A picture containing tree, ocean floor

Description automatically generated

**The One Ocean Hub’s Written Submission**

**To the UN Special Rapporteur on Climate Change and Human Rights on**

**“Promotion and protection of human rights in the context of mitigation, adaptation, and financial actions to address climate change, with particular emphasis on loss and damage”**

23 June 2022

Prepared by:

Alana Malinde S.N. Lancaster, Lecturer in Law, University of West Indies, Cave Hill Campus; Member of the GCRF UKRI One Ocean Hub

Mitchell Lennan, PhD Researcher, Strathclyde Law School, University of Strathclyde, Glasgow, United Kingdom; Member of the GCRF UKRI One Ocean Hub

Elisa Morgera, Professor of Global Environmental Law, Strathclyde Law School, University of Strathclyde, Glasgow, United Kingdom; Director, GCRF UKRI One Ocean Hub

Contact: One Ocean Hub [oneocean-hub@strath.ac.uk](mailto:oneocean-hub@strath.ac.uk)

**Scope of this submission:** The submission provides answers to questions 1, 2, 5, and 8 raised by the Special Rapporteur.

**Word count:** 2404

**Background information on the One Ocean Hub:** The One Ocean Hub is an international programme of research for sustainable development, working to promote fair and inclusive decision-making for a healthy ocean whereby people and planet flourish. The Hub brings together coastal people, researchers, decision-makers, civil society, and international organisations to value, and learn from, different knowledge systems and voices. It specifically addresses the challenges and opportunities facing Ghana, Namibia and South Africa, endeavouring to share relevant research findings at the regional (Africa, Caribbean, Pacific) and international levels. The Hub is funded by UK Research and Innovation (UKRI) through the Global Challenges Research Fund (GCRF), a key component in delivering the UK AID strategy to tackle the UN Sustainable Development Goals (SDGs). Led by the University of Strathclyde, UK, the Hub gathers 126 researchers, 21 research partners, and 19 project partner organisations, including UN bodies and programmes. The Hub is currently collaborating with the UN Food and Agriculture Organization, the UN Environment Programme and the UN Office of the High Commissioner for Human Rights to clarify and mainstream within pertinent policy dialogues the nexus between the ocean, climate change, biodiversity, and human rights. It has also been collaborating with the UN Division for Ocean Affairs and the Law of the Sea since 2020, providing virtual training sessions for government officials and other ocean practitioners around the world on the law of the sea, international environmental law and human rights. <https://oneoceanhub.org>

1. **What experiences and examples are you aware of that are being faced by particularly individuals and communities in vulnerable situations (as identified above) that have suffered loss and damage due to the adverse impacts of climate change?**

In addition to the well-established impacts of climate change in coastal and low-lying states, and of small island developing states (SIDS) of the African, Pacific, and Caribbean regions, other emerging impacts are occurring. These include combined **land- and ocean-grabbing**, with economic and non-economic loss and damage – in both cases, it should be stressed that these terms actually refer to major threats to basic human rights and should be viewed as such. An example of land- and ocean-grabbing is the active attempt to change the tenure system in the Caribbean island of Barbuda, after a Category 5+ storm in 2017 ([Lancaster, 2022](https://www.researchgate.net/publication/351125604_Critical_Perspectives_of_Post-Colonial_Notions_of_Ownership_Use_and_Regulation_of_Forestry_and_Fishery_Resources_in_the_CARICOM_OECS_Caribbean_Regions)). Non-economic loss and damage associated with prolonged displacement of entire island populations by extreme weather events such as hurricanes in the Caribbean, or drought or saltwater intrusion which destroys crops in African and Pacific SIDS, are rarely addressed in national policies, plans or strategies ([Thomas and Benjamin, 2019](https://www.emerald.com/insight/content/doi/10.1108/IJCCSM-03-2017-0055/full/html)) and effectively constitute negative impacts on the right to life, an adequate standard of living, housing, water and sanitation, health, food and nutrition, and a healthy environment. Additionally, these events can negatively impact on the right not to be forcibly displaced and maintain personal integrity, as well as cultural rights, and rights to property, development and self-determination. Furthermore, the impact on these substantive rights is coupled with impacts on procedural rights of access to information and justice, both between and within nations and generations ([Advisory Opinion 23-17](https://elaw.org/system/files/attachments/publicresource/English%20version%20of%20AdvOp%20OC-23.pdf) of IACtHR, 2017).

