SUBMISSION REGARDING THE REQUEST BY THE PAN AFRICAN LAWYERS UNION (PALU) FOR AN ADVISORY OPINION ON THE OBLIGATIONS OF STATES WITH RESPECT TO THE CLIMATE CHANGE CRISIS

1. Statement of identity and interest

This brief is being submitted by Paula Gaviria Betancur, in her capacity as the United Nations Special Rapporteur on the human rights of internally displaced persons, appointed by the Human Rights Council to begin serving on 1 November 2022, pursuant to resolution 50/6 adopted by the Human Rights Council on 7 July 2022. Her mandate was extended by three years pursuant to Human Rights Council Resolution 59/12 on 7 July 2025. She is mandated to work towards strengthening the international response to the complex problem of internal displacement in the context of often multiple interacting drivers, including the adverse effects of climate change and disasters.

The present submission is made to the African Court on Human and People's Rights (hereafter: the Court) in the proceedings concerning the Advisory Opinion Request made by the Pan African Lawyers Union (Palu) on "The Obligations of States with Respect to the Climate Change Crisis" under article 4 of the Protocol to the African Charter on Human and People's Rights (ACHPR) on the establishment of an African Court on Human and People's Rights, and Rule 82(1) of the Rules of the African Court on Human and Peoples' Rights.

In the performance of her mandate, the Special Rapporteur on the human rights of internally displaced persons is accorded certain privileges and immunities as expert on mission for the United Nations pursuant to the Convention on the Privileges and Immunities of the United Nations, adopted by the United Nations General Assembly on 13 February 1946. The present brief is provided by the Special Rapporteur on a voluntary basis without prejudice to, and should not be considered as a waiver, express or implied, of the privileges and immunities of the United Nations, its official and experts on mission, pursuant to the Convention on the Privileges and Immunities of the United Nations of 1946. Authorization for the positions and views expressed by the Special Rapporteur, in full accordance with her mandate, was neither sought nor given by the United Nations, the Human Rights Council, the Office of the High Commissioner for Human Rights, or any of the officials associated with those bodies.

2. Introduction

The request of PALU for an Advisory Opinion on the Obligations of States with Respect to the Climate Change Crisis highlights the magnitude of internal displacement in the context of disasters and adverse effects of climate change in Africa.[1] Africa is in fact among the world's regions hardest hit by internal displacement in the context of disasters and adverse effects of climate change. Between 2020 and 2024, the number of new such displacements amounted to 39.6 million in Sub-Saharan Africa. Droughts and floods, and to a lesser extent landslides as a consequence of heavy rain fall, are the main drivers of such forced movements. According to the World Bank,

[1] Request by the Pan African Lawyers Union (Palu) for an Advisory Opinion on the Obligations of States with Respect to the Climate Change Crisis, paras. 15, 17 f., 28 f., 36, 43, 46 f., 54 ff.

> *"Sub-Saharan Africa is projected to have the largest numbers of internal climate migrants: ranging from 56.6 to 85.7 million in the pessimistic reference scenario by 2050. This represents an average of 3.5 percent of the region's total population, which is more than twice the proportion of [South Asia and Latin America]. Two factors may be driving this. First, Sub-Saharan Africa is highly vulnerable to climate impacts, especially in already fragile drylands and along exposed coastlines. Second, the region's agriculture, which employs a significant portion of the labor force, depends on rainfall for almost all its crop production."*[2]

As generally recognized, including by the UN General Assembly,[3] the UN Human Rights Council,[4] the mandate of the Special Rapporteur on the human rights of internally displaced persons, [5] climate change impacts are not only driving internal displacement but also undermine the human rights of internally displaced persons (IDPs). At the regional level, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa of 23 October 2009 explicitly obliges States Parties to "take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change" (article 5, para. 4).

According to the Court's case law, the human and peoples' rights of the African Charter also apply to cases of forced evictions from ancestral lands[6] or involuntary resettlement[7] due to environmental projects and measures, and thus cases of internal displacement. Given the scale of the problem and its relevance to Africa, it is very welcome that the following questions of the Request implicitly address internal displacement:

(1) Paragraphs 94(a) and (b) as well as 181(d) regarding positive obligations to protect vulnerable populations;

(2) Paragraphs 94(d) and (e) and 181(f) and (g) regarding applicable obligations in implementing adaptation, resilience and mitigation measures including obligations to provide compensation for loss and damage.

