

**INTERNATIONAL COURT OF JUSTICE**

**OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE**

**(REQUEST FOR ADVISORY OPINION)**



**Papua New Guinea's response to the question posed by Justice Aurescu of the  
International Court of Justice (ICJ)**

**20<sup>th</sup> December 2024**

**Papua New Guinea’s response to the question posed by Justice Aurescu of the  
International Court of Justice (ICJ) on the Advisory Opinion on State obligations in  
respect of climate change**

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In connection with the proceedings of the International Court of Justice (the “Court”) relating to the United Nations General Assembly request for an advisory opinion on the obligations of States in respect of climate change, Papua New Guinea respectfully submits the response below to the following question posed by the Court at the conclusion of the oral proceedings thereof:

*What is the legal content of the right to a clean, healthy and sustainable environment in international law, and how does it relate to other relevant human rights related to this advisory opinion?*

In Papua New Guinea’s oral submission to the Court on 6 December 2024, we respectfully submitted that the Court should comprehensively and holistically interpret the entire corpus of international law, including human rights law, in providing the advisory opinion.

In line with its oral submission and in response to the above-mentioned question, Papua New Guinea will further analyze the right to a clean, healthy, and sustainable environment in international law and its connection to other human rights related to the advisory opinion.

*What is the legal content of the right to a clean, healthy and sustainable environment in international law?*

The right to a clean, healthy and sustainable environment was recognized by the United Nations Human Rights Council in October 2021<sup>1</sup> and by the United Nations General Assembly in July 2022<sup>2</sup>. By virtue of these and other recognitions of the right to a clean, healthy and sustainable environment, this right has become customary international law.

Other international and regional instruments that recognized the right to a clean, healthy and sustainable environment, include:

- Stockholm Declaration of the United Nations Conference on the Human Environment 1972<sup>3</sup>;

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<sup>1</sup> UNGA, HRC, A/HRC/RES/48/13 (18 October 2021).

<sup>2</sup> UNGA, The human right to a clean, healthy and sustainable environment, A/RES/76/300 (28 July 2022).

<sup>3</sup> Principle 1: “... the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being ...”

- Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters 1998 (Aarhus Convention)<sup>4</sup>;
- African Charter on Human and People’s Rights 1981<sup>5</sup>;
- San Salvador Protocol to the American Convention on Human Rights 1988<sup>6</sup>;
- Arab Charter on Human Rights 2004<sup>7</sup>;
- ASEAN Declaration on Human Rights 2012<sup>8</sup>; and
- Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean 2018 (Escazu Agreement)<sup>9</sup>.

In the context of the Pacific region and Papua New Guinea, the following instruments and laws recognize the right to a clean, healthy and sustainable environment:

- Waigani Convention<sup>10</sup>;
- Constitution of the Independent State of Papua New Guinea<sup>11</sup>; and
- Constitution of the Autonomous Region of Bougainville 2004, Papua New Guinea<sup>12</sup>.

The following non-binding international policies also recognize the right to a clean, healthy and sustainable environment:

- Millenium Development Goals<sup>13</sup>; and
- 2030 Agenda for Sustainable Development<sup>14</sup>.

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<sup>4</sup> The Preamble to the Convention recognizes the right to a clean, healthy and sustainable environment.

<sup>5</sup> Article 24: “All peoples shall have the right to a general satisfactory environment favourable to development”.

<sup>6</sup> Article 11: “(1) Everyone shall have the right to live in a healthy environment and to have access to basic public services. (2) The States Parties shall promote the protection, preservation, and improvement of the environment.”

<sup>7</sup> Article 38: “Everyone shall have the right to an adequate standard of living for himself and his family, ensuring well-being and decent life, including adequate food, clothing, housing, services and a right to a safe environment. The State Parties shall take appropriate measures within their available resources to ensure the realization of this right.”

<sup>8</sup> Article 28(f): “Everyone has the right to an adequate standard of living for himself or herself and his or her family including the right to a safe, clean and sustainable environment.”

<sup>9</sup> Article 4(1): “Each Party shall guarantee the right of every person to live in a healthy environment and any other universally recognized human right related to the present Agreement.” The Preamble to the Agreement also recognizes the right to a clean, healthy and sustainable environment.

<sup>10</sup> The Preamble to the Convention stresses the responsibility to protect the environment from hazardous waste disposal. By implication, it recognises the right to a clean, healthy and sustainable environment.

<sup>11</sup> Preamble to the Constitution – Goal 4 of National Goals and Directive Principles: “We declare our fourth goal to be for Papua New Guinea’s natural resources and environment to be conserved and used for the collective benefit of us all, and be replenished for the benefit of our future generations.”

<sup>12</sup> Sections 23(2) and 27 of the Constitution recognise the promotion, preservation and protection of a healthy environment for the benefit of current and future generations. These provisions recognise and promote the right to a clean, healthy and sustainable environment.

<sup>13</sup> Goal 7: Ensure environmental sustainability.

<sup>14</sup> The Preamble, and Goals 14 and 15 of Agenda 2030 advocate for conservation, protection, restoration and sustainable use of marine and forest and other resources. By implication, the Agenda 2030 recognises the right to a clean, healthy and sustainable environment.

The Human Rights Council recognized that the right to a clean, healthy and sustainable environment is a human right that is important for the enjoyment of human rights, and with unparalleled support (161 votes in favour, no votes against, and eight abstentions), the General Assembly recognized the right to a clean, healthy and sustainable environment as a human right.

Both the Human Rights Council and the General Assembly noted that the right to a clean, healthy and sustainable environment is related to other rights and existing international law.

