



Society for  
Threatened Peoples



## List of issues

### **Submission on the impacts of German green energy policies on Economic, Social and Cultural rights on the Nama indigenous people**

#### Submitted by

Nama Traditional Leaders Association (NTLA)

European Center for Constitutional and Human Rights (ECCHR)

Society for Threatened Peoples (STP)

Forensic Architecture (FA)

Minority Rights Group International (MRG)

#### to the

UN Committee on Economic, Social and Cultural Rights

on the occasion of the consideration of the

List of Issues for Germany during the

Committee's Pre-Sessional Working Group on

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## **Introduction**

This submission outlines Germany's failure to uphold its obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR), particularly regarding the extraterritorial human rights impacts of its (in)actions on the Nama people in Namibia. The Nama people are excluded from decisions affecting their collective rights and ancestral territories in the absence of Free, Prior and Informed Consent (FPIC), violating their right to self-determination. Despite historical injustices — including Germany's failure to provide adequate reparations for the genocide committed against the Nama and Ovaherero peoples — current bilateral development cooperation between Germany and Namibia continues to perpetuate harm against them. Through technical and financial cooperation for the promotion of renewable energy and the development of a green hydrogen sector, Germany is supporting the Hyphen project, a hydrogen production planned on the ancestral lands of the Nama in the Great Namaqualand. German-domiciled businesses are also involved in the Hyphen project and fail to respect the rights of the ICESCR. This submission hence shows the violations of the Nama people's rights to culture, a healthy environment and self-determination under the principle of non-discrimination.

The German businesses involved in the Hyphen project are ENERTRAG, a main shareholder of Hyphen,<sup>1</sup> as well as the energy company RWE, which has signed a Memorandum of Understanding intending to purchase 300,000 tons of ammonia once the project is operating.<sup>2</sup>

The submission focuses on two issues regarding the impact of German green energy policies on ESC rights:

1. Rights of Indigenous Peoples to self-determination, and
2. Environmental rights.

We kindly request the Committee to include these issues in its list of issues.

The following organizations contributed to this submission:

The *Nama Traditional Leaders Association (NTLA)* is the umbrella organization of the ten Nama Traditional Authorities representing the Nama tribe worldwide and advocates for reparations for German colonial crimes and respect for human and civil rights of the Nama people. They are a traditional authority recognized by the Namibian government.

The *European Center for Constitutional and Human Rights (ECCHR)* is a German independent, non-profit legal and educational organization dedicated to enforcing civil and human rights worldwide.

The *Society for Threatened Peoples (STP)* is an internationally active, independent human rights organization based in Germany. It advocates for persecuted and threatened ethnic and religious minorities, nationalities and indigenous communities.

*Forensic Architecture (FA)* is a research agency based at Goldsmiths, University of London. FA's mandate is to develop, employ, and disseminate new techniques, methods, and concepts for investigating state and corporate violence. The team includes architects, software developers, filmmakers, investigative journalists, scientists, and lawyers.

*Minority Rights Group International (MRG)* is the leading human rights organization working with ethnic, religious and linguistic minorities, and Indigenous Peoples worldwide.

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<sup>1</sup> See <https://enertrag.com/de/news-und-presse/pressemitteilungen/hyphen-wasserstoff-projekt-in-namibia-auf-dem-weg-zum-strategischen-auslandsprojekt-der-bundesrepublik-deutschland>

<sup>2</sup> See [https://www.rwe.com/-/media/RWE/Pressarticle/PDF/2022/12/2022-12-02-rwe-and-hyphen-explore-offtake-of-green-ammonia-from-namibia-en-RWE.pdf?sc\\_lang=en](https://www.rwe.com/-/media/RWE/Pressarticle/PDF/2022/12/2022-12-02-rwe-and-hyphen-explore-offtake-of-green-ammonia-from-namibia-en-RWE.pdf?sc_lang=en)

## **Issue 1: Rights of Indigenous Peoples to self-determination**

**ICESCR Articles:** Art. 1, Art. 2.2, Art. 12, Art. 15

**Concluding observations from the previous report:** Recommendations No. 8, 9, 10<sup>3</sup>

### **Questions:**

**a) What measures is the German government implementing to ensure that consultations are carried out in a systematic and transparent manner in order to obtain the free, prior, and informed consent of Indigenous Peoples in the context of decisions that affect them in relation to reparations for the genocide perpetrated by colonial Germany and the “Joint Declaration”?**