3. Positive Obligations to Protect Vulnerable Populations

3.1 Questions

According to paragraph 94 of the Request, the Court is invited to address the following questions:

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[2] Kanta Kumari Rigaud et. al., *Groundswell: Preparing for Internal Climate Migration* (Washington, DC: The World Bank 2018), p. 182.

[3] See. e.g., Protection of and assistance to internally displaced persons, UNGA Res74/160 (2019), preambular paragraphs.

[4] See, e.g. Human Rights Council Resolution 59/25 of 8 July 2025entitled "Human rights and climate change" with numerous references.

[5] Regarding internal displacement in the context of the slow-onset adverse effects of climate change see, in particular, Report of the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary, UN Doc. A/75/207 (21 July 2020).

[6] See African Court of Human and Peoples' Rights, African Commission on Human and Peoples' Rights v Republic of Kenya, App no 006/2012 (Judgment [merits] 26 May 2017).

[7] See African Commission of Human and Peoples' Rights, Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya, Communication No 276/2003 (February 2010).

"(*a) What, if any, are the States' specific human and peoples' rights obligations to protect and safeguard the rights of individuals and peoples of the past (ancestral rights), present and future generations affected by the adverse and negative impacts of climate change, considering the relevant provisions of the African Charter?*

(b) Given the unique and significant implications of the responsibilities and duties to vulnerable individuals and populations, whether State parties to the African Charter on Human and Peoples' Rights (the Charter) have positive obligations to protect vulnerable populations including environmental human rights defenders, indigenous communities, women, children, youth, future generations, the current generation, past generations, the elderly and people with disabilities from the impact of climate change in line with the relevant treaties?"

Iin paragraph 181(d) of its request, PALU asks the Court to determine the

"Positive obligations of States to protect vulnerable populations, including environmental human rights defenders, indigenous communities, women, children, the elderly, and people with disabilities."

3.2 General remarks

First, ***the Court is invited*** *to explicitly address the rights of IDPs as part of vulnerable populations and the corresponding obligations of States.* While PALU's Request does not mention IDPs, the list of vulnerable populations is not exhaustive, thus allowing the Court to take up this issue. This is not only justified because of the magnitude of the problem, but also because IDPs do not only experience particular vulnerabilities but, like the other categories mention in the question, have specific needs. Unlike non-displaced people, they need among others to be able to (1) be protected from arbitrary displacement; (2) find refuge in a (relatively) safe location and be protected from forcible return; (3) find at least temporary shelter; (4) avoid discrimination because of their being displaced; (5) have lost personal documentation restituted even if, according to the law, documentation can be obtained only at the place of habitual residence; (6) register as voters and participate in elections and referenda even if, according to the law, these political rights can only be exercised at the place of habitual residence; (7) have land, housing and other property left behind protected from being taken over by others, or have them restituted; and (8) find a durable solution ending their displacement.[8] All these needs are protected by corresponding human rights. These rights are made explicit in the 1998 Guiding Principles on Internal Displacement[9] and, as shown below, implicitly guaranteed by the African Charter on Human and Peoples' Rights (ACHPR).

Second, ***the Court is invited*** *to clarify that States Parties to the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) have the duty to domesticate it and incorporate its provisions into domestic law.* The Kampala Convention explicitly addresses the specific needs of internally displaced persons and communities in detail. As of now, 34 out of the 55 members of the African Union have ratified it.

[8] Walter Kälin, *Internal Displacement and the Law* (Oxford University Press 2023) p. 57 f. with references.

[9] Guiding Principles on Internal Displacement, Addendum to 'Report of the Representative of the Secretary-General, Mr Francis M Deng, submitted pursuant to Commission Resolution 1997/39, UN Doc E/C.N.4/1998/53/Add.2 (11 February 1998).

However, only three States Parties to the Convention have incorporated it into domestic legislation following its ratification, despite a corresponding obligation in its Article 3(2)(a). As the Kampala Convention is not a self-executing treaty, this means that in most States Parties affected individuals and communities cannot invoke its guarantees in judicial proceedings.

