

**FROM COPPER TO ASHES: VIOLATIONS OF THE RIGHT
TO A HEALTHY ENVIRONMENT AND HEALTH IN
TSUMEB, NAMIBIA**

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ABSTRACT

The rights to a healthy environment and health are not new human rights to the African System for Human and Peoples' Rights. In fact, they have been protected under the African Charter on Human and People's Rights since 1981. However, outside of the established normative framework, a pressing issue arises in States where the extractive industry maintains a stronghold on the economy. The people of and around Tsumeb, Namibia, have been subjected to egregious human rights abuses and an environmental crisis. Their lives and environment have been historically and continuously destroyed due to the foreign-corporate extractive industry. The mining and smelting industry have exposed workers and communities to highly toxic and dangerous materials. This article explores how existing neocolonial frameworks permit State and non-State actors to persistently degrade the environment, exploit the most marginalized, and deny basic rights

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such as clean water, sanitation and health. It also calls into question current practices in Tsumeb that place financial gains above human lives and the environment. This article calls for the very needed accountability for the people of Tsumeb.

INTRODUCTION

Marginalization, exploitation, and environmental destruction have been the norm in Tsumeb, Namibia. Namibia is the second most unequal country in the world, with extremely high levels of poverty and racial inequality. The extractive industry¹ in Namibia has been responsible for polluting the environment with highly toxic materials and condemning communities to suffer from the exposure to harmful environmental conditions, such as disproportionate levels of arsenic. Foreign corporations should not be permitted to continue harming individuals and communities by destroying their environment and health with impunity. This article highlights the need for action to protect the rights of those suffering from human rights violations stemming from environmental, health, labor and other abuses in Namibia. This article specifically calls for the Namibian government, States whose corporations have engaged in environmentally harmful activities, and corporations responsible to provide adequate, prompt, and effective remedies to this environmental and human rights crisis.

The current and historic toxic impunity by the extractive industry, and specifically the smelting industry in Tsumeb, is so egregious that the United Nations Special Rapporteur on toxics and human rights,²

1. Extractive industries focus on extracting raw materials from the earth, such as oil, metals, minerals, and aggregates, to be processed and utilized by consumers. U.N. Conference on Trade and Development, *Extractive Industries: Optimizing Value Retention in Host Countries*, 3, UNCTAD/SUC/2012/1 New York & Geneva, 2012, https://unctad.org/system/files/official-document/suc2012d1_en.pdf.

2. The United Nations Special Rapporteur on Toxics and Human Rights, Dr. Marcos Orellana, was appointed in 2020 as United Nations expert on toxics and human rights. This mandate on toxics and human rights examines the exposure of people to harmful substances and the resulting human rights violations, and seeks to support States, businesses, and other stakeholders adopt solutions stemming from such exposures. *Special Rapporteur on Toxics and Human Rights: About the Mandate*, THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, <https://www.ohchr.org/en/special-procedures/sr-toxics-and-human-rights/about-mandate>.

Dr. Marcos Orellana, has asked that the Namibian government (along with other responsible States and corporations) to answer very serious allegations of human rights abuses.³ This important letter to Namibia asserts that the Special Rapporteur received credible and legitimate allegations of human rights abuses suffered by the workers and community members in and around the Tsumeb Smelter (“Smelter”) and the need to ask that the Namibian government take action to protect human rights.⁴ The letter specifically identifies Dundee Precious Metals Tsumeb (Pty) Limited as the previous Smelter owner and Sinomine Resource Group Co., Ltd. as the current Smelter owner.⁵

The inclusion of these corporations into this article’s analysis of State and corporate responsibility is integral to understanding the complex dynamics between States and corporate actors engaging in environmentally disastrous activities. Their practices pollute, degrade, and produce harmful, long-lasting effects resulting in the triple planetary crisis.⁶ They engage in environmentally harmful business activities with impunity. They act with little regard for human life and environmental harm, as the State continues to support them and benefit from their harmful practices and activities.⁷

Human rights advocates and scholars alike call upon governments and the international community to develop and implement norms that protect individuals and communities from private corporate action

3. Letter from Dr. Marcos A. Orellana, United Nations Special Rapporteur on Toxics and Human Rights, et al., Off. of the High Comm’r for Hum. Rts., AL CHN 7/2025 (Jun. 11, 2025), at 1, <https://www.csosew.org/wp-content/uploads/2025/08/DownLoadPublicCommunicationFile-1.pdf> [hereinafter *Communications Letter*].

4. *Id.* at 4, 5.

5. *Id.* at 2.

6. The “triple planetary crisis” describes the crisis that humanity faces relating to climate change, environmental pollution, and the loss of biodiversity. *What is the Triple Planetary Crisis?*, UNFCCC (Apr. 13, 2022), unfccc.int/news/what-is-the-triple-planetary-crisis; see also *UN General Assembly Declares Access to Clean and Healthy Environment a Universal Human Right*, UN NEWS (July 28, 2022), <https://news.un.org/en/story/2022/07/1123482> (“Member States can come together in the collective fight against the triple planetary crisis of climate change, biodiversity loss and pollution”).

7. Nyasha Nyaungwa & Daniel Sherwood, *Namibians Demand Accountability From Dundee Precious Metals*, HUNTERBROOK MEDIA (Daniel Sherwood ed.) (May 2, 2024), <https://hntrbrk.com/dundee/>.

violating environmental human rights.⁸ As such, I focus this article on the need to join these strong voices in calling for corporate accountability⁹ in relation to the protection of human rights and the environment. This article is a product of a multi-year clinic project that seeks to work towards justice efforts in Namibia.¹⁰ Particularly, this project has focused on investigating the historic and persistent gross human rights violations in the extractive industry sector in Tsumeb.¹¹ The work of the International Human Rights Clinic (“clinic”) at the University of Illinois Chicago School of Law has consisted in the investigation of the human rights crisis in Tsumeb. The clinic focused on investigating the impact of the Smelter’s environmental and water pollution on surrounding communities, as well as the Smelter’s egregious labor practices. This investigation consisted in the gathering and examining of thousands of pieces of documentary evidence, and testimonials of experts and directly impacted persons affected by this crisis. While this article is informed by this investigation, it will not

8. Obligations of States in Respect of Climate Change, Advisory Opinion OC-32/25, Inter-Am. Ct. H.R. (July 3, 2025); *Ligue Ivoirienne des Droits de l’Homme (LIDHO) v. Republic of Côte d’Ivoire*, No. 041/2016, Judgment, African Court on Human and Peoples’ Rights [Afr. Ct. H.P.R.], para. 247 (Sept. 5, 2023) <https://www.african-court.org/cpmt/storage/app/uploads/public/64f/ebd/f77/64febd77f811512395983.pdf> (on file with author); *Soc. & Econ. Rts. Action Ctr. (SERAC) v. Nigeria*, Comm. No. 155/96, African Commission on Human and Peoples’ Rights [Afr. Comm’n H.P.R.], ¶. 57 (Oct. 27, 2001), <https://africanlii.org/en/akn/aa-au/judgment/achpr/2001/35/eng@2001-10-27>.

9. Corporate accountability or corporate social accountability is an important area concerning accountability relating to corporate activities. While there is no generally accepted definition, it has been an area of study and practice where “the ability of those affected by a corporation to hold corporations to account for their operations.” Kanchan Lata Tripathi, *Corporate Accountability: A Review*, SSRG INT’L J. ECONS. & MGMT. STUD. 101, 101 (2016), https://www.researchgate.net/publication/314648863_Corporate_Accountability_A_Review.

10. Namibia is an independent nation in the west coast of Africa, bordering Angola in the north; Botswana, Zambia, and Zimbabwe in the east; and South Africa on the south; with its west coast to the Atlantic Ocean. *Political Map of Namibia*, NATIONS ONLINE PROJECT, <https://www.nationsonline.org/oneworld/map/namibia-political-map.htm> (last visited Oct. 26, 2025).

11. Tsumeb is a city located in north-central Namibia. It has been home to one of the world’s only smelters to treat copper concentrate, sulfuric acid, and arsenic trioxide. Tsumeb, ENCYC. BRITANNICA (Dec. 4, 2025), <https://www.britannica.com/place/Tsumeb>; *Namibian Custom Smelter, Tsumeb, Namibia*, EJGLOBAL ATLAS OF ENVIRONMENTAL JUSTICE, (Apr. 25, 2022), <https://ejatlas.org/print/tsumeb-smelter> [hereinafter *Atlas of Environmental Justice*].

disclose confidential information or replace the important advocacy work performed by the clinic. Instead, this article seeks to engage critically with existing neocolonial frameworks and persistent State and corporate practices that continue to subjugate individuals and communities reliant on the mining and smelting industries in Namibia. This article posits that this post-Apartheid neocolonial framework continues to perpetuate abuses of human rights of those who have been historically and persistently marginalized in Namibia, especially in and around Tsumeb.

The writing of this article raises important questions about engaging in human rights scholarly work from outside of Namibia and Africa, and particularly from a place of privilege in the West and in Academia. In this regard, I echo the words of Dr. Fatima Müller-Friedman, a scholar in The Netherlands working in the field of architecture and in Namibia: “I recognize the liberties I am taking by reflecting critically from the security of academic (and from a continent away) on those who are engaged in the very real and important challenge of urban practice in Namibia.”¹² Müller-Friedman’s work focused on post-Apartheid architecture in Namibia, but some of the questions she poses are integral to my own reflection in writing this article and engaging in human rights work in Namibia. One of those core questions being, how one engages in this work when post-Apartheid work is inherently political and a historic continuity of discrimination, exclusion, and marginalization? Other questions in my own reflection are how do we engage in this work ethically and compassionately without imposing our own Western views, including Western-oriented international legal frameworks seeking to provide justice? How can we acknowledge our place as observers and compassionate advocates while trying to work with those who are suffering injustices and putting themselves at risk? Finally, what is our responsibility as outsiders when those on the ground are punished and silenced for speaking up against powerful State and corporate entities continuing to exploit them and violate their human rights? In posing these questions I reflect on the work of Africana Studies scholar, Professor Angi Porter, who posits that as legal scholars we must consider the framework and origins of “Western Law and African people as a story

12. Fatima Müller-Friedman, *Toward a (Post)apartheid Architecture? A View from Namibia*, 23 *PLANNING PERSPS.*, 29, 30 (2008), <https://doi.org/10.1080/02665430701738008>.

of the interactions between two *systems*.”¹³ That our work must center the experience of the *Maafa*; the “great suffering of our people” in Africa, the “‘disaster’ of enslavement and colonization.”¹⁴

I. HISTORICAL BACKGROUND

GERMAN COLONIAL VIOLENCE IN SOUTH WEST AFRICA (PRESENT DAY NAMIBIA)¹⁵

Irrespective of the inherently charged nature of colonial violence, it must be acknowledged as its role in modern day issues cannot be understated. Namibia’s history is complex with German and South African colonialism starting in the late 1800s/early 1900s with German settlers formalizing their occupation in present-day Namibia.¹⁶ German settlers arrived in Namibia, as part of a widespread policy of expansion and colonization of Africa in “Tanzania, Burundi, Rwanda, Namibia, Cameroon, Togo, and Ghana.”¹⁷ Europeans and others carved Africa for themselves (“scramble for Africa”) during the Berlin

13. Angi Porter, *Africana Legal Studies: A New Theoretical Approach to Law & Protocol*, 27 MICH L. REV. 249, 253 (2022).

14. *Id.* at 255 (citing MARIMBA ANI, YURUGU: AN AFRICAN-CENTERED CRITIQUE OF EUROPEAN CULTURAL THOUGHT AND BEHAVIOR xxi (1994)).

15. I will refer to South West Africa when discussing early historical records but will transition to using “Namibia” as it was a symbolic change in the actualization of the right of self-determination of Namibian people.

16. Greg Beyer, *Germans in South West Africa: A History of Colonization & Genocide*, THE COLLECTOR (Sep. 19, 2023), www.thecollector.com/german-colonization-southwest-africa/ (explaining Germans first arrived to proselytize local peoples since 1840, with the German Rhenish Missionary Society establishing and building churches in the area after the British (London Missionary Society) had failed to convert the Nama people); Reginald Herbold Green, *The Road to Namibia*, ENCYC. BRITANNICA, (Jan. 21, 2026), <https://www.britannica.com/place/Namibia/The-road-to-Namibia> [hereinafter *The Road to Namibia*] (discussing Namibia becoming independent from South Africa); *12 June 1968: South West Africa Renamed to ‘Namibia’*, THE NAMIBIAN, (Jun. 12, 2020), www.namibian.com.na/12-june-1968-south-west-africa-renamed-to-namibia/ (reporting that Namibia became officially known as Namibia in 1968 when the United Nations General Assembly renamed the country).

17. Bettina Mittelstraß, *140-Year Berlin–West Africa Conference*, DEUTSCHLAND.DE (Nov. 13, 2024), <https://www.deutschland.de/en/topic/culture/140-year-berlin-west-africa-conference#:~:text=The%20German%20Empire%20maintained%20numerous%20colonies%2C>.

Conference without regard for its people.¹⁸ Britain, France, Portugal, the Netherlands, Denmark, Spain, Italy, Belgium, Austria-Hungary, Russia, Sweden-Norway, the Ottoman Empire, the United States, and Germany, sought to control and exploit the resources and people in the African continent.¹⁹ This conference excluded any African representatives of the already recognized Ethiopia, Liberia and Zanzibar.²⁰ German occupation ensured the control of natural resources such as gold, copper, and diamonds in then-South West Africa, through the German colonial society Deutsche Kolonialgesellschaft für Südwest-Afrika (DKGSWA) created to oversee colonial interests.²¹ This exploitation of South West African territory and its natural resources was exercised through the widespread systematic policy of seizing lands, enslavement, rape, and murder.²² Indigenous²³ groups, the Nama and Herero peoples, fought a war of resistance against the Germans, known now as the Namibian War.²⁴ The Herero and Nama's armed resistance was an anti-colonial struggle for self-determination and freedom from violent colonial oppression.²⁵ However, the Germans waged such brutal violence that

18. Diplo Faloyin, *Africa Is Not a Country: Breaking Down Stereotypes*, 27 (Penguin Random House UK 2022) (on file with author); Shola Lawal, 'No One Talks About This': Remembering Germany's Role in Colonizing Africa, AL JAZEERA (Feb. 26, 2025), www.aljazeera.com/features/2025/2/26/no-one-talks-about-this-remembering-germanys-role-in-colonising-africa (Feb. 28, 2025 at 11:57 AM GMT).

19. Matt Rosenberg, *The Berlin Conference to Divide Africa*, ThoughtCo. <https://www.thoughtco.com/berlin-conference-1884-1885-divide-africa-1433556> (May 8, 2025).

20. Lawal, *infra* note 26.

21. Beyer, *supra* note 16.

22. *Id.*

23. The term "Indigenous" refers to the peoples who have been native to present-day Namibia before German and South African colonial rule. The history of forced segregating Indigenous peoples is a notorious practice that sought to divide and exploit identity, culture, and geographic location of different peoples in Namibia, which is outside the scope of this article, but important to mention. *Namibia*, INT'L WORKING GRP. FOR INDIGENOUS AFFS., <https://iwgia.org/en/namibia.html>.

24. REINHART KÖBLER, "Postcolonial Asymmetry: Coping with the Consequences of Genocide between Namibia and Germany, in POSTCOLONIALISM CROSS-EXAMINED: MULTIDIRECTIONAL PERSPECTIVES ON IMPERIAL AND COLONIAL PASTS AND THE NEOCOLONIAL PRESENT 120 (Monika Albrecht ed., Routledge 2019).

