

IN THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS, AT ARUSHA

REQUEST FOR AN ADVISORY OPINION No. 0 0 2 OF 2026

**IN THE MATTER OF A REQUEST BY THE PAN AFRICAN LAWYERS' UNION
(PALU) FOR AN ADVISORY OPINION ON THE OBLIGATIONS OF AFRICAN
STATES, INDIVIDUALLY AND COLLECTIVELY, WITH RESPECT TO
INDIVIDUAL CRIMINAL RESPONSIBILITY FOR SERIOUS, MASSIVE OR GROSS
VIOLATIONS OF HUMAN AND PEOPLES' RIGHTS IN AFRICA**

(Made under Article 58 (1)-(3) of the African Charter on Human and Peoples' Rights; Articles 3, 4, 7 and 33 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights; Rules 29(1)(b) and 82 of the Rules of the African Court on Human and Peoples' Rights, 2020; and all other enabling provisions of the law)

Table Of Contents

Introduction	3
Statement regarding Jurisdiction and Admissibility	4
Circumstances giving rise to the Request	5
Applicable Law.....	10
Issues for Determination.....	11
Summary of Arguments	13
<i>Meaning, Content and Scope of Serious, Massive or Gross Violations of Human and Peoples' Rights</i>	13
<i>Obligation to Investigate and Prosecute</i>	17
<i>Extra-Territorial Application of the Obligation to Investigate and Prosecute</i>	29
Active and passive Personality Jurisdiction	29
Universal Jurisdiction Obligations.....	31
<i>Relevant Collective Obligations of African States under the Formation of The African Union</i>	36
<i>Relevant Collective Obligations of African States under the Formation of Various Regional Economic Communities</i>	40
<i>PALU's position on the Questions Posed</i>	44
Summary of the Request.....	45
Conclusion	47

I. INTRODUCTION

1. This is a Request for an Advisory Opinion submitted by the Pan African Lawyers' Union (hereafter referred to as "PALU" or "the Applicant"), being an African organisation recognised by the African Union through Memoranda of Understanding concluded in 2006 (*Annexure 1 hereto*).
2. PALU is a continental association of lawyers and other legal sector professionals and organisations, registered in and whose address is 1 Kaunda Road, off Haile Selassie Road, P.O. Box 6065, Arusha, Tanzania, Tel: +255685078794, E-mail: legal@lawyersofafrica.org.

II. PARTICULARS OF THE AUTHORS

3. For the purpose of this Request, all further correspondence may be directed to—

Mr. Donald DEYA, Advocate

Pan African Lawyers' Union (PALU),
No. 1 Kaunda Road, Off Haile Selassie Road,
P.O. Box 6065, Arusha, Tanzania.
E-mail: legal@lawyersofafrica.org

Prof. Chidi Anselm ODINKALU, Advocate

c/o Pan African Lawyers' Union (PALU)
No. 1 Kaunda Road, Off Haile Selassie Road,
P.O. Box 6065, Arusha, Tanzania
Tel: +234 805 502 7273
E-mail: chidio@hotmai.com

Dr. Owiso OWISO, Advocate

OLC Law, LLP
CMS Africa House, 11th Floor
Chania Avenue
P.O. Box 10191–00200 Nairobi, Kenya.
Tel: +254700033300
E-mail: owiso.owiso@protonmail.ch / owiso.owiso@gmail.com

Ms. Ruth OGBEWEKON

Pan African Lawyers' Union (PALU),
No. 1 Kaunda Road, Off Haile Selassie Road,
P.O. Box 6065, Arusha, Tanzania.
E-mail: legal@lawyersofafrica.org

4. The authors' preferred language for purposes of correspondence is English.

III. STATEMENT REGARDING JURISDICTION AND ADMISSIBILITY

5. PALU respectfully seeks the exercise of the advisory jurisdiction of this honourable court pursuant to the following:
 - a) Article 58(1)-(3) of the African Charter on Human and Peoples' Rights.
 - b) Articles 3(1), 4(1) and 7 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol); and
 - c) Rules 29(1)(b) and 82 of the Rules of the African Court on Human and Peoples' Rights, 2020 (Rules of Court).
6. More specifically, PALU seeks an Advisory Opinion on the obligations of African States, individually and collectively, with respect to individual criminal responsibility for serious, massive or gross violations of human rights in Africa.
7. This Request invokes the advisory jurisdiction of the African Court on Human and Peoples' Rights (Court) to interpret the provisions of the African Charter on Human and Peoples' Rights (African Charter), particularly Articles 1 and 58 of the Charter.
8. The subject matter of this Request is not related to a matter being examined by the African Commission on Human and Peoples' Rights (African Commission).

IV. CIRCUMSTANCES GIVING RISE TO THE REQUEST

9. African States, through the African Charter on Human and Peoples' Rights (hereinafter "the Charter"), have made firm commitments to protect and promote the rights and freedoms of African peoples. The eighth preambular paragraph links the rights and freedoms enshrined in the Charter to the economic, social, and cultural development of African peoples.¹
10. Further, the Constitutive Act of the African Union (hereinafter "the Constitutive Act") similarly recognises the "scourge of conflicts," which impacts the development of the continent, and emphasises the need to promote peace, security, and stability as a prerequisite for the implementation of "our development agenda," while also affirming the determination of Member States to "promote and protect" human and peoples' rights.²
11. In particular, State parties to the Constitutive Act of the African Union undertake to promote and protect human rights in accordance with the African Charter on Human and Peoples' Rights;³ and recognise the "right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity."⁴
12. Thus, the interest of African development, is underpinned by adherence to the rule of law, the protection and promotion of human and peoples' rights, and the maintenance of peace and stability. This is further solidified by the African Union Agenda 2063 (The Africa We Want),⁵ which affirms an anti-impunity agenda and envisions an Africa governed by, and grounded in, a universal culture of good governance, democratic values, gender equality, respect for human rights, justice, and the rule of law.
13. Notwithstanding the existence of this normative consensus at the continental level, the Applicant respectfully invites this Honourable Court to take judicial notice of the fact that serious, massive, and gross violations of human and

¹ Preambular Paragraphs, African Charter on Human and Peoples Rights

² AU Constitutive Act

³ Id., Art. 3(h)

⁴ Id., Art. 4(h)

⁵ AU Agenda 2063, The Africa we Want - <https://au.int/en/agenda2063/overview>

peoples' rights continue to be committed by both State and non-State actors in the territory of State parties to the African Charter on Human and Peoples' Rights. Accountability for these violations has largely remained unclear, inchoate, or elusive, resulting in a persistent state of impunity and further exacerbating instability across multiple regions of the continent.

