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AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

**A REQUEST FOR AN ADVISORY OPINION ON THE OBLIGATIONS OF
STATES WITH RESPECT TO THE CLIMATE CHANGE CRISIS**

BY

THE PAN AFRICAN LAWYERS UNION (PALU)

REQUEST FOR AN ADVISORY OPINION NO. 001/025

CASE SUMMARY

I. THE AUTHOR

1. The Pan African Lawyers Union (PALU), is a premier continental membership forum of and for individual African lawyers and lawyer's associations in Africa. Registered in Tanzania in 2002 by African Bar leaders and eminent lawyers, to reflect the aspirations and concerns of the African people and to promote and defend their shared interests. Its membership comprises of the continents over five regional lawyers' associations, over fifty-four (54) national lawyers' associations and over one thousand (1000) individual lawyers spread across Africa and in the Diaspora, working together to advance the law and the legal profession, rule of law, good governance, human and peoples' rights and socio-economic development of the African continent. This organization is located at Arusha, United Republic of Tanzania.
2. This Request is made in collaboration with the African Climate Platform and several African civil society organizations, including the Environmental Lawyers Collective for Africa, Natural Justice, and Resilient. The Author is represented by Mr. Donald Omondi DEYA, Advocate and Chief Executive Officer of PALU and a team of lawyers.

II. SUBJECT OF THE APPLICATION

A. CIRCUMSTANCES GIVING RISE TO THE REQUEST

3. The Request is filed pursuant to Article 4(1) of the Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights (Protocol) read with Rule 82(1) of the Rules of the African Court on Human and People's Rights (Rules).
4. The request concerns the disproportionate impact of climate change on the African continent and its implications for human rights. The Authors asserts that climate change crisis is an unprecedented threat to humanity and the

planet.¹ The Authors aver that nowhere is it more evident than in Africa, where communities that have contributed the least to greenhouse gas emissions bear the brunt of climate change's devastating impacts. Furthermore, that the United Nations (UN) has observed that "Africa is the continent most vulnerable to the impacts of climate change".² The author claims that this vulnerability stems from historical inequities, including colonial exploitation that decimated Indigenous land management practices and lagging underdeveloped economies. Consequently, Africans face rising temperatures, unrelenting droughts, catastrophic floods, and biodiversity loss, or threats to livelihoods infringing upon fundamental rights.³

5. The Authors submits that climate change worsens existing inequalities, placing specific vulnerable groups at increased risk. These include: women and girls, children, the elderly, indigenous people, and environmental human rights defenders. They claim that women and girls are more vulnerable, less educated, and excluded from decision making, but are highly exposed to climate change impacts due to their roles in agriculture and water management. They are significantly more likely to die during extreme weather events and face increased risks to education and safety due to displacements and resource scarcity.
6. The Authors claim Africa has the world youngest population and that children are uniquely vulnerable with limited capacity to adapt to climate shocks. They face risks like school disruptions, social disorder, food insecurity, diseases, and threats to water and sanitation.

¹ See generally Intergovernmental Panel on Climate Change, Climate Change 2022: Impacts, Adaptation, and Vulnerability, in Sixth Assessment Report of the Intergovernmental Panel on Climate Change, CAMBRIDGE U. PRESS, https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FullReport.pdf ("IPCC 2022 Report").

² United Nations, Fact Sheet on Climate Change: Africa is Particularly Vulnerable to the Expected Impacts of Global Warming, https://unfccc.int/files/press/backgrounders/application/pdf/factsheet_africa.pdf ("UN Fact Sheet"). See also IPCC 2022 Report, supra note 1.

³ See UN Fact Sheet, supra note 3. See also IPCC 2022 Report, supra note 1.

