



## REPUBLIC OF NAMIBIA

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Ref.: 2/2

The Permanent Mission of the Republic of Namibia to the United Nations Office at Geneva and other international organizations presents its compliments to the Office of the High Commissioner for Human Rights (Special Procedures Branch) and has the honour to transmit the attached letter from Honourable Dr. Peya Mushelenga, Minister of International Relations and Cooperation of the Republic of Namibia, for onwards transmission to the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur in the field of cultural rights and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.

The Permanent Mission of the Republic of Namibia to the United Nations Office at Geneva and other international organizations avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights (Special Procedures Branch) the assurances of its highest consideration.

**Office of the High Commissioner for Human Rights  
Special Procedures Branch  
Geneva**





REPUBLIC OF NAMIBIA

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15 November 2024

United Nations Human Rights Special Procedures  
Special Procedures Branch  
Office of the High Commissioner for Human Rights  
GENEVA

*Ref: AL NAM 1/2024*

Dear Special Procedures Mandate Holders,

**JOINT COMMUNICATION FROM SPECIAL PROCEDURES**

I wish to acknowledge receipt of the Joint Communication dated 12 September 2024, from the Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises; the Special Rapporteur in the Field of Cultural Rights; and the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, with regard to alleged endangering of an important heritage site memorialising the 1904-1908 Genocide.

The people of Namibia suffered greatly and died under excruciating circumstances at the hands of their colonizers since the end of the 1800s, until the end of apartheid, that ushered in the dawn of independence on 21 March 1990. The Republic of Namibia, in its efforts to memorialise genocide places, has tasked the National Heritage Council, established by an Act of Parliament, to, *amongst others*, identify, conserve, protect and manage places of heritage significance related to the genocide. So far, Shark Island, Ozombu Zovindimba, and Chief Hosea Kutako Memorial Museum and Homestead Shrine, amongst many others, have been declared national heritage sites, and the task of identifying such places is ongoing. The Government of the Republic of Namibia therefore remains committed to the promotion and protection of human rights, including respecting and protecting cultural heritage in all its forms. The descendants of the victims of the first genocide of the 20<sup>th</sup> Century deserve to receive reparations from the perpetrators thereof, and the Government of the Republic of Namibia remains committed to this cause, for the full benefit of the affected communities.

The Republic of Namibia will continue to ensure a good balance as it actively promotes and maintains the welfare of the people of Namibia, including by providing a conducive environment for economic growth for the benefit of the people, while protecting their human rights.

Yours sincerely,

  
DR PEYA MUSHELANGA  
MINISTER



## RESPONSES BY THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA- AL NAM 1/2024

### INTRODUCTION

First and foremost, the Government of the Republic of Namibia reassures the UN Human Rights Special Mandate Holders of its steadfast commitment to its obligation to respect and protect cultural heritage in all its forms and to ensure the right of everyone to take part in cultural life.

The Government of the Republic of Namibia further reassures of its steadfast commitment to prevent human rights violations in the territory of the Republic of Namibia, and where such violations have occurred because of actions by Government Officials, the Private Sector or individuals alike, that due processes are followed to hold such persons or entities accountable.

The Government of the Republic of Namibia will always take the necessary measures to prevent and investigate any such violations, and, through the relevant processes, systems and institutions, ensure redress, where applicable or appropriate.

The Government of the Republic of Namibia further reassures of its steadfast commitment to its obligation to institute various measures to ensure truth and reparation for past human rights violations.

### **QUESTION 1:**

**Please provide any additional information and/or comments (s) you may have on the above-mentioned allegations.**

It is the policy of the Government of the Republic of Namibia to involve and consult all interested and affected stakeholders in all our infrastructure projects, especially where such projects may have negative impacts on such stakeholders. It is for this reason that the Robert Harbour Expansion project has been delayed after heeding to the local communities' call to conduct additional specialist impact assessment studies.

To date Namport<sup>1</sup>, a state-owned enterprise that manages Namibia's ports, has conducted a public engagement session in Lüderitz as well as attended a workshop with the affected communities, and Namport will again arrange such sessions in 2025 once their specialist studies are completed.