25. Henning Melber, *Namibia: The German Roots of Apartheid*, 27 RACE & CLASS 1, 75 (1985).

it was characterized as an “intentional extermination attempt” against the Nama and Herero.²⁶

During their rule of South West Africa, the German Colonial army perpetrated the first genocide of the twentieth century, also known as “Germany’s forgotten genocide.”²⁷ Germany’s actions centered on destroying the Nama and Herero peoples.²⁸ Their actions included brutal violence, poisoning of water sources, mass displacement into barren lands outside of what was considered colonial territory, expropriation of lands, and large-scale settlement of white colonial settlers.²⁹ The Herero people, who after mass displacement survived the Kalahari desert, were imprisoned in concentration camps, abused, subjected to sexual violence, and enslaved.³⁰ Children born to German fathers who had raped their mothers in the concentration camps were experimented on in the name of eugenics, studying racial “purity” for children born of mixed races.³¹ Similarly, the Nama people also faced massive human rights violations from the German colonial authorities and white German settlers.³² The expansion of the German settlers and colonial authorities in Namibian land, along with exploitation and export of Namibian resources, was by design.³³

26. Shola Lawal, *How to Pay for Genocide: Namibian Victims of German Colonialism Want a Say*, AL JAZEERA (Dec. 23, 2023), <https://www.aljazeera.com/features/2023/12/23/how-to-pay-for-genocide-the-cost-of-germanys-colonial-crimes-in-namibia>.

27. KÖBLER, *supra* note 24 at 119-20; Natasha Booty, *Namibia Marks Colonial Genocide as Reparations Hang in the Balance*, BBC, (May 28, 2025), <https://www.bbc.com/news/articles/cy0jkynyn2o>

28. *Herero Genocide in Namibia*, MONTREAL HOLOCAUST MUSEUM, <https://museeholocauste.ca/en/resources-training/herero-genocide-namibia/> [hereinafter *Herero Genocide*] (last visited Aug. 10, 2025) (explaining that on October 2, 1902, German colonial commanding General Lothar von Trotha asserted his intention and plans to eliminate the Herero people from the colony: “The Herero are no longer German subjects . . . Any Herero sighted within the [Namibian] German borders with or without a weapon, with or without cattle, will be shot. I will no longer accept women and children but will send them back to their people or let them be slaughtered.”); KÖBLER, *supra* note 24 at 120.

29. KÖBLER, *supra* note 24 at 120.

30. *Herero Genocide*, *supra* note 28.

31. *Id.*; Norimitsu Onishi, *Germany Grapples With its African Genocide*, N. Y. TIMES, (Dec. 29, 2016), <https://www.nytimes.com/2016/12/29/world/africa/germany-genocide-namibia-holocaust.html>.

32. Melber, *supra* note 25 at 71-72.

33. *Id.* at 72.

After waging a violent and genocidal war against the Herero³⁴ and Nama resistance, Germany pushed the Nama and Herero to reserves while transferring their (Nama and Herero) land to white German settlers.³⁵ German settlers stole the Nama and Herero valuable cattle and extracted valuable raw materials such as zinc and copper from their lands, with Tsumeb being one of the important mines of extractivism in the then South-West Africa.³⁶ German expropriation of the land and its resources was a central feature of the genocide.³⁷ In addition to continued support of settler communities from violently taking Namibian lands and forcing Black³⁸ Namibians to work as slave labor, in 1905, the German colonial authorities prohibited the non-Ovambo³⁹ peoples from entering the north of Namibia.⁴⁰ In that same year, it expropriated the lands in Ovamboland, thus extending its forced acquisition of Namibian lands, cattle, and natural resources.⁴¹ Along with the forced displacement and geographic segregation, the 1905 law prohibited interracial marriage, further cementing into law a

34. KÖBLER, *supra* note 24 at 120.

35. Lawal, *supra* note 26.

36. *Id.*; Tsumeb, ENCYC. BRITANNICA, (Dec. 4, 2025), <https://www.britannica.com/place/Tsumeb>.

37. KÖBLER, *supra* note 24 at 119.

38. Heike Becker, *From 'to die a tribe and be Born a Nation' Towards 'Culture, the Foundation of a Nation': the Shifting Politics and Aesthetics of Namibian Nationalism*, 18 J. NAMIBIAN STUD., 21 21-35 (2015) (intentionally capitalizing “Black” to refer to Black Namibians who represent the majority of the population in Namibia, and who have also been historically excluded and marginalized due to racists colonial policies under German rule and Apartheid under South Africa. This article does not delve into policies affecting mixed-race populations (often called “Coloured”), since the disparities between the white population and Black population are the most significant for purposes of this discussion. Additionally, Black nationalism was a cornerstone of the Namibian liberation movement and fight for the human right to self-determination during the colonial era and struggle from South African Apartheid).

39. *Ovambo / Ambo / Aawambo / Ovawambo*, 101 LAST TRIBES, <https://www.101lasttribes.com/tribes/ovambo.html> (last visited Aug. 11, 2025) (revealing the Ovambo people are the single largest ethnic group in Namibia, from “north-central Namibia (Oshana, Ohangwena, Omusati, and Oshikoto regions), and south-central Angola.”). The Ovambo have close cultural, linguistic and historical ties to the Herero and the Kavango people in Namibia. *Id.* Their pastoral nomadic lifestyle resulted in their exclusion from German colonial rule. *Id.* Later under South African rule, the Ovambo people became subject to South Africa’s chiefdoms. *Id.*

40. Melber, *supra* note 25, at 74.

41. *Id.*

practice forced by the colonial authorities. Similarly, the law required Black Namibians to hold a pass detailing their identity, labor contracts, and geographic limitations, limiting freedom of movement and strengthening the systematic implementation of the oppressive regime.⁴²

Overall, the German colonial authorities developed a colonial economy and control over the territory and population based on racist eugenic philosophy. The creation and administration of colonial law and practice was grounded in the economic, social, cultural, and physical subjugation of Black Namibians.⁴³ This violent campaigning of expropriating lands and forced displacement and labor, set the roots for the Apartheid system later implemented under South African rule.⁴⁴

Presently, the German-speaking community continue to own significant land territory in Namibia, which is still at the core of Namibians' memory of the genocide. After an offer in 2021 from the German government in providing development funds to be paid out over 30 years, Namibian whose ancestors were genocide victims have been clear that "We want our land. Money is nothing."⁴⁵ Descendants of the Nama and Herero continue to seek reparations today for the genocide.⁴⁶

42. *Id.* at 75.

43. *Id.* at 74.

44. *Id.*

45. Natasha Booty, *Namibia marks colonial genocide as reparations hang in the balance*, BBC (May 28, 2025) www.bbc.com/news/articles/cy0jkyln2o; Nyasha Nyaungwa, *Namibian communities demand return of land in dispute over German genocide legacy*, REUTERS (Mar. 7, 2024) www.reuters.com/world/africa/namibian-communities-demand-return-land-dispute-over-german-genocide-legacy-2024-03-07/ (quoting Mutjinde Katjiua, leader within the Ovaherero Traditional Authority: "What we have now is a bilateral agreement to fund development aid. It's not even reparations and something to do with genocide," "Germany must come to the table, discuss with us, negotiate with Hereros and Namas, and together we agree on what is appropriate to repair the damage (caused)").

46. Kate Connolly, *UN Representatives Criticize Germany Over Reparations for Colonial Crimes in Namibia*, IBW21 (May 1, 2023), ibw21.org/reparations/un-representatives-criticise-germany-over-reparations-for-colonial-crimes-in-namibia/#:~:text=By%20Kate%20Connolly%2C%20The%20Guardian%20%E2%80%94%20UN%20special,over%20reparations%20for%20colonial%20crimes%20against%20their%20ancestors.

SOUTH AFRICA'S OCCUPATION OF NAMIBIA

After Germany's defeat in World War I, the then League of Nations,⁴⁷ mandated that South-West Africa (present day Namibia) be placed under South Africa's administration.⁴⁸ South-West Africa was "conferred" from Germany to the United Kingdom on behalf of the Union of South Africa, under the *Mandate Agreement Regarding German South-West Africa of 17 December 1920* ("1920 Mandate").⁴⁹ This mandate provided that South Africa would have "full power of administration and legislation" to "apply the laws of the Union of South Africa" to South West Africa.⁵⁰ This mandate continued until the League of Nations disbanded in 1946.⁵¹

In reality, this meant that Namibia remained under an oppressive colonial rule. Despite the semantic difference, people suffered the systemic violence and brutalization under a vicious Apartheid system.⁵² In that same year (1946), the United Nations General

47. *Predecessor: The League of Nations*, UNITED NATIONS, <https://www.un.org/en/about-us/history-of-the-un/predecessor> (last visited Aug. 11, 2025) (recalling the League of Nations was an international organization established after World War I with the purpose to maintain world peace. It was the predecessor to the United Nations).

48. *A Brief History of Namibia*, NAMIBIA HIGH COMMISSION LONDON, <https://www.namibiahc.org.uk/history.php> (last visited Apr. 21, 2024).

49. League of Nations, *Mandate for German South West Africa*, December 17, 1920, 33 L.N.T.S. 118.

50. *Id.*

51. *Namibia - UNTAG Background*, UNITED NATIONS PEACEKEEPING, <https://peacekeeping.un.org/mission/past/untagFT.htm#Background> (last visited Aug. 11, 2025) [hereinafter UNTAG].

52. A system of Apartheid establishes policies and practices grounded in racial segregation and discrimination that include but are not limited to the following treatment based on the membership of a person or persons belonging to a racial group(s): denial to the right to life and liberty of person; murder; infliction of serious bodily or mental harm, by the infringement of their freedom of dignity, torture, or other cruel, inhuman or degrading treatment or punishment; arbitrary arrest or illegal imprisonment; deliberate imposition of living conditions designed to cause their physical destruction in part or in whole; legislative or other measure to prevent political, social, economic, and cultural participation and full development, realization of human rights and freedoms; any measures designed to divide the population along racial lines, with the creation of separate reserves or ghettos; prohibition of mixed marriages; expropriation of lands; exploitation of labor, including submitting them to forced labour; and persecution because of their opposition to Apartheid. International Convention on the Suppression and

Assembly recommended that Namibia be placed under the Trusteeship System;⁵³ South Africa refused.⁵⁴ In response the United Nations General Assembly requested that the International Court of Justice (“ICJ”) review and provide an Advisory Opinion⁵⁵ on South Africa’s international obligation to then-South West Africa as a territory.⁵⁶ In its Advisory Opinion *International Status of South-West Africa*, the ICJ affirmed that South West Africa was a territory under the Mandate (as per the 1920 Mandate).⁵⁷ As such, South Africa continued to have an obligation to its administration as a territory supervised under the terms in the 1920 Mandate, under the United Nations General Assembly’s supervisory authority.⁵⁸

In 1966, the United Nations General Assembly (“UN General Assembly”) adopted its resolution on *The Situation in Namibia*, declaring Namibia be placed under the direct responsibility of the United Nations Council for South West Africa until independence; because South Africa had failed to fulfil its international obligations by annexing it and continued to extend its Apartheid regime in South

Punishment of the Crime of Apartheid, G.A. res. 3068 (XXVIII), 28 U.N. GAOR Supp. (No. 30), at 75, U.N. Doc. A/9030 (1974), 1015 U.N.T.S. 243, Art. 2, https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.10_International%20Convention%20on%20the%20Suppression%20and%20Punishment%20of%20the%20Crime%20of%20Apartheid.pdf

53. *Id.*

54. *Trusteeship Council*, United Nations, <https://www.un.org/en/about-us/trusteeship-council> (last visited Aug. 11, 2025) (elaborating that the United Nations Trusteeship Council an organ of the United Nations, was tasked to supervise the administration of territories placed under its review. The primary objective of the Trusteeship System was to “promote the advancement of the inhabitants of Trust Territories and their progressive development towards self-government or independence”).

55. Hugh Thirlway, *Advisory Opinion*, OXFORD PUBLIC INTERNATIONAL LAW, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e4> (last updated Apr. 2006) (defining an Advisory Opinion as a judicial opinion on a legal question needing interpretation generally in the context of international law).

56. *International Status of South-West Africa*, Advisory Opinion, International Court of Justice, 1950 I.C.J. 128 (Jul. 11, 1950) (available at <https://www.icj-cij.org/sites/default/files/case-related/10/010-19491227-REQ-1-00-EN.pdf>).

57. *Id.*

58. *Id.*

West Africa.⁵⁹ Between 1968 and 1970, the United Nations Security Council (“UN Security Council”) recognized that the Mandate had ended and South Africa’s continued occupation of Namibia was “illegal and invalid.”⁶⁰ The UN Security Council found that South Africa’s continued oppression of Namibians and the use of the Apartheid system in Namibia was a violation of international human rights law.⁶¹ The UN Security Council requested that the ICJ consider the legality of South Africa’s occupation of Namibia, and in 1971, the ICJ held that the occupation was illegal and that South Africa was under the obligation to withdraw from Namibia immediately.⁶² However, South Africa refused to comply with the ICJ’s Advisory Opinion requiring it to immediately withdraw and continued to occupy Namibia with its repressive regime of Apartheid, Bantustanization, and exploitation of its resources.⁶³

SOUTH AFRICA’S APARTHEID, BANTUSTANIZATION, AND EXPLOITATION OF NAMIBIA’S RESOURCES

As mentioned, the history of Namibia’s past with Apartheid began before South Africa’s occupation of Namibia. The foundation of an oppressive system for Apartheid was laid by German colonial rule. Under German rule, Black Namibians were intentionally and systematically subjugated, with the genocide of the Herero and Nama peoples, forced displacement and *de jure* segregation, enslavement and forced labor, and forced sterilization in the name of eugenics.⁶⁴

59. UNTAG, *supra* note 51; G.A. Res. 2145 (XXI), U.N. Doc. A/RES/2145 (XXI) (Oct. 27, 1966) (available at [https://docs.un.org/en/a/res/2145\(xxi\)](https://docs.un.org/en/a/res/2145(xxi))).

60. S.C. Res. 276, ¶ 2, U.N. Doc. (Jan. 30, 1970), www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Chap%20VII%20SRES%20276.pdf.

61. *Id.* (“[T]he extension and enforcement of South African laws in the Territory together with the continued detentions, trials and subsequent sentencing of Namibians by the Government of South Africa constitute illegal acts and flagrant violations of the rights of the Namibians concerned, the Universal Declaration of Human Rights and the international status of the Territory”).

62. Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding S.C. Res. 276 (1970), Advisory Opinion, 1971 I.C.J. 78, 78 (Jun. 21, 1971), <https://www.icj-cij.org/sites/default/files/case-related/53/5597.pdf> [hereinafter *Legal Consequences*].

63. UNTAG, *supra* note 51.

64. Melber, *supra* note 25, at 71-74; Onishi, *supra* note 31.

Further, since occupation (in Namibia), South Africa's brutal Apartheid system dictated land division, labor policies, education, work opportunities, where individuals lived, how they could move throughout the territory, and who held legal and political authority over them.⁶⁵ The cornerstone of this racist system was the implementation of the Bantustans.⁶⁶ In South Africa and in Namibia, Bantustans divided Black peoples into ethnically distinct groups and assigned them "homelands."⁶⁷ In Namibia, the "homelands"—which included Damaraland, Namaland, Kaokoland, Okavango, Ovamboland, East Caprivi and Bushmandland—restricted the territory where Black Namibians could live, grow crops, and raise their livestock.⁶⁸

The education of Blacks within this system promoted ideas of white superiority and Black inferiority.⁶⁹ The former president of South West Africa People's Organization (SWAPO), Sam Nujoma: "Bantu education is simply brain-washing the African to believe that he's inferior to the white . . . to prepare him for a life of laboring for the white 'baas.'"⁷⁰ Schools within this system perpetuated differences between white and Black children by preventing Black children from learning English or Afrikaans at the same proficiency level as white

65. G.A. Res. 3068 (XXVIII), *International Convention on the Suppression and Punishment of the Crime of Apartheid* at 75, U.N. Doc. A/9030 (July 18, 1976), at arts. 1–2 (defining apartheid as a system of policies and practices of racial segregation and discrimination; these systems were established and maintained for the domination of one racial group of persons over other racial groups of persons for their systematic oppression); see also *Apartheid Extended: South Africa's Illegal Occupation of Namibia*, WASH. OFF. ON AFR. EDUC. FUND (Nov.1986), <https://africanactivist.msu.edu/recordFiles/210-849-20521/woaef11-86opt.pdf>; MARION O'CALLAGHAN, NAMIBIA: THE EFFECTS OF APARTHEID ON CULTURE AND EDUCATION 11 (1977) [hereinafter *CULTURE AND EDUCATION*] (clarifying South Africa officially "extended" a system of Apartheid, as an alleged position to implement its racist policies in Namibia).

