

INTERNATIONAL COURT OF JUSTICE

(REQUEST FOR AN ADVISORY OPINION)

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

RESPONSE OF THE REPUBLIC OF MALDIVES TO THE JUDGES'
QUESTIONS

20 December 2024

1. The Republic of Maldives (“**the Maldives**”) submits the present response pursuant to the Court’s letter dated 13 December 2024 communicating questions posed by individual Judges.
2. Judge Aurescu has posed the following question:

“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?”
3. The Maldives is part of a core group of States (also comprising Costa Rica, Morocco, Slovenia and Switzerland) advancing the right to a clean, healthy and sustainable environment under international law. This core group tabled before the United Nations Human Rights Council the draft resolution which was adopted as Resolution 48/13 (“**Resolution 48/13**”) and which unequivocally recognises the human right to a clean, healthy and sustainable environmental for all. The States of the same core group were the original sponsors of United Nations General Assembly Resolution 76/300 (“**Resolution 76/300**”) which, following a large consultation among United Nations Member States, endorsed this right.¹
4. Given the formulation of Judge Aurescu’s question, in this response, the Maldives focuses on the legal content of the human right to a clean, healthy and sustainable environment (rather than, for example, the crystallisation of this right as a matter of customary international law).
5. The Maldives submits that this human right guarantees that individuals should have access to clean air, a safe climate, healthy and sustainably produced food, access to safe water and adequate sanitation, non-toxic environments in which to live, work and play, and healthy ecosystems and biodiversity.² Individuals’ enjoyment of this right correlates to obligations on States to protect and promote this right, with those obligations forming an essential part of the right’s legal content. In this response, the

¹ United Nations General Assembly Resolution 76/300, UN Doc. A/RES/76/300 (1 August 2022).

² Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, “Right to a healthy environment: good practices”, UN Doc. A/HRC/43/53 (30 December 2019), paras. 38–112.

Maldives wishes to highlight four of the obligations which (among others) States bear in order to protect and promote this right.

6. First, due to the existence of this right, States have an obligation not to cause environmental harm to a degree that will jeopardise “the quality of life and the very health of human beings” (to use the Court’s language in the *Nuclear Weapons Advisory Opinion*).³ The African Commission on Human and Peoples’ Rights (“**the Commission**”) confirmed as long ago as 2001 that, by virtue of the right to a healthy environment, a State must “desist from directly threatening the health and environment of their citizens”.⁴ This duty is closely linked to States’ obligations to promote and protect other human rights. For example, it has been recognised that “[e]nvironmental degradation [and] climate change ... constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life”.⁵ The United Nations Human Rights Committee has further stated that “the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life” and that “such threats may include adverse climate change impacts”.⁶ A clean, healthy and sustainable environment is equally essential to enjoyment of other rights, including the rights to the highest attainable standard of physical and mental health, to an adequate standard of living, to adequate food, to safe drinking water and sanitation, to housing, and to participation in cultural life.⁷ A State cannot ensure any of these relevant rights if it engages in conduct which itself causes serious environmental degradation.
7. Secondly, States are required to guarantee the right to a clean, healthy and sustainable environment by taking positive steps to protect the environment, including from harm caused by private actors. The United Nations Human Rights Committee has stated that States parties are under a duty to take “measures ... to preserve the environment and protect it against harm, pollution and climate change caused by public *and private*

³ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, p. 226 at pp. 241–242, para. 29.

⁴ *The Social and Economic Rights Action Center and Others v Nigeria* [2001] ACHPR 35, para. 52.

⁵ United Nations Human Rights Committee, General Comment No. 36, Article 6: right to life, UN Doc. CCPR/C/GC/36 (3 September 1999), para. 62.

⁶ United Nations Human Rights Committee, *Daniel Billy and others v Australia*, Communication No. 3624/2019, UN Doc. CCPR/C/135/D/3624/2019 (21 July 2022), para. 8.3.

⁷ 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/37/59 (24 January 2018), Annex, para. 4; United Nations Human Rights Council Resolution 48/13, “The human right to a clean, healthy and sustainable environment”, UN Doc. A/HRC/RES/48/13 (8 October 2021), Preamble.

actors”.⁸ The African Commission has likewise recognised that a State must take positive steps, as a matter of its human rights obligations, to protect the environment,⁹ “not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts that may be perpetrated by private parties”.¹⁰

8. Thirdly, the right to a clean, healthy and sustainable environment has a procedural aspect which requires States to guarantee to individuals a right to participate in decision-making concerning or affecting the environment and to access to justice in environmental matters. This is reflected in the Preamble to Resolution 48/13, which recognises “the rights to seek, receive and impart information [and] to participate effectively in the conduct of government and public affairs”, which it states are “vital to the protection of a clean, healthy and sustainable environment”.¹¹ The same Resolution refers to the importance of “effective individual access to justice and effective remedies for environment-related concerns”.¹² It also exhorts States to enhance cooperation with (among others) “civil society [and] national human rights institutions and business”¹³ — a further indication that States are expected to invite wide participation in decision-making concerning the environment. The Special Rapporteur has similarly stated that “[a]ccess to information is a widely recognized human right and is essential for people to be able to protect and defend their human rights from potentially harmful environmental impact”, while also advocating for “broad, inclusive and gender-sensitive public participation” in environmental decision-making as important for “fulfil[ling] human rights obligations”.¹⁴ The Inter-American Court of Human Rights has given a detailed analysis of the procedural obligations in

⁸ United Nations Human Rights Committee, General Comment No. 36, Article 6: right to life, UN Doc. CCPR/C/GC/36 (3 September 1999), para. 62 (emphasis added).