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<sup>1</sup> NAMPORT is a state-owned enterprise that was established by an Act of Parliament, the Namibian Ports Authority Act, Act 2 of 1994 and is tasked to undertake the management and control of ports and lighthouses in Namibia and the provision of facilities and services related thereto.

## RESPONSES BY THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA- AL NAM 1/2024

The Government of the Republic of Namibia therefore unequivocally rejects the suggestion that it lacks recognition and appreciation of the cultural and historical importance of the Shark Island and the need to preserve it.

### **QUESTION 2:**

**Please provide information about the project for the extension of the harbour of Lüderitz, including all measures and steps that have been taken to assess the impact of the project on the heritage site of Shark Island, including the underwater burial site, and on human rights.**

Part of Namport's mandate is to ensure that demand for seaborne trade within our ports is met with adequate and suitable port capacity. As such we have been expanding our two ports of Lüderitz and Walvis Bay, to meet demand, since we were established in 1994. To date major expansion projects undertaken by Namport include, amongst others, the following:

1. The expansion of the Port of Lüderitz Robert harbour in 1999, through the construction of a 500metres long quay wall, 10 hectares of land reclamation next to Shark Island and dredging of the submerged port basins and entrance channel, all within Namport's legal jurisdiction. This project established the Port of Lüderitz Robert Harbour's current capacity and enabled key industries in Southern Namibia to become viable and get off the ground, industries which today form the basis of some of the main economic drivers in Southern Namibia, such as commercial fishing and exports, zinc mining and exports, the offshore oil and gas exploration activities, to name just a few; and
2. The expansion of the Port of Walvis Bay South Port in 2019, through the construction of 900metres of additional quay walls and jetties, 40 hectares of land reclamation in the bay and dredging of the submerged basins and entrance channel, all within Namport's legal jurisdiction. This expansion project doubled the existing Port of Walvis Bay's cargo handling capacity. The Port of Walvis Bay today not only serves Namibia but also its landlocked neighbours and provides unmatched and unique access to seaborne trade to the entire Southern African region.

Both the Port of Lüderitz and Walvis Bay therefore serve as foundations for existing industries and create opportunities for all Namibians. Our seaports form the backbone of Namibia's economy, and it is fact that any bottlenecks such as a lack of adequate and timely capacity in our ports can and will have negative ripple effects which will affect

## RESPONSES BY THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA- AL NAM 1/2024

every Namibian. It is for this reason that Namport is required to ensure that it continuously invest in port capacity to stay ahead of the demand.

Most significantly, the Port of Luderitz is one of the single largest catalysts for the economic growth and sustenance of the town of Luderitz and the immediate surroundings. It therefore stands to reason that any call(s) to stifle a structured, consultative and an all-pertinent factors considerate port expansion would be to the direct detriment of the continued development and progression of the town of Luderitz, the region and its inhabitants.

With the above said, we are cognisant of the fact that our ports are situated in sensitive environments, and it is well known that large infrastructure expansion projects in general, can have not just positive but also negative social and environmental impacts. For this reason, it is Namport's philosophy when implementing capital development projects to follow all the relevant legislation to the letter such as but not limited to, the Environmental Management Act (Act 7 of 2007) and the National Heritage Act (Act 27 of 2004), to name but a few.

The following projects are planned for the Port of Luderitz:

### **Port of Lüderitz Robert Harbour:**

1. Namport plans to expand the existing port in Robert Harbour, next to Shark Island. Our expansion, just like the expansion we did in 1999 (as described above), will not extend to nor touch Shark Island, but instead be limited to the water area next to the island and all in the current port's legal jurisdiction. Following extensive due diligence, observance of, and compliance to, all requisite regulations and legislation, Namport expanded the existing port in the same manner in 1999. Importantly, this is also next to Shark Island and there were no negative effects to the island during the course of the expansion and post commissioning. It must be further emphasized that Shark Island was declared a National Heritage Site in 2019, and this recognition and official protection and preservation could therefore not have been possible had Namport desecrated the site in any form and/or manner during the works carried out in 1999 and predating this declaration. The Robert harbour expansion plans will see the main quay wall extended by 500metres northwards and see land reclamation of about 14 hectares of land in our current water area and strictly observing the same protocols.