66. *Bantustans*, SOUTH AFRICA: OVERCOMING APARTHEID, <https://overcomingapartheid.msu.edu/multimedia.php?kid=163-582-19> (last visited Aug. 11, 2025).

67. *Id.*; see also *CULTURE AND EDUCATION*, *supra* note 65, at 42.

68. Eduard Gargallo, *Beyond Black and White: Ethnicity and Land Reform in Namibia*, 120 *POLITIQUE AFRICAINE* 152, 156–57 (2010).

69. Christopher A. Leu, *Opposition to Apartheid in Namibia: The Role of Education, Religion and the Contract System*, 9 *UFAHAMU: J. AFR. STUD.*, 111, 111–12 (1979).

70. *Id.* at 112.

children.⁷¹ This would later prevent Black children from accessing government, industry, financial and professional circles.⁷² Bantu education's promotion of linguistic apartheid resulted in high dropout rates and levels of illiteracy forcing individuals into lower skilled and exploitative work.⁷³

Outside of the "homelands" was considered territory of the five-percent white population, who could freely access education, medical facilities, and modern houses.⁷⁴ In order to move throughout Namibia, Black Namibians were required to carry passes to leave their reserve, obtain work, and move throughout the territory.⁷⁵ Their engagement in the labor market was based in the contract system. The contract system used migratory labor within Namibia to support exploitative industries, including mining and agriculture, to serve South African or foreign-owned enterprises.⁷⁶ Those working within the contract system were required to work for one year under exploitative conditions without protections relating to working hours, living conditions, or access to basic services.⁷⁷ During Apartheid this contract system controlled all facets of recruitment, wages, housing conditions, food, and their confinement to the compound facilities.⁷⁸ The nature of a migrant worker system and lack of a permanent industrial force meant that workers were forced to rely on subsistence farming for several months each year or to commute to see their families because of the lack of housing and other basic (health and social) services near their employment.⁷⁹ Workers in the mines were exposed to toxics

71. Basic Education Act 3 of 2020, GG 7257, (2020); Leu, *supra* note 69 at 116–17 (describing how many Namibians do not speak English and have been excluded from education and professional opportunities based on their racial identity).

72. Leu, *supra* note 69, at 116.

73. *Id.* at 116, 119 (stating White children were taught in Afrikaans and English, the two languages of access under Apartheid); CULTURE AND EDUCATION, *supra* note 66 at 88 (discussing the impact of illiteracy on employment).

74. CULTURE AND EDUCATION, *supra* note 65, at 80, 86.

75. *Id.* at 89.

76. *Id.* at 86 (recounting that the South West African Native Labour Association (SWANLA) was created to ensure that labor could be supplied to the mining and agricultural industry without competition while maintaining cheap labor).

77. *Id.* at 87, 89.

78. *Id.* at 89 (stating the compound system was more than a housing facility; it served as a method of controlling laborers while under contracts).

79. Ali Sarawar Naqvi, *Foreign Enterprise and Labor Exploitation in Namibia: A Report of the U.N. Council for Namibia*, 13 J. OPINION, 35, 38 (1984) [hereinafter

without proper protections or the ability to unionize.⁸⁰ They were not given adequate medical treatment or information relating to the source of their injuries and health conditions.⁸¹

Bantustan policy was grounded on the segregation of groups by race and ethnicity and the subsequent restriction of their ability to engage with social and political systems. The Bantustans functioned as reserves of cheap mobile labor for whites.⁸² South African rule through Bantustans and its reinforcement of tribal hierarchical control of territories, reinforced a system of deep inequities without access to a central government, political participatory processes, and basic services.⁸³

Similarly, South Africa's exploitation of Namibian natural resources was at the center of economic activities while occupying Namibia. Namibia's rich natural resources, including minerals, the fishing industry, and agricultural products were extracted and exploited for South Africa's economic and colonial dominion over Namibia during its occupation.⁸⁴ For example, during the time of South Africa's occupation, the mining industry contributed almost half of Namibia's GDP, while only relying on 10% of the Namibian labor force.⁸⁵ Similarly, commercial agriculture (95% of marketed output) was primarily controlled by 5,000 white farmers.⁸⁶ The rampant exploitation of Namibia's fishing resources by South African and foreign corporations resulted in the significant depletion of Namibia's marine resources.⁸⁷

Namibia's resource extraction was so ruthless that in 1974, the U.N. General Assembly approved Decrees No. 1 for the Protection of the

Exploitation in Namibia]; Lurgen Lenggenhager et al., *Turning Land Into Money*, 11 *Rev. of Agrarian Studies* 3, 4 (2021).

80. *Id.* at 37–38.

81. *Communications Letter*, *supra* note 3, at 7.

82. CULTURE AND EDUCATION, *supra* note 65 at 9.

83. *See id.* at 10.

84. *Exploitation in Namibia*, *supra* note 79 at 35.

85. *Id.* at 35 (detailing Namibia's gross domestic product represented the total value of goods and services produced in Namibia while being a territory of South Africa, and the gross national product was after payments to foreign entities were made).

86. *Id.*

87. *Id.*

Natural Resources of Namibia, enacted by the United Nations Council for Namibia.⁸⁸ The Decrees No. 1 declared that:

[N]o person or entity, whether a body corporate or unincorporated, may research for, prospect for, explore for, take, extract, mine, process, refine, use, sell, export, or distribute any natural resource whether animal or mineral, situated or found to be situated within the territorial limits of Namibia without the consent and permission of the United Nations Council for Namibia or any person authorized to act on its behalf for the purpose of giving such permission or consent.⁸⁹

Despite these efforts by the international community, South Africa continued its campaign for inequitable resource extraction and distribution of resources in Namibia.⁹⁰ In 1980, white per capita income represented R3,000 and for Blacks, including wage and subsistence earners, was R125.⁹¹ For those living in the reserves and “homelands” the per capita income was significantly less.⁹²

During this time, South Africa controlled and authorized foreign economic activities in Namibia. It provided licenses to corporations and financial entities from South Africa, Western Europe (France, Italy, Netherlands, Spain, Switzerland, Germany, and the United Kingdom), North America (Canada and the United States), and Hong Kong.⁹³ The lure for foreign corporations was based on the significant natural resources in Namibia that South Africa extracted or authorized to be extracted, and an abundance of cheap and enslaved labor force.⁹⁴ The three major corporations controlling the mining sector were Diamond Mines of South West Africa, Ltd (CDM), Rössing Uranium,

88. U.N. GAOR, 35th Sess., U.N. Doc. A/35/24 (1980); Legal Consequences, *supra* note 63.

89. G.A. Res. 3295 (XXIX), Decree No. 1 for the Protection of the Natural Resources of Namibia, (Dec. 13, 1974).

90. Exploitation in Namibia, *supra* note 79 at 35.

91. *Id.*

92. *Id.*

93. *Id.* at 36.

94. *Id.* at 35–36.

Ltd., and Tsumeb Corporation, Ltd., all foreign controlled corporations.⁹⁵

NAMIBIA'S LIBERATION STRUGGLE

The Namibian liberation struggle has strong roots that date back to the aforementioned Nama and Herero fight against German colonial dominion. Historians and Namibians who experienced South African occupation and Apartheid first-hand, recognize the Namibian liberation struggle as the struggle from South African rule. As a movement, the liberation struggle for independence predominantly took place between 1966 through 1990 when Namibia achieved independence. It was characterized by a decades-long political and armed struggle against South Africa, led by South West Africa People's Organization (SWAPO).⁹⁶ The fight for independence in Namibia was centered around the fight against Apartheid, racial and economic segregation and discrimination, as well as the right to self-determination.

II. PRESENT-DAY NAMIBIA

DECOLONIZATION AND SWAPO

Namibia gained independence on March 21, 1990.⁹⁷ The liberation and independence movement was hard fought through grassroots activism, civic mobilization, re-education campaigns, and the international community's support of Namibia's independence; the Namibian transfer of power included the historic liberation from white settler rule to Black Namibians establishing a constitutional democracy.⁹⁸ The Namibian liberation efforts had started early on against Germans (with the aforementioned Nama and Herero resistance) and subsequent South African rule with various forms of

95. *Id.* at 36 (revealing these corporations were the major holders of the uranium, diamond, and smelting industry in and around 1984, with intermediate companies, shareholdings, and overlapping directorates).

96. See discussion *infra* Part II.

97. *The Road to Namibia*, *supra* note 16.

98. Christopher Saunders, *The Transitions from Apartheid to Democracy in Namibia and South Africa in the Context of Decolonization*, 1 J. COLONIALISM & COLONIAL HIST. (2000).

struggle. The creation of the South West Africa People's Organization (SWAPO) was the primary Black African nationalist movement (in Namibia).⁹⁹ The center of SWAPO's agenda as a Black liberation movement, was grounded in class struggle, and political and social freedom.¹⁰⁰ In 1961 SWAPO issued three broad goals:

[t]o establish a free, democratic government in SWA [South West Africa] . . . to unify all the people [and to] . . . reconstruct the economic, educational and social foundations which will support and maintain the real African independence which our people desire for themselves . . . to be allowed in SWA if it will be invested in such industries as are controlled by the South West Africans.¹⁰¹

SWAPO's origin in left-leaning and anti-imperialist rhetoric resulted in South Africa labeling it as a "communist terrorist" organization, which was and has been historically a powerful tool of discrediting liberation movements.¹⁰² But despite these campaigns, SWAPO steadily continued its efforts to engage with the United Nations and press on its anti-racists Apartheid campaign against South Africa's occupation of Namibia.¹⁰³ In 1973, the United Nations recognized SWAPO as the "sole and legitimate representative of the

99. *The Namibian Struggle for Independence – 1966–1990: A Historical Background*, SOUTH AFRICAN HIST. ONLINE (Aug. 27, 2019), <https://sahistory.org.za/article/namibian-struggle-independence-1966-1990-historical-background> [hereinafter *Namibian Struggle for Independence*].

100. *Id.*

101. Alejandro López, *Namibia Elections See Declining Support for Ruling SWAPO*, WORLD SOCIALIST WEB SITE (Dec. 4, 2024), <https://www.wsws.org/en/articles/2024/12/04/ufsl-d04.html> (last visited Aug. 11, 2025) [hereinafter *Declining Support for SWAPO*].

102. Jakob Zollmann, *On SWAPO's Socialism: Socialist Ideology and Practice During the Namibian Struggle for Independence, 1960 to 1989*, in *SOCIALISMES EN AFRIQUE* 593 (Françoise Blum et al. eds., 2021), <https://books.openedition.org/editionsmsh/51515?lang=en> [hereinafter *SWAPO's Socialism*].

103. *Id.*; Hidipo Hamutenya, *Namibia and Angola: Analysis of a Symbiotic Relationship*, in *NAMIBIA'S FOREIGN RELATIONS* 91 (Anton Bösl et al. eds., 2014), https://www.kas.de/c/document_library/get_file?uuid=8ad998dc-963b-caef-b9fa-f169c37e9097&groupId=252038 (understanding SWAPO's efforts in the context of Angola's independence and its effort to support the Namibian liberation struggle).

Namibian nation.”¹⁰⁴ After decades of Namibian liberation struggle and international pressure, South Africa finally engaged in the transition process ending its occupation of Namibia.¹⁰⁵ While under international law and the auspices of the United Nations Namibia was recognized to have inalienable rights to its resources, the transition to independence was characterized by the protection of South African and foreign corporate interests from Namibian ownership.¹⁰⁶

ECONOMY AND INEQUITY

Today, Namibia’s economy is still characterized by significant foreign corporate ownership. Namibia’s economy is considered an upper-middle income economy,¹⁰⁷ being above average among Sub-Saharan African countries.¹⁰⁸ It has primarily been based on the industrial sector, with a strong reliance on the extractive industry, and the production and export of primary commodities, such as beef, fish, and minerals.¹⁰⁹ Despite the Namibian government’s efforts toward economic diversification, its mining and energy sectors are the third-

104. SWAPO’s Socialism, *supra* note 102.

105. *Namibian Struggle for Independence*, *supra* note 99.

106. *Id.* UNTAG, *supra* note 51 (explaining that five Western States supported Namibia’s independence from South Africa).

107. *Middle Income Countries*, THE WORLD BANK, <https://www.worldbank.org/ext/en/region/mic> (last visited Aug. 11, 2025) (utilizing the World Bank Atlas method to define upper middle economies as those achieving a Gross National Income per capita between \$4,496 and \$13,936); *see also Trade Facilitation Program in Middle Income Countries (TFMICs)*, THE WORLD BANK, <https://www.worldbank.org/en/topic/trade/brief/trade-facilitation-program-in-middle-income-countries-tfmic> (last visited Aug. 11, 2025) (“Middle Income Countries are a diverse group by size, population and income level, and are home to 75% of the world’s population and 62% of the world’s poor. Middle Income Countries also represent about one-third of global GDP and are major engines of global growth.”).

108. *GDP (Current US\$) - Namibia*, THE WORLD BANK, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=NA> (last visited Aug. 11, 2025) (reporting Namibia’s 2022 GDP to be \$12.57 billion (USD)); *see also Namibia Ranks 7th in Sub-Saharan Africa for Economic Freedom*, THE NAMIBIAN (Jun. 3, 2025), <https://www.namibian.com.na/namibia-ranks-7th-in-sub-saharan-africa-for-economic-freedom/>.

109. *Economy*, EMBASSY OF THE REPUBLIC OF NAMIBIA IN STOCKHOLM TO SWEDEN, NORWAY, DENMARK, AND ICELAND, <https://www.embassyofnamibia.se/index.php/about-namibia/economy> (last visited Aug. 11, 2025) [hereinafter *Economy*].

largest contributors to its GDP.¹¹⁰ Namibia's extractive industry remains a major contributor propelling exports in Africa and internationally. Namibia is a significant exporter of non-fuel minerals, such as uranium, alluvial diamonds, lead, zinc, tin, silver, and tungsten.¹¹¹ Namibia also exports copper, gemstones, granite, lead products, marble, and manufactured products, with its primary export partners being South Africa, United Kingdom, and the United States.¹¹² Other significant sectors of the Namibian economy include agriculture, fishing, and tourism.¹¹³

Namibia has heavily relied on mining (extractive sector) as a primary source of economic activity and for building of infrastructure in Namibia. The National Planning Commission of Namibia recognizes:

The mining sector plays a key role in socio-economic development of many resource-rich economies. In Namibia, the sector has been and remains the backbone of the economy as reflected by its economic growth, contribution to GDP, job creation, income generation, and a key source of government fiscal receipts and foreign exchange earnings, among others.¹¹⁴

110. See Romie Nghitevelekwa, *Namibia After 30 Years of Independence*, ROSA LUXEMBURG STIFTUNG (Mar. 21, 2020), <https://www.rosalux.de/en/news/id/41788/namibia-after-30-years-of-independence> [hereinafter *30 Years of Independence*]; see also Export Processing Zones Act, 1995 (as amended through Dec. 31, 2020), <https://namiblii.org/akn/na/act/1995/9/eng@2020-12-31> (supporting that the Namibian government has made efforts to expand industry).

111. *Namibia*, THE OBSERVATORY OF ECON. COMPLEXITY, <https://oec.world/en/profile/country/nam> (last visited Aug. 11, 2025) [hereinafter *Namibia*]; *Economy*, *supra* note 109; see also G.P. Thomas, *Namibia: Mining, Minerals, and Fuel Resources*, AZOMINING (updated Feb. 3, 2020), <https://www.azominig.com/Article.aspx?ArticleID=61>

112. *Economy*, *supra* note 109.