14. The African Charter on Human and Peoples' Rights provides that when the it appears to the African Commission from its communications procedure that one or more communications "apparently relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights",⁶ the Commission may bring such to the attention of the Assembly of Heads of State and Government,⁷ which may then request the Commission to make an in-depth study of these cases "and make a factual report, accompanied by its finding and recommendations."⁸
15. This provision of the African Charter clearly recognises the existence of a normative category of "serious and massive violations" of human and peoples' rights in Africa. However, the scope and nature of the responses permissible under the Charter is unclear. In the practice of the institutions created under the African Charter, including this honourable Court, there is an absence of authoritative guidance on the meaning or scope of "serious and massive violations" or of the nature and scope of measures that may be deployed in response thereto.
16. This gap has deadly consequences for human and peoples' rights in Africa. One of the most devastating episodes in recent human history, the Genocide against the Tutsi in Rwanda in 1994, saw the Organisation of African Unity establish in 1998 an International Panel of Eminent Personalities (IPEP) to establish the facts surrounding the genocide, recommend measures to redress its consequences, and to prevent possible recurrence. In its report published in 2000, the Panel recommended, among others, the clarification of the legal obligations of States

⁶ African Charter on Human and Peoples' Rights, Art 58(1)

⁷ Id., Art. 58(2)

⁸ Id.

regarding the crime of genocide, and the exploration of universal jurisdiction as a way of pursuing accountability for genocide.⁹

17. At the very least, the devastation witnessed in Rwanda in 1994 and the assertive recommendations of the Panel should have acted as a wake-up call for enhancing rights protection in Africa and propelling continental momentum towards a more proactive approach to preventing serious, massive or gross violations of human and peoples' rights.¹⁰ However, in recent times, the continent has seen more violence in several States, characterised by serious, massive or gross violations of human and peoples' rights, some of which are highlighted below.
18. In December 2007, violent clashes erupted in Kenya following a disputed presidential election, resulting in approximately 1,300 deaths and thousands maimed and internally displaced. In January 2008, the African Union convened a Panel of Eminent African Personalities headed by former United Nations Secretary-General, Kofi Annan, which quickly mediated an end to the violence.¹¹ However, despite the October 2008 Report of the Commission of Inquiry into Post Election Violence (CIPEV) which documented serious, gross and massive violations of human rights amounting to crimes against humanity and which recommended criminal accountability,¹² domestic prosecutions were never undertaken, and all cases pursued before the International Criminal Court ultimately collapsed amidst allegations of witness tampering.¹³
19. In 2009, the African Union High-Level Panel on Darfur documented serious and gross violations of human and peoples' rights in Darfur, Sudan since at least

⁹ International Panel of Eminent Personalities, 'Rwanda: The Preventable Genocide' (2000), cap 24.

¹⁰ Notably, the report clearly articulated the need for a regional institution capable of more assertive action in situations of gross violations of human and peoples' rights, which contributed to the later codification in Article 4(h) of the Constitutive Act of the African Union of the Union's right of intervention in a Member State 'in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity'.

¹¹ See Office of the AU Panel of Eminent African Personalities, *Back from the Brink: The 2008 Mediation Process and Reforms in Kenya* (African Union 2014); Tinashe Sithole and Lucky E. Asuelime, 'The Role of the African Union in Post-Violence in Kenya' (2017) 6 *African Journal of Governance and Development* 97.

¹² Report of the Commission of Inquiry into Post-Election Violence (CIPEV) (October 2008), caps 3–13.

¹³ International Criminal Court, 'Situation in the Republic of Kenya' <https://www.icc-cpi.int/kenya>.

2003,¹⁴ with violations recurring till date. With respect to South Sudan, in 2014 the African Union Commission of Inquiry on South Sudan reported serious, massive or gross violations of human and peoples' rights since December 2013,¹⁵ with violations recurring even after the (re-)signing of a peace agreement in September 2018.¹⁶ In 2015, a fact-finding mission in Burundi by the African Commission reported equally serious, gross violations since April 2015.¹⁷ In Ethiopia similar violations were reportedly committed since November 2020.¹⁸ More recently, the United Nations Independent International Fact-Finding Mission for Sudan reported serious, massive or gross violations of human and peoples' rights committed in Sudan since 2023.¹⁹

20. The incidents cited in paragraphs 16-19 above represent only a select subset of a much wider pattern. Notably, the continent has witnessed major crises such as the post-electoral violence in Côte d'Ivoire in 2010,²⁰ which followed a disputed

¹⁴ Report of the African Union High-Level Panel on Darfur, PSC/AHG/2(CC VII) (October 2009), paras 36–127.

¹⁵ Final Report of the African Union Commission of Inquiry on South Sudan (15 October 2014) (AUCISS Report), cap III, paras 380–827 & 1122–1137.

¹⁶ See Report of the Commission on Human Rights in South Sudan, A/HRC/34/63 (06 March 2017), paras 24–52; Report of the Commission on Human Rights in South Sudan, A/HRC/37/71 (13 March 2018); paras 23–110; Report of the Commission on Human Rights in South Sudan, A/HRC/40/69 (20 February 2019), paras 24–53 & 62–108; Report of the Commission on Human Rights in South Sudan, A/HRC/43/56 (20 February 2020), paras 25–75; Report of the Commission on Human Rights in South Sudan, A/HRC/46/53 (19 February 2021), paras 27–72; Report of the Commission on Human Rights in South Sudan, A/HRC/49/78 (16 March 2022); Report of the Commission on Human Rights in South Sudan, A/HRC/52/26 (31 January 2023), paras 32–94; Report of the Commission on Human Rights in South Sudan, A/HRC/55/26 (01 March 2024), paras 23–63; Report of the Commission on Human Rights in South Sudan, A/HRC/58/27 (28 February 2025), paras 19–74.

¹⁷ Report of the Delegation of the African Commission on Human and Peoples' Rights on its Fact-Finding Mission in Burundi, 07–13 December 2015, paras 40–167.

¹⁸ Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation into Alleged Violations of International Human Rights, Humanitarian and Refugee Law Committed by all Parties to the Conflict in the Tigray Region of the Federal Democratic Republic of Ethiopia (2021), paras 83–354; Report of the International Commission of Human Rights Experts in Ethiopia, A/HRC/51/46 (19 September 2022), paras 25–99; Report of the International Commission of Human Rights Experts in Ethiopia, A/HRC/54/55 (18 September 2023), paras 20–73; Comprehensive Investigative Findings and Legal Determinations, International Commission of Human Rights Experts in Ethiopia, A/HRC/54/CRP.3 (13 October 2023), paras 98–503.

¹⁹ Report of the Independent International Fact-Finding Mission for the Sudan, A/HRC/57/23 (05 September 2024), paras 37–95; Findings of the Investigations Conducted by the Independent International Fact-Finding Mission for the Sudan into Violations of International Human Rights Law and International Humanitarian Law, and Related Crimes, Committed in the Sudan In the Context of the Conflict that Erupted In Mid-April 2023, A/HRC/57/CRP.6 (23 October 2024), paras 124–295.

