

INTERNATIONAL COURT OF JUSTICE

**ADVISORY OPINION OF THE INTERNATIONAL COURT OF JUSTICE ON THE
OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE**



**WRITTEN REPLIES OF THE PLURINATIONAL STATE OF BOLIVIA TO THE
QUESTIONS PUT BY THE JUDGES TLADI AND AURESCU**

20 DECEMBER 2024

Introduction

1. The Plurinational State of Bolivia has the honour to submit its responses to the questions posed by Judges Tladi and Aurescu during the oral proceedings concerning the request for an advisory opinion on the Obligations of States in respect of Climate Change on Friday 13 December 2024.
2. These responses are submitted pursuant to the Registrar's letter of 13 December 2024, which invited participants to provide written replies within the specified deadline.
3. In the following sections, we address the questions posed by judges Tlady and Aurescu.

Question posed by Judge Tladi

4. Judge Tladi posed the following question to the participants to the proceedings:

“In their written and oral pleadings, participants have generally engaged in an interpretation of the various paragraphs of Article 4 of the Paris Agreement. Many participants have, on the basis of this interpretation, come to the conclusion that, to the extent that Article 4 imposes any obligations in respect of Nationally Determined Contributions, these are procedural obligations. Participants coming to this conclusion have, in general, relied on the ordinary meaning of the words, context and sometimes some elements in Article 31 (3) of the Vienna Convention on the Law of Treaties. I would like to know from the participants whether, according to them, “the object and purpose” of the Paris Agreement, and the object and purpose of the climate change treaty framework in general, has any effect on this interpretation and if so, what effect does it have?”
5. Bolivia holds that the Paris Agreement and the climate change treaty framework in general must be interpreted in accordance with the general rule of interpretation, as articulated by Article 31 of the Vienna Convention on the Law of Treaties. Thus, “[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”. The preamble, too, may provide important guidance but is not the sole source.
6. As the Court has emphasised, when a treaty provision allows for several possible interpretations, the interpretation that gives effect to the treaty’s object and purpose while remaining faithful to the text should be preferred.¹
7. As regards the Paris Agreement, Bolivia is of the opinion that the main object and purpose of this Treaty is articulated in Article 2

“(a) holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change; (b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and (c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.”
8. These goals follow a clear order of precedence. The first objective is to hold the increase in global average temperature to well below 2°C above pre-industrial levels. The second is to enhance adaptation capabilities and foster climate resilience alongside low greenhouse gas emissions development. The third is to align financial flows with low-emission and climate-resilient development pathways.
9. Unlike the Kyoto Protocol’s top-down approach, which set specific emission reduction targets for Annex 1 countries, the Paris Agreement adopts a bottom-up framework. This allows each Party to determine its reduction targets sovereignly, while emphasising that such determinations must align with the principles of equity and Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC). Under this framework, developed countries must take the lead in emission reductions through their

¹ *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, ICJ Reports 1994, p. 25.

Nationally Determined Contribution (“NDC”), enabling a fair distribution of the carbon budget that preserves developing countries’ right to development.

10. Thus, in pursuit of these objectives, Article 4 establishes that each Party must prepare, communicate, and maintain successive NDC that reflect its highest possible ambition. While States must pursue domestic mitigation measures to achieve their NDC objectives, these obligations focus on conduct rather than guaranteeing specific global temperature outcomes. This responsibility requires progressive and sustained efforts, fundamentally guided by the principles of fairness, equity, and common but differentiated responsibilities (CBDR).
11. In this connection, Bolivia reaffirms its commitment to act in good faith and take ambitious measures with the adjustment of its NDC update for the 2021-2030 period within the framework of the Paris Agreement and other climate measures to contribute to the collective temperature goal.
12. The Preamble of the Paris Agreement incorporates additional crucial elements into its object and purpose: the imperative for “an effective and progressive response to the urgent threat of climate change based on best available scientific knowledge”, recognition of “the specific needs and special circumstances of developing country Parties,” and preservation of “the integrity of all ecosystems, including oceans, and the protection of biodiversity, recognised by some cultures as Mother Earth”.
13. Article 4’s implementation within the broader UNFCCC regime makes developing countries’ commitments conditional upon developed countries providing means of implementation through finance, technology, and capacity building, as outlined in Articles 9, 10, and 11. While Article 4 establishes procedural obligations for NDC preparation and communication, it also creates distinct substantive obligations for developing and developed countries.
14. Bolivia submits that the Paris Agreement’s primary object and purpose is to limit global temperature rise to well below 2°C above pre-industrial levels. This requires developed countries to achieve net zero carbon by 2030 and net negative carbon thereafter, as part of a just transition within an equitable carbon budget framework. Their inaction cannot shift additional burdens to developing countries, whether directly or indirectly, including by expecting them to compensate for such inaction.
15. Specifically, the Agreement’s object and purpose encompass the imperative for science-based progressive action, acknowledgment of the specific circumstances of developing countries, and the protection of ecological integrity, including the rights of Mother Earth.
16. In conclusion, the object and purpose of both the Paris Agreement and the broader climate change treaty framework carries significant weight in the Court’s teleological treaty interpretation. Consequently, obligations under the Paris Agreement must be interpreted to effectively achieve these fundamental objectives. This interpretation must recognise the distinct roles and capabilities of developed and developing countries.

