



The Commonwealth

Open-ended informal consultative process on Oceans and the Law of the Sea on the theme of 'sea level rise and its impacts'

Submission by the Commonwealth Secretariat | February 2020

About this Submission

This Submission is prepared by the Commonwealth Secretariat in response to the invitation by the United Nations for submissions pursuant to the General Assembly Resolution A/74/19, entitled 'Oceans and the law of the sea'. It is accompanied by a Paper on the Legal Implications of Rising Sea Levels, delivered at the Meeting of Law Ministers and Attorneys General of Small Commonwealth Jurisdictions in December 2018.

Background

The Commonwealth is a voluntary association of 54 independent and equal countries. It is home to 2.4 billion people and includes both advanced economies and developing countries. Our members work together to boost trade policy, competitiveness and create prosperity, protect the environment, promote democracy and good governance, amplify the voice of small states, celebrate diversity and further social equity through gender and youth mainstreaming. The Commonwealth Secretariat delivers on the role of the Commonwealth. As noted in its Charter, it is a recognised intergovernmental champion of small states, advocating for their special needs; providing policy advice on political, economic and social development issues; and delivering technical assistance.

Ocean-related issues form a significant area of interest within the Commonwealth. Of note:

- 47 Commonwealth countries have a marine coastline;
- About one-third of all marine waters fall within national jurisdiction;
- 32 of our members are small states;
- 25 of our members are small island developing states, also known as 'Big Ocean States'.

The following key focus areas of advisory support are provided:

- Ocean and natural resource governance (including for maritime boundary delimitation and seabed minerals)
- The Commonwealth Blue Charter
- Climate change adaptation, access to climate finance and strengthening legal commitment

i. Commonwealth Secretariat's Ocean programme

The Commonwealth Secretariat provides technical assistance support to member countries in the development of policies, laws, design of fiscal regimes and strengthening of national institutions as they seek to implement the [Sustainable Development Goals](#). The Secretariat's Ocean Governance and Natural Resources programme assists its member countries to sustainably manage their natural resources in the ocean, for the benefit of present and future generations and is delivered through direct advisory support, capacity building and collaborations.

Ocean Governance

Under international law, coastal states have jurisdiction and responsibilities regarding economic activities within 200 nautical miles and beyond from their coastlines and on their continental shelf. For some Commonwealth coastal states, this jurisdiction far exceeds their terrestrial areas. The Secretariat has been a primary partner in the acquisition and management of greater areas of maritime space, developing Blue Economy/Blue Growth approaches for realizing sustainable growth centred around an ocean-based economy. We promote knowledge exchanges and provide targeted advice to member countries on the development of legal and regulatory frameworks including ocean policies and strategies for tackling increasing threats to ocean health.

Maritime Boundaries

Under the 1982 United Nations Convention on the Law of the Sea, many coastal Commonwealth member states are entitled to increase their maritime zones including through the making of extended continental shelf submissions. However, legal uncertainty on the extent of maritime jurisdiction entitlements may impact coastal states' ability to manage marine resources and can lead

to conflict. Lack of clarity and inadequate management frameworks can also undermine the economic potential of the sustainable exploitation of fisheries, tourism, minerals, marine renewable energy and marine biotechnology resources. Additionally, establishing maritime boundaries by agreement or third party dispute resolution ‘fixes’ the extent of a State’s maritime jurisdiction, a key step in countering potential loss of maritime space due to sea level rise. The Secretariat’s ongoing maritime boundaries programme builds on legal and technical support provided to more than 30 countries. Of 51 extended continental shelf submissions lodged with the UN up to December 2014, 17 Commonwealth member countries secured more than 1.8 million square kilometres of seabed.

Commonwealth Blue Charter

The [Commonwealth Blue Charter](#) was adopted by Commonwealth leaders in 2018, committing them collectively and individually to take bold, coordinated action. Blue Charter Champion countries work with fellow members to translate their high-level commitments into on-the-water actions and to date, 13 countries are Champions in 10 Action Groups¹. More than 30 countries have banned or restricted single-use plastics and the 54 Commonwealth countries have collectively protected more than 15 per cent of the ocean within their jurisdiction, surpassing the UN target of conserving at least 10 per cent of coastal and marine areas by 2020. The Commonwealth Blue Charter recognises that we need to work together collectively and increase the pace of our action in order to achieve the goals of Sustainable Development Goal 14.

Climate Finance Access Hub

Commonwealth Heads in 2015 welcomed the establishment of the Commonwealth Climate Finance Access Hub (CFAH) to help build the capacity of Commonwealth small and other climate vulnerable states to access climate finance with regional support. The CFAH supports countries in making successful applications to international funds that address climate change. Through a pan-Commonwealth network managed by a hub in Mauritius, national advisors take up long-term positions in government environmental departments, agencies and regional bodies. The climate finance readiness support/finances that the Hub accesses from climate funds like the Green Climate Fund (GCF), helps integrate climate change concerns into national institutional architecture, and hastens the enactment and implementation of environmental laws in the wake of climate change. The CFAH has already mobilised approximately USD 27.3M for projects to address climate finance, with over USD 500M in the pipeline for around 50 mitigation and adaptation projects.

