



REPUBLIC OF NAMIBIA

INTERNATIONAL COURT OF JUSTICE

**Obligations of States in Respect of Climate Change
(Request for Advisory Opinion)**

**Written Replies of the Republic of Namibia to
the Question Put by Judge Aurescu**

20 December 2024

1. Pursuant to the President’s direction and the Court’s correspondence dated 13 December 2024, the Republic of Namibia hereby submits its written replies to the following question put by Judge Aurescu at the end of the public sitting that day:¹

“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?”

« Certains participants ont fait valoir, dans leurs écritures et/ou lors de la phase orale de la procédure, que le droit à un environnement propre, sain et durable existe en droit international. Pourriez-vous expliciter, de votre point de vue, quel est le contenu juridique de ce droit et quelle est sa relation avec les autres droits de l'homme que vous considérez pertinents aux fins du présent avis consultative ? »

2. At the outset, Namibia reaffirms,² along with the overwhelming majority of Participants,³ that the right to a clean, healthy and sustainable environment exists under international law. In addition to being implied by a bundle of **conventional** human rights, as set out in Section II below, Namibia submits that the right to a clean, healthy and sustainable environment has also now crystallised as a **customary** human rights norm given both State practice and *opinio juris*, with its separate legal content, as further detailed in Section I below. Namibia disagrees with a handful of States arguing otherwise,⁴ for two reasons.

¹ While appreciating the significance of the questions of Judges Cleveland, Tladi and Charlesworth, in the limited time, we have directed our answers to the questions where we believe we would be of most assistance to the Court, in light of Namibia’s written and oral submissions.

² See Written Statement of Namibia, paras. 121-126.

³ See, e.g., Spain, CR 2024/40, p. 32, para. 8 (Solà Pardell); Ghana, CR 2024/41, p. 36, para. 21(Negm); Liechtenstein, CR 2024/44, p. 30, paras. 24-25 (Schafhauser); Portugal, CR 2024/48, pp. 11 ff., paras. 23-30 (Galvão Teles); Slovenia, CR 2024/50, pp. 19 ff. (Rakovec; Sancin; Müller). See also Guatemala, CR 2024/41, pp. 61-62, paras. 42-43 (Rodríguez Pineda); Jamaica, CR 2024/43, p. 15 para. 15 (Gayle); Micronesia, CR 2024/45, p. 24, para. 20 (Mulalap).

⁴ See, e.g., Germany, CR 2024/35, p. 152, paras. 29 et seq. (Zimmermann) (“an individual self-standing right to a clean, healthy and sustainable environment does not yet form part and parcel of current customary international law”); Saudi Arabia, CR 2024/36, p. 33, para. 13 (Bajbaa) (“such a right has not entered the corpus of international law, and the implications flowing from any such right have not been spelled out and agreed”); Canada, CR 2024/38, p. 17, para. 33 (Aumais) (noting that “there is currently no common or internationally agreed upon understanding of the content and scope of a right to a clean, healthy and sustainable environment”); Russia, CR 2024/40, p. 57, paras. 36-37 (Musikhin) (contending that “this ‘right’ has not crystallized in customary international law yet”).

3. *First*, as the Court held in *Nuclear Weapons*, “General Assembly resolutions, even if they are not binding, may sometimes have normative value”, and that they can “provide evidence important for establishing the existence of a rule or the emergence of an *opinio juris*”.⁵ In 2021, the Human Rights Council in its Resolution 48/13 recognised “the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights”.⁶ The following year, the General Assembly in its Resolution 76/300 recognised, by a vote of 168 to 0, with 8 abstentions, “the right to a clean, healthy and sustainable environment as a human right”.⁷ This Resolution was recalled by the General Assembly, by consensus, in its Resolution 77/276 requesting the present Advisory Opinion.⁸

4. *Second*, as further evidence of State practice and *opinio juris*, more than 156 UN Member States legally recognise the right to a clean, healthy and sustainable environment, in national constitutions, legislation, court decisions and regional treaties.⁹ The right to a clean, healthy and sustainable environment is also found in constitutions and legislation at the sub-national level.¹⁰ Indeed, Namibia is proud to be one of the States that *constitutionalise*, as a core “principle of State policy”, the duty for positive State policies for the maintenance of ecosystems, ecological processes and biodiversity for the benefit of present and future generations of Namibians.¹¹

5. Namibia, therefore, submits that the right to a clean, healthy and sustainable environment has now crystallised as a part of international custom, and requests the Court to recognise it as

⁵ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I. C.J. Reports 1996*, p. 226, at pp. 254-255, para. 70. See also ILC, Draft Conclusions on Identification of Customary International Law (2018), conclusion 12.

⁶ UN Human Rights Council, Resolution 48/13 (8 October 2021) (Dossier No. 279), para. 1.

⁷ UN General Assembly, Resolution 76/300 (28 July 2022) (Dossier No. 260), para. 1; UN, Press Release, *With 161 Votes in Favour, 8 Abstentions, General Assembly Adopts Landmark Resolution Recognizing Clean, Healthy, Sustainable Environment as Human Right* (28 July 2022).