²⁰ [Report of the United Nations High Commissioner for Human Rights on the Situation of human rights in Côte d'Ivoire](#), A/HRC/16/79 (25 February 2011); see also [Cote d'Ivoire, 2010 Country Reports on Human Rights Practices](#), US State Department Bureau of Democracy, Human Rights and Labor, (8 April 2011);

presidential election and resulted in large-scale civilian casualties and displacement. Somalia, with decades of protracted conflict marked by weak state institutions, the presence of extremist armed groups, and persistent humanitarian crises.²¹ Central African Republic has also been affected by cyclical violence driven by armed group proliferation, communal tensions, and fragile governance structures.²² Meanwhile, the situation in the Democratic Republic of Congo, (particularly eastern DRC), continues to escalate, as they face chronic insecurity fuelled by armed groups, competition over natural resources, and cross-border dynamics.²³ Mali and other Alliance of Sahel States (AES) have also experienced escalating instability linked to mercenaryism, violent insurgencies, and deteriorating civilian protection environments.²⁴

21. The wider Sahel region continues to confront interconnected conflicts characterized by violent extremism, climate stress, and limited state presence. Additionally, Nigeria continues to face parallel security challenges, including insurgency in the north-east, atrocity banditry in the north-west, armed gangs in the south and communal violence in the Middle-Belt.²⁵ Libya also remains fragmented following the collapse of central authority in 2011, with rival administrations and armed actors undermining prospects for durable peace and national reconciliation.²⁶
22. Notably, in most of these situations, accountability for serious and massive violations of human and peoples' rights remains pending. The continued perpetration of such violations has resulted in untold suffering among African peoples, threatens their very existence, frustrates and significantly undermines, their socio-economic and cultural development. As evidenced by the examples

21 Report of the African Union Commission Chairperson on the Situation in Somalia, PSC/PR/4(CCLXXII), (21 April 2011); See also [Amnesty International Country Profile on Somalia \(2025\)](#) – accessed 12 March 2026

22 [Central African Republic, Report of the Secretary-General](#), UNSC S/2023/769 (16 October 2023)- accessed 11 March 2026

²³ See, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, *I.C.J. Rep.*, 2005, 168

24 [Activities of the United Nations Office for West Africa and the Sahel, Report of the Secretary-General](#) UNSC S/2025/77 (28 November 2025) – accessed 20 April 2026

25 *ibid*

26 [Consideration of the Emergency Situation in Libya](#), Amani Africa Insights on the (AU) Peace and Security Council, 22 May 2025- accessed 22 March 2026; See also *Communique, Peace and Security Council (PSC) of the African Union (AU) at its 1280th meeting held on 23 May 2025 on the Situation in Libya*, PSC/PR/COMM.1280(2025), (23 May 2025) – accessed 20 April 2026

highlighted above, the current peace, security, and human rights landscape in Africa risks hampering the attainment of the aspirations of Agenda 2063 referenced above. If these aspirations are to be achieved, it is imperative that African States, both individually and collectively, recommit themselves to preventing the recurrence of, and ensuring accountability for, gross violations of human and peoples' rights across the continent.

23. This Request for an Advisory Opinion therefore invites this honourable Court in exercise of its jurisdiction under the African Charter and the African Court Protocol to clarify for State parties thereto, the scope of their obligations to protect and promote human rights, particularly in relation to accountability for gross violations or mass atrocities amounting to serious and massive violations of human rights under Article 58 of the African Charter. Specifically, the Request seeks authoritative clarification from the Court regarding the legal obligations of African States with respect to individual criminal accountability for serious, massive, or gross violations of human and peoples' rights, as part of the obligations of the State parties.

V. APPLICABLE LAW

24. The primary law upon which the Request is anchored is the African Charter. The Request seeks interpretation of paragraphs 10 and 11 of the preamble, and Article 1 and 58 of the African Charter with respect to the commitment of state parties, individually and collectively, to fulfilling their obligations protect and promote human and peoples' rights enshrined within
25. The Request also presents, as interpretative aids to relevant provisions of the African Charter, other relevant treaties to which African States are party, and on customary international law. Without limiting them, these provisions include:
 - a) Articles 2(1) and (3) of the International Covenant on Civil and Political Rights.
 - b) Articles 4, 5, 7 and 8 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

- c) Articles 9 and 11 of the International Convention for the Protection of All Persons from Enforced Disappearance (2006).
- d) Articles 2(2) and 4 of the International Conference on the Great Lakes Protocol on the Prevention and Suppression of Sexual Violence against Women and Children, 2006.
- e) Article I and VI of the Convention on the Prevention and Punishment of the Crime of Genocide.
- f) Articles 3(h) and 25(d) of Protocol A/P.1/12/99 Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security (Lomé Protocol).
- g) Articles 8, 9, 10, 11 and 11 of the International Conference on the Great Lakes Protocol for the Prevention and the Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all forms of Discrimination, 2006.
- h) Articles 3(h) and 4(h) of the Constitutive Act of the African Union.
- i) Articles 4(g) and 56(2) of the Revised Treaty of the Economic Community of West African States, 1993.
- j) Article 3 of the Amended Treaty of the West African Economic and Monetary Union (*Traité Modifié de l'Union Economique et Monétaire Ouest Africaine*).
- k) Articles 5(3)(f), 6(d) and 7(2) of the Treaty for the Establishment of the East African Community.
- l) Article 4(c) of the Consolidated Treaty of the Southern African Development Community.
- m) Article 6(e), (f), (g) and (i) of the Treaty Establishing the Common Market for Eastern and Southern Africa.

VI. ISSUES FOR DETERMINATION

26. PALU respectfully requests for an opinion from the Honourable Court on the following questions:

- a) Whether there exists, within the combined provisions of Articles 1 and 58(1)-(2) of the African Charter by themselves, or read together with Articles 3(h) and 4(h) of the Constitutive Act of the African Union, an obligation on State parties to prevent serious and massive violations of human rights and, where they occur, to ensure effective criminal responsibility for such violations.
- b) Arising from the interaction between the African Charter and the Constitutive Act of the African Union, to what extent do the obligations of African States encompass the duty to ensure criminal accountability, including through the establishment of effective regional cooperation mechanisms?
- c) Whether the obligation assumed by State parties to the African Charter on Human and Peoples' Rights under Article 1 thereof "to adopt legislative or other measures to give effect to" the provisions of the Charter does not include an obligation separately and in co-operation with one another, to ensure effective individual accountability for serious and massive violations of human and peoples' rights in Africa.
- d) In light of the provisions of the African Charter and other applicable legal instruments, what legal obligations, if any, do African States bear to establish and operationalise effective mechanisms of cooperation, whether through the African Union, African Regional Economic Communities (RECs), or other relevant regional frameworks, to ensure criminal accountability for persons alleged to have committed serious or massive violations of human and peoples' rights on the continent?
- e) Further, what legal consequences flow from the refusal or failure of African States, acting individually or collectively through the African Union or African Regional Economic Communities, to extradite or prosecute persons suspected of having committed serious and massive violations of human and peoples' rights in Africa?