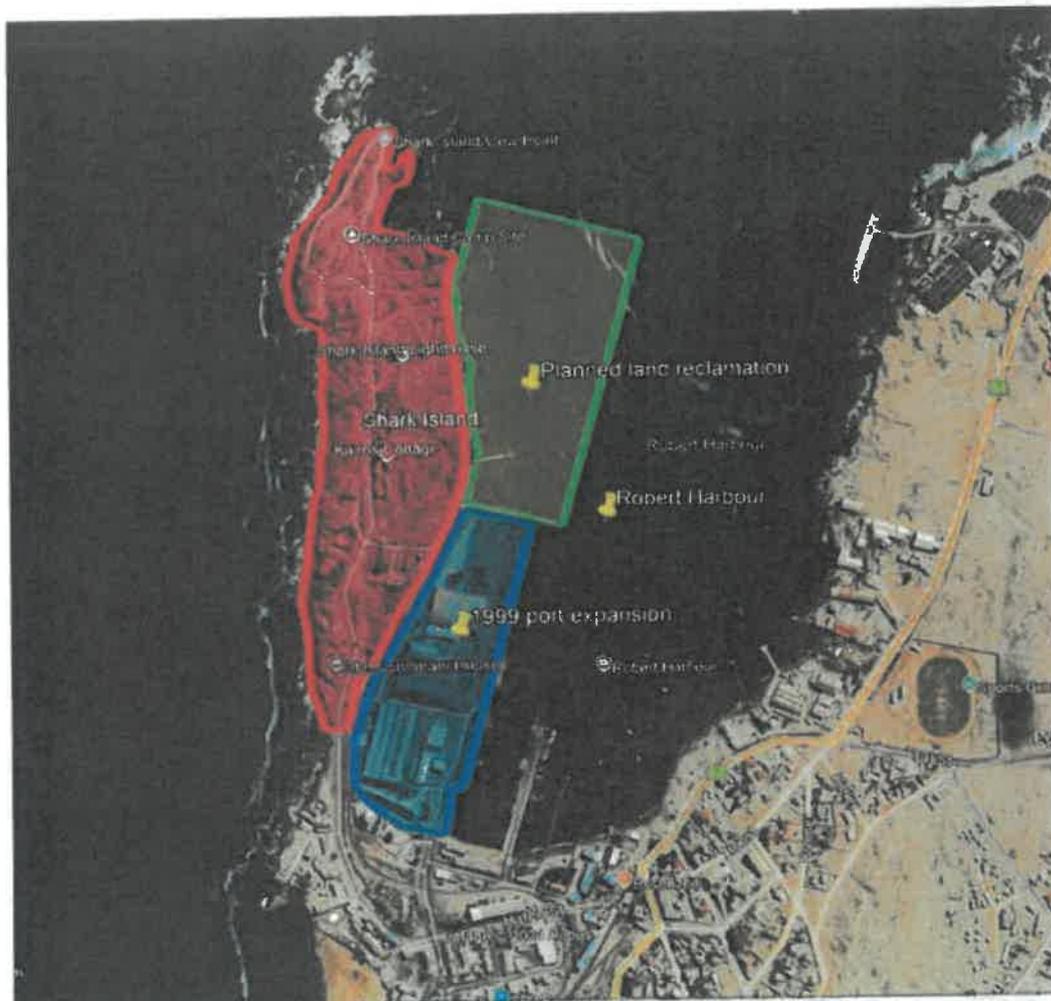
## **RESPONSES BY THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA- AL NAM 1/2024**

2. This expansion of the port in Robert Harbour is aimed at increasing capacity for the current port activities, such as the fishing and mining activities in the southern part of Namibia. The expansion will also create much needed capacity for the booming oil and gas logistics industry that are today mainly serviced from the Port of Walvis Bay. We intend to create adequate capacity in the current Port of Lüderitz Robert Harbour to ensure that Lüderitz and the surrounding region at large can play the main role in supporting the offshore oil and gas fields in the Orange basin. Without such much needed additional port capacity Lüderitz and its residents will not benefit from the oil fields in the Orange basin and other ports such as Walvis Bay will serve this role. This will deprive the Luderitz area (a traditional Nama area) of much needed development opportunities.