### **Explanatory note:**

1. Originally, there were 13 traditional Nama clans in the Great Namaqualand, which was governed by a confederation confirmed by the Hoachanas Treaty of 9 January 1858.<sup>4</sup> The Nama people have been without access to most of their ancestral land since 1884, when German traders and settlers arrived to what is today Namibia. During the colonial occupation of German South West Africa, the legal framework for land dispossession of Nama people by German colonizers was based on a series of fraudulent land purchases and colonial decrees issued by German authorities.<sup>5</sup> Land confiscations were carried out through various German South West Africa land dispossession ordinances. Notable among these were the 1905 Land Expropriation Measures, which allowed the confiscation of indigenous lands as state property; the 1907 Settler ordinances and indigenous land seizures, which declared large portions of indigenous land as “state land” and restricted Nama access; and the 1913 Land Law, which further solidified land confiscations, permanently restricting indigenous land ownership.<sup>6</sup> In 1908 parts of Great Namaqualand were declared a *Sperrgebiet* (“Mining Restricted Area”) by the German colonizers designating it for diamond mining activities, accompanied by the forced and violent displacement and genocide of Nama communities.

2. Since 2015, the German government has been negotiating a reconciliation agreement with the Namibian government for crimes committed during its colonial occupation, including the genocide and other crimes committed against the Nama (and Ovaherero) Indigenous Peoples. For several years now, the draft of the so-called “Joint Declaration” has been agreed upon and is waiting for final signature.<sup>7</sup> While it recognizes that a genocide from a historical perspective was committed and commits Germany to supporting Namibia through economic development cooperation, it does not include reparations for the groups affected by the genocide and other crimes. Following criticism from the Nama (and Ovaherero) Indigenous Peoples, on 23 February 2023 seven UN Special Rapporteurs sent letters to the German and Namibian governments.<sup>8</sup> They highlighted the lack of participation of Nama (and

<sup>3</sup> CESCR, *Concluding observations on the sixth periodic report of Germany (2018)*, E/C.12/DEU/CO/6.

<sup>4</sup> See: <https://www.ntla.de/fotos/8/184097/album/einsatzbilder/hoachanas-vertrag/>.

<sup>5</sup> The so-called “Meilenschwindel” laid the foundation for the colonization of indigenous territory by the German empire. More similar treaties followed, which gave German settlers and businesses access to exploit the ancestral Nama land. The area around Lüderitz was transferred to the German South West Africa Company (Deutsche Kolonialgesellschaft für Südwestafrika), including the rights to explore and exploit the territory for mining activities.

<sup>6</sup> Details can be found in the letter sent by NTLA, ECCHR, FA, STP, MRG to RWE in April 2025, available at: [https://www.ecchr.eu/fileadmin/Offene\\_Briefe/20250402\\_RWE\\_open\\_letter.pdf](https://www.ecchr.eu/fileadmin/Offene_Briefe/20250402_RWE_open_letter.pdf)

<sup>7</sup> See <https://www.deutsche-afrika-stiftung.de/wp-content/uploads/2021/06/deutsche-afrika-stiftung-joint-declaration-by-the-federal-republic-of-germany-and-the-republic-of-namibia.pdf>.

<sup>8</sup> The letters were sent by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the rights of indigenous peoples; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on violence against women and girls, its causes and consequences under the following reference numbers: AL DEU 1/2023 (Germany) and AL NAM 1/2023 (Namibia).

Ovaherero) representatives in the negotiations, the lack of reparative measures directed to them specifically and the failure to fully recognize the genocide committed against them. Germany's response to this letter, dated 1 June 2023,<sup>9</sup> outlines its bilateral development support to Namibia and insists on limiting its responsibility to a historical and moral nature, rather than legal responsibility, which would include reparations to the victimized communities for the genocide and other crimes committed.

3. Article 1 of the CESCRC recognizes the right of Indigenous Peoples to self-determination. In General Comment No. 21, the Committee affirms that this right includes the ability to participate freely, actively, and in an informed way in key decision-making processes that affect one's way of life and cultural rights without discrimination. It also encompasses the right to seek and receive compensation when those rights are violated.<sup>10</sup> The Expert Mechanism on the Rights of Indigenous Peoples states: "Free, prior and informed consent (FPIC) is a human rights norm grounded in the fundamental rights to self-determination and to be free from racial discrimination guaranteed by the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination."<sup>11</sup> The obligation to obtain FPIC is also explicitly recognized in Art. 19 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) as well as the ILO's Indigenous and Tribal Peoples Convention (ILO 169), much of which is recognized as customary international law.