VII. SUMMARY OF ARGUMENTS: OBLIGATIONS AND APPLICABLE LEGAL STANDARDS

A. Meaning, content and scope of serious, massive or gross violations of human and peoples' rights

27. The determination of the first question posed is of preliminary importance to the determination of the entire Request. To assist the Court in answering the first question posed, PALU considers it appropriate to submit on the meaning, content and scope of the expression “serious or massive violations of human and peoples’ rights” under Art. 58(1) of the African Charter.
28. The African continental legal framework recognises that certain violations of human and peoples’ rights can be of such “special” nature as to require extraordinary responses. Article 58 of the African Charter, for instance, provides for unprecedented intervention by the African Commission and the AU Assembly in “special cases which reveal the existence of a series of serious or massive violations of human and peoples’ rights”. The African Charter does not define “serious or massive violations of human and peoples’ rights.” However, a general sense of what constitutes: serious or massive violations of human and peoples’ rights” can be discerned from the practice of AU entities.
29. Rule 2 of the Rules of Procedure of the African Commission on Human and Peoples’ Rights (“African Commission”), 2020 defines serious or massive violations as “grave human rights violations as distinguished by their scale and importance.” While this definition does not provide sufficient insight into the exact nature of “serious or massive violations,” the African Commission’s practice and jurisprudence provides some guidance, at least as regards the specific types of violations that would fall under this category.
30. In ***Communication 27/89-46/91-49/91-99/93***,²⁷ the Commission held that “widespread massacres, extrajudicial executions and arbitrary arrests against the Tutsi ethnic group” constituted serious or massive violations. Similar findings

²⁷ Communication 27/89-46/91-49/91-99/93, Organisation mondiale contre la torture, Association Internationale des juristes démocrates, Commission internationale des juristes, Union interafricaine des droits de l’Homme v Rwanda (31 October 1996) paras 4 & 16.

have been made by the Commission with respect to “several accounts of killings, disappearances and torture including in **Communication 74/92**,²⁸ concerning mass detention without trial, widespread torture in prisons, extra-judicial killings and executions of thousands of civilians in Chad;²⁹ and **Communication 279/03-296/05**³⁰ on large-scale killings, forced displacement of populations, destruction of public facilities, properties and disruption of life through bombing by military fighter jets in densely populated areas, extra-judicial executions, torture, rape of women and girls, arbitrary arrests and detentions in Sudan.

31. The African Commission’s resolutions and reports also provide further guidance on what it considers serious or massive violations. In its 1994 Resolution ACHPR/Res.8(XV)94 on the Situation in Rwanda, the Commission condemned the “massacre of innocent civilians”³¹ when expressing concern over the serious and massive human rights violations.³² Similarly in its 2005 Resolution ACHPR/Res.74(XXXVII)05 on the Human Rights Situation in Darfur, Sudan, the Commission urged conflict parties to stop “attacks against civilians in the Darfur ... campaign of forced depopulation of entire areas ... indiscriminate attacks of villages, rape and sexual violence against women, girls and children, abduction of women and children, looting of livestock and foodstuff from villages”.³³ The 2010 Resolution ACHPR/Res.173(XLVIII)10 on the Crimes Committed against Women in the Democratic Republic of Congo, condemned the “systematic and highly widespread practice of rape by armed groups against women and young girls in particular in the Eastern region of the DRC”,³⁴ while the 2016 Resolution ACHPR/Res. 357(LIX)2016 on the Human Rights Situation in Burundi expressed concern about “continuous arrests and arbitrary detentions, targeted killings, extrajudicial executions, acts of torture and other forms of cruel, inhuman and

²⁸ Communication 74/92, Commission nationale des droits de l’Homme et des libertés v Chad, (11 October 1995).

²⁹ See also Communication 48/90-50/91-52/91-89/93, Amnesty International, Comité Loosli Bachelard, Lawyers’ Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v Sudan (15 November 1999).

³⁰ Communication 279/03-296/05, Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan (27 May 2009).

³¹ Resolution ACHPR/Res. 8(XV) 94 on the Situation in Rwanda in Rwanda (27 April 1994) para 1.

³² Resolution ACHPR/Res. 8(XV) 94 on the Situation in Rwanda in Rwanda (27 April 1994) preamble.

³³ Resolution ACHPR/Res.74(XXXVII)05 on the Human Rights Situation in Darfur, Sudan (11 May 2005), para iii; See also Resolution ACHPR/Res.68 (4 June 2004).

³⁴ Resolution ACHPR/Res.173(XLVIII)10 on the Crimes Committed against Women in the Democratic Republic of Congo (24 November 2010).

degrading treatment, abductions and enforced disappearances, harassment and intimidation of journalists and media professionals, sexual violence, and other forms of serious human rights violations.”³⁵

32. Notably, the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples Rights employs slightly different phraseology to the African Charter, providing at Article 27(2) that, “In cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary.” *In the Matter of African Commission on Human and Peoples’ Rights v Great Socialist People’s Libyan Arab Jamahiriya*,³⁶ following the African Commission’s conclusion that violent suppression of protesters by security forces leading to killings and injuries, and attacks against civilian populations including aerial bombardment, constituted serious and massive violations of human rights, the African Court held that these circumstances also amounted to a situation of extreme gravity and urgency. Similarly, in *Bernard Anbataayela Mornah v Republic of Benin and 7 Others*, the Court considered that allegations of decades-long violations of sovereignty, territorial integrity, independence, the right to peace and self-determination constitute serious and massive violations of human rights.³⁷
33. Further persuasive authority include the reports of various African Union entities, including the 2004 Report of the African Commission on Human and Peoples’ Rights Fact-Finding Mission to the Republic of Sudan, which found the conflicting parties to have committed serious, massive or gross violations of human rights including widespread and systematic murder, attacks on and bombardment of civilian populations and villages, rape and mass displacement, and which the report considered to also constitute war crimes and crimes against humanity.³⁸

³⁵ Resolution ACHPR/Res. 357(LIX)2016 on the Human Rights Situation in Burundi (04 November 2016).

³⁶ Application No. 004/2011, Order for Provisional Measures, 25 March 2011, paras 10–13 & 22.

³⁷ *Bernard Anbataayela Mornah v Republic of Benin and 7 Others [Sahrawi Arab Democratic Republic and Republic of Mauritius: Interveners]*, Application No. 028/2018, Judgment, 22 September 2022, para 211.

³⁸ Report of the African Commission on Human and Peoples’ Rights’ Fact-finding Mission to the Republic of Sudan in the Darfur Region (08–18 July 2004) EX.CL/364 (XI) Annex III, paras 120–123.

34. Relatedly, the mandate of African Union Commission of Inquiry on South Sudan (AUCISS) according to its governing documents included investigating “gross violations of human rights,”³⁹ which AUCISS interpreted as including war crimes and crimes against humanity, which then became the focus of its 2014 report.⁴⁰ Additional examples include, the Report of the Delegation of the African Commission on Human and Peoples’ Rights on its Fact-Finding Mission to Burundi, which also documented serious and massive violations of human rights including mass killings of protesters, extrajudicial killings and executions by security forces in the period following the protests, and hundreds of cases of torture by security organs.⁴¹ Similarly, the African Commission’s Resolution ACHPR/Res. 482 (EXT.OS/XXXII) 2021 which established the Fact-Finding Mission to the Tigray Region of the Federal Democratic Republic of Ethiopia considered “gross violations” to include “sexual violence against women and girls, gang rapes used as weapons of war, killings of civilians by belligerents and extrajudicial killings.”⁴²
35. The African Union Transitional Justice Policy, 2019 (AUTJP) interchangeably uses the phrases “systematic or gross violations of human and peoples’ rights” and “serious violations of human rights.” Notably, the AUTJP emphasises that “serious violations, notably those specified under Article 4(h) of the Constitutive Act of the AU, including sexual and gender-based violations” must be fully investigated and prosecuted⁴³ and that unconditional amnesties should not be available to those suspected of committing these violations.⁴⁴ Article 4(h) of the Constitutive Act of the AU, as referenced in the AUTJP, relates to “grave circumstances, namely: war crimes, genocide and crimes against humanity.” This implies, therefore, that the AUTJP considers “serious or gross violations” to include, at least, war crimes, genocide and crimes against humanity. The AUTJP

³⁹ Final Report of the African Union Commission of Inquiry on South Sudan (15 October 2014) <<https://www.peaceau.org/uploads/auciss.final.report.pdf>>, para 3.