Third, ***the Court is invited*** *to clarify that States, by virtue of the ACHPR have to respect, protect and fulfil the human rights of internally displaced persons and peoples regardless of whether or not they are a party to the Kampala Convention or have domesticated it.* While it is often assumed that violations of human rights of IDPs only occur in the context of armed conflict, work by the successive Special Rapporteurs have consistently highlighted, that persons and communities displaced in the context of disasters and adverse effects of climate change also experience such violations.[10] The Special Rapporteur identified, among others, gender-based violence in evacuation and relocation centres and lack of accessible complaint mechanisms; higher risk of experiencing violence, exploitation and abuse of persons with disabilities; child prostitution and human trafficking; or lack of access to civil documentation as common violations.[11]

3.3 Prevention of displacement and protection from arbitrary displacement

While the Kampala Convention focuses on the obligations to prevent arbitrary displacement, States arguably have a broader human rights duty to take preventive measures in the context of climate change. See below, section 4.2.

3.4 Protection during displacement

Article 5 Kampala Convention obliges "States Parties [to] take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change" as well as to "provide sufficient protection and assistance to internally displaced persons, and where available resources are inadequate to enable them to do so" to seek the assistance of international organizations and other relevant actors. Art. 8(2) Kampala Convention on "Obligations of States Parties Relating to Protection and Assistance during Internal Displacement" lists several duties of States that are particularly relevant for IDPs, including, in particular, the obligations to:

[10] See Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, Addendum, Protection of Internally Displaced Persons in Situations of Natural Disasters, UN Doc. A/HRC/10/013/Add.1 (5 March 2009); Report of the Representative of the Secretary-General on the human rights of internally displaced persons, UN Doc. A/64/214 (3 August 2009), paras. 10–30; Report of the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary, Un Doc. A/75/207 (21 July 2020). See also Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, Addendum, Mission to Maldives, Un Doc. A/HRC/19/54/Add.1 (30 January 2012); Report of the Special Rapporteur on the human rights of internally displaced persons on his mission to the Philippines, UN Doc. A/HRC/32/35/Add.3 (5April 2016), paras. 15–38; Visit to Japan, Report of the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary, Un Doc. A/HRC/53/35/Add.1 (24 May 2023); Report of the Special Rapporteur on the human rights of internally displaced persons, Paula Gaviria Betancur, on her visit to Mozambique, UN Doc. A/HRC/56/47/Add.1 (3 July 2024), paras. 24-31, 40 ff.

[11] Report of the Special Rapporteur on the human rights of internally displaced persons, Paula Gaviria Betancur, on her visit to Mozambique, UN Doc. A/HRC/56/47/Add.1 (3 July 2024), paras. 40 ff.

> *"a. Take necessary measures to ensure that internally displaced persons are received, without discrimination of any kind and live in satisfactory conditions of safety, dignity and security;*
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> *b. Provide internally displaced persons to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include food, water, shelter, medical care and other health services, sanitation, education, and any other necessary social services, and where appropriate, extend such assistance to local and host communities."*

Article 9 Kampala Convention furthermore obliges States to prevent and refrain from sexual and gender based violence in all its forms, sexual exploitation and harmful practices, slavery, recruitment of children, and human trafficking (Art. 9[1][d]; take special measures to protect and assist IDP's with special needs and vulnerabilities (Art. 9[2][c]); provide for appropriate psycho-social support for victims of sexual and other related abuses (Art. 9[2][d]); refrain from forcible return or resettlement to danger zones (Art. 9[2][e]); guarantee the freedom of movement and choice of residence (Art. 9[2][f]); trace and reunify families separated during displacement (Art. 8[h]); take measures to property left behind (Art. 9[2][i]). Art. 13(2) obliges States to issue or replace relevant personal documentation. Particularly important is Art. 9(2)k) providing that

> *States Parties shall consult internally displaced persons and allow them to participate in decisions relating to their protection and assistance;*

The Court is invited to reaffirm that these obligations *are underpinned by corresponding guarantees* of the African Charter on Human and People's Rights, which apply also to States that have not yet ratified the Kampala Convention or domesticated it by incorporating their obligations under this Convention into domestic law.