⁸ UN General Assembly, Resolution 77/276, *Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change*, UN Doc. A/RES/77/276 (4 April 2023) (Dossier No. 2), preamble.

⁹ Report of the special Rapporteur on the right to a clean, healthy and sustainable environment, “Good Practices”, A/HRC/43/53, Annex II. As of December 2019, 156 UN Member States recognized the right in law. Subsequent legal developments in Antigua and Barbuda, Belize, Canada, Dominica, the Federated States of Micronesia, Grenada, Oman and Saint Lucia increased the total to 164 UN Member States that recognize the right in law. See also Malé Declaration on the Human Dimension of Global Climate Change, 2007.

¹⁰ See, e.g., the Human Rights Act in the Australian Capital Territory (amended in 2024), the Canadian Environmental Protection Act (amended in 2023), and state constitutions in Hawai’i, Montana, New York, and Pennsylvania in the United States.

¹¹ Namibian Constitution, Article 95(1).

such. Below, Namibia will set out (i) the content of the right to a clean, healthy and sustainable environment, as well as (ii) its relation other relevant human rights.

I. LEGAL CONTENT OF THE RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT

6. The right to a clean, healthy and sustainable environment is of fundamental importance to the African continent. Namibia highlights to the Court that the African Charter on Human and Peoples' Rights was the pioneering regional instrument to recognise the right to a clean, healthy and sustainable environment in its text. Article 24 of the African Charter provides: "All peoples shall have the right to a general satisfactory environment favourable to their development."¹² Consistent with this, Article III(1) of the African Convention on the Conservation of Nature and Natural Resources enshrines "the right of all peoples to a satisfactory environment favourable to their development".¹³ Further, Article 18 of the Maputo Protocol on the Rights of Women in Africa recognises that "[w]omen shall have the right to live in a healthy and sustainable environment."

7. In this light, the African Commission on Human and Peoples' Rights has also developed the content of the right to a clean, healthy and sustainable environment in *Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights (CESR) v Nigeria*, stating that:

"[A] clean and safe environment [...] is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual."¹⁴

8. Additionally, the African Commission identified two key obligations in relation to this right:

¹² African Charter on Human and Peoples' Rights, 27 June 1981, 1520 UNTS 217, Article 24.

¹³ African Convention on the Conservation of Nature and Natural Resources (adopted 11 July 2003, entered into force 23 July 2016), Article IV ("The Parties shall adopt and implement all measures necessary to achieve the objectives of this Convention, in particular through preventive measures and the application of the precautionary principle, and with due regard to ethical and traditional values as well as scientific knowledge in the interest of present and future generations.").

¹⁴ ACmHPR, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria*, Communication No. 155/96, Decision (27 October 2001), para. 51 (hereinafter "**SERAC**").

- a. *First*, the State is under an obligation to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources.¹⁵
- b. *Second*, the State is under an obligation to respect the right to a healthy environment and this entails largely non-interventionist conduct from the State, for example, not carrying out, sponsoring or tolerating any practice, policy or legal measures violating the integrity of the individual.¹⁶

9. As the UN Special Rapporteur on the right to a healthy environment pointed out, the content of the right to a clean, healthy and sustainable environment comprises both substantive and procedural aspects.¹⁷ Here, Namibia focuses on the substantive content, which in turn includes five elements:¹⁸

- a. a safe climate;
- b. safe and sufficient water;
- c. healthy and sustainable food;
- d. non-toxic environments; and
- e. healthy eco-systems and biodiversity.

10. Namibia wishes to expand on the substantive legal content specifically with respect to (a) a safe climate, as well as (b) safe and sufficient water, given their importance to the questions put before the Court.

11. *First*, the right to a clean, healthy and sustainable environment requires States to ensure the protection of the **climate system** from anthropogenic greenhouse gas emissions. For example, as the Committee on the Rights of the Child points out, in order to realise children’s right to a clean, healthy and sustainable environment, States should immediately take the following action: “Equitably phase out the use of coal, oil and natural gas, ensure a fair and just transition of energy sources and invest in renewable energy, energy storage and energy

¹⁵ *SERAC*, para. 52.

¹⁶ *Ibid.*, para. 52.

¹⁷ *Report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment*, United Nations General Assembly, A/79/270, 2 August 2024, section III. The procedural components include: (i) access to information, (ii) the right to participate in decision-making, and (iii) access to justice and effective remedies, including the secure exercise of these rights free from intimidation, reprisals and criminalization. See Inter-American Court of Human Rights, 2017, *Advisory Opinion OC-23/17*, at para. 212.

