

SAINT LUCIA'S RESPONSE TO QUESTIONS BY THE COURT

Saint Lucia takes this opportunity to thank the Court for the opportunity to address it once again in the context of questions it has posed for consideration. Saint Lucia will only briefly address **Question 1**.

Question 1 put by Judge Cleveland:

“During these proceedings, a number of participants have referred to the production of fossil fuels in the context of climate change, including with respect to subsidies. In your view, what are the specific obligations under international law of States within whose jurisdiction fossil fuels are produced to ensure protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases, if any?”

Saint Lucia reiterates arguments which it and other States have made in these proceedings, namely, that States producing and subsidizing fossil fuels in full knowledge of the environmental consequences have breached duties of prevention, due diligence, and the obligation to respect human rights and the right to self-determination.¹ By continuing to license, subsidize, and expand fossil fuel production, these States have failed to meet the standard of stringent due diligence required under international law², including Part XII of UNCLOS. Such conduct is clearly contrary to meeting the objectives of the Paris Agreement and the UNFCCC.³

The wrongful character of this conduct triggers the law of State responsibility. As Saint Lucia highlighted in its oral pleadings before the Court, under these rules, cessation requires that fossil fuel production causing ongoing harm must stop, that subsidies intensifying emissions must end, and that systems enabling continued large-scale emissions must be dismantled. Saint Lucia further noted during its oral submissions that although some may argue that such steps are unrealistic, the first step essentially requires fossil fuel producers to face the markets without undue aid. The very distortion generated by fossil fuel subsidies is a major obstacle to developing low-carbon or carbon-free technologies; and States should cooperate and actively pursue action in other

¹See for instance, WS Vanuatu, paras. 117-192

²As set out in Saint Lucia's previous submissions.

³As to the divergence between the conduct required and the conduct observed, see generally WC Vanuatu, para. 110, Table 1.

multilateral fora, including the World Trade Organization (WTO), where discussions on fossil fuel subsidies and green trade policies are critical to global mitigation efforts.

The issue of fossil fuel subsidies has taken central stage in international trade because they affect competitiveness and economic relations. The global energy market is worth trillions of dollars and comprises a significant portion of international trade. This market is heavily subsidized, with an estimated \$5.2 trillion spent on fossil fuel subsidies in 2017 according to the IMF (2019), and more recent estimates put the global figure at \$7 trillion in 2022 or 7.1% of global GDP.⁴ Fossil fuel subsidies can take the form of direct, indirect, consumption, or production subsidies. They are known to have detrimental environmental impacts, distort energy markets, encourage overconsumption of fossil fuels, and discourage investment in climate-friendly alternatives. Reducing or eliminating these subsidies can help promote the transition to renewable energy, reducing carbon emissions and global warming.

Despite these negative impacts, the existing rules of the global trade system, particularly the WTO Agreement on Subsidies and Countervailing Measures (ASCM), provide only general disciplines against subsidies. To be disciplined, subsidies must meet specific criteria: they must constitute a financial contribution, confer a benefit, be specific to an industry, and cause adverse effects on other countries' trade. Under the ASCM, prohibited subsidies include export subsidies and import substitution subsidies, which are expressly prohibited under Article 3. Actionable subsidies are those that cause adverse effects, including serious prejudice, material injury, or nullification or impairment of benefits to other Members' trade interests, as defined under Article 5. If such effects are established, the subsidy can be challenged, and the subsidizing Member may be required to withdraw the subsidy or remove its harmful effects. Additionally, importing Members may impose countervailing measures to offset the adverse impact of the subsidy. Many argue, however, that current rules are insufficiently precise to address harmful fossil subsidies, as they often lack the "specificity" requirement under the ASCM's legal standard.⁵

⁴IMF Working Papers, "Global Fossil Fuel Subsidies: Overview and Update" (2019, 2022, 2023).

⁵See for instance, Magnezi, Nadav, Wigoda, Ari, Bensoussan, Alexander, and Friedman, Amichai. *Challenging Fossil Fuel Subsidies in the WTO: A Legal Analysis of Fossil Fuel Subsidies under the SCM Agreement*. Journal of International Economic Law, vol. 20, no. 3, 2017, pp. 557-586.