The Court is also invited to highlight, that disasters and adverse effects of climate change do not affect everyone in the same way but have differentiated impacts on *IDPs with special needs.* Disasters

> *tend to aggravate pre-existing patterns of discrimination and power imbalances within a society. Women and children, especially if they are heads of households, older persons, persons with disabilities, persons who are seriously ill or injured, the poor and persons belonging to socially marginalized groups (including in many cases migrants and persons belonging to indigenous groups or minorities) will therefore be disproportionally affected by natural disasters. These groups are also at risk of facing additional abuses in displacement, especially if displaced to a setting radically different from their home such as a shelter or a poor urban area.*[12]

The Court is further invited to spell out the content of the *right to participate* in decisions relating to their protection and assistance and its three dimensions of information, consultations, and actual involvement in decision-making, as guaranteed by the right to receive information and the

[12] See Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, Addendum, Protection of Internally Displaced Persons in Situations of Natural Disasters, UN Doc. A/HRC/10/013/Add.1 (5 March 2009), para. 71. For a detailed analysis see Report of the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary, Un Doc. A/75/207 (21 July 2020), paras. 20–33.

freedom to express and disseminate one's opinion (Art. 9 ACHPR), and to underscore that this right applies to all phases of displacement as highlighted by the 1998 UN Guiding Principles on Internal Displacement and summarized by the Special Rapporteur on the Human Rights of Internally Displaced Persons as follows.

> *Under Guiding Principle 7 (3), if displacement occurs in situations other than during the emergency states of armed conflicts and disasters, the guarantees to be complied with include adequate measures to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation; the free and informed consent of those to be displaced; and the involvement of those affected, particularly women, in the planning and management of their relocation. Guiding Principle 18 (3) requires that special efforts be made to ensure the full participation of displaced women in the planning and distribution of basic supplies. Principle 22 relates to the right to participate in economic and community affairs, the right to vote and to take part in governmental and public affairs and the right to communicate in a language that internally displaced persons understand. Principle 23 (3) considers the right of internally displaced persons to education and the full and equal participation of women and girls in education programmes. Guiding Principle 28 stipulates that special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.*[13]

As highlighted by the African Commission on Human and Peoples' Rights, information, consultation and participation must be conducted "in good faith, through culturally appropriate procedures and with the objective of reaching an agreement" with displaced persons and communities.[14] To be effective, "participation requires bottom up community based approaches rather than the top-down approaches", i.e. "full engagement with affected communities, recognizing their rights and dignity."[15] The African Charter emphasizes participation in governance and development, particularly through Article 13 and Article 22. In the climate context, this implies that affected communities must be meaningfully consulted in climate adaptation planning, planned relocation decisions must involve free, informed and participatory processes, and states must ensure special consideration for marginalized groups, including women, children, older persons, and persons with disabilities.

Finally, ***the Court is invited*** to stress that persons internally displaced in the context of climate change are also protected by relevant *human rights guarantees that are not listed in the Kampala Convention*. For instance, authorities may be obliged to *evacuate* persons from locations where they face imminent and life-threatening dangers because a failure to assist persons who cannot leave such zones on their own may amount to a violation of the right to life and the integrity of person (Art. 4 ACHPR), provided that competent authorities knew or should have known the danger and would have had the capacity to act.[16] At the same time, forced evacuations not required to

[13] Report of the Special Rapporteur on the human rights of internally displaced persons, UN Doc A/72/202 (24 July 2024), para. 19.

[14] *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya*, Communication No 276/03 (2009) (hereafter Endorois case), para 289.

[15] Report of the Special Rapporteur on the human rights of internally displaced persons, UN Doc A/72/202 (24 July 2024), para. 46.

[16] See, e.g, Report of the Representative of the Secretary-General on the human rights of internally displaced persons, UN Doc. A/64/214 (3 August 2009), paras. 24 ff. See also European Court of Human Rights, *Budayeva and others v. Russia,* judgement of 20 March 2008.

protect the safety of affected persons may amount to arbitrary displacement,[17] and thus a violation of the right to remain as part of the freedom of movement and residence (Art, 12[1] ACHPR). *Forced evictions* of IDPs living in informal settlements are, as for instance illustrated by the case of Mogadishu with its large numbers of internally displaced victims of drought,[18] a huge challenge that may amount to a violation of the right to adequate housing.

3.5 Durable solutions

Durable solutions are "achieved when IDPs no longer have specific assistance and protection needs that are linked to their displacement and such persons can enjoy their human rights without discrimination resulting from their displacement."[19] Thus, human rights play a crucial role in the context of efforts to allow IDPs to find a durable solution that ends their displacement.