113. *Id.*

114. VICTORIA NAMBINGA & LYDIA MUBITA, NAT'L PLANNING COMM'N, THE IMPACT OF MINING SECTOR TO THE NAMIBIA ECONOMY "ASSESSING SOCIO-ECONOMIC AND ENVIRONMENTAL EFFECTS", ii (2021), <https://www.npc.gov.na/wp-content/uploads/2022/02/The-Impact-of-Mining-sector-to-the-Namibia-economy-FINAL.pdf> [hereinafter *Mining Sector*].

Despite these strong economic export activities, Namibia continues to be one of the most unequal societies in the world.¹¹⁵ Namibia's past with the brutal Apartheid system has created lasting structural obstacles for the majority of the Black population to enjoy economic equality and access to basic resources.¹¹⁶ According to Dr. Tapiwa V. Warikandwa and Dr. Ndatega V. Asheela, three key factors in Namibia's inequality can be attributed to:

- 1) the systematic disempowerment mechanisms adopted during the apartheid era; 2) the unequal distribution of resources after the adoption of government policy initiatives such as the Mining and Minerals Policy of 2002,¹¹⁷ with the well-connected elite benefiting from the programmes; and 3) injustices caused by neoliberal market regulatory mechanisms that fall short of curbing power and economic inequality.¹¹⁸

As described by Warikandwa and Asheela, these policies are grounded in neoliberalism,¹¹⁹ placing a significant value on free trade,

115. The World Bank in Namibia: Overview, The World Bank, <https://www.worldbank.org/en/country/namibia/overview> (last visited April 21, 2024).

116. *30 Years of Independence*, *supra* note 110; *The World Bank in Namibia: Overview*, The WORLD BANK, <https://www.worldbank.org/en/country/namibia/overview> (last visited Oct. 28, 2025).

117. The Mining and Minerals Policy was designed to attract foreign investment in resource exploration and development for mining, energy and geothermal industries. Alec Crawford, Jessica Mooney, & Harmony Musiyarira, *4.0 NAMIBIA: KEY MINING INSTITUTIONS, LAWS AND POLICIES*, International Institute for Sustainable Development (IISD) Namibia 8, (Sep. 1, 2018) <https://www.jstor.org/stable/resrep21962.6?seq=1>.

118. Tapiwa V. Warikandwa & Ndatega V. Asheela, *Promoting Economic Transformation and Empowerment and "Investment Security," in Namibia: An Appraisal of the National Equitable Economic Empowerment Framework Bill*, in *GRID-LOCKED AFRICAN ECONOMIC SOVEREIGNTY: DECOLONISING THE NEO-IMPERIAL SOCIO-ECONOMIC AND LEGAL FORCE-FIELDS IN THE 21ST CENTURY*, 463, 467 (Tapiwa V. Warikandwa et al. eds., 2019) [hereinafter *Grid-Locked Ch. 18*].

119. Jonathan D. Ostry et al., *Neoliberalism: Oversold?*, FIN & DEV. June 2016, at 38, <https://www.imf.org/external/pubs/ft/fandd/2016/06/ostry.htm> (elaborating that Neoliberalism focused on two main aspects: the deregulation of markets through the promotion of free trade with an emphasis on foreign competition, and minimizing the role of the state through privatization and limited debt).

freedom of capital, and minimal state intervention.¹²⁰ Despite the Namibian government's efforts to remediate persistent inequality in social and economic life for marginalized persons, the problematic reality is that Namibia relies heavily on foreign direct investment.¹²¹ The Namibian mining and fishing industry have attracted significant foreign direct investment, as the mining industry is owned by multinational corporations from China, South Africa, United States, the United Kingdom, France, the Netherlands, Qatar, and others.¹²² Additionally, 44% of the total Namibian territory and around 70% of commercial agricultural lands is owned by white Namibians (German descendants and Afrikaners of Dutch/South African descent), who represent 0.3% of the population in Namibia.¹²³ These figures are significant because land dispossession and segregation policies were at the center of Germany's colonial policies and South Africa's Apartheid in Namibia with its effects felt today. Two-third of Namibians live in poverty, and around 44% live in multidimensional poverty.¹²⁴ Multidimensional poverty includes broad factors relating to health, living standard, and education.¹²⁵ Of particular importance to Namibia are some markers of poverty, such as lack of access to

120. Grid-Locked Ch. 18, *supra* note 118, at 464.

121. *See id.* at 463, 468; Jemima Beukes, *World Bank Study Says No to NEEEF*, NAMIBIAN SUN (May 9, 2023, 2:56 PM), www.namibiansun.com/local-news/world-bank-study-says-no-to-neeef2023-05-09 (describing the National Equitable Economic Empowerment Framework (NEEEF) Bill, while tabled, as an effort to “ensure a balanced redistribution of wealth and resources”); *see* Amarachi Orjiude-Ndibe, *Greenfield projects, investor confidence drive Namibia's \$11bn FDI inflows*, Finance in Africa (July 4, 2025), <https://financeinfrica.com/insights/investor-namibias-11bn-fdi-haul/>.

122. U.S. DEP'T OF STATE, 2024 INVESTMENT CLIMATE STATEMENTS: NAMIBIA, (2024), <https://www.state.gov/reports/2024-investment-climate-statements/namibia/> [hereinafter *Climate Statement*].

123. *See* ERIKA VON WIETERSHEIM, THIS LAND IS MY LAND!: MOTIONS AND EMOTIONS AROUND LAND REFORM IN NAMIBIA 46 n.10 (Friedrich-Ebert-Stiftung, Namibia Office, 2021); *see also*, Menzi Ndhlovu & Ronak Gopaldas, *How Alike Is Land Reform in Namibia and South Africa?*, ISS TODAY (Nov. 19, 2018), <https://issafrica.org/iss-today/how-alike-is-land-reform-in-namibia-and-south-africa> (“According to the 2018 Namibia Land Statistics report, domestic and foreign white citizens own about 70% of commercial or freehold agricultural farmland.”).

124. NAMIBIA STATISTICS AGENCY, NAMIBIA MULTIDIMENSIONAL POVERTY INDEX (MPI) REPORT 7, 22 (2021), <https://www.unicef.org/esa/media/9041/file/UNICEF-Namibia-Multidimensional-Poverty-Index-2021.pdf>.

125. *Id.* at 7.

drinking water, sanitation infrastructure, housing, access to clinics and hospitals, food security, and child nutrition.¹²⁶ Around 59.3% of Namibians living in rural areas live in poverty, compared to only 25.3% of Namibians living in urban areas.¹²⁷

Despite Black Namibians representing the vast majority of the population, around 86%, only one-sixth of Black Namibians have adequate incomes, exacerbated by the fact that they were historically segregated to rural areas of which there are higher levels of poverty.¹²⁸ This is unsurprising considering how much colonial-era injustice disenfranchised Black Namibians.¹²⁹ Economic and social inequity is carved into the foundation of Namibian society.

As the important scholar Walter Rodney posited, the consideration of exploitation imperialism in Africa must consider the West's critical role in resource extraction and Africa's political instability.¹³⁰ Rodney, stated that:

The question as to who, and what, is responsible for African underdevelopment can be answered at two levels. Firstly, the answer is that the operation of the imperialist system bears major responsibility for African economic retardation by draining African wealth and by making it impossible to develop more rapidly the resources of the continent. Secondly, one has to deal with those who manipulated the system and those who are either agents or unwitting accomplices of the said system. The capitalists of Western Europe were the ones who actively extended their exploitation from inside Europe to cover the whole of

126. *See id.* at 15.

127. *Id.* at 7.

128. Reginald Herbold Green, *Namibia*, ENCYC. BRITANNICA (Oct. 28, 2025), www.britannica.com/place/Namibia (“About 85 percent of Namibians are Black”); CULTURE AND EDUCATION, *supra* note 65 at 86; *The Legacy of Exclusion: How Namibia's Past Shapes Its Present Challenges*, NAMIBIA TODAY, (Jan. 28, 2025), <https://namibiatoday.com/the-legacy-of-exclusion-how-namibias-past-shapes-its-present-challenges/> (“The apartheid-era economic system left Black Namibians with limited access to wealth-generating opportunities . . . wealth of the country is concentrated in the hands of a few, and the Black population, particularly those in rural areas, often lacks access to the economic opportunities enjoyed by the wealthy minority.”) [hereinafter *Legacy of Exclusion*].

129. Grid-Locked Ch. 18, *supra* note 118, at 463–64.

130. Walter Rodney, *How Europe Underdeveloped Africa* 27 (rev. ed. 1981).

Africa. In recent times, they were joined, and to some extent replaced, by the capitalists from the United States; and for many years now even the workers of those metropolitan countries have benefited from the exploitation and underdevelopment of Africa.¹³¹

His work, considering Europe and the West's role in resource extraction, exploitation, and imperialism, also recognized Africa's complicity and responsibility to combat this ongoing subjugation and marginalization of Africa's most vulnerable.¹³² As such, it is critical that we consider Namibia's independent role in perpetuating this neocolonial framework of resource extraction to fully understand the context in which environmental and human rights are being violated.

NEOCOLONIALISM

According to Namibia's Office of the President, "[t]he post-independence period (between 1990 and 2018) saw the mining sector record an annual average growth of 5.0%" and continues to be "the bedrock of the Namibian economy."¹³³ However, despite the impressive output of materials produced in Namibia with copper, tin, silver, zinc, iron, tungsten, lead, manganese, vanadium, cadmium, chrome, uranium, coal, and diamonds, the exploration and extraction was and is still primarily foreign-owned.¹³⁴

Foreign corporations continue to own the majority of industry in Namibia, particularly in fishing and mining.¹³⁵ The foreign business sector and its governments consider Namibia a country with a positive investment climate due to the general protection of foreign property,

131. *Id.* at xii; *id.* at 27–28.

132. *Id.* at 280.

133. Mining Sector, *supra* note 115 at 1, 4.

134. BRIAN BOLTON, MULTINATIONAL COMPANIES OPERATING IN NAMIBIA: AN OVERVIEW 2 (1982), <https://africanactivist.msu.edu/recordFiles/210-849-29487/al.sff.document.acoa000197.pdf> (revealing the Namibian government retains minority ownership in foreign owned corporations in the extractive industry) [hereinafter *Multinational Companies in Namibia*]; see also NAMBINGA & MUBITA, *supra* note 114, at 15–23.

135. Climate Statement, *supra* note 122 ("The mining, fishing, and tourism sectors have historically attracted significant investment in Namibia.").

political stability, and constitutional transfers of powers through electoral processes.¹³⁶

Since Namibia's independence in 1990, SWAPO has steadily lost public support with growing unemployment, inequality, widespread corruption, and its close relationship with foreign corporate interests.¹³⁷ As the leading party in Namibia, SWAPO's shift towards national capitalism has cemented its close relationship with the foreign business sector. SWAPO's prioritization of foreign direct investment and its role in the extractive industry guarantees SWAPO's own enrichment, at the cost of its Namibian constituents.¹³⁸ As discussed above, Namibia is the second most unequal country in the world, with high levels of poverty and inequality along racial lines.¹³⁹ Informal settlements provide informal housing to approximately 40% of the population, lacking basic access to water, sanitation, and hygiene.¹⁴⁰ Over 1 million Namibians live in informal settlements lacking access to sanitation services and infrastructure.¹⁴¹

We are a family of eight in a shack in a community that has
no water points or toilets . . . we relieve ourselves in the

136. Climate Statement, *supra* note 122.

137. Declining Support for SWAPO, *supra* note 101; see *Orjiude-Ndibe*, *supra* note 121.

138. Meredith J. DeBoom, *Nuclear (Geo)Political Ecologies: A Hybrid Geography of Chinese Investment in Namibia's Uranium Sector*, 46 J. CURRENT CHINESE AFFS. 53, 70 (2017), <https://doi.org/10.1177/186810261704600303> (explaining that while SWAPO presents mining, uranium mining specifically, as less exploitative than mining before independence, it still disproportionately affects Namibians working and living near the mine, while the benefits of the mining are gleaned by others like SWAPO).

139. Declining Support for SWAPO, *supra* note 101; See *Legacy of Exclusion*, *supra* note 126.

140. Declining Support for SWAPO, *supra* note 101.

141. Freddie Clayton et al., *Not the Kind of Life a Human Being Should Live*, PULITZER CTR. (May 2, 2023), <https://pulitzercenter.org/stories/not-kind-life-human-being-should-live> (discussing how the lack of access to clean water and sanitation, which is a grave health concern in Namibia, causes health conditions for the Namibian population without access to these basic resources and services, but especially for children at risk of deadly fecal-oral diseases); *Namibia*, *supra* note 112 (last visited Dec. 15, 2025).

dump behind our home. When I'm on my period, it's the same place I go to the toilet and where I throw the used pads,

says Natalia Shaanika, from Swakopmund's Democratic Resettlement Community, a large informal settlement where approximately 20,000 people living without running water or sanitation (toilets or sewerage).¹⁴² Informal settlements provide housing for a striking 40% of Namibians.¹⁴³ These informal settlements ("silver houses" made from corrugated iron sheets) have continued to emerge as housing for many Namibians due to severe and profound inequality and lack of affordable housing.¹⁴⁴ Those who live in informal settlements not only lack basic access to water or sanitation services, but are vulnerable to the government or private actors owning the land on which these informal settlements have been built.¹⁴⁵

Namibia has one of the highest unemployment levels in the world.¹⁴⁶ Similarly, unemployment rates are extremely high, with youth unemployment "of over 50%."¹⁴⁷ Working conditions in Namibia are exploitative, with low wages, unsafe and unjust working conditions, and overall vulnerability to foreign corporate impunity.¹⁴⁸ Namibia's heavy reliance on foreign corporate investments and governmental corruption (including workers' unions whose alleged mission is to

142. *Id.*

143. Hopolang Phororo, *Rising from the Margins: Transforming Informal Settlements in Namibia*, U.N. SUSTAINABLE DEV. GRP. (Feb. 27, 2024), <https://unsdg.un.org/latest/stories/rising-margins-transforming-informal-settlements-namibia>.

144. *Id.*

145. Selma T. Karuaihe, *Namibia's Urban Poor are Stuck in Limbo, Without Land or Services*, UNIV. OF PRETORIA (Nov. 4, 2019), https://www.up.ac.za/research-matters/news/post_2999126-namibias-urban-poor-are-stuck-in-limbo-without-land-or-services.

146. *Namibia's Unemployment Rate Rises to 36.9%*, REUTERS (Jan. 29, 2025, 9:10 AM), <https://www.reuters.com/world/africa/namibias-unemployment-rate-rises-369-2025-01-29/>.

147. Declining Support for SWAPO, *supra* note 101.

148. Neha Mathur, *Namibian Labors are Becoming Victims of the Tyranny of Foreign Employers – Herbert Jauch Main Concern of the Namibia Labor Act*, THE WORKERS RTS. (Jul. 28, 2022, 10:33 AM), <https://www.theworkersrights.com/namibian-labors-are-becoming-victims-of-the-tyranny-of-foreign-employers-herbert-jauch-main-concern-of-the-namibia-labor-act/>.

protect workers) has led to widespread abuse of workers' rights.¹⁴⁹ Tsumeb is a quintessential example of how foreign corporations exploit Namibian workers and subject them to environmentally harmful conditions.

THE SMELTING INDUSTRY'S DESTRUCTION OF TSUMEB'S
ENVIRONMENT AND HEALTH OF ITS PEOPLE

A. Extractive Industry Impact on the Environment

Tsumeb, the largest city in the Oshikoto region in northern Namibia, is historically and currently significant in the copper smelting industry.¹⁵⁰ Since 1904, Tsumeb has had mining and smelting copper activities, which has driven the economic development in and around Tsumeb.¹⁵¹ Presently, the Tsumeb Smelter does not engage in mining, but focuses on the resource extraction through recycling of metallurgical slag left from smelting copper and other materials.¹⁵² For decades and since the 1960s, the Tsumeb Smelter focused until recently on smelting copper¹⁵³ and producing related products such as blister copper, sulfuric acid, and arsenic trioxide.¹⁵⁴ The Tsumeb

149. *Id.* (describing dehumanization of Namibian workers, including supervisors “instruct[ing] their Namibian employees to throw the bags of feces and urine in public rubbish bins in 2013”); see *Communications Letter*, *supra* note 4.