Intergenerational justice also raises issues related to the impact of climate change on **children’s human rights**: while attention is growing on the impacts of climate change on children’s human rights, however, these impacts are often not discussed in relation to the ocean-climate nexus ([Sweeney and Morgera, 2021](https://oneoceanhub.org/wp-content/uploads/2021/09/Policy-Brief.pdf); [Lennan, 2022](https://www.amazon.co.uk/Fantasee-Bottle-Countertop-Storage-Wedding/dp/B08BJJRTLN/ref=asc_df_B08BJJRTLN/?tag=googshopuk-21&linkCode=df0&hvadid=536037338116&hvpos=&hvnetw=g&hvrand=310172679175049697&hvpone=&hvptwo=&hvqmt=&hvdev=c&hvdvcmdl=&hvlocint=&hvlocphy=9046833&hvtargid=pla-1286912362314&psc=1)). While the latest IPCC report highlighted the impacts of climate change on food security, health and nutrition of children ([IPCC, 2022](https://www.ipcc.ch/report/sixth-assessment-report-working-group-ii/) at SPM.B.1.3 and SPM.B.4.4), the IPCC has yet to produce a report focused on children and climate change, or consider children’s rights to a safe climate (let alone in the context of the ocean-climate nexus).

Several SIDS have already reached their limits to adaptation, meaning the identification and management of loss and damage issues (and provision of the financial means to do so) is essential. Fundamentally, these impacts compound existing developmental vulnerabilities and negate prior development gains, leading to a lower resilience and adaptation capacity by these states. SIDS and developing countries therefore are in an untenable situation, where there are facing exogenous and endogenous challenges to achieving their goals under the climate change regime, as well as sustainable development goals. There is an opportunity in the context of loss and damage to clarify the **inter-linkages between pre-existing international obligations**, namely the customary law principle of no harm, relevant provisions on the protection of the marine environment in the UN Convention on the Law of the Sea (UNCLOS), relevant international human rights obligations, together with the international environmental law principle of common but differentiated responsibility, as well as the international human rights principles of universality and non-discrimination. A rights-based approach could serve as a catalyst for accelerated action to mitigate and adapt to climate change and provide finance to do so, while showing benefits in terms of policy coherence and support for multiple SDGs for donor countries ([Morgera and Lennan, 2022](https://unfccc.int/sites/default/files/resource/A1_OBCAaHR_V1.3.pdf)).

The Hub’s research at the country level has demonstrated the importance of adopting a human rights-based approach in tackling the connections with marine biodiversity in climate change adaptation and mitigation ([Lennan, 2022](https://oneoceanhub.org/wp-content/uploads/2021/10/Climate-change-and-ocean-policy-brief-FINALFINAL.pdf)). To that end, the importance of integrating the human rights-ocean-climate nexus within States’ nationally determined contributions under the Paris Agreement cannot be overstated. Moreover, there is a need to support this integration in developing countries, including in SIDS and least-developed countries ([Lennan, 2021](https://oneoceanhub.org/climate-and-the-oceans-ndc-synthesis-report-suggests-more-work-to-be-done-to-mainstream-climate-adaptation-and-oceans/)).

1. **What legislation, policies and practices do you think are necessary to provide redress for particularly individuals and communities in vulnerable situations that have suffered and will continue to suffer loss and damage due to the adverse impacts of climate change?**

Researchers at the One Ocean Hub have identified three key practices that can support States in facilitating redress for ocean-dependent communities vulnerable to climate change.