7. Regarding the elderly, the Author asserts that they are disproportionately affected by climate phenomena like heat, floods, droughts, and food insecurity due to age-related health conditions and reduced mobility.
8. Moreover, the indigenous peoples are particularly vulnerable due to their reliance on land and resources for subsistence and cultural practices. Climate impacts on land and resources directly threaten their survival and traditional ways of life. Carbon market projects are implemented without their consent, have further impacted their rights and access to land and resources.
9. Finally, the Authors claims that the environmental human rights defenders face increasing assaults, murders, intimidation, harassment, and criminalization for opposing activities harmful to the environment. Their right to assembly and to express themselves is curtailed as well as their right to participate in the democratic process and environmental governance.
10. The Authors highlight detailed accounts of the major impacts, caused by the climate change crisis in each African region including, Northern Africa in countries like Morocco, Tunisia, and Algeria. West Africa in Ghana, Benin, and Togo, East Africa in Kenya, and Tanzania. Southern African in Mozambique and Zimbabwe, and Central Africa in Chad.

B. ISSUES FOR DETERMINATION

11. The Authors emphasises that African States have the obligation under international human rights law: to respect, protect, promote and implement the guaranteed rights, including a positive duty to undertake measures ensuring effective dissemination and enjoyment of these rights. The Authors assert that Concepts such as "Sustainable Development," "Sustainable Use," and "Intergenerational Equity" are crucial interpretative tools for framing State obligations.
12. The Author asks the Court to determine several key issues, including:

- i. The Court's jurisdiction over African States' human and peoples' rights obligations regarding the climate emergency;
- ii. The interpretation and application of custom and treaty law concerning State obligations on climate change;
- iii. Specific State human rights obligations towards past, present and future generations affected by climate change;
- iv. Positive obligations of States to protect vulnerable populations, including environmental human rights defenders, indigenous communities, women, children, the elderly, and people with disabilities;
- v. Applicable obligations concerning a just, transparent, equitable, and accountable transition;
- vi. Applicable obligations in implementing adaptation, resilience and mitigation measures;
- vii. Applicable obligations concerning compensation for loss, damage and reparations;
- viii. Responsibilities of African States regarding violations by third parties (international monopolies, multinational corporations) operating within their jurisdiction. These entities contribute significantly to emissions and States have obligations under the Charter (Article 21) and international law to regulate and monitor their activities. The importance of Environmental Impact Assessments (EIAs) in regulating third-party activities is highlighted;
- ix. Obligations of African States concerning traditional emitters (historically high-emitting countries), including advocating for climate justice, demanding climate finance, seeking compensation for loss and damage, and promoting equitable burden-sharing; and
- x. The application of the principle of duty of care for States and potentially corporations in addressing climate change impacts.

III. APPLICABLE LAW

13. The Authors submit that the Advisory request is grounded in the African Charter; other regional and international human rights and climate change instruments, such as:

- i. Constitutive Act of the African Union;

- ii. African Charter for Human and Peoples Rights, especially Articles 2, 3, 4, 5, 8, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 60 and 61;
- iii. African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention);
- iv. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol);
- v. The African Charter on the Rights and Welfare of the Child;
- vi. The Revised African Convention on Conservation of Nature; and
- vii. Any other Relevant Instrument, international climate change treaties which have been ratified by most African States such as; United Nations Framework Convention on Climate Change, Kyoto Protocol to the United Nations Framework Convention on Climate Change, Paris Agreement, United Nations Convention on Combatting Desertification, and United Nations Convention on Biological Diversity.

14. The Author invites the Court to consider the following guidelines, resolutions, and frameworks as possible interpretative tools:

- i. African Commission on Human and Peoples' Rights State Reporting Guidelines and Principles on article 21 and 24 of the African Charter Relating to Extractive Industries, Human Rights and Environment 2018;
- ii. African Commission on Human and Peoples Rights Resolution 153 on Climate Change and Human Rights;
- iii. African Commission on Human and Peoples Rights Resolution 342 on Climate Change and Human Rights in Africa;
- iv. African Commission on Human and Peoples Rights Resolution 417 on the Human Rights Impacts of Extreme Weather in Eastern and Southern Africa; and
- v. African Commission on Human and Peoples Rights Resolution on Climate Change and Forced Disappearance.