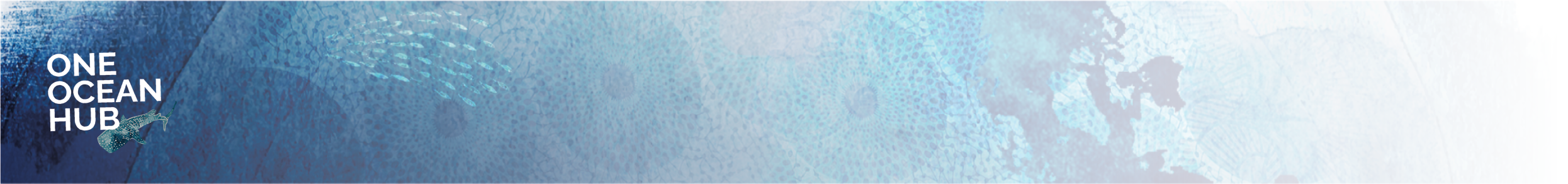
**Submission by the One Ocean Hub**

**to the**

[**Call for inputs**](https://www.dropbox.com/s/0px0plb8gmz1r1y/OHCHR%20%7C%20Call%20for%20inputs%3A%20Extractive%20sector%2C%20just%20transition%20and%20human%20rights.pdf?dl=0) **“Extractive sector, just transition and human rights” from the UN Working Group on the issue of human rights and transnational corporations and other business enterprises**

**(15 May 2023)**

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**Background information on the One Ocean Hub**

The [One Ocean Hub](https://oneoceanhub.org/) ([oneocean-hub@strath.ac.uk](mailto:oneocean-hub@strath.ac.uk)) 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.

**Aims and scope of this submission**

This submission aims to underscore the urgent need to include “blue economies”, other ocean-related economic development planning, and marine spatial planning into any consideration of the human rights impacts of energy transition policies and projects, with particular attention to the enjoyment of the right to a clean, healthy, and sustainable environment, and access to land and marine areas, as well as terrestrial, freshwater and marine resources to vulnerable and historically excluded groups.

This submission also aims to underscore that the large-scale fisheries sector should be included in considerations of the human rights impacts of energy transition policies and projects in the marine environment, both because of the energy consumption in large-scale fisheries and other contributions to climate change, and because of the growing negative human rights impacts of large-scale fisheries on the right to a clean, healthy, and sustainable environment, and access to land and marine areas, as well as terrestrial, freshwater and marine resources to vulnerable and historically excluded groups.

The submission will thus address question #6 posed by the UN Working Group on the issue of human rights and transnational corporations and other business enterprises, namely: “What are the gaps in the development and implementation of existing National Action Plans, legislation, and domestic, regional, or international frameworks on business and human rights, particularly in relation to the extractive sector, which if addressed will advance a just and human rights-based energy transition?

The implications for business due diligence of our points below (question #9) rests on their responsibility to carry out environmental and human rights impacts assessments (and where relevant, seek the prior, informed consent of Indigenous peoples and other ocean-dependent communities, and fairly and equitably share benefits with them)[[1]](#footnote-1) in the context of blue economies and the integration of their responsibility to respect human rights that are dependent on the protection of the marine environment.

1. **Energy transition in blue/ocean economies**

Business interest in the so-called ‘blue economy’ has increased, including among multinationals investing in well-established sectors such as shipping, port infrastructure, fisheries, aquaculture, coastal tourism and offshore oil and gas, and in emerging activities such as offshore wind and deep seabed mining.[[2]](#footnote-2) Many blue economy policies have placed significant emphasis on energy transitions, notably with regard to marine renewables, but also a renewed push for offshore oil and gas extraction. These trends have led to concerns about ‘ocean resource grabbing’ and increasing documentation of negative impacts on human rights, including for “ocean defenders” as environmental human rights defenders in the context of the blue economy.[[3]](#footnote-3)

We conducted an inter-disciplinary analysis,[[4]](#footnote-4) which found that national blue economy policies:

* are strongly influenced by international aspirations for sustainability and justice, but the translation of these international aims to national actions remains limited;
* focus on technical solutions that do not address systemic and complex tensions, such as the balance between securitisation of the ocean for management purposes and issues of appropriation and justice (**SDG 16**), or gender equality (**SDG 5**);
* are not informed by understanding of local contexts through genuine public participation; and
* are not flexible enough to adjust to the current and future challenges posed by climate change (**SDG 13**).