According to Article 11(1) of the Kampala Convention, "States Parties shall seek lasting solutions to the problem of displacement by promoting and creating satisfactory conditions for voluntary return, local integration or relocation on a sustainable basis and in circumstances of safety and dignity." As highlighted by the UN Guiding Principles on Internal Displacement, IDPs have the right to choose whether to return, locally integrate where they found refuge, or relocate to another part of the country (Principle 28). Therefore, States Parties to the Kampala Convention have the duty to "enable internally displaced persons to make a free and informed choice on whether to return, integrate locally or relocate by consulting them on these and other options and ensuring their participation in finding sustainable solutions" (Art. 11[2]). Other obligations include the duty to provide simplified mechanisms to resolve property disputes and restore land left behind by displaced "communities with special dependency and attachment to such lands" ((Art. 11[4] and [5]).

The Court is invited to highlight, among others, the following human rights that are particularly relevant to achieve durable solutions:

- The *right to choose* whether to return, locally integrate, or relocate to another part of the country, which derives from Article 12 ACHPR, guaranteeing the right to freedom of movement and residence within one's own country.
- The *right to return*, as well as the *right to be protected from forcible return*, derived from Article 12 ACHPR and, in the case of return to locations where the life and personal integrity of affected persons would be at risk, Article 4.
- The *right to information, consultation and participation* in matters related to durable solutions, which has its foundation in Article 9 ACHPR on the right to receive information and express one's opinion. This right is of paramount importance as the right to choose the location where IDPs want to achieve a durable solution and their effective implementation require that they receive adequate information (e.g. on conditions in areas of return, or the support provided by national and international actors), are consulted, and can participate in matters affecting them.

[17] Guiding Principles on Internal Displacement, Principle 6(2)(d)

[18] See, e.g. Mohamed Jelle et. al., Forced evictions and their social and health impacts in Southern Somalia: a qualitative study in Mogadishu Internally Displaced Persons (IDP) camps, 2021:14 Global Health Action, 1969117.

[19] 'Framework on Durable Solutions for Internally Displaced Persons', Addendum to 'Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin' UN Doc A/HRC/13/21/Add.4 (9 February 2010).

- The *right to property* (Art. 14 ACHPR) whose enjoyment is jeopardized if land, housing, and other assets left behind is taken over by others and cannot be restituted.
- The *right to compensation* (see below, section 4).

4. Obligations in implementing adaptation, resilience and mitigation measures

4.1 Questions

Paragraph 94(d) of the Request invites the Court to address the following question:

> *What, if any, are the applicable obligations of African States in the implementation of adaptation, resilience and mitigation measures in response to climate change?*

This question is particularly relevant for the issue of internal displacement because adaptation, resilience and mitigation measures

- may help people to stay and thus prevent displacement;
- may require the relocation of people and communities; or
- may lead to arbitrary displacement if not carried out in accordance with relevant human rights standards.

Paragraph 94(d) of the Request, inviting the Court to *examine applicable human rights obligations of States to provide reparation and compensation for loss and damage* is also relevant in this context. At its core, displacement means the loss of security, property and possessions, economic independence, social ties, access to basic services and political participation. Thus, internal displacement has been recognized as loss and damage by explicitly including it in the scope of the Fund for Responding to Loss and Damage.[20]

4.2 Preventing displacement

The implementation of adaptation, resilience and mitigation measures can help people affected by the impacts of climate change to stay and thus prevent internal displacement. This is recognized by Article 4 Kampala Convention, providing that "States Parties shall …, in areas of potential displacement, establish and implement disaster risk reduction strategies, emergency and disaster preparedness and management measures …".

States must take reasonable and effective measures to prevent environmental harms that threaten life, health, and human dignity (Art. 4, 16 and 24 African Charter). This includes implementing preventive measures to protect communities exposed to climate hazards. The right to respect for one's life and integrity of person (Art. 4 ACHPR) is the legal cornerstone of duties to prevent displacement in the context of disasters and adverse impacts of climate change. The right to development and other justiciable economic, social and cultural rights in the Charter may apply. When governments fail to take reasonable measures to protect populations from known climate risks, such omissions may amount to a violation of Charter rights.

[20] Decision 2/CP.27, 'Funding arrangements for responding to loss and damage associated with the adverse effects of climate change, including a focus on addressing loss and damage' (2022), para. 6(b).

