSF communities' past and current contributions to global environmental objectives and food security, with the goal of ensuring that their traditional methods continue in the future.<sup>131</sup>

As stated in the preceding paragraphs, equity is one of the guiding principles of the Namibian BE policy, which tries to guarantee that historically disadvantaged populations such as women, youth, the disabled, and economically marginalised communities partake in the benefits arising from sound social organisation. Taking practical limitations into account, Namibian law applicable to marine resource governance must include provisions that promote the equitable sharing of benefits arising from sustainable marine resource management to all previously advantaged groups that rely on fishing for a living.

#### 4 Conclusion

Namibia's BE policy is a notable policy statement that aims to develop sustainable BE by recognising and promoting social inclusion and fairness as guiding principles. This is consistent with SDG 14's aims and targets, as well as with the *Rio Declaration*, the CBD and the *SSF Guidelines*. However, the BE sector of Namibia fails to embrace inclusion and access to marine resources by marginalised coastal communities and the SSF. The marginalised coastal communities and the SSF will not be able to participate in the economic mainstream and benefit from the economic and cultural heritage of the coast in Namibia unless there is a deliberate effort on the part of policy makers to ensure that the language of policy is translated into law. Policy is not binding, so there is a need to amend the MRA so that it contains provisions that promote a sustainable BE through recognising the following measures: (a) the meaningful participation of local community members with respect to any decision-making taking place within their shared marine ecosystems; (b) the requirement to obtain the prior and informed consent of local community members before engaging in any development on shared marine ecosystems and the recognition of traditional knowledge in the giving of prior and informed consent by a local community group surviving on a shared marine ecosystem; (d) the

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<sup>129</sup> Section 5.1 of the *SSF Guidelines*. Also see Morgera and Nakamura "Shedding a Light" 17.

<sup>130</sup> Morgera and Nakamura "Shedding a Light" 17.

<sup>131</sup> Morgera and Nakamura "Shedding a Light" 17.

integration of traditional marine ecosystem management systems and indigenous knowledge in the management, use and access to marine resources through MSP; (e) the framing of provisions that promote the equitable sharing of benefits arising from the sustainable management of marine resources to all previously advantaged groups that rely on fishing as a source of livelihood; and f) the recognition of the SSF from a statutory perspective. Failure to amend the MRA to ensure inclusivity, benefit sharing and access to marine resources by marginalised coastal communities in Namibia's BE sector would lead to the failure of the country's development agenda. In principle, the envisaged development of the country would not be sustainable and would simply translate into the over-exploitation of marine resources by a few connected elites at the expense of the marginalised coastal communities. Poverty eradication would fail and inequality would continually increase in Namibia. There is, therefore, a need to adopt a sustainable BE sector agenda for the benefit of all in Namibia through legal reform as argued in this article.

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## List of Abbreviations

ACHPR	African Commission on Human and People's Rights
AU	African Union
BE	Blue Economy
CBD	Convention on Biological Diversity
EEZ	exclusive economic zone
EMA	Environmental Management Act 7 of 2007
ESCR	Economic Social and Cultural Rights
EU	European Union
GDP	Gross Domestic Product
IPLCs	indigenous people and local communities
LDCs	Least Developed Countries
MFMR	Ministry of Fisheries and Marine Resources (Namibia)
MRA	Marine Resources Act 27 of 2000
MSP	marine spatial planning
NPOA	National Plan of Action



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NPOA-SSF	National Plan of Action for Small-Scale Fisheries
NEEEF	New Equitable Economic Empowerment Framework
PELJ	Potchefstroom Electronic Law Journal
SDG	Sustainable Development Goal
SIDS	Small Island Developing States
SSF	small-scale fisheries
TSAR	Tydskrif vir die Suid-Afrikaanse Reg
UN	United Nations
UNCTAD	United Nations Trade and Development
UNECA	United Nations Economic Commission for Africa