4. Free, Prior and Informed Consent (FPIC) is a core principle of international Indigenous rights law, enshrined in Article 19 of UNDRIP, requiring states to "consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."<sup>12</sup> This obligation is reinforced by ILO Convention No. 169, particularly Articles 6 and 15, mandating governments to consult Indigenous Peoples with the objective of achieving agreement or consent on measures affecting their lives, lands, and resources.<sup>13</sup> Together, these instruments affirm that FPIC is not a procedural formality, but a substantive right grounded in the broader framework of self-determination, land tenure, and participatory governance, forming part of the evolving body of international customary law concerning Indigenous Peoples.

5. In June 2021, Germany ratified the ILO 169, which entered into force on 23 June 2022. In its seventh periodic report presented to the Committee in 2023, Germany states that "(there) are no indigenous peoples in Germany within the meaning of the Convention. The ratification [of the ILO Convention] was carried out with the aim of strengthening Germany's foreign policy and development policy position with regard to the protection of the rights of indigenous peoples (...). The aim was to strengthen the protection of indigenous peoples, whose existence is under increasing threat, internationally."<sup>14</sup> Assigning a symbolic character to the ratification of this legally binding instrument, knowing that German foreign policies affect indigenous territories, is contrary to the most basic principles of international law, recognized in the Vienna Convention on the Law of Treaties.<sup>15</sup> Germany should ensure the right to FPIC in relation to reparations for the genocide, in direct consultation with the affected Indigenous communities.

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<sup>9</sup> Reference Number Pol-10 552.00 NAM, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=37548>.

<sup>10</sup> CESCRC, *General Comment No. 21 (2009) on the right of everyone to take part in cultural life (art. 15, para. 1 (a))*, E/C.12/GC/21, paras. 49e, 54a.

<sup>11</sup> Expert Mechanism on the Rights of Indigenous Peoples, *Study (2018) on free, prior and informed consent: a human rights-based approach*, A/HRC/39/62, para 3.

<sup>12</sup> UN Declaration on the Rights of Indigenous Peoples (UNDRIP), Art. 19.

<sup>13</sup> International Labor Organization, Convention No. 169, Art. 6 and 15.

<sup>14</sup> Seventh periodic report submitted by Germany (2023), E/C.12/DEU/7, para. 27.

<sup>15</sup> Vienna Convention on the Law of Treaties (1969), Article 26: 'Pacta sunt servanda' "Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

6. The Expert Mechanism on the Rights of Indigenous People has found in a report from 2016, that “Indigenous peoples’ conceptualization of health and well-being is generally broader and more holistic than that of mainstream society, with health frequently viewed as both an individual and a collective right, strongly determined by community, land and the natural environment. (...) Indigenous concepts of health often incorporate spiritual, emotional, cultural and social dimensions in addition to physical ones. Those concepts are inextricably linked with the realization of other rights, including the rights to self-determination, development, culture, land, language and the natural environment.”<sup>16</sup>

7. Therefore, the lack of inclusion of the Nama people during the negotiation process for the Joint Declaration violates their rights to self-determination under the principle of non-discrimination. The lack of reparations to the Nama communities and the perpetuation of inter-generational trauma moreover violate their rights to health and culture.

**b) What measures is the German government implementing to obtain the free, prior, and informed consent of Indigenous People in the context of decisions in support of industrial green energy projects, which will be located on their ancestral lands?**

**Explanatory note:**

8. Furthermore, the Nama people are affected by the construction of a major renewable energy project on this same ancestral land, today’s Tsau|Khaeb National Park, south of Lüderitz on Namibia’s Atlantic coast, with the involvement of two German companies. The German government has expressed its intent to recognize Hyphen as a “strategic foreign project”, in order to give it privileged access to funds and investments.<sup>17</sup> Yet, the German government is not consulting the Nama people about the development and implementation of the Hyphen project on their ancestral land.