Law and Climate Change Toolkit

The Law and Climate Change Toolkit is an online open database under development by a partnership involving the UN Climate Change Convention Secretariat, UN Environment, and the Commonwealth Secretariat working in close collaboration with partner countries, international organizations and research institutions. The Toolkit aims to provide a global resource to help countries with legal frameworks necessary for effective domestic implementation of the Paris Agreement and their nationally determined contributions (NDCs).

The Toolkit is designed for use by national governments, international organizational and experts assisting countries to implement national climate change laws, as well as academia and research institutions undertaking analysis of the growing body of climate change-related instruments. Key features of the toolkit include functionalities to search and assess existing climate change-related legislation, identify priority areas for climate law review, and determine potential areas for legislative or regulatory reform. An interactive user guide and a complementary database of ‘lessons learned’ in the application of national climate laws in different countries will be added over time.

¹ These are: Coral Reef Protection and Restoration (Australia, Belize, Mauritius); Mangrove Ecosystems and Livelihoods (Sri Lanka); Marine Plastics (aka ‘Commonwealth Clean Ocean Alliance’); (UK, Vanuatu); Ocean Acidification (New Zealand); Ocean and Climate Change (Fiji); Ocean Observation (Canada); Marine Protected Areas (Seychelles); Sustainable Aquaculture(Cyprus); Sustainable Blue Economy(Kenya); Sustainable Coastal Fisheries(Kiribati).

ii. Understanding sea-level rise: its causes and effects

The Commonwealth has a long history of commitment to addressing climate change and supporting member countries in dealing with its adverse impacts. The Commonwealth Expert Group on Climatic Change and Sea Level Rise was appointed in 1987 to consider the implications of sea level rise for island and low lying countries. They catalogued the effects of sea-level rise as: reduced island size and shore length, decreased fresh water capacity, less available land for food production, greater exposure to salination and penetration of storm surges, more extensive food shortages, greater risk of malnutrition and environmental health problems, the movement of settlements from coastlines including in-country migration from low to high islands and urban centres, and increased migration to continental countries.

The Work of the Commonwealth Expert Group took place against a backdrop of several parallel scientific evaluations, conferences and debates with environmental themes. Its seminal Report, *Climate Change: Meeting the Challenge: Report by a Commonwealth Group of Experts* reignited discussion around the fact that ‘the environment’ was not the purview of single states, but a unifying and comprehensive theme to be considered in the determination of national land use, industry, energy and investment.

Amidst a backdrop of disastrous floods in Bangladesh and growing sea inundation in Maldives, the Expert Group conducted rapid assessments in these countries as well as in Guyana, Tonga, Tuvalu and Kiribati. The Report grounded its assessments in wider worldwide causal factors and grouped its most important findings into a Commonwealth Action Plan², commended to Heads of Government as an achievable formula calling for:

- Improved research and monitoring in the work of the Inter-Governmental Panel on Climate Change (IPCC), the World Climate Programme and other international initiatives geared towards enhanced knowledge of the world climate system, our ability to predict its behaviour and our capacity to determine appropriate responses.
- National and international adaption strategies
- Reductions in CO2 emissions and energy usage
- Improved coastal defences to manage sea level rise
- Safeguards for biological diversity and natural forests

The Langkawi Declaration on the Environment

The Langkawi Declaration on the Environment adopted by Commonwealth leaders in 1989, recognised the challenges of sea level rise due to greenhouse gas emissions and its impacts on low-lying island states. They resolved to act individually and as a group on the environment and climate change and since then, this ‘wake-up call’ on climate change and sea level rise has permeated across Commonwealth work in this area.

Subsequent Heads of Government between 2003 and 2015 underscored the seriousness and urgency of climate change as one of the greatest challenges facing Commonwealth member states and the wider international community. Heads have highlighted the need for an ambitious Paris agreement and undertook to continue efforts towards effective international approaches to climate change mitigation including at subsequent Conferences of the Parties to the United Nations Framework Convention on Climate Change (COPs). In 2015, they further reaffirmed Commonwealth support through technical assistance to address the adaptation concerns of small island and other states particularly vulnerable to global warming and sea level rise.

² Policy approaches focused on:

- (a) Measures to enhance knowledge, understanding and awareness;
- (b) Measures to avoid the worst impacts of climate change and sea level rise, and to adapt to those that could not be avoided;
- (c) Measures to deal with the causes of these changes, thereby slowing and eventually halting them.

At their 2018 Meeting, Commonwealth Heads noted the close linkages between the ocean, wellbeing and prosperity of the people of the Commonwealth. They identified climate change, including sea level rise and acidification, biodiversity loss, overfishing, and plastic pollution as some of the most significant pressures on the ocean, and again called for ambitious, coordinated global action to address the deteriorating health of the world's oceans which impacts every country.

iii. Observed and projected environmental, social and economic impacts and resulting challenges relating to sea-level rise

The 1989 *Climate Change Report* noted the existence of reasonable agreement about global average increases, yet found far less agreement about what these could mean for the climate of particular regions, let alone individual countries. Although the current state of science did not enable predictions of future temperature and precipitation to be made at that scale with any confidence, some countries would, however experience changes significantly greater than the global average.