Recent discussions at the WTO have sought to increase the scope of disciplines on fossil fuel subsidies to directly address their harmful environmental impacts.⁶ For instance, plurilateral negotiations for Fossil Fuel Subsidy Reform, aimed at reducing these subsidies⁷ have already started. Additionally, outside the WTO, the Agreement on Climate Change, Trade and Sustainability (ACCTS) was recently concluded by a sub-set of WTO members and sets new legal standards for fossil fuel subsidies. The ACCTS defines fossil fuel subsidies using the ASCM framework but expands the scope by focusing on subsidies targeting fossil fuel generation, transport, marketing, or consumption under Article 4.3(b). Parties are prohibited from introducing or maintaining fossil fuel subsidies beyond a *de minimis* limit under Article 4.5, with specific exceptions including subsidies aimed at low-income, remote, or vulnerable communities for energy security under Article 4.6(2).

Even in the context of climate negotiations, there have been attempts to discipline fossil fuel subsidies. In Decision 1/CMA.5 (2023), Parties recognized the need for deep, rapid, and sustained reductions in greenhouse gas emissions in line with 1.5°C pathways. The Decision calls on States to contribute to efforts including transitioning away from fossil fuels in energy systems in a just, orderly, and equitable manner and accelerating action toward net-zero emissions by 2050, consistent with scientific guidance.

This Court should recognize the current trajectory of international law – as evidenced in the Paris Agreement, UNFCCC, WTO negotiations, and emerging trade agreements like the ACCTS – which collectively demonstrate a global trend toward reducing fossil fuel subsidies and advancing environmental and trade-related obligations.

⁶In academic circles, see also *Villars Framework for a Sustainable Global Trade System*, Chapter 4: Distinguishing between Harmful and Beneficial Subsidies, available at: <https://remakingtradeproject.org/villars-framework>

⁷See Ministerial Statement on Fossil Fuel Subsidies, WT/MIN(21)/9/Rev.2 (10 June 2022).

RESPONSE TO QUESTION 2 BY JUDGE DIRE TIADI

“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 treaty framework in general, has any effect on this interpretation and if so, what effect does it have?”

Answer:

1. Introduction

The object and purpose of the **United Framework Convention on Climate Change (UNFCCC)** and the subsidiary treaties such as the **Paris Agreement, the Kyoto Protocol and its Doha Amendment** is essentially to prevent dangerous anthropogenic GHG gases from interfering with the climate system, in accordance with the common but differentiated responsibilities and respective capabilities (CBDR-RC) of Member States. The Oral Proceedings before the International Court of Justice from December 2-13, 2024, marks the culmination of a process of filing of Written Statements and Written Comments. Unfortunately, in both the written and oral pleadings of some of the major emitting States, there has been rampant disregard for this very object and purpose which have led to breaches of correlative obligations under the climate regime and other parts of international law. This answer posits that the obligations of States under **Article 4 of the Paris Agreement** must be interpreted with a view to remedying this ongoing breach and restoring the balance which entails compliance with the relevant substantive obligations.

2. Background

The purpose of the Paris Agreement can be found in Article 2.1 which is “*holding the increase in the global average temperature to well below 2 degrees centigrade above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 degrees centigrade above pre-industrial levels.*” To achieve this long-term temperature goal, Article 4.1 of the Paris Agreement provides for State Parties to aim to reach global peaking of GHG emissions as soon as possible and to undertake rapid reductions thereafter to achieve a balance between GHG

emissions by sources and removals of sinks known as “net-zero” emissions by the end of the century. To do this, Parties are required to communicate every five (5) years, a Nationally Determined Contribution (NDC) accompanied by information that enhances its clarity, understanding and transparency and to account for it. These contributions are nationally determined rather than internationally, and whilst the States are obliged to submit NDCs, it has been argued especially by major emitting States that they are not obliged to achieve their targets or objectives. However, it is contended that Parties must participate in an ambition cycle which consists of providing information regarding how they track progress in implementing and achieving their NDCs as part of an enhanced transparency framework. This information flows into a global stocktake which is scheduled every five years and into a facilitative implementation and compliance mechanism. These NDCs, though determined nationally, have a condition whereby Parties are expected to ensure that every successive NDC represents a progression from the last one reflected the State’s highest possible ambition and its CBDR-RC, in-keeping with different national circumstances. More developed countries are however expected to submit NDCs which reflect their leadership role in the climate regime.