* Community-led vulnerability assessments

Vulnerability assessments at local level support contextual understanding the direct impacts of climate change on the ocean and on human life on land. Hub Researcher Professor Merle Sowman, University of Cape Town, demonstrated that community-level vulnerability assessment serve to document how the increased risk and uncertainty of climate change create challenges for livelihoods and impedes development; while the enhanced understanding of vulnerability at the local level can support more effective adaptation planning ([The One Ocean Hub, 30 November 2020](https://www.youtube.com/watch?v=fzR9cHUQ9WE&t=1753s)).

Community-led vulnerability assessment can thus also identify losses arising from the adverse effects of climate change and appropriate forms of redress, by enabling decision makers to learn from indingeous peoples and local communities’ observations, experiences and knowledge of threats and stressors, their perceptions of change, coping strategies, and feasible and appropriate adaptation strategies at the local level. In addition, these assessments can support communities’ identification of support needed and early indication of areas requiring research to prevent loss and damage ([The One Ocean Hub, 30 November 2020](https://www.youtube.com/watch?v=fzR9cHUQ9WE&t=1753s)).

* Community-led ecosystem restoration

Hub researchers have published evidence of multiple co-benefits and replicable methods in integrating ocean management, climate change mitigation and adaptation, biodiversity and human rights through ecosystem restoration. ([The One Ocean Hub, 2021](https://oneoceanhub.org/publications/integrating-the-ocean-climate-change-adaptation-and-mitigation-biodiversity-ecosystem-restoration-and-human-rights-in-practice-evidence-of-multiple-benefits-and-replicable-methods-from-algoa-bay/)). This research was carried out in Algoa Bay, Eastern Cape Province, South Africa by a multi-funded project at Nelson Mandela University. The project was undertaken through a participatory action approach by: including affected communities in setting up ecosystem restoration interventions, and hosting water quality analysis equipment and integrating local knowledge in tool design. Community-led ecosystem restoration had a number of co-benefits relevant to financial and non-financial redress of loss and damage:

* Enhancing human health: women’s and children’s health negatively impacted by poor water quality when using the estuaries and nearby beaches;
* Climate mitigation: protecting salt marshes and submerged seaweeds contributing to carbon absorption, which are negatively impacted by pollution;
* Climate adaptation: ensuring access to fresh water in the face of water shortages due to climate change impacts;
* Further biodiversity benefits: healthier wetlands and algal ponds that provide habitat for many bird species;
* Cultural services: supporting continued spiritual/religious connections along the estuary (Sangoma ritual sites; areas for christening);
* Supporting the local livelihoods of subsistence fishers and bait collectors; and
* Supporting tourism and recreation, as improvement of water quality improves attractiveness and safety of use of coastal areas.
* Use of inclusive and participatory arts-based research to engage in transformative public dialogue and prevent conflict

The Hub is piloting various innovative art-based research co-development approaches that support inclusivity, human rights protection and non-discrimination in ocean and climate decision making (see also our [submission to the UN Special Rapporteur on Cultural Rights](https://oneoceanhub.glasscubes.com/share/s/984ks6jl4jhq2cmqiuhtpd60q4) in April 2022). These approaches can also serve to mediate climate-related conflicts (as explored with the [Green Climate Fund Independent Redress Mechanism](https://oneoceanhub.org/exploring-law-conflict-and-mediation-at-the-ocean-climate-nexus/) at COP26), and could serve as an inclusive methodology to address loss and damage issues. Hub Researcher Dr Dylan McGarry, Rhodes University, co-led participatory [empatheatre](https://www.empatheatre.com/) and [animations](https://www.youtube.com/watch?v=AAy0RDSido0&t=2s) to bring together artists, traditional healers, marine social scientists and ecologies ([The One Ocean Hub, 22 November](https://www.youtube.com/watch?v=pufOGgRoPrM&t=1435s)) to reveal shared, inter-related concerns around our climate change and others impacts on the ocean and human rights, across different knowledge knowledge systems. This approach can be utilised to empower marginalised groups to share their concerns and experiences concerning loss and damage, and their ideas about appropriate redress in an inclusive and culturally sensitive manner. Moreover, this approach can support community-led ecosystem restoration and community-led assessment discussed above. Another example of arts-based approaches is photography and digital storytelling in Algoa Bay, South Africa, which allow Indigenous and local knowledge holders as co-researchers to integrate cultural connections to the ocean in marine spatial planning (Strand, Rivers and Snow, 2022), thereby [supporting](https://oneoceanhub.org/how-art-can-support-the-advancement-of-human-rights-and-the-ocean/) the recognition of substantive human rights and the realization of procedural human rights in a planning process that also contributes to climate change adaptation and mitigation.