150. Mining Sector, *supra* note 114 at 16; Tsumeb, *supra* note 36.

151. Mining Sector, *supra* note 114 at 16.

152. Edgar Brandt, Metal Recycling to Target Critical Metals, NEW ERA, (Aug. 6, 2025), <https://neweralive.na/sinomine-to-invest-n2b-in-new-plant-new-multi-metal-recycling-project-to-target-critical-metals/>.

153. The copper smelting process includes the treating of the copper to produce a more refined product by separating the elemental copper from copper ore or copper concentrate through multiple sulphide oxidizing through various usages of furnaces. *Copper Mining and Processing: Processing Copper Ores*, Ariz. Superfund Rsch. Center. (last visited Dec. 15, 2025) <https://superfund.arizona.edu/resources/learning-modules-english/copper-mining-and-processing/processing-copper-ores>. Through this process, the copper ore (in dry or granulated form that looks like sand) is treated with oxygen, and other substances, to produce a molten slag. Hongyu Tian et al., *Comprehensive Review on Metallurgical Recycling and Cleaning of Copper Slag*, 168 RES., CONSERVATION & RECYCLING 105, 366–67 (2021), <https://doi.org/10.1016/j.resconrec.2020.105366>. The process of smelting the blister copper continues for several phases (recycling and refining), including using already treated material (secondary resource) with continuous heat and exposure to oxygen, to obtain a copper slag that is high enough in copper. *Id.*

154. *Atlas of Environmental Justice*, *supra* note 11.

smelter (currently owned by Sinomine¹⁵⁵) is one of the world's only smelters to treat copper concentrate due to the high toxicity levels (accepting "complex ores" or sometimes referred to as "dirty ores" for smelting).¹⁵⁶ It is unclear how Sinomine will move forward with its proposed plan to transform the Tsumeb Smelter into a more comprehensive facility for polymetallic recovery, but if so, these efforts would expand and process materials such as germanium, gallium, and zinc.¹⁵⁷

The Smelter is only five hundred meters between the arsenic landfill and the nearest school, with approximately 700 meters to a hotel, and with subterranean aquifers running under the Smelter.¹⁵⁸ Under Dundee Precious Metals (DPM), the Smelter received and processed copper ore from the Chelopech Mine in Bulgaria containing high levels of arsenic (with levels around 5.5%, above the typical 1%).¹⁵⁹ Bulgaria's own environmental regulations prevent Bulgaria from processing this copper ore themselves because it is so high in arsenic.¹⁶⁰ Instead, they offshore this highly toxic activity to Namibia.¹⁶¹

155. *Dundee Precious Metals Completes Sale of Tsumeb Smelter*, DPM METALS INC. (Aug. 30, 2024), <https://dundeeprecious.com/news-media/news-releases/dundee-precious-metals-completes-sale-of-tsumeb-sm-9466/>; Matthew Dlamini, *Chinese Firm Buys Tsumeb Smelter for N\$930m*, THE NAMIBIAN (Mar. 11, 2024), <https://www.namibian.com.na/chinese-firm-buys-tsumeb-smelter-for-n930m/> (detailing that Dundee Precious Metals (DPM) had owned the Smelter for 13 years and that the Chinese-owned company Sinomine Resource Group became the new owner of the smelter in Tsumeb).

156. Sinomine Resource Group, *Sinomine Tsumeb Smelter*, (Oct. 15, 2024) <https://en.sinomine.cn/fzjg/181.html>; Samuel Schlaefli (assisted by Ester Mbathera) *Namibia's Sacrificial Zone; A Case Study of Arsenic Poisoning in Tsumeb*, NAMIBIAN J. SOC. JUSTICE, 2 at 2. [hereinafter *Namibia's Sacrificial Zone*]

157. Polymetallic recovery includes recovering extracting various metal resources from existing materials, including from slag produced from smelting metal ores. Edgar Brandt, *Sinomine to Invest N\$2b in new plant . . . new multimetal recycling project to target critical metals*, NEW ERA, Aug. 6, 2025; *Namibia: Sinomine Project Gets Greenlight Amid Job Cuts*, ALLAFRICA (Jul. 3, 2025), allafrica.com/stories/202507030522.html.

158. Namibia's Sacrificial Zone, *supra* note 156.

159. *Id.*

160. DANIEL POPOV ET AL., *DIRTY PRECIOUS METALS: DUMPING EUROPEAN TOXIC WASTE IN TSUMEB, NAMIBIA*, (Jan. 2016), <https://bankwatch.org/wp-content/uploads/2017/06/DirtyPreciousMetals-Namibia.pdf>; *Atlas of Environmental Justice*, *supra* note 11.

161. *Id.*

Since its operation in the 1960s, but more recently since Dundee's use of the Chelopech copper ore, the Tsumeb Smelter has released toxic byproducts of arsenic trioxide, sulfuric acid, sulfuric dioxide (produced in the Smelter's acid plant), lead, cadmium, and mercury into the environment in and around Tsumeb.¹⁶²

These toxic substances have been released into the environment through various mediums, including air and water, affecting workers working in close proximity to the materials as well as community members breathing the toxic air, eating food covered with toxic dust, and drinking polluted water.¹⁶³ The Smelter's unsafe operations and poor waste management systems result in these toxic substances to be released into the environment through air, with the release of solid and gaseous emissions, airborne particles, and hazardous dust throughout the different stages of the Smelting process.¹⁶⁴ Testimonies have provides consistent information to the research performed relating to dust (gray or rust-like ash) and pollution carried by the wind, predominantly with southeastern and northeastern patterns (with the

162. *Communications Letter*, *supra* note 3, at 2.

163. V. Ettler et al., *Composition and Fate of Mine- and Smelter-Derived Particles in Soils of Humid Subtropical and Hot Semi-Arid Areas*, 563 SCI. TOTAL ENV'T. 329, 329–39 (2016) [hereinafter *Fate of Mine*]; J.E. Myers, *Health Impact Assessment for the Environmental Impact Assessment of the Dundee Precious Metals Tsumeb Smelter Expansion Project*, (Jan. 31, 2019), https://dundeeprecious.com/site/assets/files/16518/10-appendix-i_health_impact_assessment.pdf [hereinafter *HIA*]; Samuel Schlaefli & Geoffrey York, *Canadian Copper Company Leaves a Legacy of Toxic Waste in Namibia*, THE NAMIBIAN (Jan. 20, 2025), <https://www.namibian.com.na/canadian-copper-company-leaves-a-legacy-of-toxic-waste-in-namibia/> [hereinafter *Toxic Waste*]; I. Hasheela, *Contamination Mapping and Land Use Categorization for Tsumeb*, 19 Commc'ns Geological Surv. Namibia 1, 1–7 (2018); R. Ellmies et al., *Environmental Situation Around the Tsumeb Smelter Complex*, Namibia, 16 Commc'ns Geological Surv. Namibia 1, 1–9 (2015) [hereinafter *Environmental Situation*] (revealing research performed over the years by various international entities and researchers has confirmed the high levels of arsenic in the air, surface soil, settled dust samples, and locally grown plants).

164. *Environmental Situation*, *supra* note 163; Bohdan Kribek et. al., *Contamination of Soil and Grass in the Tsumeb Smelter Area, Namibia: Modeling of Contaminants Dispersion and Ground Geochemical Verification*, 65 APPLIED GEOCHEMISTRY 75 (2016), <https://doi.org/10.1016/j.apgeochem.2015.07.006>; J.E. Myers, *Health Impact Assessment for the Environmental Impact Assessment of the Dundee Precious Metals Tsumeb Smelter Expansion Project*, at 66 (Jan. 31, 2019), available at https://dpmmetals.com/site/assets/files/16518/10-appendix-i_health_impact_assessment.pdf.

Smelter as the starting point).¹⁶⁵ The wind carrying this toxic dust results in surfaces covered in particles containing high levels of arsenic, tending to worsen during dry season (and with the increasing effects of higher temperatures and less precipitation due to climate change).¹⁶⁶

Workers exposed to toxic dust through inhalation and skin contact (even if they wear protective gear) have experienced severe coughing, lung disease, chest pain, induced hyperkeratosis, loss of eyesight function, hearing loss, erectile dysfunction, diabetes, chronic kidney disease, hypertension, gastric issues (including ulcers), pancreatic complications, and other adverse impacts such as cancer.¹⁶⁷

B. *Water Scarcity in and around Tsumeb*

Water pollution stemming from the Smelter operations is also one of the most serious concerns with individuals and communities living in and around Tsumeb. Namibia is one of the most arid countries in the world, with rainfall of around twenty-six inches per year.¹⁶⁸ Access to water sources is dependent on a system of ephemeral surface waters only available after the rain system, river systems in the northern and southern borders, and groundwater accessed through bore holes.¹⁶⁹ In periods of low rainfall and increasing temperatures, reliance on groundwater is even more important. Ground water in Namibia is sourced from underground aquifers¹⁷⁰ with some groundwater more accessible than others depending on physical access, amount of water,

165. *Id.*

166. *Communications Letter*, *supra* note 3 at 3; *Fate of Mine*, *supra* note 163; *HIA*, *supra* note 163; *Toxic Waste*, *supra* note 163.

167. *Communications Letter*, *supra* note 3 at 5-6; *Atlas of Environmental Justice*, *supra* note 11.

168. Climate Change Knowledge Portal, *Namibia*, <https://climateknowledgeportal.worldbank.org/country/namibia>.

169. Christelis G. et. al, *Africa Groundwater Atlas: Hydrogeology of Namibia*, BRITISH GEOLOGICAL SURVEY, https://earthwise.bgs.ac.uk/index.php/Hydrogeology_of_Namibia (last visited Aug. 12, 2025); Republic of Namibia, *Namibia Water and the UN 2023 Water Conference Preparatory Meeting*, New York, at 4 (Oct. 25, 2022), available at <https://sdgs.un.org/sites/default/files/2022-11/NAMIBIA%20inputs.pdf> [hereinafter *2023 UN Water Conference*].

170. *Aquifer*, MERRIAM-WEBSTER.COM (defining “a water-bearing stratum of permeable rock, sand, or gravel”), available at <https://www.merriam-webster.com/dictionary/aquifer> (last visited Aug. 11, 2025).

and water quality.¹⁷¹ Access to water is difficult for most Namibians, with scarce water sources available and the competing governmental and corporate interests on utilizing water sources for mining (including the processing of raw materials), agriculture, tourism, pastoralism, and manufacturing.¹⁷² To complicate things further, historical and present-day control of water (as is for natural resources) is influenced by political, economic, and societal power and privilege over natural resources and lands.

Namibians primarily rely on water access from boreholes¹⁷³ pulling from aquifers (mostly recharged through rainwater) to fulfill their residential and commercial needs. However, serious toxic pollution of water sources causes grave concerns regarding the amount, quality, and high price of the water. Climate change research has found that Namibia's water is vulnerable and at risk of pollution.¹⁷⁴ The water in and around Tsumeb (or affected by the Smelter) has been shown to have cryptosporidium¹⁷⁵ as well as high levels of arsenic, sulfate, and lead.¹⁷⁶ Exposure to contaminated water can result in the symptoms previously discussed as well as abdominal pain, nausea, vomiting, fever, dehydration, extreme fatigue, rashes, lung issues, reproductive issues for men and women, as well as deformities in babies.¹⁷⁷

171. Alice Jarvis et al., "Chapter 3: Climate," in *Atlas of Namibia: Its Land, Water and Life* (Namibia Nature Found. 2022), available at http://the-eis.com/elibrary/sites/default/files/downloads/literature/Atlas%20of%20Namibia_03%20Climate.pdf.

172. *2023 UN Water Conference*, *supra* note 169 at 4.

173. Boreholes serve the same purpose as wells (to retrieve water from a natural source underground) but are installed differently, by using a large rotary drill reaching deeper into the ground with a narrower cavity. HYDROTECH DRILLING, "Difference between a well and a borehole," <https://hydrotechdrilling.co.zw/2023/03/15/difference-between-a-well-and-a-borehole/> (last visited Nov. 26, 2025).

174. Benjamin S. Mapani et al., *A review on water security and management under climate change conditions, Windhoek, Namibia*, 197 *J. Afr. Earth Sci.* 104901 (2023), available at <https://www.sciencedirect.com/science/article/pii/S1464343X22003016> (last visited Aug. 11, 2025).

175. *Symptoms of Crypto*, CTRS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/cryptosporidium/signs-symptoms/index.html> (Jun. 16, 2025) (clarifying crypto as a parasite causing abdominal pain, nausea, vomiting, fever, dehydration, and weight loss).

176. Green Earth Environmental Consultants, *Environmental Impact Assessment for the Design, Supply, Installation, Construction and Commissioning of a Potable New Water Treatment Plant for Tsumeb, Oshikoto Region*, 1, 1-60 (2023)

177. *Communications Letter*, *supra* note 3, at 6.

C. Health Crisis in and around Tsumeb

This persistent and widespread pollution has resulted in a health crisis in and around Tsumeb, including in Kuvukiland (approximately 4.9km from Tsumeb), Grootfontein (approximately 62.8km from Tsumeb) and Ondonga (approximately 249 km from Tsumeb).¹⁷⁸ “The arsenic content in the samples from Tsumeb was up to 100 times higher than samples collected in the Namibian capital, Windhoek . . . [t]he values are frightening, and show that the population of Tsumeb is massively exposed to arsenic.” said Dr. Adrien Mestrot, Associate Professor specializing in soil science at the University of Bern, Switzerland.¹⁷⁹

Lack of health services and access to medical and environmental information has resulted in serious barriers to medical treatment in Tsumeb.¹⁸⁰ Consistent testimonies show that access to health is incredibly limited due to the limited number of medical facilities and the high costs related to obtaining medical care.¹⁸¹ The majority of Smelter workers rely on the Smelter’s on-site medical clinic because they cannot afford private medical care, even though many fear that they will be terminated or be asked to take unpaid time-off (due to their high arsenic levels).¹⁸² Both private and public medical clinics had received substantial contributions from Dundee during its ownership of the Smelter, thereby giving rise to a conflict of interest.¹⁸³ Medical professionals paid by the Smelter or receiving benefits (whether medical equipment or other financial benefits) would provide patients’ results to the Smelter instead of providing those results to patients

178. *Id.*; Ester Mbathera, *AR Wants Tsumeb Declared a Health Hazard*, WINDHOEK OBSERVER (Jul. 29, 2024), <https://www.observer24.com/na/ar-wants-tsumeb-declared-a-health-hazard/>.

179. *Namibia’s Sacrificial Zone*, *supra* note 156, at 6.

180. Namibia Ministry of Health and Social Services, *Namibia 2014/15 Health Accounts Report* (2017) 20, ¶ 4, <https://www.afro.who.int/sites/default/files/2017-10/Namibia%20Health%20Accounts%20Report%202014-2015%20-%20final%202017.09.07.pdf>.

181. *Id.*; *Communications Letter*, *supra* note 3, at 6.

182. *Communications Letter*, *supra* note 3, at 7.