3. The Issue Analysed

The core arguments which must be considered in answering this question is that firstly (1) the object and purpose of the Paris Agreement is intricately linked to the UNFCCC’s unmet objective. The Chapeau of the Paris Agreement in Article 2 refers to “*enhancing the implementation*” and this together with the reference to loss and damage in Article 8 and the escalation of emissions since the 1990s confirm that certain states have breached their substantive obligations under the UNFCCC.

(2) Secondly, While Article 4 of the Paris Agreement sets procedural obligations e.g preparing and communicating NDCs, these obligations are inseparable from the substantive obligations arising from the climate regime and the other sources of international law.

(3) Thirdly, Given that the ultimate objective of the UNFCCC has not been achieved, and loss and damage have already occurred, NDCs of responsible States must be seen as tools to encourage cessation and reparation ensuring that these States reduce emissions substantially and immediately!

(4) Fourthly responsible States are under heightened obligations to provide developing countries with finance, technology transfer and capacity-building to contribute to maximum global climate action inclusive of the kind of support necessary to fully implement conditional NDCs.

The “*object and purpose*” of the UNFCCC and the Paris Agreement thus reinforce an interpretation of the Article 4 (Paris Agreement) that demands ambitious, immediate, science-

based action and international cooperation to correct the on-going breach and prevent further harm.

4. Conclusion

To win this fight against the vagaries of climate change the international community hopefully with proper clarification from this Honorable Court, will achieve the daunting task of aligning norms, actions and actors towards creating a climate safe world for present and future generations.

The answer must be in crafting a more robust role for international law in solving pressing global challenges like climate change guided by a holistic purpose-driven interpretation of the Paris Agreement. This holistic interpretation must recognize norms including non-binding ones are all part of the entire corpus of international law which can not be ignored. Together with an objective standard of due diligence, with standards of fairness, ambition and progression in NDCs aimed at enhancing and strengthening the interpretation of the object and purpose of the Paris Agreement. There may still be challenges in achieving this, but if international law finds itself understood as an interlocking chain of norms, practices, instruments and resolve which with unbridled hope, works seamlessly towards finding a solution to this climate crisis, that would be a marvelous achievement!

Submitted by **Kate Wilson Legal Officer, Department of Sustainable Development, SAINT LUCIA.**

QUESTION 3 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?”

ANSWER:

I. Introduction

The United Nations General Assembly (UNGA) recognized the “*human right to a clean, healthy and sustainable environment*” on July 28, 2022 (**Resolution A/76/300**).¹ This adoption was preceded by the **UN Human Rights Council Resolution 48/13** of October 8, 2021, which had recognized the human right to a clean, healthy and sustainable environment and committed the General Assembly to consider the recognition of that right². Both Resolutions saw no opposing votes from States, with only a few abstentions.³ Although, this right is by no means a new human right, these resolutions cemented its recent recognition, at a global level.

During the Oral Hearings before the ICJ regarding an Advisory Opinion on climate change from December 2-13, 2024, more than 50 Member States urged the Court to acknowledge the right to a clean, healthy and sustainable environment as an integral part of the broader corpus of international human rights law which is intrinsic to the clarification of States obligations as they relate to climate change.

2. Status of the Right to a Clean, Healthy and Sustainable Environment

During the 27th. and 28th. Conferences of Parties (COPs) of the United Nations Framework Convention on Climate Change (UNFCCC) the Parties incorporated this right by consensus into key outcome documents like the **Sharm El-Sheikh Implementation Plan** and the **First Global**

¹ ***The Human Right to a Clean, Healthy, Sustainable Environment***, GA Res 76/300, UN GAOR, 76th. sess., Agenda Item 74(b), UN Doc A/HRC/RES/76/300(1 August 2022 adopted 28 July 2022).