3. The planned expansion in Robert harbour is not linked to green hydrogen at all. Green hydrogen in the form of ammonia will not be exported from Robert Harbour due to the depth constraints.

4. The planned port expansion project would see the first half of this new capacity commissioned by 2027, and in time to serve the oil and gas industry's capacity needs for construction of the oil fields.

5. The planned expansion and schedules are on the presumption that Namport secures all requisite legislative approvals, suffice to say, that should they not be secured, then we will not go ahead with this development.



**Figure 1: Port of Lüderitz Robert Harbour and Shark Island (Google Earth), Existing Namport land reclamation done in 1999 shown in blue, Namport planned 2025 expansion shown in green, Shark Island shown in red.**

**Port of Lüderitz Angra point:**

1. Our planned new section of the Port of Lüderitz at Angra Point, located in the adjacent bay called “Lüderitz Bay” and located 2km West of Robert Harbour, is a long-term program and contains many future projects/terminals, one of which is the future planned Hyphen green ammonia export terminal. This planned new terminal to export Hyphen’s green ammonia will be the first terminal in this new section of the port at Angra Point, but its implementation timelines are completely dependent on Hyphen’s project feasibility. Hyphen is expected to complete their feasibility study in a few years’ time after which the

**RESPONSES BY THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA- AL NAM 1/2024**

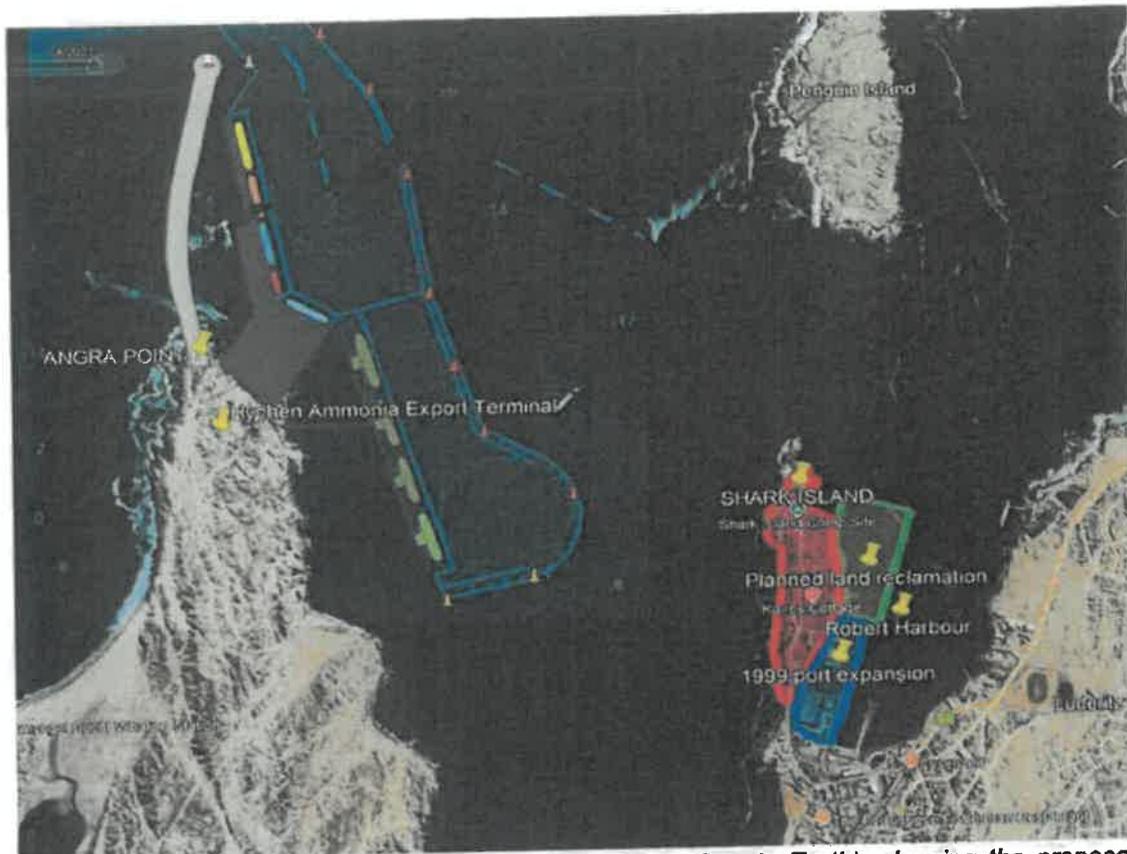
implementation time frame for the new ammonia export terminal at Angra point will be better understood.