These findings also legal implications for international foreign investors involved in the blue economy. Out international law study on foreign investment in blue economies unveiled that blue economy policies may restrict the opportunities for national governments and judiciary to protect local communities’ human rights because of separate international obligations to protect the legitimate expectations of foreign investors that arise from the terms of national blue economy poicies (**SDG 17.5**).[[5]](#footnote-5)

In addition, our empirical socio-legal research in South Africa, Ghana and Namibia has identified several instances in which ocean economy/blue economy projects can marginalise indigenous peoples and small-scale fishers. Our evidence has already been relied upon in the 2022 report of the **UN Special Rapporteurs on Cultural Rights on principles for sustainable development**. The Rapporteur devoted a paragraph to evidence submitted from the One Ocean Hub ([A/77/290](https://www.undocs.org/A/77/290)), in stating that “sustainable development cannot be separated from the recognition of individual and collective cultural rights, including spiritual and heritage rights” (para 20). The Rapporteur also noted that these threats can arise from blue economy projects:

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At the national level, our natural and social sciences evidence of negative human rights impacts of **proposed offshore oil and gas exploration through seismic surveys in South Africa has led to a series of judicial decisions** (currently subject to appeal) that have effectively stopped Shell and Impact Africa from proceeding for the time being. Significantly, the judicial decisions took into account: 1) the negative impacts on marine biodiversity and on climate change, which can be understood as protection of everyone’s human right to a healthy environment; and 2) negative impacts on the livelihoods, right to food and right to culture of small-scale fishers. On the latter point, it is particularly notable that our evidence of ocean-related intangible cultural heritage was relied upon to support communities in successfully contesting exploration rights on the Wild Coast that had been granted to Shell, on the grounds of inadequate consultation with communities. A first interdict in December 2021 represented a key victory for the community, with the judiciary relying also on our artistic outputs to evidence intangible cultural heritage that had been disregarded in previous consultations on ocean use. A judgement in September 2022[[6]](#footnote-6) – which has now been appealed – was widely reported in international media and has historical importance as it recognises 1) the crucial role of coastal communities as ocean custodians, including at the ocean-climate nexus; 2) the sacred nature of this relationship in terms of cultural human rights; and 3) the need to protect the participatory rights of these communities in environmental impact assessments and decision-making on the ocean.[[7]](#footnote-7)

1. **Other extractives in blue/ocean economies**
   1. **Large-scale fisheries**

The large-scale industrial fisheries sector is supported by voluminous capital investment that supply the modern technology deployed in highly motorized fishing fleets and sophisticated fishing gears, including industrial trawlers (bottom and pelagic ones), longlines, purse seines, and gillnets. Large-scale fishing vessels and factory fishing ships with powerful propulsion systems and intense high fuel cause significant impacts on the marine environment.[[8]](#footnote-8) They potentially emit more than 130 million tonnes of carbon dioxide,[[9]](#footnote-9) thereby contributing to ocean acidification and aggravating the impacts of climate change.[[10]](#footnote-10) Fishing vessels in general have recently accounted for large emissions of black carbon, which contribute to global warming.[[11]](#footnote-11) The large-scale industrial fisheries sector may also operate, particularly on the high seas, with the support of bunkers or tankers for refuelling of fishing vessels, as well as reefers or refrigerated cargo ships and other transport vessels used for transshipment.[[12]](#footnote-12) These structures are powered by different types of fossil fuels, including marine diesel oil,[[13]](#footnote-13) four-cycle diesel engines generating nitrogen oxide emissions,[[14]](#footnote-14) all of which add more stresses to the marine environment and intensify climate change.[[15]](#footnote-15) While the infrastructure is needed to avoid multiple travels to port, the offshore location of these supporting facilities complicate the effective flag States’ monitoring, control, surveillance and enforcement of applicable rules. This creates opportunities for large-scale industrial fishing vessels to continuously (over)fish in distant waters, launder catches from illegal, unreported and unregulated (IUU) fishing in transshipment operations,[[16]](#footnote-16) and surpass safe and decent working conditions for the crew, who can spend months at sea without appropriate support.[[17]](#footnote-17)