The integration of these strands of research and methods helps to create platforms formore equitable public dialogue platforms, which support participants in thinking through contentious issues without retreating into polarised positions ([Erwin, 2021)](https://www.tandfonline.com/doi/abs/10.1080/21681392.2020.1850304) and new forms of solidarity networks for knowledge sharing and co-development of solutions, based on better understanding of: direct impacts on human rights holders; direct impacts on the environment; improved capacity. For instance, the [Coastal Justice Network](https://coastaljusticenetwork.co.za/) brings together small-scale fisher leaders, environmental justice organisations and researchers responding collaboratively to unsustainable blue economy initiatives along the South African coastline. Together they are fighting in courts numerous applications for [seismic surveys](https://oneoceanhub.org/publications/a-seismic-shift-a-coalition-of-fishing-communities-activists-and-lawyers-has-come-together-to-keep-the-coasts-and-oceans-of-south-africa-free-of-the-destructive-blue-economy-agenda/) to support offshore oil and gas exploration, to the detriment of their right to food and cultural rights, as well as in opposition to further fossil fuel extraction with a view to mitigating climate change.

1. **What international, regional and national policies and legal approaches are necessary to protect current and future generations and achieve intergenerational justice for particularly for individuals and communities, from the adverse impacts of climate change?**

This answer focuses on international policy and legal approaches. A key starting point is that greater knowledge of **deep-sea ecosystem services** (such as carbon sequestration or biomedical solutions), species and habitats, and the role they play in climate regulation and satisfying the material conditions for many human rights, and conversely, the impact of human activities on those ecosystem services can advance understanding of loss and damage at the ocean-climate nexus ([The One Ocean Hub, 28 February, 2021](https://oneoceanhub.org/focus-on-deep-sea/)). For example, the dissolved silicon from skeletons of deep-sea sponges provide the building blocks for carbon-sequestering photosynthetic plankton ([Maldonado et al., 2019](https://www.nature.com/articles/s41561-019-0430-7#Ack1)).

Hub Researcher [Ms Giulia LaBianca](https://www.plymouth.ac.uk/staff/giulia-la-bianca), Plymouth University, is developing a **standard framework on deep-sea ecosystem services** to include within decision making the benefits that these remote environments provide to society, and therefore the potential damage and losses that could be incurred if these services are not duly taken into account. Equally, the framework serves to better understand knowledge gaps in the management of supporting ecosystem services such as climate regulation, in order to prioritise new scientific efforts and the application of the precautionary approach in decision-making.