⁴⁰ AUCISS considered that crimes against humanity ‘are essentially serious violations of human rights, sometimes referred to as gross violations of human rights’. See Final Report of the African Union Commission of Inquiry on South Sudan (15 October 2014) <<https://www.peaceau.org/uploads/auciss.final.report.pdf>>, para 379.

⁴¹ The Report of the Delegation of the African Commission on Human and Peoples’ Rights on its Fact-Finding Mission to Burundi, 07–13 December 2015, paras 110–126.

⁴² Resolution ACHPR/Res. 482 (EXT.OS/XXXII) 2021 (12 May 2021) preamble.

⁴³ African Union Transitional Justice Policy (February 2019), para 86.

⁴⁴ African Union Transitional Justice Policy (February 2019), para 91.

further requires that there should be no limitation to the full investigation and prosecution of serious violations, notably those specified under Article 4(h) of the Constitutive Act of the AU, including sexual and gender-based violations. The principle is that prosecution should lead to conviction and imposition of punishment ordinarily applied in national and international criminal processes and following the due process of the law.

36. Consequently, the phrase “serious or massive violations of human and peoples’ rights⁴⁵ is not alien to African human rights lexicon; it is in fact commonly applied by African Union entities. For purposes of this Request, PALU submits that the phrase implies qualitative and quantitative dimensions respectively. In other words, it may incorporate criteria based on both the gravity of the acts and their systematic or large-scale nature as the basis for determining what constitutes “serious or massive violations of human and peoples” rights. It is also understood as including those violations which amount to well-defined international crimes, including those mentioned in Article 4(h) of the Constitutive Act, which provides for unprecedented intervention by the African Union. At the very least, therefore, serious, massive or gross violations of human and peoples’ rights should be considered as including those violations that amount to the international crimes, such as war crimes, genocide, crimes against humanity, or torture.
37. Further, PALU submits that the appearance of this phrase in multiple instruments presents *opinio juris*, and the corresponding practice to trigger action presents state practice, both essential components for identifying (African) customary international law on an obligation to act in response to serious or massive violations of human and peoples’ rights. It then follows that the next consideration be directed to the specific modalities of obligation.

B. Obligation to investigate and prosecute

38. In response to the questions raised under the ISSUES FOR DETERMINATION above, PALU submits that Article 1 of the African Charter, purposefully interpreted: -

⁴⁵ The phrases serious or massive violations of human and peoples’ rights’ and ‘gross violation of human and peoples’ rights’ may be used interchangeably in this Request.

- a) imposes an obligation on African States individually to investigate and prosecute serious, massive or gross violations of human and peoples' rights;
 - b) imposes an obligation on African States collectively under the formation of the African Union to intervene, including using criminal accountability mechanisms, in situations of serious, massive or gross violations of human and peoples' rights, and
 - c) imposes an obligation on African States collectively within the frameworks of institutions such as the African Union and the Regional Economic Communities (RECs) to co-operate with one another in order to ensure investigation and prosecution of serious, massive or gross violations of human and peoples' rights in Africa.
39. PALU submits that international law generally and international human rights law, imposes an obligation on African States to ensure criminal accountability for serious, massive or gross violations of human and peoples' rights. This obligation derives from Article 1 of the African Charter, from provisions of other human rights treaties which codify rights, and corresponding obligations, as well as from customary international law.
40. It is further submitted that it is now an established principle in international law that States have a duty to investigate and prosecute serious, massive or gross violations of human and peoples' rights; this is a position informed by the authoritative interpretation by international courts of States' obligations under the various treaties referred to above,⁴⁶ which interpretation emphasises investigation, prosecution and punishment of these violations as primary obligations of States.
41. Criminal accountability for serious, massive or gross violations of human and peoples' rights is generally anchored upon the obligation to respect, ensure and give effect to rights and fundamental freedoms, and to provide an effective

⁴⁶ See also Owiso Owiso, "Obligation to Strangers": Reconceptualizing Cosmopolitanism as a Basis for Collective (Regional-Level) Accountability for International Crimes' 21(1) *Journal of International Criminal Justice*, 1 (2021)

remedy for violations, as expressly codified in various human rights treaties including the African Charter.

42. Article 1 of the African Charter obligates State parties to “recognize the rights, duties and freedoms enshrined in this Charter and [...] to adopt legislative or other measures to give effect to them.” African judicial and quasi-judicial mechanisms have interpreted article 1 of the African Charter which imposes an obligation on State parties to give effect to rights and freedoms as entailing an obligation to investigate and prosecute serious, massive or gross violations of human and peoples’ rights. In other words, while not expressly stated as such in the African Charter, these mechanisms have authoritatively interpreted and expounded upon the nature, content and scope of Article 1 of the Charter as read together with the expressly-stated substantive rights within and concluded that these provisions entail a procedural obligation to effectively investigate and prosecute violations of these substantive rights in order to reinforce their substance and ensure greater protection.⁴⁷ The jurisprudence of the African Commission is consistent with this provision.
43. In **Zimbabwe Human Rights NGO Forum v Zimbabwe**,⁴⁸ the Commission affirmed that the duty to undertake serious investigation of violations of rights protected under international law, identify perpetrators and impose appropriate punishment, is a fundamental element of States’ obligation under Article 1 of the African Charter i.e. to recognise and give effect to rights, and further, that this affirmation “represents an authoritative interpretation of an international standard on State duty.” Notably, the African Commission drew inspiration from the celebrated judgment of the Inter-American Court of Human Rights (Inter-American Court) in *Velasquez* (below).
44. This position has also been repeatedly affirmed by the African Commission in subsequent jurisprudence, including in **Dino Noca v Democratic Republic of**

⁴⁷ Ezéchiél Amani Cirimwami, ‘Fashioning Rights in the African Court on Human and Peoples’ Rights: Understanding the Proceduralisation of Substantive Rights’ (2020) 4 African Human Rights Yearbook 1, 5–11.

⁴⁸ [Communication 245/02](#), Adopted at the 39th Ordinary Session held from 11th–15th May 2006, paras 142–144.

the Congo⁴⁹ where the Commission held that, “[I]t is the duty of States to investigate and remedy violations under the general obligations incumbent on them pursuant to Article 1 of the African Charter on Human and Peoples’ Rights.”