In addition, large-scale industrial fisheries negatively impact on Indigenous peoples, small-scale fishers and fishing communities dependent on fishing for their survival, livelihoods, and culture because of their negative impacts on fisheries and the marine environment. But currently no environmental impact assessments (EIAs) are required prior to the development or reform of fisheries at the national level.[[18]](#footnote-18)

We conducted an international legal study to clarify that States’ general international duty to carry out an EIA should be interpreted in conjunction with the UN Convention on the Law of the Sea, UN Fish Stocks Agreement, and Convention on Biological Diversity (CBD), as well as guiding instruments adopted under the aegis of the FAO and CBD, and relevant international human rights treaties. This mutually supportive interpretative approach serves to clarifying the existence and scope of an international obligation to carry out integrated environmental and socio-cultural impact assessments of large-scale industrial fisheries (including of existing projects, to assess continuing impacts) and Strategic Environmental Assessment (SEAs) of plans, programmes and policies related to large-scale industrial fisheries. States need to recognize and implement these international obligations by legislating on EIAs and SEAs for existing and new large-scale industrial fisheries, ensuring that such assessments integrate socio-cultural dimensions as well. Moreover, States need to create binding rules for, and effectively monitor, large-scale industrial fishing operators to respect human rights (particularly those of Indigenous peoples and small-scale fishers whose sacred sites, and traditionally occupied and used areas, are involved or affected by large-scale industrial fisheries), as well as to protect biodiversity and contribute to climate change mitigation.[[19]](#footnote-19)

* 1. **Deep-seabed mining**

The assumptions about the potential of deep-seabed mining to contribute to humanity’s climate change mitigation efforts by contributing minerals that are needed for electric car batteries[[20]](#footnote-20) need to be seriously challenges in the light of growing scientific evidence about the irreparable damage to deep-sea biodiversity that could arise from deep-seabed mining, which could also negatively impact on the ocean’s natural contributions to climate change mitigation.[[21]](#footnote-21) In 2022, the UN Special Rapporteur on Climate and Human Rights reported that ‘serious concerns have been brought to [his] attention … about the potential environmental and human rights impacts from deep seabed exploration and mining for minerals that could be used in battery production for electric vehicles and other forms of electrical storage’ (A/77/226). For these reasons, protection of marine biodiversity from the negative impacts of deep-seabed mining should be seen as an integral component of States’ international obligations to protect a healthy biosphere and a safe climate as substantive elements of everyone’s human right to a healthy environment and the other basic human rights dependent on a healthy environment.[[22]](#footnote-22) States’ obligations to prevent biodiversity loss that can have knock-on effects on human rights apply also at the multilateral level, so States collectively need to consider the human rights implications of their international duty to cooperate under UNCLOS.[[23]](#footnote-23)

In addition, it is necessary to understand if and how international rules on the treatment of foreign investment may have a bearing on deep-seabed activities in the Area — for example in governing relations between businesses and their sponsoring state. Only nationals of sponsoring states may apply for sponsorship, but foreign investors often incorporate a local subsidiary to make the application. This is particularly common in small island developing states, which may eventually rely on these sponsorships for revenues. Some small island states, including those in the Pacific, have established legislation and institutions to manage deep seabed mining both on the continental shelf and in the Area. UNCLOS requires the sponsoring state to supervise the investor’s activities in the Area. Should a sponsoring state sanction a business for violations, for example by suspending its sponsorship, the investor might seek to resort to investor–state arbitration under an applicable investment treaty between its home and sponsoring states (although such a lawsuit would need to overcome significant legal hurdles). [[24]](#footnote-24)

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