2. The other planned terminals at Angra Point are part of a 50-year master plan and will only be developed as demand dictates, and such terminals are designed to cater for future additional ammonia exporters as well as many other potential cargo flows that could in future be handled at the Port of Lüderitz.

3. The benefit of developing port terminals at Angra Point in Lüderitz is that it is not constrained by shallow depth and limited backup land such as the case with the Port of Lüderitz Robert Harbour. Based on the current planning for the Port of Lüderitz's Robert Harbour extension, this particular phase would utilize the remaining footprint for the current port without encroaching on Shark Island hence the Angra Point extension would be a green field development and completely removed from the Heritage Site at Shark Island.

4. Finally, the social and environmental impact assessment study for the new port at Angra point has not yet started and actually forms part of the feasibility study which Hyphen will carry out for the first terminal.

5. Just as with Robert Harbour expansion, it goes without saying that if all required legislative approvals are not obtained, then we will not go ahead with this development.



*Figure 2: Planned future Port of Lüderitz Angra Point (Google Earth), showing the proposed Hyphen Ammonia Export Terminal, as well as all other planned terminals to be developed over the next 50 years.*

**QUESTION 3:**

**Please provide details about all measures and steps that have been taken, or that Your Excellency's Government is planning to take, to guarantee the full participation of the Nama and Ovaherero Peoples in decision-making processes that concern their land and cultural heritage on Shark Island. If such measures, have been adopted, please provide details about the type and scope of participation, the representatives among the Ovaherero and Nama Peoples of the persons or entities involved in the discussions, and how was this participation communicated to the remaining members of the Ovaherero and Nama Peoples. If such measures have not been adopted, please explain why.**

## RESPONSES BY THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA- AL NAM 1/2024

We expect to start the expansion of the Robert Harbour in the Port of Luderitz at the end of 2025, if we obtain all requisite approvals as per the various applicable legislations. We are currently busy conducting specialist environmental impact assessment studies to assess any social and environmental impacts. Since we will not physically touch Shark Island, the specialist studies dealing with the island are focussed on indirect impacts from noise and aesthetics. We are also carrying out both aboveground and underwater archaeological studies. Some of these specialist studies have already commenced and some are yet to commence. We expect to complete the specialist studies in early 2025 after which we will do another round of public and key stakeholder consultations to present the findings of the studies, which will then guide the way forward.

### QUESTION 4:

**Please provide information on the actions and measures taken by the National Heritage Council of Namibia, created by the National Heritage Act, to protect and preserve the site of the concentration camp on Shark Island, including underwater and mass burial places, especially in the context of the planned expansion of the harbour. Please provide details about the involvement of the National Heritage Council in the impact assessment and decision-making processes of the project, if any, about its advisory role in raising awareness for the importance and value of the site to relevant authorities. If the National Heritage Council was not involved, please explain why.**

The Republic of Namibia is a country governed by the rule of law. Article 96 of the Namibian Constitution obliges the State to foster respect for international law and treaty obligations. In this regard, in line with the relevant national laws and the International Covenant on Economic, Social and Cultural Rights, which forms part of the Namibian Legal Framework, our country is under obligation to respect and protect cultural heritage in all its forms.

To this end, when implementing capital development projects, all relevant legislation are followed to the letter, such as but not limited to, the Environmental Management Act (Act 7 of 2007) and the National Heritage Act (Act 27 of 2004), which were passed by the Parliament of the Republic of Namibia, in 2007 and 2004, respectively.