45. This Honourable Court in its 2014 judgment in the **Zongo Case**,⁵⁰ similarly interpreted Articles 1 (obligation to recognise and give effect to rights) and 7 of the African Charter (obligation to have one’s cause heard by competent national courts) as entailing an obligation on the State to undertake prompt and effective investigations and to prosecute and “put to trial” those responsible for gross violations of human rights such as murder
46. The depth of this jurisprudence is also evidenced by its application in the regional mechanisms. The Court of Justice of the Economic Community of West African States (ECOWAS Court) has also adopted the above position. In its 2024 decision in **Global Justice and Research Project and Others v Republic of Liberia**, the ECOWAS Court expressly interpreted Article 1 of the African Charter as imposing an obligation on State parties “to respect, protect, promote, and fulfil the rights enshrined in the Charter”⁵¹ and that “under this obligation, States are obliged to investigate all acts of crime and prosecute all perpetrators”.⁵²
47. In an earlier decision in **Hadijatou Mani Karaou v The Republic of Niger**,⁵³ the ECOWAS Court held that Niger’s failure to denounce, prevent and “ensure that proceedings were instituted or that sanctions were preferred” amounted to tacit tolerance, which in turn violated its obligation to ensure effective remedies and uphold the prohibition of slavery under international and domestic law. Similarly, in **Oluwatimilehin Adebayo v The Federal Republic of Nigeria**⁵⁴ the ECOWAS

⁴⁹ [Communication 286/2004](#), Adopted at the 52nd Ordinary Session held from 09–22 October 2012, para 158. See also IHRDA et autres c République Démocratique du Congo [Communication 700/18](#), Adopted at the 80th Ordinary Session held from 24 July–02 August 2024. *accessed 12 August 2025*

⁵⁰ Beneficiaries of the Late Nibert Zongo, Abdoulaye Nikiema alias Ablassé, Ernest Zongo and Blaise Ilboudo & another v Burkina Faso, [Application No. 013/2011](#), Judgment 28 March 2014, paras 150–156 & 198–199.

⁵¹ [ECW/CCJ/APP/48/22; ECW/CCJ/RUL/04/24 \[2024\] ECOWASCJ 19](#) (17 October 2024) para 44. *accessed 12 August 2025*

⁵² *Ibid*, para 45.

⁵³ Community Court of Justice, ECOWAS Law Reports (2004 - 2009 CCJELR) pp 217–244, [ECW/CCJ/APP/08/08; ECW/CCJ/JUD/06/08](#) (27 October 2008) paras 81–86.

⁵⁴ [ECW/CCJ/APP/47/23; ECW/CCJ/JUD/44/24 \[2024\] ECOWASCJ 25](#) (03 December 2024) paras 91–96. See also [Dorothy Chioma Njemanze & 2 others v The Federal Republic of Nigeria](#), ECOWAS Law Reports (2017 CCJELR) pp 139–176, [ECW/CCJ/APP/17/14; ECW/CCJ/JUD/08/17](#) (12 October 2017)

Court affirmed that a State's failure, despite being aware of human rights violations (specifically, torture), to carry out a prompt, impartial and effective investigation into these violations, identify perpetrators and provide justice by holding the perpetrators accountable would constitute a breach under international law including Article 1 of the African Charter and Article 13 of the Convention against Torture. The Court subsequently ordered Nigeria "to carry out a prompt, impartial and effective investigation ... and to prosecute and bring to justice all those responsible."⁵⁵

48. Related to the obligation to investigate and prosecute, it is noteworthy that the ECOWAS Court held in **Global Justice and Research Project and Others v Republic of Liberia**, which concerned Liberia's failure to investigate and prosecute serious, massive and gross violations of human rights arising out of a massacre at a church in 1990 and which failure the Applicants alleged violated Article 1 of the African Charter, that seeking a remedy for violations of human rights, in particular those of a serious, massive or gross nature, cannot be subject to limitations of time.⁵⁶
49. It is therefore evident that in the African human rights system, there is recognition that the "absence [of criminal prosecutions] constitutes an autonomous violation by the state of its obligation to protect treaty rights".⁵⁷ Additionally, it is also recognised "that only effective and efficient criminal proceedings can protect individuals from particularly unbearable violations of their rights granted by the Charter."⁵⁸ It is submitted that these positions apply with even more force to massive or gross violations of human and peoples' rights. This position is fairly consistent with that adopted by other human rights systems.

pp 173–176; [Hembadoon Chia & 7 others v Federal Republic of Nigeria & another](#), ECW/CCJ/APP/07/16, ECW/CCJ/JUD/21/18, [2018] ECOWASCJ 21 (29 June 2018), p 30; [The Registered Trustees of Jama'a Foundation & 5 others v The Federal Republic of Nigeria & another](#), ECW/CCJ/APP/26/13, ECW/CCJ/JUD/04/20 (20 March 2020) paras 115–119 & 122. accessed 14 August 2025

⁵⁵ *ibid*, xi (operative clause).

⁵⁶ *Supra*. Fn45 above, paras 23–24.

⁵⁷ Ezéchiel Amani Cirimwami, 'Fashioning Rights in the African Court on Human and Peoples' Rights: Understanding the Proceduralisation of Substantive Rights' (2020) 4 *African Human Rights Yearbook* 1, 9.

⁵⁸ *Id.*

50. Comparatively and similarly, in its celebrated 1988 judgment in **Velásquez Rodríguez v Honduras**, the Inter-American Court interpreted Article 1(1) of the American Convention on Human Rights which imposes an obligation on State parties to respect and ensure free and full exercise of rights, as entailing an affirmative duty on States to prevent human rights violations, undertake serious investigation of violations and to ensure that perpetrators are punished.⁵⁹ This position has since been reiterated severally by the Inter-American Court in cases involving gross violations of human rights, including its 2005 judgment in **Case of the Moiwana Community v Suriname** where the Court emphasised that as primary legal remedies, States have an obligation to undertake swift, serious, effective and exhaustive investigation of gross violations of human rights, and to identify and prosecute persons responsible for the violations.⁶⁰
51. Interpreting the broadly similar obligation under Article 2(3) of the ICCPR to provide an effective remedy, the Human Rights Committee in **General Comment 31 [80]**⁶¹ on the Nature of the General Legal Obligation on States Parties to the Covenant [on Civil and Political Rights] affirmed that as a fundamental element of the obligation to ensure a remedy for human rights violations, States must ensure prompt, thorough and effective investigation and bringing to justice through individual (criminal) responsibility of gross violations of human rights including torture, cruel, inhuman, and degrading treatment, murder and enforced disappearances, particularly when committed as part of a widespread or systematic attack on a civilian population (that is, crimes against humanity), and further that failure to do so constitutes a separate violation of human rights obligations. In other words, Article 2(1) and (3) of the ICCPR which codify the obligation to ensure, respect and provide effective remedy obligate States to investigate and prosecute serious, massive or gross violations of human rights.

⁵⁹ Series C No. 4, [Judgment \(Merits\) 29 July 1988](#), paras 161–188.

