



## Certain Phosphate Lands in Nauru (Nauru v. Australia)

**ARGUED: 24 November 2024**

**DECIDED: 25 November 2024**

1 The Dissenting Opinion was agreed to and signed by Justice Crutcher of the Kingdom of Bel-  
2 gium, Justice Evans of the Kingdom of Sweden, Justice Lenart of the Republic of France, Justice Shannon  
3 of the Republic of Costa Rica, and Justice Truax of the Republic of Kenya.

### 4 *Summary of Fact/History:*

5 The island of Nauru is located 42 kilometers South of the equator in the Pacific Ocean, home to  
6 nearly 11,000 residents. In 1900, Nauru was held under German control when Phosphate was discovered  
7 on the island. Phosphate is a rare naturally occurring mineral used around the world as a fertilizer. At  
8 the beginning of WWI Australia seized the island into its jurisdiction. Imperial Japan invaded the island  
9 during WWII for use as a base of operations for its Pacific campaign. After the end of World War II, the  
10 occupation of Imperial Japan ended and Nauru became a UN Trust Territory administered by Australia,  
11 the United Kingdom, and New Zealand.

12 Between 1947 and 1968, Nauru was under a co-trusteeship of the United Kingdom, New Zealand,  
13 and Australia, and these three countries greatly benefited from the phosphate profits. Nauru received  
14 a percentage of the profits from the export of phosphates, however, it was significantly less than the  
15 profits received by the three countries of the co-trusteeship. In the 1960s, it was determined that the  
16 phosphate reserves had been largely depleted and were no longer of value to Australia, and in 1968,  
17 Nauru was given sovereignty. This sovereignty was achieved through the 1967 Agreement relating to  
18 the Nauru Phosphate Industry, herein referred to as the 1967 Trusteeship Agreement, which largely ad-  
19 dressed the future of phosphate mining on the island by the Nauruans themselves, as well as \$750,000  
20 a quarter with 6% interest, established in Part II Section 9 of the Agreement. Soon after Nauru gained  
21 independence from the co-trusteeship, its economy failed and its phosphate reserves ran out, finding  
22 that 80% of the island was left uninhabitable and that the soil was unable to sustain agriculture. The  
23 Court was asked to examine the validity of the Republic of Nauru's claims against the Commonwealth  
24 of Australia for violating the Trusteeship Agreement that they were subject to.

### 25 *Summary of Arguments*

26 Nauru approached the Court seeking appropriate relief and compensation in accordance with  
27 international legal principles. Nauru is requesting the Court order Australia to pay full compensation for  
28 the environmental and economic damage that they have suffered from their actions, as well as pro-  
29 vide funds for the rehabilitation of Nauru's environment and infrastructure in order to restore the island  
30 back to a habitable and productive state. They claimed that through the excessive mining of the land of  
31 Nauru, Australia has depleted their resources and violated Article 76 of the United Nations Charter, de-  
32 lineating that the objectives of the Trusteeship system were to "promote the political, economic, social,  
33 and educational advancement of the inhabitants of trust territories, and their progressive development  
34 towards self-government or independence as may be appropriate to the particular circumstances of  
35 each territory and its peoples and the freely expressed wishes of the people concerned." Nauru claims  
36 that through the mining of their natural resources and their subsequent depletion, Australia has vi-  
37 olated their sovereign rights to future independence by denying them proper compensation for the  
38 damage done; setting up their economy to fail. Nauru claimed that Australia granted them indepen-  
39 dence without their desire or consent and this independence was only granted due to there no longer

40 being economic benefits available. Thus, Nauru was unable to prepare for independence, preventing  
41 them from thriving as a newly independent nation.

42 Australia approached the Court seeking the determination the Court does not have jurisdic-  
43 tion over this case as the original trusteeship that Nauru claims was violated has ended. Therefore,  
44 the original trusteeship holds no legal obligation that can be addressed in this case. Under Article 78  
45 of the United Nations Charter, once a nation joins the United Nations post-trusteeship, the trusteeship  
46 no longer applies and they forfeit the protections of the trusteeship. Australia claimed that, though the  
47 trusteeship has ended, they did not violate the Trusteeship to begin with, as they allowed Nauruan rep-  
48 resentation in all of the decisions made over the mining being carried out on the island. They claimed  
49 that as Nauru was constantly represented and they were granted independence by Australia without  
50 a national movement, that shows Australia's respect for the Nauruan people and their sovereignty.  
51 Also, Australia claimed that the worsening environmental conditions of Nauru are due to the continued  
52 mining after they gained independence, even after Australia determined that the land was largely de-  
53 pleted of phosphate and pulled out of the mining. The 1967 Trusteeship Agreement ending the trustee-  
54 ship clearly outlined the limits of the amount of phosphates that could be mined by any entity, and thus  
55 any problems that may have occurred as a result of the mining of phosphates are solely the respon-  
56 sibility Nauru mining operations, and not the responsibility of the Court.