Question posed by Judge Aurescu

17. Judge Aurescu posed the following question to the participants to the proceedings:

“Some Participants have argued, during the written and/or oral stages of the proceedings, that there exists the right to a clean, healthy and sustainable environment in international law. Could you please develop what is, in your view, the legal content of this right and its relation with the other human rights which you consider relevant for this advisory opinion?”

18. International law recognises the right to a clean, healthy and sustainable environment as a function of the enjoyment of basic human rights². The right has been widely recognised in numerous international and regional instruments, as well as in State constitutions and legislation around the world. Even before the UN General Assembly formally recognised this right, over 80% of UN Member States (including Bolivia) had already incorporated it into their regional or domestic legal frameworks³. Such widespread and representative practice contributes to its emergence as a norm of customary international law.⁴

19. Bolivia also co-sponsored an important resolution of the General Assembly of the United Nations on this very point⁵, which “recognise[d] the right to a clean, healthy and sustainable environment as a human right” and linked this right to other international legal principles⁶. 161 States voted in favour, and not a single State voted against.⁷

20. As explained in the Written Statement of Bolivia, the right to a clean, healthy and sustainable environment finds expression in both State practice and international human rights treaty obligations.⁸ In the present proceedings, other States have similarly characterised the status of this right.⁹

21. The importance which Bolivia places upon this right is indeed reflected in its own legal system. The Constitution of Bolivia demonstrates this commitment in its foundational principles, with Article 9(6) explicitly requiring the State to promote and guarantee

² UNGA, Report of the Secretary-General. Gaps in international environmental law and environment-related instruments: towards a global pact for the environment, UN Doc. A/73/419*, 30 November 2018, paras. 18-19.

³ UNEP, OHCHR and UNDP, “What is the Right to a Healthy Environment? Information Note”, 3 January 2023, <https://wedocs.unep.org/bitstream/handle/20.500.11822/41599/WRHE.pdf?sequence=1&isAllowed=y%20>, 8; UNHRC, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc. A/HRC/43/53, (30 December 2019), para. 13.

⁴ Draft conclusions on identification of customary international law, Conclusion 8(1), Report of the International Law Commission, seventieth session (30 April–1 June and 2 July–10 August 2018), UN Doc. A/73/10, Conclusion 8 (1).

⁵ UNGA, draft resolution: addendum. The human right to a clean, healthy and sustainable environment, UN Doc. A/76/L.75/Add.1, 28 July 2022.

⁶ UNGA, resolution 76/300. The human right to a clean, healthy and sustainable environment, UN Doc. A/RES/76/300, 28 July 2022, paras. 1-2.

⁷ UNGA, resolution 76/300. The human right to a clean, healthy and sustainable environment: resolution, voting data, <https://digitallibrary.un.org/record/3982659?ln=en>.

⁸ Written Statement of the Plurinational State of Bolivia, 22 March 2024, paras. 13-20.

⁹ See, e.g., Written statement submitted by the Republic of Vanuatu, paras. 379-381, <https://www.icj-cij.org/sites/default/files/case-related/187/187-20240815-wri-11-00-en.pdf>.

environmental conservation for the welfare of present and future generations¹⁰. The Constitution of Bolivia enshrines clearly “derecho a un medio ambiente saludable, protegido y equilibrado” (“the right to a healthy, protected, and balanced environment”)¹¹, and clarifies that this right must be granted to “los individuos y colectividades de las presentes y futuras generaciones” (“individuals and collectives of present and future generations, as well as to other living things, so they may develop in a normal and permanent way”)¹². It moreover recognises that any person, individually or collectively, as well as the State, can exercise legal actions in defence of this right.¹³