⁶⁰ Series C No. 124, [Judgment \(Preliminary Objections, Merits, Reparations and Costs\) 15 June 2005](#), paras 144–147. accessed 15 August 2025

⁶¹ [Human Rights Committee in General Comment 31 \[80\]](#), CCPR/C/21/Rev.1/Add. 13 (2004), paras 15 & 18. accessed 15 August 2025

52. This exposition of States' obligation to investigate and prosecute perpetrators of serious, massive or gross violations of human and peoples' rights has also since found expression in other "soft law" instruments.
53. The United Nations General Assembly's Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005 (Basic Principles) take the position that States have an obligation under international law to provide an effective remedy specifically by investigating and prosecuting perpetrators of gross violations of human rights, and provide at Principle 4 that–

In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him. Moreover, in these cases, States should, in accordance with international law, cooperate with one another and assist international judicial organs competent in the investigation and prosecution of these violations.

54. The International Law Commission's 2019 Draft Articles on Prevention and Punishment of Crimes against Humanity (Articles 3, 6, 7, 8, 9, 10 and 13) propose an obligation on States to establish jurisdiction over, criminalise, investigate, impose criminal liability for and punish (prosecute or extradite suspects) crimes against humanity, while the 2023 Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War crimes and other International Crimes (Articles 7 and 8) similarly seeks to impose an obligation on State parties to criminalise and establish criminal jurisdiction over genocide, war crimes and crimes against humanity.⁶²

⁶² Though not 'soft law', the Convention is yet to attain the requisite number of ratifications necessary to enter into force. As of the time of the Request, no African State had ratified the treaty.

55. In addition to the general obligations to respect and ensure rights, as discussed above, certain legal instruments as well as customary international law impose specific legal obligations on States with respect to certain manifestations of serious, massive or gross violations of human and peoples' rights, including genocide and torture.
56. The Applicant submits that Article 4(1) of the African Court Protocol bestows this Honourable Court with jurisdiction to "provide an opinion on any legal matter relating to the Charter or any other relevant human rights instruments." In accordance herewith, this Honourable Court, in answering the questions posed in this Request, ought to draw inspiration from other relevant treaties to which African States are party, particularly their provisions on specific manifestations of serious, massive or gross violations of human and peoples' rights. These include the:
- a) Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture);
 - b) International Covenant on Civil and Political Rights;
 - c) International Conference on the Great Lakes Protocol for the Prevention and the Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all forms of Discrimination;
 - d) International Conference on the Great Lakes Protocol on the Prevention and Suppression of Sexual Violence against Women and Children;
 - e) International Convention for the Protection of All Persons from Enforced Disappearance, the Constitutive Act of the African Union;
 - f) Revised Treaty of the Economic Community of West African States, Protocol A/P.1/12/99 Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security (Lomé Protocol);
 - g) Treaty for the Establishment of the East African Community;
 - h) Treaty Establishing the Common Market for Eastern and Southern Africa;

- i) Consolidated Treaty of the Southern African Development Community; and
- j) Amended Treaty of the West African Economic and Monetary Union (*Traité Modifié de l'Union Economique et Monétaire Ouest Africaine*).

57. With respect to genocide, no doubt one of the most serious forms of violations of human and peoples' rights, Article I of the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), to which at least thirty-five (35) African States are currently party, imposes an express obligation on State parties "to prevent and to punish" genocide. This provision, particularly the obligation thereunder to punish, is appropriately read together with Article VI of the Convention which requires that perpetrators of genocide "shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction."
58. The International Court of Justice (ICJ) has on several occasions [see **Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)**],⁶³ and **Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Yugoslavia)**]⁶⁴ affirmed the binding nature of the obligation to punish genocide under the Convention and the common interest of all State parties in ensuring such punishment/prosecution. In particular, more recently in **Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)**,⁶⁵ the ICJ held that all State parties not only have a common interest in the punishment of genocide and have thus committed to fulfilling this obligation, but that the obligation is also of an *erga omnes partes* nature in that each State party has an interest in compliance with

⁶³ Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro), International Court of Justice, [Judgment, 26 February 2007](#), I.C.J. Reports 2007, p. 43 [162].

⁶⁴ International Court of Justice, [Judgment, Preliminary Objections, 11 July 1996](#), I.C.J. Reports 1996, p. 595 [31–32].

⁶⁵ International Court of Justice, [Judgment, Preliminary Objections, 22 July 2022](#), I.C.J. Reports 2022, p. 477 [107–109].

it and is thus entitled to invoke the responsibility of another State party for failing to fulfil the obligation.

59. Further, in **Case Concerning Armed Activities on the Territory of the Congo (New Application:2002) (Democratic Republic of the Congo v Rwanda)**, the ICJ affirmed the prohibition against genocide as a *jus cogens* norm which therefore binds all States regardless of whether they are parties to the Genocide Convention,⁶⁶ and further opined in **Advisory Opinion Concerning Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion**⁶⁷ that the principles of the Genocide Convention – including the obligation to punish genocide – are both treaty law obligations (Genocide Convention) and are also “binding on States, even without any conventional obligation”, by virtue of their *jus cogens* status. In other words, the obligation to punish genocide is binding on all States regardless of whether they are parties to the Genocide Convention.
60. Articles 8, 9, 10, 11 and 11 of the International Conference on the Great Lakes Protocol for the Prevention and the Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all forms of Discrimination, 2006 also obligate State parties to prevent and punish genocide, war crimes and crimes against humanity, while Articles 2(2) and 4 of the International Conference on the Great Lakes Protocol on the Prevention and Suppression of Sexual Violence against Women and Children, 2006 obligate State parties to punish sexual violence including in relation to the crime of genocide, crimes against humanity and war crimes. These provisions are, so far, the most express and unambiguous codification in Africa of the obligation to prosecute some of the most prevalent manifestations of serious, massive or gross violations of human and peoples’ rights, being genocide, war crimes and crimes against humanity.
61. With respect to acts of torture, Articles 4, 5, 7 and 8 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

⁶⁶ *Case Concerning Armed Activities on the Territory of the Congo (New Application:2002) (Democratic Republic of the Congo v Rwanda)*, International Court of Justice, Jurisdiction and Admissibility, [Judgment, 3 February 2006](#), I.C.J. Reports 2006, p. 6 [64].

⁶⁷ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion of 28 May 1951*, I.C.J. Reports 1951, p. 15, 23.

(Convention against Torture)⁶⁸ impose obligations on State parties to criminalise, investigate, prosecute and punish all acts of torture. Regarding the obligation to prosecute, Article 7 imposes the alternative obligation of either prosecuting suspected perpetrators domestically or extraditing them to other jurisdictions for prosecution.⁶⁹ Notably, while not expressly providing for prosecution, Article 5 of the African Charter also prohibits torture,⁷⁰ while Article 16 of the African Charter on the Rights and Welfare of the Child (ACRWC) obligates State parties to take measures to protect children from torture.