⁹ *The Social and Economic Rights Action Center and Others v Nigeria* [2001] ACHPR 35, para. 52 (“requires governments to take necessary steps for the improvement of all aspects of environmental and industrial hygiene”).

¹⁰ *The Social and Economic Rights Action Center and Others v Nigeria* [2001] ACHPR 35, para. 57.

¹¹ United Nations Human Rights Council Resolution 48/13, “The human right to a clean, healthy and sustainable environment”, UN Doc. A/HRC/RES/48/13 (8 October 2021), Preamble.

¹² United Nations Human Rights Council Resolution 48/13, “The human right to a clean, healthy and sustainable environment”, UN Doc. A/HRC/RES/48/13 (8 October 2021), Preamble. See also United Nations General Assembly Resolution 76/300, UN Doc. A/RES/76/300 (1 August 2022), Preamble (“the right[] ... to an effective remedy, is vital to the protection of a clean, healthy and sustainable environment”).

¹³ United Nations Human Rights Council Resolution 48/13, “The human right to a clean, healthy and sustainable environment”, UN Doc. A/HRC/RES/48/13 (8 October 2021), para. 4(a).

¹⁴ Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, “Right to a healthy environment: good practices”, UN Doc. A/HRC/43/53 (30 December 2019), paras. 14, 22.

the context of human rights and environmental protection.¹⁵ The Court has explained that these obligations include providing access to information (noting that, in general, “information must be handed over without the need to prove direct interest or personal involvement in order to obtain it”¹⁶), facilitating public participation (requiring States to allow “the participation of persons subject to their jurisdiction in decision-making and policies that could affect the environment, without discrimination and in a fair, significant and transparent manner”¹⁷), and access to justice (which, in the context of environmental protection, must “permit[] the individual to ensure that environmental standards are enforced and provide[] a means of redressing any human rights violations that may result from failure to comply with environmental standards, and includes remedies and reparation”¹⁸).

9. Fourth, the right to a clean, healthy and sustainable environment imposes on States an obligation to cooperate in order to promote and protect this right. As the Maldives explained in its oral submissions in the present advisory proceedings,¹⁹ States have a duty to cooperate in order to achieve universal respect for and observance of human rights.²⁰ This obligation undoubtedly applies in relation to the human right to a clean, healthy and sustainable environment,²¹ not least because of the transnational nature of the risks and barriers to enjoyment of this right (including climate change) which require a collective response. Indeed, Resolution 48/13 expressly encourages States to “enhance cooperation with other States, the Office of the United Nations High Commissioner for Human Rights [and] the rest of the United Nations system” (among others), as well as to “continue to share good practices in fulfilling human rights obligations relating to the enjoyment of a clean, healthy and sustainable

¹⁵ Inter-American Court of Human Rights, *Advisory Opinion OC-23/17 on the Environment and Human Rights*, 15 November 2017, paras. 211–241.

¹⁶ Inter-American Court of Human Rights, *Advisory Opinion OC-23/17 on the Environment and Human Rights*, 15 November 2017, para. 219.

¹⁷ Inter-American Court of Human Rights, *Advisory Opinion OC-23/17 on the Environment and Human Rights*, 15 November 2017, para. 231.

¹⁸ Inter-American Court of Human Rights, *Advisory Opinion OC-23/17 on the Environment and Human Rights*, 15 November 2017, para. 234.

¹⁹ CR 2024/44, Maldives (Hart), p. 55, para. 13.

²⁰ Charter of the United Nations, 26 June 1945 (entered into force 24 October 1945), Articles 55–56; Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UNGA Resolution 2625 (XXV), UN Doc. A/RES/2625(XXV) (24 October 1970).

²¹ See, e.g., Inter-American Court of Human Rights, *Advisory Opinion OC-23/17 on the Environment and Human Rights*, 15 November 2017, paras. 181–210.

environment”.²² Further, Resolution 76/300 states, in the context of recognising the right to a clean, healthy and sustainable environment, that “international cooperation has an essential role in assisting developing countries, including highly indebted poor countries, least developed countries, landlocked developing countries, small island developing States, as well as the specific challenges faced by middle-income countries, in strengthening their human, institutional and technological capacity”.²³ This same Resolution calls upon “States, international organizations, business enterprises and other relevant stakeholders ... to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all”.²⁴

²² United Nations Human Rights Council Resolution 48/13, “The human right to a clean, healthy and sustainable environment”, UN Doc. A/HRC/RES/48/13 (8 October 2021), para. 4(a)–(b).

²³ United Nations General Assembly Resolution 76/300, UN Doc. A/RES/76/300 (1 August 2022), Preamble.

²⁴ United Nations General Assembly Resolution 76/300, UN Doc. A/RES/76/300 (1 August 2022), para. 4.