9. In August 2021, a Joint Communiqué of Intent on green hydrogen was signed between the German Namibian governments under the lead of the Federal Ministry of Research, Technology and Space (Bundesministerium für Forschung, Technologie und Raumfahrt (BMFTR) – then the German Federal Ministry of Education and Research (BMBF)), with € 40 million allocated for exploratory research.<sup>18</sup> In March 2022, a Joint Declaration of Intent on hydrogen cooperation followed, coordinated by the then Federal Ministry for Economic Affairs and Climate Action (BMWK),<sup>19</sup> now Federal Ministry for Economic Affairs and Energy. Former State Secretary Rainer Baake was appointed as special envoy for the cooperation.<sup>20</sup> Furthermore, the then Federal Ministry for Economic Affairs and Climate Action (BMWK) has entered into a bilateral administrative partnership with the Namibian Ministry of Industrialization and Trade and the Ministry of Mines and Energy to support the development of a high-quality green hydrogen infrastructure.<sup>21</sup>

10. The German ‘H2Global’ auction scheme offers to compensate the cost of the difference between (expected higher) green hydrogen purchasing prices and the (lower) sales prices companies like RWE

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<sup>16</sup> Expert Mechanism on the Rights of Indigenous Peoples, *Right to health and indigenous peoples with a focus on children and youth*, A/HRC/33/57, para. 4.

<sup>17</sup> See: <https://www.h2-view.com/story/hyphens-namibian-hydrogen-venture-recognised-as-a-strategic-foreign-project-by-germany/2107761.article/>; see also German Government, Answer No. 17 to Parliamentary Inquiry, BT-Drs. 20/14426, 23 December 2024, available at <https://dserver.bundestag.de/btd/20/144/2014426.pdf>.

<sup>18</sup> Available at <https://www.fona.de/medien/pdf/JOINT-COMMUNIQUE-OF-INTENT.pdf?m=1748417110&>; see also BMBF, “Deutsch-namibische Kooperationsvereinbarung zu Grünem Wasserstoff”, available at: <https://www.fona.de/de/massnahmen/foerdermassnahmen/jcoi-wasserstoff-kooperation-namibia-deutschland.php>

<sup>19</sup> German Government, Answer No. 1 to Parliamentary Inquiry, BT-Drs. 20/14426, 23 December 2024, available at <https://dserver.bundestag.de/btd/20/144/2014426.pdf>.

<sup>20</sup> See <https://www.rechargenews.com/energy-transition/hardly-a-better-place-on-earth-for-green-hydrogen-energy-veteran-baake-to-head-german-namibian-pact/2-1-1256093>; see also German Government, Annex 1 to the Answer to Parliamentary Inquiry, BT-Drs. 20/14426.

<sup>21</sup> See <https://www.bundeswirtschaftsministerium.de/Redaktion/DE/Schlaglichter-der-Wirtschaftspolitik/2024/12/05-gruener-wasserstoff-namibia.html>.

expect.<sup>22</sup> Germany has earmarked substantial public funds to subsidize these transactions.<sup>23</sup> Although there are no German export guarantees or financial loans for Hyphen yet,<sup>24</sup> there have reportedly been various “preliminary discussions at working level” to explain application procedures and funding criteria.<sup>25</sup> The German government clarified that its “qualified letter of interest” for Hyphen is still subject to an additional review of the company’s business and technology plan, after which the company could gain access to special foreign trade promotion as a “strategic foreign project”.<sup>26</sup> In December 2024, the German government confirmed in its response to a parliamentary enquiry, that a “comprehensive social, environmental and human rights impact assessment on the basis of international standards” would take place, before export credit guarantees or an investment guarantee to cover political risks would be granted.<sup>27</sup>

11. The Committee has shown concern in previous concluding observations about “the lack of effective legal mechanisms in line with international standards to guarantee that Indigenous Peoples are consulted regarding any legislative or administrative measures likely to affect them” and has criticized “concessions for natural resource exploitation projects without engaging in consultations aimed at obtaining the free, prior and informed consent of Indigenous Peoples or conducting social, environmental and human rights impact studies (art. 1)”.<sup>28</sup>

12. The Committee has stated in General Comment No. 24, that “[t]he obligation to respect economic, social and cultural rights is violated when States parties prioritize the interests of business entities over Covenant rights without adequate justification, or when they pursue policies that negatively affect such rights [...]. Indigenous peoples’ cultural values and rights associated with their ancestral lands are particularly at risk. States parties and businesses should respect the principle of free, prior and informed consent of indigenous peoples in relation to all matters that could affect their rights, including their lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired”.<sup>29</sup> In the same General Comment, the Committee has also found that entering into such trade agreements and investment treaties should “be preceded by human rights impact assessments that take into account both the positive and negative human rights impacts of trade and investment treaties (...). States parties cannot derogate from the obligations under the Covenant in trade and investment treaties that they may conclude.”<sup>30</sup> Furthermore, in General Comment No. 14, “the Committee considers that development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health.”<sup>31</sup>

13. The Expert Mechanism on the Rights of Indigenous Peoples has found that a relationship between intergenerational trauma and lack of progress towards the realization of indigenous human rights exists.<sup>32</sup> General Comment No. 26 of the ICESCR, finds that “[i]n many parts of the world, land is not only a resource for producing food, generating income and developing housing, it also constitutes the basis for social, cultural and religious practices and the enjoyment of the right to take part in cultural

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<sup>22</sup> H2 Global Stiftung, “The H2Global mechanism”, available at <https://www.h2-global.org/the-h2global-instrument>.