#### 57 *Summary of Jurisdiction*

58 In this case, we hold that the Court has partial jurisdiction.

59 Article 36.2 of the Statute of the International Court of Justice states, "The States parties to the  
60 present Statute may at any time declare that they recognize as compulsory *ipso facto* and without  
61 special agreement, concerning any other State accepting the same obligation, the jurisdiction of the  
62 Court in all legal disputes concerning: a. the interpretation of a treaty; b. any question of international  
63 law; c. the existence of any fact which, if established, would constitute a breach of an international  
64 obligation; d. the nature or extent of the reparation to be made for the breach of an international obli-  
65 gation". This goes to show the Court's jurisdiction lies in the point of contention. The point of contention  
66 lies in the reparations and therefore is an economic conflict, not a human rights conflict.

67 The court only has jurisdiction so far as the point of contention. The point of contention is the  
68 "payment" for wrongs done while under the trusteeship. This payment falls under economics and the  
69 failing of Nauru's economy. While both sides acknowledge the effect the phosphate depletion had  
70 on the human rights of the people of Nauru, this is not the point of contention. The contention of this  
71 court is reparations for economic and land damage. These, in conjunction with the case, make this  
72 an economic concern. The Trusteeship council has already ruled on the human rights violations and  
73 Australia has paid that sum in full, which clears that point of contention.

#### 74 *Opinion*

75 1. The issue of this case is not of a human rights violation. There was no concrete evidence  
76 presented by any side of the case that human rights breaches occurred separately from the economic  
77 breaches. All human rights breaches are directly related to the economic issues at play. The depletion  
78 of their natural resources was economically driven and continued after the Trusteeship was removed.  
79 The driving difference between Human Rights and Economic conflict is the contention of monetary  
80 value for the depletion of the phosphate lands. Since they are asking for money to rehabilitate the  
81 land and "to be made whole", this falls into an economic cause of the contention.

82 2. The economic contention of this case is the basis of the human rights violations that are  
83 relied upon in the majority opinion. Through the trusteeship, the economy of Nauru was bolstered by  
84 aid from Australia, the United Kingdom, and New Zealand, as well as the percentage of the profits from  
85 their mining company on Nauru, and upon being granted independence, the economic reparations  
86 from Australia were not significant enough to sustain their economy effectively. In the 1967 Trusteeship  
87 Agreement, the Nauruan Phosphate Company was founded, but the company was already on unstable  
88 ground because the phosphate was largely depleted from the island, making the company unable to  
89 support the economy upon independence. The decline in the economy was followed by the failure to  
90 advance politically, socially, and educationally, as these advancements can only be supported by a  
91 strong economy to support the programs. The human rights violations are a result of the economic

92 contention of this case, and the Court can only consider the economic contentions, not the human  
93 rights contentions, as the economic contention is relevant to the 1967 Trusteeship Agreement.

94 3. The driving force for our opinion today rests in the contractual agreement between Nauru and  
95 Australia under the 1967 Agreement relating to the Nauru Island Phosphate Industry. Due to the pay-  
96 ment of money per Article III section 9 of the 1967 Agreement, the contractual obligation of Australia has  
97 been fulfilled. When Nauru signed this agreement, they waived their right to further payments towards  
98 the land and their economy. In regards to economics, the contract between Nauru and Trust coun-  
99 tries takes precedence over any qualms in the original trustee charter. The 1967 agreement effectively  
100 ended the trusteeship and therefore holds contractual precedent over any other documents relating  
101 to the Trusteeship of Nauru. We believe Australia owes no monetary compensation to the Indigenous  
102 people of Nauru beyond what the Australian government has already paid out reparations after dis-  
103 continuing the trusteeship agreement in 1967. As stipulated in this contractual agreement, Australia,  
104 as well as the United Kingdom and New Zealand, paid their dues of \$750,000 with an accrument of  
105 6% interest in accordance. The advocates for Nauru claimed during oral arguments that they had re-  
106 ceived a total of 88 Million dollars from not only the contractual obligations of these nations but also  
107 from the Trustee Act council. The funds received by Nauru to this point serve as effective reparations  
108 to any human rights violations that may have occurred in connection with the environmental strain.  
109 Australia compensated Nauru for its rightful share per the agreement.

110 In conclusion, the dissenting opinion holds that Australia has *not* violated any international or  
111 contractual obligations and has acted per guidelines established in the United Nations Charter Chapter  
112 XII, the Trusteeship Agreement for the Territory of Nauru, or the Agreement Relating to Nauru Phosphate  
113 Industry. We understand the subject at hand is inherently sensitive to many parties around the world.  
114 However, this court needs to take an objective stance and deliberate only on matters of our jurisdiction.  
115 We recognize the reality that finite resources on Nauru are heavily sought after, and are no longer as  
116 widely available as they once were. We, the Dissent, recommend Australia support Nauru and the  
117 rebuilding of their phosphate lands by providing sustainable infrastructure through services rather than  
118 arbitrary monetary reparations.

Signed By



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Justice Henry Crutcher



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Justice Kaylin Evans



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Justice Abigail Truax



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Justice Zachary Lenart



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Justice Emerson Shannon