² 48th. sess. Agenda Item 3, UN Doc A/HRC/RES/48/13 (18 October 2021, adopted 8 October 2021).

³ At the HR Council in 2021, 43 votes in favor while only 4 countries (Russia, Japan, India and China) abstained; at the UNGA in 2022, 161 voted in favor while 8 countries (Syria, Russia, Kyrgyzstan, Iran, Ethiopia, China, Cambodia and Belarus) abstained. Kyrgyzstan later indicated by official letter to the UN that it had abstained in error and intended to vote in favor. Saint Kitts-Nevis and the Seychelles also indicated that they had intended to vote in favor. (Official Record of the 97th. Plenary Meeting of the 76th. Session A/76/PV/97, p.11).

Stocktake, through its inclusion in the preambular paragraph on human rights in the **Paris Agreement**. A point highlighted by **Saint Lucia** in its oral submission to the ICJ.⁴

*“Acknowledging that Climate Change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, **the right to a clean, healthy and sustainable environment**, the right to health, the rights of indigenous persons, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development as well as gender equality, empowerment of women and intergenerational equity.”*

Further, in 2022, again by consensus, this right was also included in the **Kunming-Montreal Global Biodiversity Framework**⁵ and in 2023, in the **Bonn Declaration for a Planet Free of Harm from Chemicals and Waste**.⁶

At a **regional level**, this right is enshrined in the ***African Charter on Human and Peoples Rights***⁷; ***The San Salvador Protocol to the American Convention on Human Rights***⁸, ***The Arab Charter on Human Rights***⁹ and the ***Association of South Asian Nations Human Rights Declarations***¹⁰ and the ***Aarhus Convention***¹¹ and the ***Escazú Agreement***¹². Further, more than 140 member states are parties to these instruments.

On a **national level**, at least 164 States have recognized the right in law through their constitutions, legislation, court decisions and incorporation of regional treaties into domestic law. Additionally, at the **sub-national level** this right is found in constitutions and legislation of several countries.¹³ Overall, this right is supported by 93% of UN Member States (179 out of 193) providing much evidence that it should emerge as customary international law.

3. The Content of the Right to a Clean, Healthy and Sustainable Environment

The right to a clean, healthy and sustainable environment has at **least three (3) components** namely: (a) a substantive component (b) a procedural component (c) an intertemporal

⁴ Oral Submission of Ms. Kate Wilson, Legal Officer, Department of Sustainable Development, Saint Lucia Delegation, pgs. 5 and 11; December 10, 2024.

⁵ Paragraph 14.

⁶ Paragraph 17.

⁷ Article 14.

⁸ Article 11.

⁹ Article 38

¹⁰ Article 28 (f).

¹¹ Preamble and Article 1 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

¹² Article 1 and 4 of the Regional Agreement on Access on Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean.

¹³ Argentina, Australia, Brazil, Canada, Mexico, Switzerland among others.

component. The **substantive** component describes the content of the right to the environment. This right is linked to and is in part derived from the right to life. This right to life itself has many components, the first of which is the right to live, that is to be alive and not dead.¹⁴ That encompasses people not being deprived of their life without due process and according to law. The right to life also involves the right to access and enjoy the necessities of life such as clean water, air and healthy food and adequate sanitation and courts around the world specifically those in **South Asia**, have held that this right includes the right to enjoy the necessities of life **free from environmental hazards**¹⁵. The **Indian Supreme Court** has held that *“the right to life is a fundamental right under Article 21 of the Constitution and it includes the right to enjoyment of pollution-free water and air for full enjoyment of life.”*¹⁶

The right to life was also held *“to encompass within its ambit, the protection and preservation of the environment, ecological balance, freedom from pollution of air and water and sanitation, without which life cannot be enjoyed.”*¹⁷ Consequently, any action that would cause environmental pollution of land, air and water which are the sources of life, must be recognized as amounting to a violation to the right to life.