¹⁸ Inter-American Court of Human Rights *Inhabitants of La Oroya v Peru*, 27 November 2023.

efficiency to address the climate crisis”.¹⁹ The Committee on the Rights of the Child provided detailed guidance in General Comment 26 regarding the State obligations and business responsibilities—related to mitigation, adaptation and loss and damage—that exist in order to fulfil children’s right to a clean, healthy and sustainable environment in the context of the climate crisis.²⁰ In this regard, Namibia affirms the importance of **just transition**:²¹ such transition should be undertaken in a manner that does not undermine or compromise the much needed socio-economic development, especially for developing economies as reflected in the Paris Agreement’s principles of equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.²²

12. *Second*, access to **safe and sufficient water** is also vital for a healthy environment.²³ Simply put, without safe and sufficient water, a healthy environment cannot be realised. The Inter-American Court of Human Rights in *Inhabitants of La Oroya v Peru*²⁴ confirmed with respect to water that “this substantive element of the right to a healthy environment” imposes an obligation on States to:

- a. design water quality standards and policies that are compatible with human and ecosystem health;
- b. identify the main causes of contamination;
- c. monitor levels of contamination in water bodies;
- d. report potential risks to human health and the health of ecosystems;
- e. make plans and undertake all practices with the aim of controlling water quality;
- f. implement measures to enforce water quality standards; and
- g. adopt actions that ensure the sustainable management of water resources.²⁵

¹⁹ UN Committee on the Rights of the Child, General Comment 26, para. 65(d).

²⁰ *Ibid.*, paras. 95-115.

²¹ See Paris Agreement, preamble, recital 10 (“Taking into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities”). See also Written Submission of the ITUC and the ITF (<https://www.ituc-csi.org/ituc-itf-submission-to-the-icj>); CR 2024/51, pp. 16-19, paras. 21-35 (Tang).

²² See Paris Agreement, Article 2(2).

²³ *Report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment*, United Nations General Assembly, A/79/270, 2 August 2024, para. 58.

²⁴ *Inhabitants of La Oroya v Peru*, para. 121.

²⁵ *Ibid.*, para. 121.

13. Namibia adds that the Court should also take into account the right to water's content as set out in General Comment No. 15. Specifically, this requires considerations of quality water to mean that water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health.²⁶

II. RELATION OF THE RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT AND OTHER HUMAN RIGHTS OBLIGATIONS

14. Namibia submits that all rights, including the right to a clean, healthy and sustainable environment, are interdependent, interrelated, and indivisible.²⁷ As such, there is overlap between the climate change obligations that exist under international environmental law as it also exists under international human rights law. The rights to water, to adequate food, to the highest attainable standard of health, to life and to development are all given substance through the realisation of the right to a clean, healthy and sustainable environment, as Namibia has submitted in our written statement.²⁸ It is only through the recognition and realisation of the right to a health environment that the rights of specifically vulnerable populations, including children, can be protected.

15. *First*, the right to a clean, healthy and sustainable environment is implied as part of the right to health in Article 12 of the International Covenant on Economic, Social and Cultural Rights. The UN Committee on Economic, Social and Cultural Rights, in its General Comment No. 14 on the right to health, states that this extends to the underlying determinants of health, such as “food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a *healthy environment*”.²⁹

16. *Second*, Article 24 of the Convention on the Rights of the Child (the “**CRC**”) recognises the right of the child to the highest attainable standard of health, and lists as amongst the measures to be taken by States Parties, the “provision of adequate and nutritious foods and

²⁶ CESCR, General Comment No. 15 (2003), para. 12(b).

²⁷ Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, adopted 22-26 January 1997, para. 6; Inter-American Court of Human Rights, *Advisory Opinion OC-23/17*, 2017, para. 64.

²⁸ See Written Statement of Namibia, paras. 83-120.

²⁹ UN Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000), The right to the highest attainable standard of health, E/C.12/2000/4, paras. 4, 11 (emphasis added).

clean drinking water, taking into consideration the dangers and risks of environmental pollution”.

17. Namibia emphasises that the CRC is an important international instrument, given that the future generations will first enter and encounter the world as children and as such the health of their environment is paramount. As mentioned above, the Committee on the Rights of the Child has developed this further in its General Comment No. 26 on children’s rights and the environment with a special focus on climate change.³⁰ The Committee concluded that children’s right to a clean, healthy and sustainable environment is implicit in the CRC, noting that “the substantive elements of this right are profoundly important for children, given that they include clean air, a safe and stable climate, healthy ecosystems and biodiversity, safe and sufficient water, healthy and sustainable food and non-toxic environments”.³¹

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18. For the foregoing reasons, Namibia submits that the Court should recognise the right to a clean, healthy and sustainable environment under customary and conventional international law. The Court has, in the various written and oral interventions, been exposed to the reality that climate change undermines the enjoyment of the right to a clean, healthy and sustainable environment, by present and future generations. The environment today cannot be considered clean, healthy, or sustainable, as long as greenhouse gas emissions continue to increase, global warming continues to progress, and human induced climate changes are not mitigated.

³⁰ Committee on the Rights of the Child, General Comment 26 (2023) on children’s rights and the environment with a special focus on climate change, CRC/C/GC/26.

³¹ *Ibid.*, para. 64.