The 2004 Act established the National Heritage Council, which has, *amongst others*, the following functions:

- a) Identify, conserve, protect and manage places and objects of heritage significance;
- b) Initiate measures for or with respect to the conservation of, the provision of access to, the presentation of, and the publication of information concerning places or objects of heritage significance;

## RESPONSES BY THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA- AL NAM 1/2024

- c) Introduce measures and exercise control aimed at preventing the destruction, removal or injudicious treatment of, or deterioration or damage occurring in, places that have or may have heritage significance or special interest; and
- d) Advise government ministries, offices and agencies, local authorities and public authorities on matters relating to the conservation and protection of places and objects of heritage significance.

It follows then that business activities on a place of heritage significance are being scrutinised by the National Heritage Council as a precautionary measure to safeguard sacred heritage value. The Council is a key stakeholder in the impact assessment for the expansion projects. It is for this reason that the Robert Harbour Expansion project has been delayed, in order to conduct additional specialist impact assessment studies.

### QUESTION 5:

In view of the recent scientific studies about the nature and importance of the genocidal act on Shark Island and the long-term consequences of it, please provide information about any effects or initiatives Your Excellency's Government intends to take to enhance the protection of and the knowledge about the concentration camp on Shark Island and the genocide against the Nama and Ovaherero Peoples, including through public memorialisation, museums and history teaching.

The Government of the Republic of Namibia takes heritage preservation and protection very seriously, and therefore declared Shark Island a National Heritage Site on 15 February 2019. This Declaration conferred legal protection over the Island to conserve it as sacred for the learning of future generations.

The Government of the Republic of Namibia is taking additional steps to ensure that the memory of those who lost their lives under excruciating circumstances is never lost. In this regard, an initiative is underway to turn an existing national camping site on Shark Island, into a Genocide Memorial Site, to further give effect to the need to ensure history learning. Furthermore, a national education campaign on the history behind Shark Island is also planned, to ensure public memorialisation.

### QUESTION 6:

Please provide information on any steps that your Excellency's Government has taken, or is considering taking, including policies, legislation and regulations to protect against human rights abuses by business enterprises within its territory and/or jurisdiction, and to ensure that business enterprises conduct effective human rights

**due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their activities, as set forth by the UN Guiding Principles on Business and Human Rights**

The Republic of Namibia has quite a robust human rights framework. Its human rights protection is extensive, including through the assurance of separation of powers between the Executive, Legislature and the Judiciary. Namibia also has an Ombudsman Office which has the mandate to investigate any human rights violations. Namibia's legal framework has several pieces of legislation that protect against human rights abuses by business entities operating in the Namibian territory. A few of them are elaborated below:

The Constitution of the Republic of Namibia is the supreme legal document that protects against human rights violations, including, *inter alia*, against discrimination based on sex, race, colour, ethnic origin, religion, creed or social or economic status; against discrimination in remuneration of men and women; slavery; forced labour; child labour; or the dumping or recycling of foreign nuclear and toxic waste on Namibian territory, amongst others.

The Environmental Management Act (Act 7 of 2007) is also an important piece of legislation that requires business ventures to undergo an environmental impact assessment prior to the commencement of business activities, in line with the provisions of the Act. The principles of environmental management in the Act, include the following:

- a) renewable resources must be used on a sustainable basis for the benefit of present and future generations;
- b) community involvement in natural resources management and the sharing of benefits arising from the use of the resources, must be promoted and facilitated;
- c) the participation of all interested and affected parties must be promoted and decisions must take into account the interest, needs and values of interested and affected parties;  
equitable access to environmental resources must be promoted and the functional integrity of ecological systems must be taken into account to ensure the sustainability of the systems and to prevent harmful effects;
- d) assessments must be undertaken for activities which may have a significant effect on the environment or the use of natural resources;
- e) sustainable development must be promoted in all aspects relating to the environment;

## RESPONSES BY THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA- AL NAM 1/2024

f) Namibia's cultural and natural heritage including, its biological diversity, must be protected and respected for the benefit of present and future generations.