22. Bolivia has further developed these constitutional principles through Law N° 71—the Law on the Rights of Mother Earth, which establishes a pioneering legal framework recognizing Mother Earth as a dynamic living system with its own rights. This innovative legislation understands Mother Earth as an indivisible community of all life systems and living beings, interrelated and sharing a common destiny—a concept particularly sacred in indigenous worldviews. The law establishes six guiding principles: harmony, collective good, guarantee of regeneration, respect for Mother Earth’s rights, non-commercialization, and interculturality. It creates specific and enforceable rights including the preservation of biodiversity, water cycle functionality, clean air, ecological balance, restoration of affected systems, and pollution-free living. Notably, the law creates an Office of the Ombudsman of Mother Earth to ensure these rights are respected and fulfilled for the benefit of present and future generations.
23. Bolivia considers that the right to a clean, healthy and sustainable environment must be construed with special regard to the rights of indigenous peoples. The Constitution of Bolivia specifically recognises that the nations and indigenous populations of Bolivia enjoy the right to live in a healthy environment, with appropriate management and exploitation of the ecosystems,¹⁴ and requires that their traditional wisdom (*sabiduría*) and knowledge—including their traditional medicine—be valued, respected and promoted.¹⁵
24. The exercise of the right to a clean, healthy and sustainable environment by indigenous peoples extends far beyond traditional medicines under Bolivian law. Under international law, this comprehensive relationship is articulated in Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples, which recognises indigenous peoples’ right to “maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions”, specifically including “human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora”.

¹⁰ Constitution of the Plurinational State of Bolivia, Article 9(6) (“Son fines y funciones esenciales del Estado, además de los que establece la Constitución y la ley: [...] Promover y garantizar el aprovechamiento responsable y planificado de los recursos naturales, e impulsar su industrialización, a través del desarrollo y del fortalecimiento de la base productiva en sus diferentes dimensiones y niveles, así como la conservación del medio ambiente, para el bienestar de las generaciones actuales y futuras”).

¹¹ *Ibid.*, Article 33.

¹² *Ibid.*

¹³ *Ibid.*, Article 34.

¹⁴ *Ibid.*, Article 30(10).

¹⁵ *Ibid.*, Article 30(9).

25. This broad protection is reinforced by Article 29 of the Declaration, which explicitly affirms indigenous peoples’ “right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources”, while requiring States to establish and implement assistance programs for such conservation and protection without discrimination.
26. The international recognition of these rights has been further strengthened by the Paris Agreement, which acknowledges the particular vulnerability of indigenous peoples in its preamble. The Agreement specifically calls on parties to respect, promote and consider their human rights obligations regarding indigenous peoples, local communities, migrants, children, persons with disabilities, and people in vulnerable situations, as well as gender equality, when taking climate action.¹⁶
27. As reflected in the opening words of its Constitution, Bolivia believes that shared environmental interests may be protected in tandem with the full development of peoples.¹⁷ In its view, the obligation to ensure a clean, healthy and sustainable environment under international law should be similarly interpreted in accordance with the principle of common but differentiated responsibilities. So, too, should the substantive scope of this obligation be construed in light of the best available science, and with due regard to the intrinsic, irreplaceable value of Earth’s ecosystems.
28. As the practice of the Inter-American Court of Human Rights shows, the right to a clean, healthy and sustainable environment is violated where persons have been exposed to environmental pollution in conditions that put them at risk, and where the State is responsible for a failure to prevent such pollution.¹⁸ This is an integral aspect of the duty of States to ensure human rights to life and personal integrity by taking measures to prevent significant harm or damage to the environment within or outside their territory.¹⁹
29. In conclusion, the right to a clean, healthy and sustainable environment safeguards the entitlement of all individuals and communities of present and future generations, as well as other living beings, to develop in a normal and permanent way. This right obliges States to not only prevent future harm, but also remedy environmental damage already inflicted.

¹⁶ See Paris Agreement to the UN Framework Convention on Climate Change, 3156 UNTS 54113 (12 December 2015), Recital 11 of the Preamble.

¹⁷ See *ibid.*, Recitals 1, 4 of the Preamble.

¹⁸ Inter-American Court of Human Rights, *Caso Habitantes La Oroya vs Peru*, Judgment of 27 November 2023, paras. 204, 266.

¹⁹ Inter-American Court of Human Rights, *The Environment and Human Rights* (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17 of November 15, 2017. Series A, No. 23, para. 140.