This is particularly important from the perspective of **children’s human rights** that depend on the ecosystem services provided by the deep seas ([Sweeney and Morgera, 2021](https://oneoceanhub.org/wp-content/uploads/2021/09/Policy-Brief.pdf)). While at the 56th Subsidiary Body of Scientific and Technological Advice, the first annual Ocean-Climate Dialogue (mandated by COP26) did include participation of youth organisations, more work is needed to amplify children’s voices in climate change, especially in the context of loss and damage, also beyond the UNFCCC. Participation of children and youth is needed in the **UN Decade for Ocean Science, UN Decade for Ecosystem Restoration, at the International Seabed Authority** (where regulations are being drawn up on the international exploitation of deep-sea minerals) ([Morgera, 2022](https://oneoceanhub.org/highlighting-critical-gaps-in-decision-making-on-deep-seabed-mining/); [Resolve, 2021](https://www.resolve.ngo/integrating_stakeholder_voices.htm)), the ongoing **UN negotiations on an internationally legally-binding instrument on marine biodiversity of areas beyond national jurisdiction** ([Morgera, 2021](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3870399); [Morgera et al, 2022](https://oneoceanhub.org/participation-at-bbnj-negotiations-matters/)), and the imminent UN negotiations on a new treaty on plastics ([Switzer and Morgera, 2022](https://oneoceanhub.org/reflections-on-the-new-un-process-to-develop-a-treaty-on-plastics/)). All these international processes can contribute to advance more integrated solutions on the climate-ocean nexus, preventing future loss and damage.

**8) What actions are necessary to enhance actions by States, business enterprises, civil society and intergovernmental organisation to increase efforts to ensure that actions to adapt to the impacts of climate change contribute to reducing, and not exacerbating, the vulnerabilities of individuals and communities in vulnerable situations to the adverse impacts of climate change?**

There are key opportunities for Parties to contribute to implement the UNFCCC and the Paris Agreement through **ocean-based climate action** that are built upon a mutually supportive interpretation of **international biodiversity law, the law of the sea, and international human rights law** with a view to achieving co-benefits across different Sustainable Development Goals and reduce vulnerabilities. The following State actions are necessary to that end:

* Require respect for human rights in relation to the scoping, assessment, selection, implementation and monitoring of ocean-based actions (including in assessment of loss and damage);
* Focus on curbing CO2 emissions to combat ocean acidification as a mitigation co-benefit; and explore how loss and damage can be operationalised to limit the ecological and human rights impacts of acidification as a slow-onset event;
* Harness guidance already adopted under the Convention on Biological Diversity on ocean-based climate change mitigation and adaptation, which also supports the protection of the human rights of indigenous peoples, small-scale fishers and other ocean-dependent communities (see answer to question 2);
* Consider the synergies between “phasing-out of inefficient fossil fuel subsidies” and the curbing of plastic production, that can in turn contribute to prevent ocean plastic pollution and its negative impacts on marine biodiversity, the ocean’s capacity to mitigate climate change, and human rights;
* Consider the role of community-led ecosystem restoration in contributing to mitigation and adaptation, as well as the protection of several human rights (see answer to question 2);
* Safeguard human rights in the context of blue carbon initiatives;
* Develop guidelines on ocean-based adaptation approaches through the Glasgow-Sharm El-Sheikh Work Programme for the Global Goal on Adaptation, notably on fisheries and climate change in partnership with the Food and Agriculture Organization of the United Nations (FAO) and relevant stakeholders including regional fisheries bodies to strengthen resilience and limit losses ([Morgera and Lennan, 2022](https://unfccc.int/sites/default/files/resource/A1_OBCAaHR_V1.3.pdf)).

With specific regard to climate finance, States should prioritize:

* scaled-up research to the ocean-basin and regional scale, to develop and design monitoring tools, as well as appropriate mitigation and adaptation strategies;
* transdisciplinary ocean research (across the marine and social sciences and the arts) which respectfully includes indigenous and local knowledge holders, and other human rights holders in the co-identification of ocean-based action (see question 2); and
* ocean-based action that supports the protection of children’s human rights (referring to the forthcoming UN Committee on the Rights of the Child’s forthcoming General Comment on children’s rights to a healthy environment, with a special focus on climate change – see answer to question 5).

In doing so, States should require specific conditions of “fair research partnerships” and “co-development” of ocean-based action as a human rights safeguard ([Morgera and Lennan, 2022](https://unfccc.int/sites/default/files/resource/A1_OBCAaHR_V1.3.pdf)).