In the case of *Budayeva v. Russia*, the European Court of Human Rights found a violation of the right to life when people were killed by a mudslide because local authorities had not only failed to repair previously destroyed protective dams but also omitted to warn and properly evacuate people. The Court stressed that authorities are obliged to act where "the imminence of a natural hazard [is] clearly identifiable" and risks are "susceptible to mitigation", particularly if they are related to "a recurring calamity affecting a distinct area developed for human habitation or use."[21]. The Court developed a series of principles regarding the due diligence obligations of authorities to prevent disaster-related deaths that, arguably, are relevant also outside Europe. They can be summarized as follows:

> *"The duty to protect life as a human rights obligation requires authorities to (i) enact and implement, in terms of general prevention, laws dealing with all relevant aspects of disaster risk mitigation and set up the necessary mechanisms and procedures; (ii) take the necessary administrative and technical measures, including monitoring potential dangers, in locations with specific risks to the extent that the threat is real, known and likely to be reduced by such measures; and (iii) inform potentially affected populations about possible risks so that they can evacuate when dangers become imminent."*[22]

Regarding the failure of authorities to implement a project to build and reinforce sea-walls on four low-lying islands inhabited by an indigenous community, the UN Human Rights Committee did not find a violation of the right to life under the specific circumstances of the case, but reiterated "that environmental degradation can compromise effective enjoyment of the right to life, and that severe environmental degradation can adversely affect an individual's well-being and lead to a violation of the right to life".[23] Furthermore, the Committee found a violation of Article 27 of the Covenant on Civil and Political Rights on the rights of minorities. Responding to the authors claim that "climate change already compromises the authors' traditional way of life and threatens to displace them from their islands",[24] it considered

> *"that the State party's failure to adopt timely adequate adaptation measures to protect the authors' collective ability to maintain their traditional way of life, to transmit to their children and future generations their culture and traditions and use of land and sea resources discloses a violation of the State party's positive obligation to protect the authors' right to enjoy their minority culture."*[25]

In light of this case law, ***the Court is invited*** to highlight that the right to life enshrined in Article 4 ACHPR and the rights of peoples guaranteed by Articles 20–22 ACHPR may oblige States to implement adaptation, resilience and mitigation measures, including in locations where communities are at risk of displacement due to climate change impacts.

4.3 Planned Relocation

[21] European Court of Human Rights, *Budayeva and Others v. Russia,* App nos 15339/ 02, 21166/ 02, 20058/ 02, 11673/ 02 and 15343/ 02 (Judgment, 20 March 2008), para. 132.

[22] Walter Kälin, *Internal Displacement and the Law* (Oxford University Press 2023), p. 115.

[23] Human Rights Committee, *Billy et.al. v. Australia,* Communication No. 3624/2019 (2022), para. 8.5

[24] Ibid., para. 3.5

[25] Ibid., para. 8.14

Planned relocation in the context of disasters and adverse effects of climate change is not only a possible solution for IDPs if in the aftermath of a disaster affected people and communities are unable to return to their homes because landslides, sea level-rise, very severe environmental degradation and other a hazard rendered that location uninhabitable or too dangerous for human habitation. It is also a preventive measure helping people moving out of harm's way before disasters strike.[26] As highlighted by the Special Rapporteur on the human rights of internally displaced persons, relocated people may face multiple human rights challenges.[27]

While preventive planned relocation may be necessary to save lives and protect the integrity of persons and thus be required by the duty to protect life enshrined in Article 4 ACHPR, they interfere with the freedom of movement and residence (Art. 12 ACHPR) if implemented against the will of those affected. While the Kampala Convention does not address preventive planned relocation, it highlights that "[f]orced evacuations in cases of natural or human made disasters" amount to prohibited arbitrary displacement unless they are "required by the safety and health of those affected" (Art. 4[4][f]). The same must be true for forced relocations.