The right to a clean, healthy and sustainable environment consists of procedural and substantive elements.

The procedural elements are access to information, public participation, and access to justice and effective remedies. The substantive elements include clean air, a safe climate, access to safe water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy ecosystems and biodiversity.<sup>15</sup>

Our submission will focus on four of the substantive elements, namely, (i) safe climate, (ii) access to safe drinking water, (iii) healthy and sustainable food, and (iv) healthy biodiversity and ecosystems, as particular elements, among others, that are under severe threat in Papua New Guinea due to climate change and sea-level rise.

The unreasonably high anthropogenic greenhouse gas emissions (historically, currently, and as projected for the future) under the jurisdiction or control of a small number of States has clearly made the climate system unsafe for all peoples, particularly in the small island developing States, including Papua New Guinea.

Specifically for our nation, this unsafe climate system has caused and will continue to cause, *inter alia*, coastal erosion and flooding of our archipelagic islands, extreme weather and tectonic events, saltwater intrusion into our freshwater supplies and agricultural land, coral bleaching and degradation of our coastal fisheries, and tuna migration and other adverse effects on our oceanic fisheries.

As Papua New Guinea stated in its oral submission: “Papua New Guinea is home to and custodian of a diverse geophysical and geomorphic landscape, including 20,197 kilometres of coastline, 40,000 square kilometres of coral reefs, one of the highest known levels of marine biological diversity in the world, around ten percent of the world’s biodiversity in less than one percent of the world’s total land area, and the world’s third largest expanse of pristine tropical rainforest, covering 77.8 percent of our total land area.”

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<sup>15</sup> UNGA, HRC, A/HRC/43/53 (30 December 2019).

As a sovereign State, Papua New Guinea upholds the right to healthy ecosystems and biodiversity as an important national priority for present and future generations. The Constitution of the Independent State of Papua New Guinea<sup>16</sup> and the Constitution of the Autonomous Region of Bougainville in Papua New Guinea<sup>17</sup> both recognize the right to a clean, healthy and sustainable environment.

The peoples of Papua New Guinea, including Indigenous Peoples and local communities, depend heavily on the natural environment for their lives and livelihoods, as well as for health, wellbeing, and the preservation of culture and cultural heritage.

Our clean drinking water is rendered unsafe by saltwater intrusion due to sea-level rise caused by anthropogenic greenhouse gas emissions. Our coastal coral fisheries, which the people depend on for their food and protein intake, are degraded by coral bleaching caused by anthropogenic greenhouse gas emissions. Our livelihoods are heavily dependent on income from oceanic fisheries, which are detrimentally affected by tuna migration caused by ocean warming due to anthropogenic greenhouse gas emissions.

Accordingly, the rights of the peoples of Papua New Guinea to, *inter alia*, healthy ecosystems and biodiversity, safe and sufficient water, and healthy and sustainable food, as substantive elements of the right to a clean, healthy, and sustainable environment, are severely and adversely impacted by the unreasonably high anthropogenic greenhouse gas emissions under the jurisdiction or control of a few States.

*How does the right relate to other relevant human rights related to this advisory opinion?*

With respect to the second part of the question, Papua New Guinea submits that human rights are universal, indivisible, interdependent and interrelated. Accordingly, the right to a clean, healthy and sustainable environment is integral to the full and effective enjoyment of all human rights by present and future generations.

Papua New Guinea further submits that the right to a clean, healthy and sustainable environment is inextricably intertwined with the right of peoples to self-determination, which is a peremptory norm under international law. This is because without the essential elements of life, food, water, health, and healthy ecosystems and biodiversity, as well as the ability to preserve culture and cultural heritage, the right of peoples to self-determination would be an empty shell, hollowed out and bereft of substantive legal and moral meaning.

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<sup>16</sup> Goal 4, National Goals and Directive Principles.

<sup>17</sup> Sections 23(2) and 27.

In our oral submission, Papua New Guinea linked the right of peoples to self-determination to the principle of permanent sovereignty over natural resources.

In this written response, we submit that the principle of permanent sovereignty over natural resources is also deeply embedded within the human rights dimension, including the right to a clean, healthy and sustainable environment and the right of peoples to self-determination.

The right of peoples to self-determination<sup>18</sup> and the principle of permanent sovereignty over natural resources are reflected in common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which provide in pertinent part:

"1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence."

The final sentence above - "[i]n no case may a people be deprived of its own means of subsistence" - is highly relevant in relation to small island developing States, including Papua New Guinea, in the context of climate change and sea-level rise.

For example, the impacts of anthropogenic emissions of greenhouse gases, such as coral bleaching which affects coastal fisheries and the migration of tuna in a warming ocean, diminishes and deprives the Pacific peoples of their own means of subsistence. This constitutes transboundary damage to the permanent sovereignty over natural resources of the Pacific small island developing States.

The resulting loss of livelihoods, food security, and ecosystem health and biodiversity prevents the effective enjoyment of the right to a clean, healthy, and sustainable environment and consequently the interlinked right of the Pacific peoples to self-determination.

The foregoing is not exhaustive of the harms and losses inflicted on Papua New Guinea and other Pacific small island developing States due to the wrongful conduct of a small number of States in connection with climate change and sea-level rise, and which will continue to be inflicted in the absence of meaningful legal remedies.

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<sup>18</sup> See also United Nations Declaration on the Rights of Indigenous Peoples, Art. 3.

In closing, Papua New Guinea wishes to express its deepest gratitude to the Court for its time and attention to our oral submission and this written response, as well as to the written and oral submissions of our Pacific brothers and sisters, in connection with this critically important advisory opinion.