The right to life also extends to having access to and being able to enjoy those aspects of life that enables one to flourish and function with dignity both as a person in family and private life and as a citizen in society.

*“a right to the environment that is consistent with the human dignity and well-being of citizens at large is an essential condition for the fulfillment of all human rights. It is an indispensable existential right that is enjoyed universally yet is vested personally.”*¹⁸

In **Juliana v United States**¹⁹ the US District court held that the right to a climate system capable of sustaining human life is fundamental to a free and ordered society stating: *“Just as marriage is the foundation of the family, a stable climate system is quite literally, the foundation of society, without which there would be neither civilization, nor progress.”*

The rights to life and a quality environment in which to live, depend on there being a healthy, functioning and flourishing biosphere. This adds the dimension of ecological sustainability to

¹⁴ Human Rights Committee, **General Comment No. 36: Article 6: Right to life**, 124th. sess. UN Doc CCPR/C/GC/36 (3 September 2019).

¹⁵ Farooque v. Government of Bangladesh (Supreme Court of Bangladesh, WP no. 891 of 1994, 15 July, 2001).

¹⁶ Subhash Kumar v State of Bihar (1991) AIR SC 420.

¹⁷ Virender Gaur v State of Haryana (1995) 2 SCC 577.

¹⁸ *Friends of the Irish Environment CLG v Fingal County Council* (High Court of Ireland, No. 344, JR 21 November, 2007).

¹⁹ 217F Supp 3rd. 1224 (D Or 2016).

the content of the right to life. This means an environment that is not only healthy for humans but is healthy in itself as a functioning and flourishing Earth system.

In 2015, the **2030 Agenda for Sustainable Development** was adopted by many UN Member States, setting 17 Sustainable Development Goals (SDGs). Many of these SDGs reflect components of the right to life and a healthy environment.²⁰ At the core of the SDGs is the concept of sustainable development as achieving the needs and human rights of the present without compromising the ability of future generations to do the same. This calls for ecological sustainability and the stability of the earth system.

Climate change as the IPCC Reports have determined is already having adverse impacts on human health, human rights and livelihoods.²¹ In fact, the achievement of all human rights depends on there being a safe climate.²² The release of GHG gases from the mining and burning of coal was found by the Court to increase climate change impacts and breach the right to life, the rights of First Nations People, rights of children, rights to property, privacy and home and the right to equal enjoyment of human rights in the case of **Waratah Coal Pty Ltd. V Youth Verdict & Ors. (No. 6) (2023)**.²³ Healthy ecosystems are essential to regulate the earth's climate, filter air and water, recycle nutrients and mitigate the impacts of natural disasters and human damage to the biosphere severely impacts human rights. The **Inter-American Court on Human Rights** in 2017²⁴ highlighted the ecocentric element of the right to a healthy environment which unlike other rights, protects the critical components of the environment such as forests, rivers and seas, as legal interests in themselves.

The **procedural** component of the right to a clean, healthy and sustainable environment encompasses the procedural rights recognized by **Principle 10 of the Rio Declaration on the Environment and Development, the Aarhus Convention, the Escazú Agreement and the Maputo Protocol**. These procedural rights are threefold: **(1) Access to Environmental information (2) Public participation in environmental decision-making (3) Access to Justice to enforce and uphold these procedural and other rights**. **SDG 16** recognizes these procedural rights with the aim of *“promoting peaceful and inclusive societies for sustainable development, promote access to justice for all and build effective, accountable and inclusive institutions at all levels.”*

²⁰ SDG 3,6, 13,14 and 15.

²¹ Warming of 1.5 degrees centigrade is unsafe for most nations, communities and sectors and poses significant risks to natural and human systems as compared to the current 1 degree centigrade, IPCC Report 6th. October, 2018.

²² John Knox Special Report, February 1, 2016.

²³ 37 Australian Environmental Review, 126.

²⁴ Advisory Opinion OC-23/17.