<sup>23</sup> Hintco, “900 million euros for the market ramp-up of green hydrogen”, available at <https://www.hintco.eu/news/900-million-euros-for-the-market-ramp-up-of-green-hydrogen>.

<sup>24</sup> Parliamentary Inquiry (BT-Drs. 20/13918), Answer No. 18 of the German Government (BT-Drs. 20/14426, 23.12.2024).

<sup>25</sup> Parliamentary Inquiry (BT-Drs. 20/13918), Answer No. 31 of the German Government (BT-Drs. 20/14426, 23.12.2024).

<sup>26</sup> Parliamentary Inquiry (BT-Drs. 20/13918), Answer No. 17 of the German Government (BT-Drs. 20/14426, 23.12.2024).

<sup>27</sup> Parliamentary Inquiry (BT-Drs. 20/13918), Answer No. 15 of the German Government (BT-Drs. 20/14426, 23.12.2024).

<sup>28</sup> See for instance CESCR, *Concluding observations on the fourth periodic report of Guatemala (2022)*, E/C.12/GTM/CO/4, para. 14.

<sup>29</sup> CESCR, *General Comment No. 24 (2017) on state obligations in the context of business activities*, E/C.12/GC/24, para. 12.

<sup>30</sup> CESCR, *General Comment No. 24, supra*, para. 13.

<sup>31</sup> CESCR, *General Comment No. 14 (2000) on the right to the highest attainable standard of health (Art. 12)*, E/C.12/2000/4, para. 27.

<sup>32</sup> Expert Mechanism on the Rights of Indigenous Peoples, *Right to health and indigenous peoples with a focus on children and youth*, A/HRC/33/57, para. 52.

life.”<sup>33</sup> It goes on to state that “land is closely and often intrinsically related to the enjoyment of the right to take part in cultural life”.<sup>34</sup>

14. Therefore, the lack of inclusion and FPIC – so far – of the Nama people in the planning of the Hyphen project and the support granted by the German government, violates their right to self-determination. The perpetuation of neo-colonial policies of extractivism furthers the existing inter-generational trauma of the Nama and violates their rights to health and culture.

**c) What measures and regulations does the German government have in place to ensure that green energy projects by German-domiciled businesses located on Indigenous Peoples’ land obtain their free, prior, and informed consent?**

**Explanatory note:**

15. In 2023, the German Supply Chain Due Diligence Act (German: Lieferkettensorgfaltspflichtengesetz,) entered into force, which regulates the human rights obligations businesses domiciled in Germany need to implement in their supply chains. The Act neither explicitly mentions the right of Indigenous Peoples to FPIC as regards business activities abroad nor lists ILO 169 in its annex of relevant human rights instruments, despite the fact that Germany ratified the Convention in 2022. In other relevant provisions, the Act remains vague as to whether rights of Indigenous Peoples are covered.

16. However, General Comment No. 24 requires the German government to ensure that the concerns of Indigenous Peoples are included in human rights impact assessments and that they are directly involved through their own representatives in order to give their required FPIC.<sup>35</sup> Furthermore, the Comment specifies, that the governments are obliged “to ensure accountability and access to remedies, preferably judicial remedies, for those whose Covenant rights have been violated in the context of business activities”.<sup>36</sup>

17. Additionally, General Comment No. 26 stresses the state’s duty to protect human rights and take legislative and other measures to establish clear standards for non-state actors in connection with the acquisition and leasing of large-scale land at home and abroad.<sup>37</sup> Going even further, the Committee obliges states to respect the rights of Indigenous Peoples to manage their land – even when no longer in their possession: “Laws and policies should protect Indigenous Peoples from the risk of State encroachment on their land, for instance for the development of industrial projects”,<sup>38</sup> and that they should avoid adopting climate change mitigation policies (...) that lead to different forms of land grabbing, especially when they affect the land (...) of (...) Indigenous Peoples”.<sup>39</sup>

18. The lack of specific guidance to German-domiciled businesses on meaningful consultations with and FPIC by Indigenous Peoples as well as lack of legal remedies constitute a violation of the Nama people’s right to self-determination.