The Act provides for an Environmental Commissioner, and it also makes provision for environmental officers to do inspections and conduct searches, with a view to ensuring that the provisions of the Act are being complied with, failing which, compliance orders can be issued against contravening persons.

The National Heritage Act (Act 27 of 2004) also provides adequate protection to ensure cultural rights are protected, as earlier enumerated.

Namibia's Labour Act 11 of 2007 also protects against unfair labour practices, and makes provision for, *inter alia*, the health and safety of workers. The Act also makes provision for a Labour Commissioner and labour inspectors to ensure full compliance with the Act.

### QUESTION 7:

**Please explain what additional steps your Excellency's Government has taken to ensure that State owned companies, in this case the Namibian Ports Authority, respect human rights, including requiring human rights due diligence.**

The Republic of Namibia enacted the State-Owned Enterprises Governance Act No. 2 of 2006, which makes provision for the efficient governance of State-Owned Enterprises (SOEs), and the monitoring of their performance. Non-performing SOE Officials or Board Members may be dismissed should there be non-compliance, in accordance with the rules of natural justice.

The SOE Governance Council established by the said Act, establishes generally accepted common principles of corporate governance and good practice governing SOEs.

### QUESTION 8:

**Please provide information about the measures that your Excellency's government has taken, or is considering to take, to ensure that affected local communities and Indigenous Peoples have access to effective remedies, including adequate reparation, in line with the UNGPs.**

The Republic of Namibia has established well defined systems, processes and institutions to address any human rights violation.

## RESPONSES BY THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA- AL NAM 1/2024

For example, aggrieved persons may present their cases to the Office of the Ombudsman for investigation.

Furthermore, persons who fail to comply with the relevant provisions of the National Heritage Act, may be penalised, in accordance with the rules of natural justice.

In addition, based on the relevant provisions of the National Heritage Act, and other legislation that speaks to the protection of cultural rights, as well as relevant international human rights treaties that binds the Republic of Namibia, aggrieved persons may lodge cases before the Namibian courts against persons or entities deemed to have violated human rights.

The Namibian Judiciary is independent, and no member of the Executive or Legislature or any other person, may interfere with judges or judicial officers in the exercise of their judicial functions.

### CONCLUSION

In conclusion, the Government of the Republic of Namibia once again reiterates its full commitment to the protection of human rights for the benefit and welfare of Namibian citizens, in line with its own national laws and international law obligations.

It is important at this juncture to point out some factual inaccuracies that were identified in the joint communication from the Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises; the Special Rapporteur in the Field of Cultural Rights; and the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, and are hereby corrected:

Throughout the letter Namport's expansion plans for Robert Harbour are mixed up interchangeably with those of Angra Point, which, as described above, are two separate projects with different implementation plans. The parameters of the two projects seem to be used interchangeably which is incorrect.

In addition, on numerous instances in the letter, Hyphen is incorrectly associated with the Robert Harbour expansion project which it is not. Robert Harbour expansion should not be linked to the future green hydrogen/ammonia export terminal of Hyphen or of any other green ammonia exporter planned at Angra Point. The Robert Harbour expansion project is a

## RESPONSES BY THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA- AL NAM 1/2024

Namport project which is designed to alleviate the congestion in the existing port and provide much needed capacity to service the offshore oil and gas fields.

It is alleged that there was an “absence” of substantive responses from the Namibian Ports Authority on letters sent to it dated 13 February 2024 and 21 June 2024 respectively. This is incorrect and unfortunate given that written responses to these two communications were indeed given, and the parties have in fact been engaging on the basis of the responses that were provided. This clear misstatement of fact is disconcerting and should be considered alongside the supposed impact of the port expansion on the Heritage Site which continues to be portrayed despite the direct clarifications provided by Namport to the communities on this strategic project and assurances that it would not have any impact on Shark Island.

Finally, it bears repeating that it is a national policy to involve and consult all interested and affected stakeholders in infrastructure projects, especially where such projects may potentially have an impact on such stakeholders. It is for this reason that the Robert Harbour Expansion project has been delayed after heeding to the local communities’ call to conduct additional specialist impact assessment studies.

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