Several key findings have been borne out in the intervening years since the Report. Its contention that given the projected impact of rising sea levels on vulnerable countries, poorer countries and poorer groups within countries have less capacity to adjust to greater climate variability and the costs of more extreme climate change, remains largely uncontroverted today.

The 2007 [Commonwealth Consultative Group on Environment in Nairobi](#) examined the needs of Commonwealth countries 'highly vulnerable to climate change' including small states, African countries and other Least Developed Countries (LDCs) facing a high exposure to risk, and significant constraints in their capacity to adapt. They noted the inherent physical characteristics of atoll states (restricted land mass, low-lying and exposed to extreme weather events) which meant that they faced real limits to adaptation. Physical impacts for African member states included sea-level rise, changes in temperature extremes (such as heat waves), and an increase in the frequency and intensity of storms, whilst key concerns for Asian states related to water stress, impacts on agriculture, food security and sea level rises in coastal areas. Overall, poverty, inequitable land distribution, conflict, HIV/AIDS, and debt meant that many highly vulnerable countries lacked the adaptive capacity to cope and adjust when compared to more developed countries.

The *Climate Change Report* also considered the impact of non-climatic causes when estimating future sea level and judging the risk to particular areas. Factors to be taken into account included the disappearance of ice sheets, slow subsidence of islands built up by coral growth on the foundations of extinct volcanoes, the pumping out of ground water leading to subsidence of some coastal areas and rapid marine encroachment due to human interference with the sediment flow of rivers. Many low-lying tropical coasts protected by coral reefs and mangroves were under pressure from human activities including pollution, sedimentation as a result of bad land-use and construction processes, dynamite fishing, coral block quarrying, and the excessive cutting of mangrove for poles and fuelwood.

Many of the findings in the 2018 IPCC Report on *Sea Level Rise and Implications for Low-Lying Islands, Coasts and Communities* were mirrored in the *Climate Change Report*. Six main concerns for low-lying coasts identified in the IPCC Report are: (i) permanent submergence of land by mean sea levels or mean high tides; (ii) more frequent or intense flooding; (iii) enhanced erosion; (iv) loss and change of ecosystems; (v) salinisation of soils, ground and surface water; and (vi) impeded drainage.

The IPCC Report noted further that coastal ecosystems are already impacted by the combination of sea level rise, other climate-related ocean changes, and adverse effects from human activities on ocean and land. As a consequence of human actions that fragment wetland habitats and restrict landward migration, coastal ecosystems progressively lose their ability to adapt to climate-induced changes and provide ecosystem services, including acting as protective barriers.

iv. Opportunities in responding to those challenges, including through cooperation and coordination at all levels on scientific, technical, technological and financial aspects and capacity building.

Thirty years on since the Lankawi Declaration, Commonwealth engagement on the future of our oceans and in addressing the challenges of climate-change is firmly embedded in our work at every level. Our efforts at creating an effective network for co-operation and promoting consensus incorporate regional traditions such as the Talanoa Dialogue, a Pacific tradition of story-telling and consensus building through inclusive, participatory and transparent dialogue to build empathy and trust.³

Ministers with responsibility for the environment, oceans and climate change from 26 countries across the Commonwealth met in 2019 on the margins of the United Nations General Assembly in New York and committed to work together “to tackle and reduce the devastating impacts of climate change on our countries’ peoples, economies, land and ocean environments”. Ministers agreed to share experiences and ideas to formulate multilateral actions across the Commonwealth. Similarly, the environment remains on the agenda for Member states as a sub-theme for the upcoming Commonwealth Heads of Government Meeting in Rwanda in June 2020.

No country in our Commonwealth family is unaffected by the impacts of climate change, which are keenly felt by small island developing states. The effects caused by climate change are multifaceted and require multidisciplinary approaches to address them. Initiatives realized through mechanisms such as the Commonwealth Blue Charter Action Groups on Mangroves and Coral Reefs will undoubtedly provide good practices to be shared in the ongoing search for solutions to address sea level rise. Financing gaps for coordinated climate action, both for mitigation and adaptation measures remain significant, however the CFAH represents continuing innovation and targeted action to develop mechanisms for addressing climate finance requirements.

The Commonwealth Charter recognizes the importance of multilateral cooperation, sustained commitment and collective action, in particular by addressing the adaptation and mitigation challenges of climate change. It reiterates our commitment to assisting small and developing states in the Commonwealth, including the particular needs of small island developing states, in tackling their particular economic, energy, climate change and security challenges, and in building their resilience for the future.

The Commonwealth Secretariat welcomes the efforts of the United Nations on this topic and looks forward to further collaboration in the future.

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³ This was used to facilitate the engagement among Commonwealth Member States, international organisations and agencies on the margins of the 2018 Heads of Government Meeting in London.