183. Mandisa Rasmeni, *Tsumeb Private Hospital Receives Beds and Oxygen Supply Points from Private Sector*, NAMIBIA ECONOMIST (July 26, 2021), <https://economist.com/na/63136/health/tsumeb-private-hospital-receive-beds-and-oxygen-supply-points-from-private-sector/>; *Dundee Donates Pediatric TB Ward to Health*, THE NAMIBIAN (Sept. 13, 2018), <https://www.namibian.com/na/dundee-donates-paediatric-tb-ward-to-health/>.

directly.¹⁸⁴ When workers' tests would show high levels of arsenic, they would be sent home for days or weeks until their arsenic levels would be reduced over time.¹⁸⁵ Most recently, with Sinomine, access to full and informative medical information has continued to be limited.¹⁸⁶ Workers are forced into signing indemnity clauses if they wish to work at the Smelter and receive any medical information relating to their regular medical testing conducted by the Smelter on-site clinic.¹⁸⁷ Ultimately, workers and community members alike understand that without the Smelter operating in Tsumeb, the local Tsumeb economy would be decimated and they would not have means of work and survival.¹⁸⁸ So they are forced to subject themselves to working in a Smelter they know is making them sick and living in a town that has been, for generations, toxic to human health and their environment.

III. THE RIGHT TO A HEALTHY ENVIRONMENT IN TSUMEB

RIGHT TO A HEALTHY ENVIRONMENT IN THE AFRICAN SYSTEM FOR HUMAN AND PEOPLES' RIGHTS

This section will elaborate on the right to a healthy environment within the African System for Human and Peoples' Rights. It will, however, do so considering that the rights to the environment cannot be separated from nature, ancestral lands, waters, and the animate world in general.¹⁸⁹ It will consider the right to a healthy environment within the philosophy of Earth Jurisprudence, an ecocentric view where humans must live in harmony with nature.¹⁹⁰

The right to a healthy environment has been widely recognized as an important human right critical in the context of the triple planetary

184. *Communications Letter*, *supra* note 3, at 6–7.

185. *Id.*

186. *Id.* at 7.

187. *Id.*

188. *Id.* at 9.

189. *Earth Jurisprudence*, Earth Jurisprudence <https://earthjurisprudence.africa/earth-jurisprudence-explained/> (last visited Dec. 15, 2025).

190. *Id.*

crisis,¹⁹¹ with the effects of climate change, loss of biodiversity, and environmental pollution.¹⁹² The United Nations General Assembly recognized the right to a healthy environment, which was a historically significant moment for the international community.¹⁹³

In the African System for Human and Peoples' Rights ("African System"),¹⁹⁴ the right to a healthy environment has been recognized since 1981 with the adoption of the African Charter on Human and Peoples' Rights, also known as Banjul Charter.¹⁹⁵ Article 24 of the African Charter ("African Charter," "Charter," or Banjul Charter") provides that "[a]ll peoples shall have the right to a general satisfactory environment favorable to their development."¹⁹⁶ The right to a healthy and satisfactory environment has been broadly interpreted to protect individuals from environmental harm and to ensure the enjoyment of a range of human rights, including those to life, physical and mental health, food, water and sanitation, an adequate standard of living, property, culture, and dignity.¹⁹⁷ It is well understood that the right to a healthy environment is a pre-condition to the enjoyment of other

191. The "triple planetary crisis" refers to the crisis that humanity faces with respect to climate change, pollution, and the loss of biodiversity. *What Is the Triple Planetary Crisis*, U.N. FRAMEWORK CONVENTION ON CLIMATE CHANGE (Apr. 13, 2022), <https://unfccc.int/news/what-is-the-triple-planetary-crisis>.

192. U.N. Dev. Programme et al., *What Is the Right to a Healthy Environment?*, (Jan. 5, 2023), <https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf> [hereinafter *Right to a Healthy Environment*].

193. G.A. Res. 76/300, U.N. Doc. A/76/L.75 (July 28, 2022) (adopted by 161 votes to 0, with 8 abstentions (Belarus, Cambodia, China, Ethiopia, Iran, Kyrgyzstan, Russ. Fed'n & Syria)).

194. Afr. Comm'n on Hum. & Peoples' Rts., *About*, <https://achpr.au.int/en/about> (last visited Aug. 12, 2025); Afr. Ct. on Hum. & Peoples' Rts., *Home*, <https://www.african-court.org/wpafc/> (last visited Aug. 12, 2025).

195. African Charter on Human and Peoples' Rights (Banjul Charter), O.A.U. Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) (entered into force Oct. 21, 1986) [hereinafter *Banjul Charter*].

196. *Id.* art. 24.

197. John H. Knox, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: Framework Principles*, U.N. Hum. Rts. Council, UN Doc. A/HRC/37/59 (Jan. 24, 2018), <https://undocs.org/A/HRC/37/59> [hereinafter *Knox Report A/HRC/37/59*]; *Right to a Healthy Environment*, *supra* note 193.

rights.¹⁹⁸ This substantive dimension of the right recognizes that if an individual or community is living in an unsafe, dangerous and polluted environment they will be unable to effectively enjoy other human rights.¹⁹⁹

Similarly, the right to a healthy environment has a procedural dimension. An individual or community's rights to information, participation, and effective remedies, are equally important to the enjoyment of this right.²⁰⁰ This means that if a community is living in a highly toxic environment, they must be able to have environmental information so that they can make decisions relating to their lives.²⁰¹ For example, the right to information is a core procedural right in the ability of individuals and communities to make meaningful decisions over their lives, engage in participatory processes, and effectively access justice mechanisms. Environmental impact assessments ("EIAs") have been globally accepted as critical to fulfill the requirement that States must provide the public and directly impacted persons with important information relating to possible risks and consequences of environmentally impactful projects.²⁰² EIAs also provide information relating to aggregate effects of projects with existing environmental conditions (including degradation).²⁰³

The African Commission on Human and Peoples' Rights ("African Commission")²⁰⁴ recognized:

198. U.N. Secretary-General, *Implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes*, U.N. Doc. A/HRC/74/480 (Oct. 7, 2019)..

199. *Knox Report A/HRC/37/59*, *supra* note 197.

200. *Id.*; Sarah A. Dávila, *The Escazú Agreement: The Last Piece of a Tripart Normative Framework in the Right to a Healthy Environment*, 42 STAN. ENVTL. L.J. 42 (2022) [hereinafter *Tripart*].

201. *LIDHO*, *supra* note 8, ¶ 191; *Tripart*, *supra* note 200.

202. Alan Gilpin, *Environmental Impact Assessment: Cutting Edge for the Twenty-First Century*, 2 (Cambridge Univ. Press 1995).

203. Hussein Abaza, et al., *Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach* 6 (U.N. Env't Programme 2004), <https://digitallibrary.un.org/record/573563?ln=en&v=pdf>.

204. Afr. Comm'n on Hum. & Peoples' Rts., *Mandate of the Commission*, <https://achpr.au.int/en/about/mandate> (last visited Aug. 12, 2025) (noting that the African Commission, a quasi-judicial body, may investigate human rights abuses, interpret provisions of the African Charter, and issue decisions on the merits or in advisory opinions).

[T]he right to a general satisfactory environment, as guaranteed under article 24 of the African Charter or the right to a healthy environment, as it is widely known . . . imposes clear obligations upon a government. It requires the state 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. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) . . . requires governments to take necessary steps for the improvement of all aspects of environmental and industrial hygiene. The right to the best attainable state of physical and mental health enunciated in article 16(1) of the African Charter and the right to a satisfactory environment favourable to development (article 16(3) . . . obligate governments to desist from directly threatening the health and environment of their citizens.²⁰⁵

States are required to take steps to the maximum of their resources and all appropriate means for the actualization of human rights.²⁰⁶ This interpretation of Article 24 is important since it connects the right to a healthy environment to other economic and social rights, such as the right to physical and mental health.²⁰⁷ Importantly, Article 16 of the African Charter provides: “(1) Every individual shall have the right to enjoy the best attainable state of physical and mental health [and] (2) States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.”²⁰⁸

The right to health has been interpreted to be “closely related to and dependent upon the realization of other human rights, including the rights to food, housing, work, education . . . life, non-discrimination, equality . . . access to information” and including the environment.²⁰⁹

205. *SERAC*, *supra* note 8, ¶¶ 52–53.

206. *Id.* ¶¶ 47–48; *International Covenant on Economic, Social & Cultural Rights*, Dec. 16, 1966, 993 U.N.T.S. 3, 6, art. 2(1).

207. *SERAC*, *supra* note 8, ¶¶ 50–52.

208. *Banjul Charter*, *supra* note 195 at Art. 16.

209. U.N. Comm. on Econ., Soc. & Cultural Rts., *General Comment No. 14: The Right to the Highest Attainable Standard of Health* at 3, U.N. Doc. E/C.12/2000/4, (Aug. 11, 2000); *Knox Report A/HRC/37/59*, *supra* note 197, ¶ 4.

The African Commission in *The Social and Economic Rights Action Centre and another v. Nigeria* (“SERAC”) faced a critical normative question on the obligations of States to fulfill their obligations to actualize the effective enjoyment of the human right to a “satisfactory” and “healthy” environment.²¹⁰ In the SERAC case, the African Commission on Human and Peoples’ Rights (“African Commission”) recognized the important connection between environmental harm and the violation of human rights obligations to protect the rights to health, life, and environment.²¹¹ The African Commission found that Nigeria had failed to protect the Ogoni community’s rights to a safe environment, health, and livelihood.²¹² The Ogoni²¹³ community had alleged that the oil and extractive industry in Nigeria, specifically through the State oil company, Nigerian National Petroleum Company, had caused serious environmental degradation and health crisis for the Ogoni people.²¹⁴ Specifically, they alleged that the oil consortium had exploited the Ogoni’s natural resources without due regard for the health of local communities, the environment, or the need for proper consultation.²¹⁵ The oil consortium had disposed of toxic waste into the environment and local waterways resulting in contamination of the air, water, and soil.²¹⁶ Furthermore, the oil consortium had failed to implement safety measures, adequately monitor operations, inform the communities of the environmentally hazardous operations, and conduct health and environmental studies.²¹⁷ As a result, the local population suffered from long-term health effects, including skin infections, gastrointestinal and respiratory diseases, neurological and reproductive issues, and

210. *See SERAC, supra* note 8, ¶¶ 43, 50–52.

211. *Id.* ¶ 50–52.

212. *Id.* ¶ 69.

213. Unrepresented Nations and Peoples Organization (UNPO), *Ogoni*, <https://unpo.org/member/ogoni/> (last visited Aug. 12, 2025) (informing about the Ogoni people, who are a distinct community in Nigeria with rich culture and traditional forms of living that are closely connected to their environment and social context. They speak various and distinct languages within the Benue-Congo origin of African languages. Their shared ancestry, identity, culture and history are closely connected to their resilience as a community and collective forms of existing. They have a profound spiritual connection to their lands and natural environment).

214. *SERAC, supra* note 8, ¶ 1–2.

215. *Id.* ¶¶ 1–6.

216. *Id.* ¶ 2.

217. *Id.* ¶¶ 4–5.

cancer.²¹⁸ Additionally, they claimed that Nigeria through its security forces had attacked, burned, and destroyed Ogoni villages using military-type violence to suppress the Movement of the Survival of Ogoni People (“MOSOP”).²¹⁹

The Commission found that States have an affirmative 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.”²²⁰ Additionally, the Commission also recognized the crucial weight of non-African sources of international law, such as the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) and its Article 12.²²¹ It recognized how Article 12 of the ICESCR provides State obligations to protect human rights to its maximum available resources with the view of progressive realization.²²² It added that obligations under the ICESCR:

requires governments to take necessary steps for the improvement of all aspects of environmental and industrial hygiene. The right to enjoy the best attainable state of physical and mental health enunciated in Article 16(1) of the African Charter and the right to a general satisfactory environment favourable to development (Article 16(3) [sic] already noted obligated governments to desist from directly threatening the health and environment of their citizens.²²³

This important recognition set the framework for the effective protection of the right to a healthy environment in the African System

218. *Id.* ¶ 2.

219. *SERAC*, *supra* note 8, ¶7 (stating that MOSOP had engaged in a peaceful, non-violent campaign to defend environmental rights and safeguard their community from the environmental harm).

220. *Id.* ¶ 52.

221. *Id.* (citing *International Covenant on Economic, Social and Cultural Rights*, art. 2(1), Dec. 16, 1966, 993 U.N.T.S. 3, 6, (“[E]ach State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”).

222. *Id.*

223. *Id.* ¶ 52; African Charter., art. 16.

as protected under the African Charter. Further, the Commission emphasized the State Responsibility framework established by the landmark Inter-American case *Velasquez Rodriguez v. Honduras* and the European Case *X and Y v. Netherlands*.²²⁴

The African Commission interpreted the international obligations to protect the right to a healthy environment to implicate the right to health as it interpreted the ICESCR (in conjunction with the African Charter). It added that State obligations under the ICESCR “requires governments to take necessary steps for the improvement of all aspects of environmental and industrial hygiene. The right to enjoy the best attainable state of physical and mental health enunciated in Article 16(1) of the African Charter and the right to a general satisfactory environment favourable to development (Article 16(3) [sic] already noted obligates governments to desist from directly threatening the health and environment of their citizens.”²²⁵

Another important case in the African Human Rights System is the *Ligue Ivoirienne des Droits de l’Homme (LIDHO) and Others v. Republic of Côte d’Ivoire* (“LIDHO”).²²⁶ In the LIDHO case, a cargo ship chartered by a multinational corporation dumped and discharged highly toxic waste on several sites in Abidjan, the economic capital of Côte d’Ivoire.²²⁷ This dumping and discharging of highly toxic waste was outside of chemical waste treatment facilities or without an environmental safety regulated process.²²⁸ This resulted in an environmental and health crisis with thousands of people falling ill with severe symptoms and some dying from toxic gas inhalation.²²⁹ The level of environmental contamination included highly toxic waste and severe groundwater contamination.²³⁰ The government of Côte d’Ivoire failed to protect individuals and communities from the environmental harm by failing to provide critical environmental and health-related information, environmental mitigation efforts, and from effective recourse and remedies, such as guarantees of non-

224. *Id.* ¶ 57; *Velásquez Rodríguez v. Honduras*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4 (July 29, 1988) [hereinafter *Velásquez Rodríguez*]; *X and Y v. Netherlands*, App. No. 8978/80, Eur. Ct. H.R. (Mar. 26, 1985).

225. *SERAC*, *supra* note 8, ¶ 52.

226. *LIDHO*, *supra* note 8.

227. *Id.* ¶ 2.

228. *Id.* ¶ 2–4.

229. *Id.* ¶ 4–5.

230. *Id.* ¶ 3–4.

repetition.²³¹ In its decision, the African Court on Human and Peoples' Rights ("African Court") delivered a significant decision on the right to a healthy environment.

The Court interpreted Côte d'Ivoire's obligations in relation to the rights to a healthy environment, health, information, as well as the rights protected under the 2003 African Convention on the Conservation of Nature and Natural Resources ("Algiers Convention") and Bamako Convention.²³²

In extending its analysis of the right to a healthy environment, the Court interpreted the State's obligations under the Algiers Convention. It noted that Article 3 of the Algiers Convention provided that not only did all peoples have a right to a healthy environment, but that States have an obligation to protect the right to development and that developmental and environmental needs are met in a sustainable, fair, and equitable manner.²³³ Additionally, the Court found that States had an obligation to "[...] adopt the measures necessary to ensure conservation, utilization and development of soil, water, flora and faunal resources *in accordance with scientific principles and with due regard to the best interests of the people.*"²³⁴ The recognition of the Algiers Convention as imposing an international obligation in conjunction with Articles 24 and 16 of the African Charter was significant.²³⁵ It extended the obligation to protect the right to a healthy environment and actually prevent "harmful effects on the environment, especially those resulting from toxic waste and hazardous waste."²³⁶

Additionally, the *LIDHO* case was significant within the recognition of state responsibility in the context of environmental harm. In general, the doctrine of state responsibility provides that States have the responsibility to protect human rights.²³⁷ As part of this responsibility

231. *Id.* ¶ 125–40, 200.

232. *Id.* ¶¶ 35–40, 130.

233. *Id.* ¶¶ 35–40 (reasoning the Court found that the Algiers Convention was a human rights instrument and therefore the Court had jurisdiction to interpret its provisions).