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<sup>33</sup> CESCR, *General Comment No. 26 (2022) on land and economic, social and cultural rights*, E/C.12/GC/26, para. 1.

<sup>34</sup> CESCR, *General Comment No. 26, supra*, para. 10.

<sup>35</sup> CESCR, *General Comment No. 24, supra*, para. 17.

<sup>36</sup> CESCR, *General Comment No. 24, supra*, para. 38.

<sup>37</sup> CESCR, *General Comment No. 26, supra*, para. 32.

<sup>38</sup> CESCR, *General Comment No. 26, supra*, para. 16.

<sup>39</sup> CESCR, *General Comment No. 26, supra*, para. 56.

## **Issue 2: Environmental impacts of German-domiciled businesses**

ICESCR Articles: Art. 12, Art. 15

**Question:**

**d) What measures is the German government taking to ensure that its support of industrial green energy projects and its regulation and monitoring of business activities of German-domiciled companies do not negatively impact the right to a healthy environment or biodiversity?**

**Explanatory note:**

19. Tsau||Khaeb National Park, located on ancestral Nama land and born out of the German occupied and exploited diamond "Restricted Area", is globally significant as the world's only arid biodiversity hotspot and one of just 36 biodiversity hotspots recognized worldwide. It plays a key role in carbon storage and climate regulation. Namibia's Chamber of Environment warns that the proposed hydrogen development poses a major threat to this ecologically sensitive and 'near-pristine' area.<sup>40</sup> The Hyphen project also includes large-scale industrial infrastructure at Angra Point, a biologically rich area within the Succulent Karoo ecosystem.<sup>41</sup> Additionally, planned desalination plants would produce brine—a hot, salty waste byproduct harmful to marine life – which could seriously affect surrounding coastal and marine ecosystems, and impact local fishing activities.<sup>42</sup>

20. The Committee recognizes in General Comment No. 14, that the right to health also encompasses the right to a healthy environment, which includes "the prevention and reduction of the population's exposure to harmful substances such as (...) detrimental environmental conditions that directly or indirectly impact upon human health."<sup>43</sup> Furthermore, the Committee recognizes that state parties should set up an environment where private actors can contribute to the realization of the right to health – and therefore also the right to a healthy environment.<sup>44</sup> In previous concluding observations, the Committee has shown concern about the lack of "adequate measures to address or mitigate the potential adverse effects of large renewable energy (...) projects on the traditional lifestyle" of Indigenous Peoples.<sup>45</sup>

21. The Special Rapporteur on the promotion and protection of human rights in the context of climate change has stated that "Indigenous Peoples (...) have faced (...) displacement, (...) access restrictions and environmental degradation of their territories by fossil fuel operations, terminating alternative livelihoods".<sup>46</sup> Historically, the land dispossession and expulsion of the Nama people to allow for the mining exploitation took place by German businesses alongside the German government during colonial occupation and are continuing today with the Hyphen project, despite it being a renewable energy and not a fossil fuel project.

22. Apart from few specific environment-related risks that companies have to include in their due diligence measures, the German Supply Chain Due Diligence Act does not contain a general clause that also takes biodiversity and other climate impacts into account. The lack of specific regulations of German-domiciled businesses to protect the biodiversity constitutes a violation of the Nama people's right to a healthy environment.

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<sup>40</sup> See: <https://n-c-e.org/wp-content/uploads/Green-hydrogen-Tsau-Khaeb-National-Park-NCE-Position-Paper.pdf>

<sup>41</sup> See: <https://www.climatechangenews.com/2023/11/15/green-hydrogen-namibia-europe-japan-tax-biodiversity-impacts/>

<sup>42</sup> See: <https://www.climatechangenews.com/2023/11/15/green-hydrogen-namibia-europe-japan-tax-biodiversity-impacts/>

<sup>43</sup> CESCR, *General Comment No. 14, supra*, paras.4 and 15.

<sup>44</sup> CESCR, *General Comment No. 14, supra*, para. 42.

<sup>45</sup> CESCR, *Concluding observations on the seventh periodic report of Sweden (2024)*, E/C.12/SWE/CO/7, para. 18.

<sup>46</sup> UN Special Rapporteur on the promotion and protection of human rights in the context of climate change, *Report (2025) on the imperative of defossilizing our economies*, A/HRC/59/42, para. 18.