This procedural component is very necessary to enliven and enforce the right and have been recognized by the Courts. Regarding **Access to Environmental Information** the Indian Supreme Court held that the right to life to be operational and effective, had to be publicized i.e. people needed to be informed that they have that right and what it involved.²⁵ Consequently publication of the right to life, including the constituent right to a quality environment was ordered in education curricula, in primary and secondary schools, in tertiary institution such as universities and even in cinemas as an opening documentary to a Bollywood blockbuster.

Public Participation in Environmental Decision-making has also been upheld by the Courts but as a component of another right. The Hawaiian Supreme Court²⁶ held that a protected property interest includes a benefit to which the claimant is legally entitled. The right to a clean and healthy environment as defined by laws relating to environmental quality is a protectable property interest under the due process clause. Additionally, the South African High Court²⁷ relying on evidence of customary knowledge from indigenous communities held that the grant of an exploration right which was awarded without meaningful consultation with the communities, constituted a violation of the right to consultation of the Applicant and therefore was unlawful.

As for **Access to Justice** as recognized in **SDG 16** highlights that denial of access to Courts and Tribunals to enforce the right to life or the right to a quality environment, is a denial of the right itself. The failure of Governments to enforce Court decisions such as the right to life or the right to a quality environment can also be a violation of the right to a fair hearing.²⁸

The **Intertemporal** Component of the right to a clean, healthy and sustainable environment envisages that this right can only be enjoyed by people who are alive. This includes the present generation and the next generation who are already born. The present generation can enjoy and enforce in the Courts that right, as well as our children, who represent the next generation. They too should be able to enjoy that right, not only today, but tomorrow and into the future. The next generation is often impeded by the law and legal system, from being able to enforce that right e.g. children are unable to sue unless they have become of legal age. Fortunately, some progressive courts²⁹ have upheld the right of children to sue to protect this right to a clean, healthy and sustainable environment and in so doing, have reinforced inter-generational justice between present and future generations. In a recent decision, the **UN Human Rights Committee**³⁰ upheld the rights of 8 Torres Strait people and their 6 children (**representatives of**

²⁵ M.C. Mehta v Union of India, 22nd. November 1991.

²⁶ Re. Application of Maui Electric Company 408 P 3d. 1 (Haw Sup Ct, 2017)

²⁷ Sustaining the Wild Coast NPC and Ors v Minister of Mineral Resources, Energy and Others [2022]

²⁸ Okyay v Turkey ECHR 2005 -VII.

²⁹ Minors Oposa v Factoran (1993) 296 Phil 694.

³⁰ Torres Strait Islanders Petition (n36)[2.7-3.7]

the present and next generation) that Australia had violated and continued to violate their rights by taking inadequate action to mitigate and adapt to climate change. The claimants argued that the violations stemmed from the Australian Government's failure to implement adequate policies and targets to reduce GHG emissions and provide adequate funding for coastal defense and resilience measures such as sea walls for the Torres Strait Islands. The Committee also addressed the question of remedies for such violations and requested Australia to adequately compensate the claimants for the harms suffered, engage in meaningful consultation with the communities affected, to assess their needs and continue to take measures to secure the safe existence of the communities.

This right to a clean, healthy and sustainable environment, is also a right held by each child of successive generations once they are born. Whilst the unborn cannot yet hold that right, that right is their birthright as it vests on their birth. Thus the present generation must respect and protect that right acting as custodians for the future generations ensuring that they will be able to enjoy those rights. This is a key component of sustainable development- development that meets the needs of the present generations without compromising the ability of future generations to meet their own needs.

The duty to respect, protect and fulfil the right to a clean, healthy and sustainable environment imposes obligations on States to refrain from conduct that can foreseeably cause or contribute to significant climate and environmental degradation and to take all necessary measures to prevent conduct by others that foreseeably threaten this right. This includes both territorially and extraterritorially. State obligations related to respecting, protecting and fulfilling that right are summarized in the **Framework Principles on Human Rights and the Environment** and include making environmental information publicly available, facilitating public participation in environmental decision-making, and access to justice with appropriate and effective remedies for environmental harm, providing a safe and enabling environment for human rights defenders, requiring environmental impact assessments of proposed projects and policies, regulation of private sector activities that impact the climate system and other parts of the environment, implementing and enforcing environmental standards based on the best available science, providing environmental information, capacity building and forging greater international cooperation and taking steps to leave no one behind especially vulnerable and marginalized populations.