234. *Id.* ¶ 35.

235. *Id.* ¶ 39.

236. *Id.* ¶ 37.

237. Hum. Rts. Comm'n., *General Comment No. 31: The Nature of the General Legal Obligations Imposed on States Parties to the Covenant*, ¶ 6, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004); *Velásquez Rodríguez*, *supra* note 224;

to protect human rights, States must ensure that private actors do not engage in activities that are violative of human rights.²³⁸ This was the first time, the African Court commented on non-state actor accountability, and specifically corporate accountability. It recognized that “even though the responsibility [. . .] to respect obligations of international is incumbent on primarily on States, it is true that this responsibility is incumbent on companies, notably, multinational companies.”²³⁹

The Inter-American Court landmark case of *Velásquez Rodríguez* recognized this very important responsibility in stating that:

[a]n illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to an international responsibility of the State, not because of the act itself, but because to the lack of due diligence to prevent the violation or to respond to it.²⁴⁰

The right to a healthy environment through Article 24 of the African Charter along with the African Commission and Court’s jurisprudence establishes a solid framework for State Responsibility incorporating obligations of due diligence to ensure that private actors do not engage in activities that violate human rights.

A. *Obligation to Fulfill, Prevent, and Protect Human Rights*

The obligation to protect human rights from private action resulting in environmental risk, degradation or harm requires that States engage in due diligence. Due diligence in the environmental human rights context requires that States not only investigate and take action when they knew or should have known of human rights violations, but also take steps to prevent harm.²⁴¹ This duty of due diligence requires States

Draft Articles on Responsibility of States for Internationally Wrongful Acts, in Rep. of the Int’l Law Comm’n, 53d Sess, UN Doc. A/56/10 (2001).

238. *Velásquez Rodríguez*, *supra* note 224, ¶ 172.

239. *LIDHO*, *supra* note 8, ¶ 142

240. *LIDHO*, *supra* note 8, ¶ 51 (acknowledging Velasquez Rodríguez as well-settled international human rights jurisprudence).

241. *Velasquez Rodríguez*, *supra* note 224, ¶ 174.

to regulate, supervise, and monitor State and non-State actors engaging in environmentally harmful activities, especially with those having significant risks to human life and health.²⁴² This duty is especially important for fragile ecosystems and vulnerable communities, since environmental information can result in protecting human and environmental lives.²⁴³ Mitigation measures are critical in this process and must be able to remediate environmental harm and provide ways to protect human health and lives.²⁴⁴

In the *LIDHO* case, the African Court found that States are held responsible for failing to protect human rights in the environmental context when they knew or should have known that the lives of people may be at risk from toxic waste and failed to take mitigation measures.²⁴⁵ In evaluating the State's responsibility, the Court interpreted international obligations imposed by the Bamako Convention.

The Court observes that African States recognize the potential impact of toxic waste importation and dumping on human life. This recognition is expressed, in the most solemn terms in the preamble to the Bamako Convention, where the States declare that they are 'mindful of the growing threat to human health [. . .] and the environment cause by transboundary movements of hazardous wastes.'²⁴⁶

The interpretation of the Bamako Convention in the context of the right to a healthy environment was significant because of the long

242. *The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity: Interpretation and Scope of Arts. 4(1) and 5(1) in relation to Arts. 1(1) and 2 of the American Convention on Human Rights)*, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶ 136, 141 (Nov. 15, 2017) [hereinafter *Advisory Opinion OC-23/17*].

243. *Id.* ¶ 141; *Ximenes-Lopes v. Brazil*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 149, ¶ 89, 90 (Jul. 4, 2006); *Gonzales Lluy et al. v. Ecuador*, Judgment, Inter-Am. Ct. H.R. (ser. C), No. 102/13 (Sept. 1, 2015).

244. *Advisory Opinion OC-23/17*, *supra* note 242, ¶ 180 (citing Rio Declaration, at Principle 15).

245. (ser. C) No. 298, at paras 178, 183; *I.V. v. Bolivia*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 329, at paras. 154, 208 (Nov. 30, 2026); *LIDHO*, *supra* note 8, ¶¶ 124–125, 129–144.

246. *LIDHO*, *supra* note 8, ¶ 130, (referencing the Bamako Convention).

history of environmental, economic, and labor exploitation in the African colonial and contemporary experience. The Court's interpretation to include other human rights instruments such as the Algiers and Bamako conventions expressly recognizes toxic waste as serious pollutants for people, but more importantly of the systemic practice of importing toxic waste and exposing individuals and communities to its dangers.²⁴⁷ Thus, the Court recognizes that toxic and waste-related private activities can be violative of human rights.

B. Responsibility of State and Private Actors Engaging in Harmful Environmental Impactful Activities

The African Court recognizes the fourfold obligation to respect, protect, promote, and implement human rights.²⁴⁸ The Court emphasizes that while traditionally States are primarily responsible to protect human rights, this fourfold obligation extends not only to State action, but to action by private individuals or entities (third parties)²⁴⁹ In doing so, the Court recalls United Nations Human Rights Committee, General Comment No. 36 (on the right to life), which recognizes that “[t]he duty to protect the right to life by law also includes an obligation for States parties to adopt any appropriate laws or other measures in order to protect life from all reasonably foreseeable threats, including from threats emanating from private persons and entities.”²⁵⁰

The State obligation to engage in due diligence requires protecting persons and the environment from harm that is reasonably foreseeable.²⁵¹ This international obligation is not only for State-sanctioned conduct, but extends to private action carried out by

247. *Id.* (quoting Article 2(1)(c) of the Bamako Convention and recalling that hazardous wastes include toxic materials as defined by the Bamako Convention “substances or wastes liable either to cause death or serious injury or to harm human health if swallowed or inhaled or by skin contact”).

248. *LIDHO*, *supra* note 8, ¶ 131 (citing to SERAC at ¶ 44; *The Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. Federal Republic of Nigeria*, Preliminary ruling ECW/CCJ/APP/07/10, Dec. 10, 2020, at ¶ 10).

249. *LIDHO*, *supra* note 8, ¶131.

250. *Id.* ¶ 132, (quoting United Nations General Comment No. 36 on Art. 6 of the International Covenant on Civil and Political Rights, concerning the right to life, 120th Session, ¶ 18 (Jul. 3–22, 2017)).

251. *Id.* ¶ 133, (citing Human Rights Committee, Comment No. 36, ¶ 7).

companies engaging in environmentally harmful activities.²⁵² This obligation extends to the prohibition of importing all hazardous wastes into Africa from non-Contracting parties, as to prevent harmful impacts.²⁵³ If such hazardous wastes are indeed imported, then it is the obligation of the State to act, limit, and repair the harmful consequences to human life and mitigate environmental degradation.²⁵⁴ Additionally, part of this obligation to engage in due diligence is to take into consideration the nature of the substance concerned and the potential risk to human life.²⁵⁵

In terms of private actors, the African Court recalled in the *LIDHO* case, the United Nations *Guiding Principles on Business and Human Rights* states that “[t]he responsibility of enterprises in the respect for human rights is independent of the capacity or the determination of states to protect human rights.”²⁵⁶ This is significant given that corporate actors often engage in environmentally harmful activities that pose risks or dangers to human lives and the natural environment.

Recently, the United Nations Committee on the Rights of the Child General Comment No. 26, called upon States and private corporations to engage in human rights-based practices in the environmental context by taking immediate steps to ensure clean air quality, providing access to safe water, and reducing fossil fuel dependency.²⁵⁷ As the *LIDHO* case reinforces, “[s]uch a responsibility requires enterprises to commit themselves to public policies in prevention and reparation, due diligence in continuous identification of the consequences of their activities and lastly, setting up procedures aimed at solving problems caused by their action.”²⁵⁸ As it is clear from regional African jurisprudence and international bodies, the protection of the right to a healthy environment requires that States engage in the necessary due diligence to ensure that individuals and communities are able to exercise their human rights.

252. *Id.* ¶ 135, (citing HRC, General Comment No. 36, ¶ 22).

253. *Id.* ¶ 136, (quoting Art 4 of the Bamako Convention).

254. *Id.* ¶¶ 136–37, 139.

255. *Id.* ¶ 139.

256. *Id.* ¶ 142 (quoting *United Nations Guiding Principles on Business and Human Rights*, U.N. Doc. A/HRC/RES/17/4 (Jul. 6, 2011)).

257. Comm. on the Rts. of the Child, General Comment No. 26, *Children’s Rights and the Environment with a Special Focus on Climate Change*, at ¶¶ 20, 64–65, U.N. Doc. CRC/C/GC/26 (Aug. 22, 2023).

258. *LIDHO*, *supra* note 8, ¶ 142.

C. Recognition of Colonialism and the Protection of Human Rights

The protection of human rights for previously colonized peoples, must consider how the historic and collective experience of colonialism has shaped the continuous marginalization of individuals and communities as well as the rights-based systems seeking to protect their rights. As Walter Rodney posited, the effect of European slave trading and exploitation in the African continent goes beyond the trading of humans, and instead it goes to the core of racialized social violence having institutionalized underdevelopment and marginalization.²⁵⁹

The African System largely arises out of the post-colonial framework with States moving away from systems created by colonialism and oppression. As such, a key distinction unique to the African System is its recognition of collective rights as critical for the understanding of African Peoples' experiences, thus providing a strong dimension to collective human rights. The Charter's preamble provides:

Taking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights; [and,] Conscious of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism, apartheid, zionism and to dismantle aggressive foreign military bases and all forms of discrimination, particularly those based on race, ethnic group, color, sex, language, religion or political opinions;²⁶⁰

This collective dimension is important in the protection of the right to a healthy environment since it provides for the vindication of this right by peoples whose rights have been violated, and for those who have been historically marginalized. That is an important recognition.

259. David Myer Temin, *Development in Decolonization: Walter Rodney, Third World Developmentalism, and "Decolonizing Political Theory"* 117, 1 AM. POL. SCI. REV. 235, 240 (2022).

260. *Banjul Charter*, *supra* note 195.

The African Commission recognized in the *LIDHO* case that Article 21 of the African Charter importantly recognizes African people to dispose of their natural resources and wealth as it relates to their liberation from foreign economic exploitation.²⁶¹ Article 21 provides that all peoples have the right to freely dispose of their wealth and natural resources and that as part of this obligation State Parties to the African Charter shall eliminate foreign economic exploitation.²⁶²

The importance of this key provision in the context of the right to a healthy environment is critical in the context of extractivism. As the Commission recognizes in the *SERAC* case, “[t]he origin of this provision may be traced to colonialism, during which the human and material resources of Africa were largely exploited for the benefit of outside powers, creating tragedy for African themselves, depriving them of their birthright and alienating them from the land. The aftermath of colonial exploitation has left Africa’s precious resources and people still vulnerable to foreign misappropriation.”²⁶³ The continuous extraction of valuable raw materials, the method in which raw materials are extracted and processed resulting in environmental destruction, and the persistent violation of human rights for the local population creates a serious human rights crisis that must be addressed.

IV. RIGHT TO A HEALTHY ENVIRONMENT IN A NEOCOLONIAL FRAMEWORK IN TSUMEB, NAMIBIA

The strong reliance on foreign direct investment has perpetuated neocolonialism in Namibia.²⁶⁴ It compounds onto the historic exploitation of the Namibian people, their resources, and the ongoing barriers to the enjoyment of human rights. This crisis is the result of more than a hundred years of the aggressive and illegal extraction of

261. *SERAC*, *supra* note 8, ¶ 55, (quoting Banjul Charter, *supra* note 194, art. 2)

262. *Banjul Charter*, *supra* note 195, at Art. 21.

263. *SERAC*, *supra* note 8, ¶ 56.

264. “Neocolonialism” “refers to forms of domination and exploitation that are not predicted upon direct occupation or control. This is done through political, economic and socio-cultural arrangements that institutionalise relationships of dependence or subservience and enable the extraction of wealth and resources.” Kwame Nkruman, former Prime Minister and President of Ghana, *What we mean by colonialism & coloniality*, U.N. Univ. (May 3, 2024) <https://unu.edu/iigh/blog-post/what-we-mean-colonialism-coloniality>.

Namibian resources, the suppression of human rights, and the chokehold of Namibian lands and valuable resources by countries including, but not limited to, Germany and South Africa.²⁶⁵

The Namibian government continues to acquiesce to and facilitate multinational corporations from extracting and removing valuable raw materials from Namibia such as diamonds, uranium, lead, zinc, silver, among other products.²⁶⁶ The Namibian government's high level of corruption and alliance with foreign corporations in the extractive industry juxtaposes their campaigns of national control, and justice, for Namibia and its resources.²⁶⁷ The government has created an impossible situation for workers and communities relying on the mining industry for survival.²⁶⁸ The extractive industry has been an "economic lifeline" to Tsumeb, by providing jobs and fueling the national and local economy.²⁶⁹

Prior to Dundee's acquisition (owner from 2011-2024) of the Smelter, Namibia's unemployment rate was 51.2%, with looming questions of economic and social survival for people in and around Tsumeb.²⁷⁰ For many, each company that acquired the Smelter over the years, "saved" Tsumeb from economic ruin and its people from further hardship.²⁷¹ For many, working for the Smelter in Tsumeb, or other businesses supporting it is one of the few alternatives available

265. See *infra* Part II.

266. *Multinational Companies in Namibia*, *supra* note 134, at 2.

267. Frederico Links, Transnational corruption in Namibia blights a legacy, *Good Governance Africa* (Jan. 18, 2023).

268. Vitalio Angula, *Namibia Restores Chinese Company's Export Permit Despite Bribery Probe*, VOA (Nov. 16, 2022, 3:14 PM) <https://www.voanews.com/a/namibia-restores-chinese-company-s-export-permit-despite-bribery-probe-/6837427.html>; N. Asheela-Shikalepo, *Corruption and Corporate Governance in Namibia: An Analysis of the Strategic Approaches in the 4th Industrial Revolution*, PER/PELJ (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3923289; Chrispin Inambao, *PM Hails Mining Group*, NEW ERA (Nov. 5, 2007), <https://neweralive.na/pm-hails-mining-group/> [hereinafter *PM Hails Mining Group*].

269. *Id.*

270. *Smelter Closure Will Leave Hundreds Jobless*, NAMIBIA ECONOMIST (Dec. 16, 2011), <https://economist.com.na/469/general-news/general-news-2011/smelter-closure-will-leave-hundreds-jobless/>.

271. PM Hails Mining Group, *supra* note 268; Kakunawe Shinana, *The Future Looks Brights for Tsumeb*, THE NAMIBIAN (Nov. 6, 2007), <https://www.namibian.com.na/the-future-looks-bright-for-tsumeb/>; Werner Menges, *TCL 'rising from the ashes'*, THE NAMIBIAN (May 8, 2000), reprinted in *AllAfrica*, <https://allafrica.com/stories/200005080101.html>.

for work.²⁷² Poverty is widespread in Tsumeb, with some individuals relying on the nearby dumpsites and waste to find something salvageable to use or sell.²⁷³ Over 1 million Namibians lack access to sanitation services and infrastructure.²⁷⁴ In Tsumeb, with many living without basic access to running water, such as Kuvukiland, the effects of toxic pollution in and around Tsumeb create a dire health crisis.²⁷⁵ Most individuals cannot afford to purchase bottled water, yet their reliance on tap water becomes deadly because of the Smelter's pollution.²⁷⁶ The only water they have access to contains arsenic levels so high it has been deemed dangerous for human consumption in the past.²⁷⁷ Consuming arsenic-polluted water and food (traces of arsenic in produce grown locally), and breathing the polluted air has escalated the health crisis in Tsumeb is a violation of the most basic right to life and health.²⁷⁸ The Smelter only exacerbates this crisis through their control and influence of health professionals, limiting the treatment of workers and residents.²⁷⁹

As recognized in the *SERAC* case, obligations under Articles 24 and 16 of the African Charter require States to adequately monitor and implement safety measures and share important environmental information related to the Smelter's hazardous operations.²⁸⁰

272. Charles Ndeumane, *Tsumeb can be rescued – Nawatiseb*, NEW ERA (Jun. 20, 2024), <https://neweralive.na/tsumeb-can-be-rescued-nawatiseb/>.