Even where they are required by the circumstances, planned relocations should be a measure of last resort.[28] Therefore, relevant international standard require that that such relocations can only be ordered by competent authorities based on a law; are implemented after the free and informed consent of those affected is sought; to the extent possible, involve those affected, including women, in the planning and management of the relocation; and respect the right to an effective remedy, including the review of decisions to relocate people and communities by judicial authorities.[29]

As highlighted by the African Commission on Human and Peoples' Rights, planned relocation is particularly problematic in the case of indigenous communities and other communities with deep attachment to and dependency on their lands due to cultural values and traditions. In this regard, Article 5(5) Kampala Convention provides that "States Parties shall endeavour to protect" such communities "from being displaced from such lands, except for compelling and overriding public interests." According to Article 16 of the ILO Convention No 169 and Article 10 of the UN Declaration on the Rights of Indigenous Peoples, the principle of free and informed consent is particularly important if such peoples are relocated away from their ancestral lands. If consent cannot be obtained, "such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned."[30]

[26] See Planned relocations of people in the context of disasters and the adverse effects of climate change, Report of the Special Rapporteur on the human rights of internally displaced persons, Paula Gaviria Betancur, UN Doc A/HRC/56/47 (1 July 2024).

[27] See the examples in ibid., paras. 36–58.

[28] Guiding Principles on Internal Displacement, Principle 7(1).

[29] Ibid, Principle 7(2). See also International Law Association, 'Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea Level Rise', Annex to Resolution 6/ 2018 (24 August 2018) Principle 6; Brookings Institution, Georgetown University and UNHCR, Guidance on Protecting People from Disasters and Environmental Change through Planned Relocations (2015).

[30] International Labour Organization, Convention (No 169) concerning indigenous and tribal peoples in independent countries (adopted 27 June 1989, entered into force 5 September 1991) 1650 UNTS 383, art 16.

In the case of the Endorois people who were relocated when their ancestral lands were designated as a game park, the African Commission on Human and Peoples' Rights stressed the importance of proper consultations with affected communities;[31] the duty to provide relocated peoples with adequate opportunities to practice their religion, exercise their cultural rights, receive proper compensation for lost land that allows them to maintain their livelihoods; as well as the obligation to create in areas of relocation conditions favourable to their development.[32]

The Court is invited to stress that planned relocations (1) are a measure of last resort in cases where it is necessary to safeguard the lives and personal integrity of those affected; (2) can only be ordered by competent authorities based on a law after the free and informed consent of those affected is sought; (3) to the extent possible, involve those affected, including women, in the planning and management of the relocation; and (4) respect the right to an effective remedy. The Court should also highlight the more stringent standards when indigenous peoples and other communities with special attachment to their lands are relocated. Finally, it is invited to state that in all cases of planned relocation States have to provide compensation, particularly in the form of of land, and take other positive measures allowing affected persons to safeguard their cultural traditions, have access to basic services and livelihoods in conditions favourable to their development.

4.4 Adaptation and mitigation measures triggering displacement

Adaptation and mitigation measures such as large-scale green energy projects, planting and protecting forests that act as carbon sinks, or the planting of mangroves and other measures to stabilize eroding coastlines are important tools to address climate change in Africa. However, they may dispossess people and communities of their land and thus trigger their displacement or forced planned relocation. If adaptation and mitigation measures displacing people and communities are not necessary or suitable for combatting and adapting to climate change, such measures may even amount to arbitrary displacement.

Climate adaptation policies, including planned relocation, should comply with human rights standards under the African Charter. States should therefore ensure that planned relocation measures are necessary and proportionate, involve meaningful consultation and participation of affected communities, protect livelihoods and cultural practices, provide adequate housing, services, and infrastructure, and ensure security of tenure and durable solutions. Failure to implement planned relocation in a rights-respecting manner may violate rights protected under Articles 14, 16, 17, 21, and 22 of the African Charter.

This creates specific dilemmas as the climate gains may be offset by the loss of land, access to livelihoods, or the exercise of cultural practices. To mitigate this dilemma, international law requires that evictions, relocation and prohibitions to return to one's former home be in accordance with relevant provisions of human rights law, in particular as codified in Guiding Principle 7, outlined above. While the Kampala Convention does not rule out displacement caused by projects, its Article 10 obliges States Parties to prevent such displacement "as much as possible" and "ensure that the stakeholders concerned will explore feasible alternatives, with full information and

[31] *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya*, AComHPR (2009) Communication No 276/03 (hereafter Endoris case), paras 225 ff.
[32] Ibid., paras. 248 ff.,267 f., 297 f.

consultation of persons likely to be displaced by Projects." Without invoking the Kampala Convention, but in line with these requirements, the Court has recognized that the right to property (Art. 14 ACHPR) applies to forced evictions from ancestral forest lands as a measure to protect the environment, and found a violation with regard to the Ogiek people who were evicted from the Kenyan Mau Forest because the government had been unable to show that their continued presence would have jeopardized the envisaged preservation of the natural ecosystem in question. Like the African Commission on Human and Peoples' Rights in the Endorois case, it ruled that such displacement without adequate compensation and redress amounts to a violation of rights guaranteed by the ACHPR.[33]

The Court is invited to underscore that, to the extent possible, adaptation and mitigation projects should avoid the eviction, displacement and planned relocation of people and communities living in designated areas, and confirm that the legal principles established by the Court and the Commission in the Ogiek and Endorois cases also apply to such projects.