Former UN Special Rapporteur on Human Rights and the Environment John H. Knox³¹ outlined specific State obligations in the context of climate change as an obligation to cooperate to achieve a low-carbon, climate resilient and sustainable future which encompasses the sharing of information, the transfer of zero-carbon, low carbon and high efficiency technologies from

³¹ A/74/161 15th. July 2019 pr.68.

wealthy to less affluent States, increasing spending on research and development towards the transition to clean and renewable energy resources, ensuring fair, legal and durable solutions for migrants and displaced persons. Wealthier nations contributing towards the mitigation and adaptation efforts of lower income nations in accordance with the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC) and climate finance being grants and not loans with cumbersome qualifiers and high interest rates. In 2023, this also included the recommendation that wealthy States should accelerate the just and equitable phase-out of fossil fuels beginning with coal.

This year, 2024 saw the most comprehensive description of the content of the right to a clean, healthy and sustainable environment by a **regional court** in **Inhabitants of La Oraya v Peru** in reference to clean air as an element of that right. The Inter-American Court of Human Rights clarified that States are obligated to (a) establish air quality laws, standards, policies and regulations that prevent health risks. (b) monitor air quality (c) inform the population of possible health risks (d) identify the main sources of air pollution (e) carry out action plans to control air quality (f) implement measures to enforce air quality standards. The Court also added that this must be done in accordance with the best available science. The Court also outlined similar State obligations with respect to safe and sufficient water.

UN Treaty Bodies have also provided extensive guidance on the content of that right and corresponding State obligations. The Committee on the Rights of the Child (CRC) has provided the most recent in its **General Comments 26 (2023)** on the rights of the child in the context of climate change. It held that the right of children to a healthy environment was implicit in the Convention on the Rights of the Child highlighting that the substantive elements of this right are particularly important for children since 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. The **CRC** urged States to take immediate action to realize the rights by doing the following: equitable phase out of coal, oil and natural gas, invest in renewable energy resources and ensure a just transition and enable energy storage and efficiency to address the climate crisis.

The application and interpretation of the right to a clean, healthy and sustainable environment are guided by a series of principles drawn from international human rights law and international environmental law including equity and non-discrimination, prevention, precaution, polluter pays principle and non-regression. Climate change disproportionately harms people in marginalized and vulnerable situations including women and children, local communities and indigenous persons, persons with disabilities, migrants and displaced persons, the elderly among others, and States are obliged to prioritize actions to assist these populations in realizing that right.

The principle of prevention of significant environmental harm imposes due diligence obligations on States that are heightened according to the degree of risk, a key factor, given the existential threat posed by the climate crisis. The human rights obligations of States become engaged where serious harm and rights violations are foreseeable, which clearly includes the climate change context

4. Relationship Between the Right to a Clean, Healthy and Sustainable Environment and other Human Rights.

The right to a clean, healthy and sustainable environment is closely linked to the effective enjoyment of other human rights as human rights are interdependent, inalienable and indivisible³². Many Courts have recognized that this right is in fact a pre-requisite to the full enjoyment of other rights including the right to a life with dignity and is closely linked to the rights to life, food, water, sanitation, health, self-determination, cultural rights, rights of indigenous persons and rights of the child.

The UN Human Rights Committee in **General Comment 36**³³ have posited that *“environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”* The Committee also stated that *“Implementation of the obligation to respect and ensure the right to life and in particular the right to dignity depends inter alia on measures taken by State Parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.”*³⁴

This Committee has also indicated that the right to health 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.”*

Additionally, the Committee has also held that the right to a healthy environment is implicit in the **International Convention on Economic, Social and Cultural Rights** and is linked to the full range of these rights.³⁵ The UN Committee on the Rights of the Child also held that the right is also implicit in the **Convention on the Rights of the Child** and is related to, *inter alia* the right to life, health, an adequate standard of living, play and education.³⁶

³² Inter-American Court of Human Rights 2017 *Advisory Opinion OC-23/17*, at para. 64.