273. Kenya Kambowe, *Sixteen years of living at Tsumeb dumpsite*, NAMIBIAN SUN (Nov. 4, 2024), <https://www.namibiansun.com/local-news/sixteen-years-of-living-at-tsumeb-dumpsite2024-11-04139242>.

274. Freddie Clayton et al., 'Not the Kind of Life a Human Being Should Live', PULITZER CTR (May 2, 2023), <https://pulitzercenter.org/stories/not-kind-life-human-being-should-live>.

275. Kenya Kambowe, *Kuvukiland Time Bomb*, NAMIBIAN SUN (Feb. 23, 2018) <https://www.namibiansun.com/news/kuvukiland-time-bomb2018-02-23/>.

276. *Microwave lands 23 dundee workers in hospital*, NEW ERA (Aug. 23, 2023), <https://neweralive.na/microwave-lands-23-dundee-workers-in-hospital>.

277. *Tsumeb water 'fine'*, THE NAMIBIAN (May 29, 2012), <https://www.namibian.com.na/tsumeb-water-fine/>.

278. Kara L. Fry et al., *Anthropogenic Contamination of Residential Environments from Smelter As, Cu and Pb Emissions: Implications for Human Health*, 262 ENVTL. POLLUTION 1, 2 (Jul. 2020), <https://www.sciencedirect.com/science/article/abs/pii/S0269749119358129>.

279. Nyasha Nyaungwa, Sam Koppelman, *Breaking: UN Demands Answers from Namibia on Toxic Legacy of Copper Smelter*, HUNTERBROOK MEDIA (Aug. 28, 2025), <https://hntbrk.com/un-letter-dundee-namibia/>.

280. *SERAC*, *supra* note 8, ¶ 52.

Environmental impact assessments are a basic measure that are not only well accepted globally and within the African System jurisprudence, but are enshrined in Namibian domestic law.²⁸¹ Namibian law through the Environmental Management Act (Act 7 of 2007), aims to prevent and mitigate the effects of environmental harm, requiring “that the findings of an assessment are taken into account before any decision is made in respect to activities.”²⁸²

As part of the corrupt relationship between Namibia and the Smelter industry, EIAs tainted by the Smelter’s owners, have been accepted as allegedly sufficient under Namibian law.²⁸³ Additionally, while environmental impact assessments have been conducted at various points of the Smelter’s operations over the years (under different ownerships), there has not been meaningful participation from directly impacted persons or the public.²⁸⁴ EIAs are not publicly disseminated for maximum access, but rather, they are deliberately hidden from the public.²⁸⁵ A study of the EIAs in Namibia finds that the system is considered “broken” and provides for no accountability or implementation of Namibian law, which requires wide dissemination of EIAs.²⁸⁶ EIAs are deliberately kept from the public eye.²⁸⁷

281. *LIDHO*, *supra* note 8; *see also* Environmental Management Act 7 of 2007, Environmental Impact Assessment Regulations, GN No. 30, (2012) (Namibia), <https://www.lac.org.na/laws/annoREG/Environmental%20Management%20Act%207%20of%202007-Regulations%202012-030.pdf>; *see also* Genady Kondarev, *Namibian Smelter Expansion Risks Deepening Environmental and Health Problems*, BANKWATCH NETWORK (Jul. 17, 2017), <https://bankwatch.org/blog/namibian-smelter-expansion-risks-deepening-environmental-and-health-problems>.

282. Ministry of Environment, Forestry and Tourism (Namibia), *Environmental Impact Assessment*, <https://www.meft.gov.na/services/environmental-impact-assessment-/233/> (last visited Aug. 12, 2025).

283. Shinovene Immanuel, *Councillor Takes a Swipe at Smelter Investigators*, THE NAMIBIAN (Jan. 6, 2012), <https://www.namibian.com.na/councillor-takes-a-swipe-at-smelter-investigators/>.

284. John Pallett & Ndelimona Ipinge, *Are Environmental Impact Assessments Working in Namibia?*, CONSERVATION NAMIBIA (Oct. 29, 2024), <https://conservationnamibia.com/articles/environmental-impact-assessments-2024.php>.

285. *Id.*

286. *Id.*

287. *Id.*

The grave reality for people in Namibia and environment is that the country relies on the Smelter industry and benefits from its profits.²⁸⁸ The Namibian government and the Smelter have worked at discrediting and delegitimizing environmental research performed for years.²⁸⁹ The lack of available EIAs, limited medical attention, and campaigns of delegitimizing people's voices about their health and environmental concerns create serious obstacles for their vindication of human rights.

As it has been clarified by Article 24 of the African Charter and the African System cases of *SERAC* and *LIDHO*, States are unequivocally responsible for ensuring that individuals and communities have access to a satisfactory and healthy environment.²⁹⁰ As a State Party to the African Charter, Namibia is responsible for ensuring that its people can fully enjoy the rights it protects.

Similarly, a State Party to the ICESCR,²⁹¹ Namibia is required to use its maximum available resources to the progressive realization of all rights, including the rights to health and a healthy environment.²⁹² These efforts must include the full and effective implementation of Namibian domestic law protecting the right to a healthy environment. According to Article 95 of the Namibian Constitution,

[t]he State shall actively promote and maintain the welfare of the people by adopting policies aimed at . . . The maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living

288. Genady Kondarev, *Namibian smelter expansion risks deepening environmental and health problems*, BANKWATCH NETWORK (Jul. 17, 2017), <https://bankwatch.org/blog/namibian-smelter-expansion-risks-deepening-environmental-and-health-problems>.

289. *Tsumeb Water 'fine,'* THE NAMIBIAN (May 29, 2012), <https://www.namibian.com.na/tsumeb-water-fine/>.

290. Banjul Charter, *supra* note 195, at art. 24; *see also SERAC*, *supra* note 8, at 52; *see also LIDHO*, *supra* note 8, at 24.

291. Status of Treaties: International Covenant on Economic, Social and Cultural Rights, U.N. TREATY COLLECTION (last updated Jan. 18, 2026), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=en.

292. *LIDHO*, *supra* note 8, at 24; *see also* Banjul Charter, *supra* note 195 (noting Namibia became a State Party to the African Charter on Sept. 16, 1992).

natural resources on a sustainable basis for the benefit of all Namibians, both present and future . . .²⁹³

“The welfare of the people” in Namibia must be prioritized beyond profit. The right to health of people in and around Tsumeb as well as its ecological and biological diversity, ecosystems, and natural resources must be protected.

Namibia’s international obligations require that it engages in due diligence to give effect to the Charter’s rights. As the African Commission required in *SERAC*, States must “take necessary steps of improvement of all aspects of environmental and industrial hygiene.”²⁹⁴ As part of its obligation to improve environmental and industrial hygiene, Namibia can enforce its environmental and occupational health regulations (through its Labor Act of 2007²⁹⁵ and related regulations, such as General Regulations No. 261 of 2008), strengthen national environmental institutions, adopt measures to combat corruption relating to extractive industry monitoring systems, and modernize its water and sanitation systems, among others.

The Namibian government must ensure that the Smelter improves its operations by implementing safety measures for worker protection and the reduction of environmental pollution. It is not sufficient that Namibia “encourage” the Smelter, and the extractive industry in general, to regulate its own corporate activities. Instead, it must oversee such activity so that it is the State carrying out actual and effective regulation, supervision, and monitoring of corporate activities, such as the Smelter’s activities in Tsumeb.

For the existing environmental pollution and degradation, Namibia must “take reasonable and other measures to prevent pollution” and prevent the Smelter from “directly threatening [the] health” of those affected by the Smelter’s polluting activities.²⁹⁶ Namibia’s obligations under Article 16 of the African Charter are also implicated because the violation of a clean, healthy, and sustainable (and satisfactory) environment necessarily implicates the right to health.²⁹⁷ As per the

293. NAMIBIAN CONST., Oct. 13, 2014, art. 95 (Namib.).

294. *SERAC*, *supra* note 8, at 52–53.

295. Labour General Regulations, 2008 (Gov’t Notice No. 261) (Namib.), (governing labor relations in Namibia) (articulating specific procedures and requirements for labor law within the context of the Namibia Labour Act of 2007).

296. *SERAC*, *supra* note 8, at 52–53.

297. African Charter, arts. 16, 24.

obligations under Article 16 of the African Charter, workers and community members of Tsumeb and other affected towns must also have access to the necessary medical attention. The health crisis has been perpetuated by the continuous and persistent toxic pollution, the lack of access to environmental and medical attention, and necessary medical assistance to those affected. It is not sufficient that the Smelter provide immediate medical assistance and control the Tsumeb health system, but rather it is the responsibility of Namibia to ensure that its people have access to real and responsive medical assistance and treatment.²⁹⁸

Additionally, under *LIDHO*, obligations to protect and give effect to the right to a healthy environment means that Namibia must “adopt the measures necessary to ensure conservation, utilization and development of soil, water, flora and fauna resources *in accordance with scientific principles and with due regard to the best interests of the people.*”²⁹⁹ As such, Namibia must ensure that the polluted environment is remediated so that community members can enjoy access to clean water, clean flora and fauna, and utilization of their environment. As part of its international obligation, Namibia is responsible for ensuring that Namibians, including those in and around Tsumeb affected by the Smelter’s environmental pollution are protected.

The power dynamics of control by foreign corporate actors play an important role in barriers to the enjoyment of the human rights to life, health, and healthy environment (including procedural rights such as participation, information, access to justice in relation to environmental matters). International and regional legal authority clarifies Namibia’s obligations to protect from private activity.³⁰⁰ Namibia is required to protect the rights of the people and environment from multinational corporations engaging in human rights violations.³⁰¹ Namibia’s fourfold obligation to respect, protect, promote, and implement human rights extends to private action.³⁰² To recall United Nations Human Rights Committee General Comment

298. U.N. Comm. on Econ., Soc. & Cultural Rts., *Gen. Comment No. 14: The Right to the Highest Attainable Standard of Health*, rt. 12, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000).

299. *LIDHO*, *supra* note 8, at 53.

300. *LIDHO*, *supra* note 8, at 131, 135, 142.

301. Knox Report A/HRC/37/59, *supra* note 197, at 3, 14.

302. *LIDHO*, *supra* note 8, at 131 (citing *SERAC*, *supra* note 8, at 44).

No. 36, the obligation encompasses “[t]he duty to protect . . . includes an obligation for States parties to adopt any appropriate laws or other measures in order to protect life from all reasonably foreseeable threats, including threats emanating from private persons or entities.”³⁰³ As such, Namibia must regulate private action (of corporate actors) to provide environmental information, to improve on its operations for safety, and to remediate polluted water sources.

Additionally, Namibia must ensure that the Smelter does not exploit workers, takes safety precautions ensuring worker occupational health, and is compliant with safety and sound waste management systems that do not continue releasing toxic materials into the air, water, and surrounding environment. It is critical for Namibia to consider the historic marginalization of Black workers who have been relegated to the most dangerous jobs and continue to be exposed to the jobs with the highest toxicity.³⁰⁴

The copper ore brought to Namibia from the Chelopech mine in Bulgaria or Colquijirca Mine in Perú to be processed represents serious questions of economic exploitation and clear forms of neocolonialism.³⁰⁵ The copper ore from the Chelopech mine could not be processed in Bulgaria due to the Bulgarian government opposition, given its high arsenic content.³⁰⁶ Copper ore’s import into Namibia as a highly toxic material to be processed represents a violation of the rights protected under the African Charter. Workers and those living in Tsumeb, like other towns relying on the extractive industry in Namibia, subject themselves to highly dangerous jobs to survive and feed their families and towns.³⁰⁷ They suffer from serious health effects and see the visible degradation of the environment in and around Tsumeb, while still needing the Smelter to continue operating.³⁰⁸ As such, the Smelter workers, and those reliant on the

303. U.N. Hum. Rts. Comm’n, *Gen. Comment No. 36, art 6*, ¶ 18, U.N. Doc. CCPR/C/GC/36, (Sept. 3, 2019); *see also* LIDHO, *supra* note 8, at 321.

304. *See* JANE B. BAIRD, *Namibia: Corporate Investment in Oppression*, THE HARV. CRIMSON (May 2, 1973), <https://www.thecrimson.com/article/1973/5/2/namibia-corporate-investment-in-oppression-pbnbamibia/>.

305. DANIEL POPOV ET. AL., *DIRTY PRECIOUS METALS: DUMPING EUROPEAN WASTE IN TSUMEB, NAMIBIA* (Jan. 2016), <https://bankwatch.org/wp-content/uploads/2017/06/DirtyPreciousMetals-Namibia.pdf>.

306. *Id.* at 5.

307. *Toxic Waste*, *supra* note 163.

308. U.N. Special Procedures, Letter dated June 11, 2025 from the Special Rapporteur on the Implications for Human Rights of the Environmentally Sound

extractive industry for survival, are the most marginalized by it. They pay the price of a “sacrifice zone.”³⁰⁹

Under the guises of “recycling” the slag left behind by decades of smelting copper and other valuable metals, Sinomine’s proposed new plant will likely continue exposing workers and community members to toxics by coming into contact and processing highly toxic materials such as arsenic, germanium and cadmium.³¹⁰ Additionally, the arsenic waste dump left behind in the Tsumeb Smelter will continue to pollute by leaching arsenic, lead, and other highly dangerous toxics into valuable subterranean aquifers if not remediated. To date, Sinomine or the Smelter’s previous owners have not proposed any plans to address their legacy of toxic pollution by remediating the arsenic and other heavy metals.³¹¹

This of course presents an existential question for Namibia and the Namibian people. Namibia cannot protect the rights to health and a healthy environment of its people when it prioritizes the corporate exploitation of Namibian resources at the cost of Namibian lives.

CONCLUSION

The Namibian government and the extractive industry, particularly the Tsumeb Smelter, have continuously violated the fundamental rights of workers and community members in and around Tsumeb. The historic exploitation of Namibian resources and its people have been at the center of foreign-direct investment all while Namibia was a German colony, was under South Africa’s brutal occupation and

Management and Disposal of Hazardous Substances and Wastes et al. addressed to the Government of Namibia, U.N. Doc. AL NAM 1/2025 (Jun. 11, 2025), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=29917>.

309. *Inhabitants of La Oroya v. Peru*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 180 (Nov. 27, 2023) (using “sacrifice zone” to denote “areas where environmental pollution is so severe that it constitutes a systematic violation of the human rights of its residents.”).

310. G. Adilov et al., *Challenges and Opportunities in the Recycling of Copper Slag*, 11 J. SUST. METALLURGY 2064 (2025).

311. Geoffrey York & Samuel Schlaefli, *In Namibia, a Canadian copper company leaves a legacy of toxic waste*, THE GLOBE AND MAIL (Jan. 15, 2025), <https://www.theglobeandmail.com/business/article-dundee-copper-mine-namibia-arsenic-toxic-waste/>.

Apartheid, and the present-day. The people of Namibia, especially Black Namibians who are the most marginalized in the labor mining sector, pay the highest price. They have been forced to make the impossible choice between their health, safety, and the survival of their families and communities. They put themselves at risk working in one of the most dangerous and highly toxic industries in order to afford even basic necessities. Communities living in and around Tsumeb have also suffered from serious health effects from being exposed to the serious and persistent toxic environmental degradation. The United Nations Special Rapporteur's letter to Namibia articulates serious allegations of human rights abuses and questions that the government must answer. It is up to us, in a community of scholars and advocates, to consider historic, political, and legal frameworks, such as this one which continues to favor corporate actors instead of the people. It is up to us all to call for the justice that the people of Tsumeb deserve. The Namibian government and responsible corporate actors must remediate past environmental harms, provide access to health and treatment, and effective remedies, including guarantees of non-repetition.