5. Conclusions

Regarding positive obligations to protect vulnerable populations (paragraphs 94[a] and ([b] as well as 181[d]), the Court is invited

- to highlight the magnitude of internal displacement occurring in the context of disasters and the adverse effects of climate change in Africa and the challenges associated with it;
- to explicitly address the rights of IDPs as part of vulnerable populations and the corresponding obligations of States;
- to clarify that States Parties to the Kampala Convention have the duty to domesticate it and incorporate its provisions into domestic law;
- to clarify that States, by virtue of the ACHPR, have to respect, protect and fulfil the human rights of internally displaced persons and peoples regardless of whether or not they are a party to the Kampala Convention or have domesticated it.

The Court is further invited

- to reaffirm that the obligations of States to protect and assist IDPs enshrined in the Kampala Convention are underpinned by corresponding guarantees of the African Charter on Human and People's Rights, which apply also in States that have not yet ratified the Kampala Convention or domesticated it by incorporating their obligations under this Convention into domestic law.
- to highlight, that disasters and adverse effects of climate change do not affect everyone in the same way but have differentiated impacts on IDPs with special needs including women and children, older persons, or persons with disabilities, members of indigenous communities;
- to spell out the content of the right to participate in decisions relating to the protection and assistance of internally displaced persons and communities and its three dimensions of information, consultations, and actual involvement in decision-making;

[33] African Court on Human and Peoples' Rights *African Commission on Human and Peoples' Rights v Republic of Kenya*, (2017) Application No 006/2012.

- to stress that persons and communities internally displaced in the context of climate change are also protected by relevant human rights guarantees that are not listed in the Kampala Convention, such as positive duties related to evacuations or prohibitions of forced evictions.

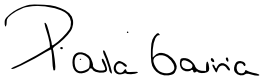
The Court is also invited to highlight, among others, the following human rights that are particularly relevant to achieve durable solutions:

- The right to choose whether to return, locally integrate, or relocate to another part of the country.
- The right to return, as well as the right to be protected from forcible return.
- The right to information, consultation and participation in matters related to durable solutions.
- The right to property whose enjoyment is jeopardized if land, housing, and other assets left behind is taken over by others and cannot be restituted.
- The right to compensation in cases of arbitrary displacement.

Regarding applicable obligations in implementing adaptation, resilience and mitigation measures including obligations to provide compensation for loss and damage (paragraphs 94[d] and [e]) and 181[f] and [g]), the Court is invited

- to highlight that the right to life enshrined in Article 4 ACHPR and the rights of peoples guaranteed by Articles 20–22 ACHPR may oblige States to implementing adaptation, resilience and mitigation measures, including in locations where communities are at risk of displacement due to climate change impacts;
- to stress that planned relocations (1) are a measure of last resort in cases where it is necessary to safeguard the lives and personal integrity of those affected; (2) can only be ordered by competent authorities based on a law after the free and informed consent of those affected is sought; (3) to the extent possible, involve those affected, including women, in the planning and management of the relocation; and (4) respect the right to an effective remedy; and to highlight that more stringent standards may apply when indigenous peoples and other communities with special attachment to their lands are relocated.
- to state that in all cases of planned relocation States have to provide compensation, particularly in the form of land, and to take other positive measures allowing affected persons to safeguard their cultural traditions, have access to basic services and livelihoods in conditions favourable to their development; and
- to underscore that, to the extent possible, adaptation and mitigation projects should avoid the eviction, displacement and planned relocation of people and communities living in designated areas and confirm that the legal principles established by the Court and the Commission in the Ogiek and Endorois cases also apply to such projects.

Bogotá, 31st of March 2026



Paula Gaviria Betancur

UN Special Rapporteur on the human rights of internally displaced persons