³³ 2019 Article 6 Right to life CCPR/C/GC/36 para.62.

³⁴ Ibid.

³⁵ General Comment 26. para.10.

³⁶ General Comment 26. paras. 14-62 (2023).

The interrelation between the right to a clean, healthy and sustainable environment and other human rights impacted by climate change are reinforced through the work of other UN Special Rapporteurs. These include Special Rapporteurs on the promotion and protection of human rights in the context of climate change, on the human rights of migrants, rights of Indigenous Persons, right to freedom of peaceful assembly and association, the right to food, the right to water and sanitation, on cultural rights and extreme poverty and human rights.

5. Conclusion

UN Special Rapporteur on Human Rights and the Environment for 2018 -2024, **David R. Boyd** has intimated that the evidence is clear that the right to a clean, healthy and sustainable environment is fundamental to the wellbeing and survival of humanity, involves a safe and livable climate, and is intimately interconnected with several other human rights being harmed by the climate crisis and accordingly, it is imperative that the International Court of Justice recognize that this right is a key element of international human rights law and the human rights obligations of States must inform much more urgent and ambitious responses to the global climate crisis.

The recognition of that right at the sub-national, national, regional and international level, is an important and imperative step in making peace with nature. The challenge however is in making this right operational and effective. The realization of that right can be achieved by adopting 4 steps namely ***(1) the immediate realization of the inviolable element of the right being the procedural component (2) immediate realization of the minimum core obligations of the substantive component of the right (3) progressive realization of the substantive component of the right beyond the minimum core obligations and (4) use of maximum available resources to progressively realize that right.***

This means that we need to delve deeper into what the right involves, recognize and explicate the correlative duties to respect, protect and uphold that right and be proactive in creating systemic and structural change in the laws, policies, institutions and governance systems of States to achieve sustainable development.

The Inter-American Court of Human Rights highlights the importance of the right so eloquently:

“States have recognized the right to a healthy environment which entails an obligation to protect it that concerns the international community as a whole. It is difficult to imagine international obligations with greater significance than those that protect the environment from unlawful or arbitrary conduct that causes serious, extensive, long-lasting and irreversible damage to the environment in a climate crisis scenario that threatens the survival of species. In view of the above, international protection of the environment requires the progressive recognition of the prohibition of conduct of this type as a mandatory norm (jus cogens) that

gains the recognition of the international community as a norm that does not admit derogation. This Court has pointed out the importance of the legal expressions of the international community whose superior universal value is indispensable to guarantee essential or fundamental values. In this sense, guaranteeing the interest of both present and future generations and the conservation of the environment against its radical degradation is essential for the survival of humanity.”

Only if States adopt this 4-step progressive framework will the identification of obligations to respect, protect and fulfil the right be clarified and how these obligations can be effectively discharged to ensure the full realization of that right.

Submitted by **Ms. Kate Wilson, Legal Officer**, Department of Sustainable Development, SAINT LUCIA. On December 20, 2024,

In responding to this question, the author relied extensively on the writings of the following:

David H. Boyd , UN Special Rapporteur on Human Rights On the Environment.

Brian J. Preston, *The Nature, Content and Realization of the Right to a Clean, Healthy and Sustainable Environment*, *Journal of Environmental Law*, 2024, 36, 159-185.

SIWI.org , *The Human Right to a Safe, Clean, Healthy and Sustainable Environment: The Legal Nitty-Gritty*.

Yann Aguila , *The Right to a Healthy Environment*, IUCN, 29th October 2021.

A_HRC_49_53-EN pdf. *Report of the Special Rapporteur on the Issue of Human Rights Obligations relating to the enjoyment of a Safe, Clean, Healthy and Sustainable Environment*.

