



INTERNATIONAL COURT OF JUSTICE

**OBLIGATIONS OF STATES IN
RESPECT OF CLIMATE CHANGE
(REQUEST FOR ADVISORY OPINION)**

**WRITTEN REPLY OF THE KINGDOM OF TONGA
TO THE QUESTION PUT BY JUDGE AURESCU ON 13 DECEMBER 2024**

20 DECEMBER 2024

1. The Kingdom of Tonga (**Tonga**) thanks Honourable Judges Cleveland, Tladi, Aurescu and Charlesworth for their questions put to States and International Organisations participating in the oral proceedings of the advisory opinion on the *Obligations of States in respect of Climate Change* on 13 December 2024.¹
2. Tonga appreciates the time that all the Judges have spent in reading written submissions and hearing oral submissions during the proceedings, which are of great importance to all States, particularly those which are specially affected by climate change. The Court's continued engagement through questions is welcomed.
3. Tonga refers to the question put by Judge Aurescu:

“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 consultatif ? »
4. As noted in Tonga's written statement, the right to a clean, healthy and sustainable environment was recognised as a human right by Resolution 76/300 of the UN General Assembly, a resolution adopted without a vote.² The same resolution notes the interrelation between the right to a clean, healthy and sustainable environment and other rights and international law, and affirms that the promotion of this right requires the

¹ International Court of Justice, Letter to States and international Organisations participating in the oral proceedings 163418 (13 December 2024).

² Written Statement of the Kingdom of Tonga in *Obligations of States in respect of climate change* (15 March 2024) [224] (**Tonga written statement**)

"full implementation of the multilateral environmental agreements under principles of international environmental law".³

5. In replying to Judge Aurescu's question, Tonga will address the freestanding character of the right, the procedural elements and the substantive elements of the right.
6. It is clear that the provision of a safe and clean environment correlates with the full enjoyment of other human rights. Tonga has recognised this in its written statement⁴ and this position is supported in the text of numerous instruments, reports and judicial decisions, including UNGA Resolution 76/300.⁵ However, the interrelated nature of human rights does not distinguish the independent existence of a one right or another.
7. As to the procedural and substantive content of the right to a clean, healthy and sustainable environment, Tonga refers to guidance provided in the Framework Principles on Human Rights and the Environment.⁶ Whilst these concern the application of other human rights in an environmental context - *relating to* the enjoyment of a safe, clean, healthy and sustainable environment - they are instructive as to the legal content of the right to a healthy, clean and sustainable environment.
8. Tonga also refers to the recent publication of *The Right to a Healthy Environment: A User's Guide*, in which Special Rapporteur David Boyd enumerates procedural obligations for the realisation of the right including "*access to information, public participation and access to justice with effective remedies*".⁷

³ *The human right to a clean, healthy and sustainable environment*, GA Res 76/300, UN Doc A/RES/76/300, (28 July 2022).

⁴ Tonga written statement, Chapter IX (n2).

⁵ See for example: Human Rights Council (HRC), Preliminary report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox UN Doc. A/HRC/22/43 (24 December 2012) [19]; HRC, 'Resolution 48/13, The Human Right to a Clean, Healthy and Sustainable Environment' UN Doc A/HRC/RES/48/13 (18 October 2021); Declaration of the United Nations Conference on the Human Environment in 'Report of the United Nations Conference on the Human Environment' UN Doc A/CONF.48/14/Rev.1 (1973) Principle 1. Similarly, the International Court of Justice has emphasized that "the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn." Cf. ICJ, Legality of the threat or use of nuclear weapons. Advisory Opinion of July 8, 1996, para. 29, and ICJ, Case concerning the Gabčíkovo-Nagymaros Project (Hungary v. Slovakia). Judgment of September 25, 1997, para. 112.

⁶ HRC, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment', A/HRC/37/59 (24 January 2018), Annex, p.7 *et seq.*

⁷ D. Boyd, UN Special Rapporteur on the human right to a clean, healthy and sustainable environment, *The Right to a Healthy Environment: A User's Guide* (2024), p.15. (**Special Rapporteur's User Guide**)

9. The substantive elements of the right to a clean, healthy and sustainable environment are as set out by Special Rapporteur David Boyd in his report on *Human rights obligations relating to the environment of a safe clean, health and sustainable environment*. They include "a safe climate, clean air, safe and sufficient water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems".⁸ It is submitted that these elements are relevant to both present and future generations.
10. Tonga respectfully submits, as is reflected in UNGA Resolution 76/300, that the substantive elements are informed and reinforced by the commitments made by States in multilateral environmental treaties and existing principles and rules of international law.

⁸ D. Boyd, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment', A/74/161 (15 July 2019) [43]-[44].
See also the Special Rapporteur's User Guide (n7), pp. 17-27.