62. International jurisprudence has affirmed these State obligations with respect to acts of torture. For instance, in **The Institute for Human Right and Development in Africa and Finders Group Initiative on behalf of TFA (a minor) v The Government of Republic of Cameroon**,⁷¹ the African Committee on the Rights and Welfare of the Child (African Committee) held that repeated rape of a ten-year old child constituted a form of torture, inhuman or degrading treatment within the meaning of Article 16 of the ACRWC and that the State's failure to investigate and prosecute this torture violated its obligation under Article 1 of the ACRWC to give effect to the substantive right be free from torture as codified under Article 16 of the ACRWC.
63. The ICJ in **Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)**⁷², drew parallels with obligations under the Genocide

⁶⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, 1465 UNTS 85; See also Inter-American Convention to Prevent and Punish Torture, 9 December 1985, OAS Treaty Series 67, arts 6 & 12; Draft Articles on Prevention and Punishment of Crimes against Humanity, A/74/10, 71st Session of the ILC (April-August 2019), arts 10 & 13.

⁶⁹ A similar obligation is found, with respect to perpetrators of enforced disappearance, in Article 11 of the International Convention for the Protection of all Persons from Enforced Disappearance.

⁷⁰ The African Commission has interpreted this provision as imposing an obligation to prosecute perpetrators of torture. See (Robben Island) Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (ACHPR/Res.61(XXXII)02), paras 4, 5, 6, 8 & 16; Resolution on the Prevention and Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ACHPR/Res.105(XXXXI)07) para 3; Resolution on the Right to Rehabilitation for Victims of Torture (ACPHR/Res.303(LVI)2015) para 4.

⁷¹ [Communication 006/Com/002/2015](#), Decision No. 001/2018, Adopted at the 31st Ordinary Session held in May 2018) paras 57 and 77.

⁷² *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, International Court of Justice, Judgment, [20 July 2012, I.C.J. Reports 2012, p. 422 \[68\]](#). Concerning *erga omnes* obligations generally, the ICJ asserted as follows in *Case Concerning the Barcelona Traction, Light and Power Company Limited (New Application: 1962) (Belgium v Spain)*, International Court of Justice, Second Phase, Judgment, 05 February 1970, I.C.J. Reports 1970, p. 3 [33–34]–

Convention and reiterated that the above obligations under the Convention against Torture are of an *erga omnes partes* nature not only owed to victims/survivors, but also by and to State parties as against one another

64. Interpreting Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) which prohibits torture and inhuman or degrading treatment or punishment, the European Court of Human Rights held in its 2014 judgment in **Case of Al Nashiri v Poland**,⁷³ that States indeed owe an obligation to victims/survivors and to the general public to provide a remedy for victims of torture, which is a serious violation of human rights, and which remedy necessarily ought to include prompt thorough and effective investigation and “proper accountability.”
65. Notably, from the preceding discussion, it is evident that the obligation to prosecute serious, massive or gross violations of human and peoples’ rights, in whatever form they manifest or are committed and by whatever name designated, is both a treaty-based obligation (stemming from Article 1 of the African Charter and the relevant provisions of the treaties cited) and a customary international law obligation particularly for violations of *jus cogens* norms such as genocide⁷⁴ and torture.

33. [...] In particular, an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*.

34. Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body of general international law (Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951, p. 23); others are conferred by international instruments of a universal or quasi-universal character.

⁷³ [Application No. 28761/11](#), Judgment 24 July 2014, paras 495–499. See also [Case of El-Masri v The Former Yugoslav Republic of Macedonia](#), Application No. 39630/90, Judgment 13 December 2012, paras 182–1924; [Case of Al-Skeini and others v The United Kingdom](#), Application No. 55721/07, Judgment 07 July 2011, paras 161–167; [Case of Anguelova v Bulgaria](#), Application No. 38361/97, Judgment 13 June 2002, paras 136–140.

⁷⁴ See for example Case Concerning Armed Activities on the Territory of the Congo (New Application:2002) (Democratic Republic of the Congo v Rwanda, International Court of Justice, Jurisdiction and Admissibility, Judgment, 3 February 2006, I.C.J. Reports 2006, p. 6 [64]; Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion of 28 May 1951, I.C.J. Reports 1951, p. 15, 23.

C. Extra-territorial application of the obligation to investigate and prosecute

66. PALU submits that the obligation to investigate and prosecute serious, massive or gross violations of human and peoples' rights under the African Charter is not limited to those violations committed on the territory of the particular State. First, PALU submits that a State Party to the African Charter owes this obligation to its nationals wherever they may be, including when they are within the territory of another State. Second, this obligation *erga omnes* is incumbent upon all members of the international community in the first instance, and particularly upon African States through Article 4(h) of the Constitutive Act, as well as through consistent state practice within the African Union. Third, due regard should be given to African philosophies and values, including principles of collective and communal development such as *Ubuntu*, as evidence of African *opinio juris* and as a rationale underpinning a collective African approach to extra-territorial intervention. These arguments collectively, support an obligation on African States that extends to other African peoples wherever they may be.
67. The obligation to investigate and prosecute is thus territorial and extraterritorial. Consequently, regardless of where in Africa these violations are committed, a State party to the African Charter has an obligation to prosecute perpetrators, with obligation discharged by the State either undertaking the prosecution itself or co-operating with any other State or entity that has the capacity to prosecute.
- (i) Active and passive personality jurisdiction
68. While the African Charter does not expressly specify or limit its territorial scope, the jurisprudence of the African human rights system on the extra-territorial nature of State obligations under the Charter is relatively straight-forward where a State or its nationals are the perpetrators of violations on the territory of another African State (active personality jurisdiction). For instance, in its 2022 judgment in **Bernard Anbataayela Mornah v Republic of Benin and 7 Others**, the African Court, noted the increasing acknowledgement in international human rights jurisprudence of the extraterritorial application of human rights treaties particularly "to areas where States have effective control and to acts and omissions committed by their agents or persons under their military, political, and

economic influence.”⁷⁵ It held that “there is a growing consensus that the obligation to protect or at least, not to violate human rights extends beyond the traditional confines of State territories.”⁷⁶

69. The African Commission took a similar position earlier in **Democratic Republic of the Congo v Burundi, Rwanda and Uganda**⁷⁷ where it considered the Communication to be admissible and proceeded to find Burundi, Rwanda and Uganda responsible for gross and massive violations of human and peoples’ rights committed by their troops on the territory of the DRC. More recently in **Mohammed Abdullah Saleh al-Asad v the Republic of Djibouti**,⁷⁸ the Commission was more emphatic, holding that Article 1 of the African Charter “does not expressly limit the application of the Charter within the territory and jurisdiction of State Parties,” and that “circumstances may obtain in which a state assumes obligations beyond its territorial jurisdiction such as when a state assumes effective control of part of a territory of another state (spatial model of jurisdiction), or where the state exercises control or authority over an individual (personal model of jurisdiction).”
70. The African Commission’s soft-law also affirms this position, including General Comment No. 3 on the African Charter on Human and Peoples’ Rights on the Right to Life (Article 4), where the Commission argues, with specific reference to the right to life, that a State’s obligations in this respect extend to persons outside its territory where “the State has jurisdiction or otherwise exercises effective authority, power, or control over either the perpetrator or the victim (or the victim’s rights), or exercises effective control over the territory on which the victim’s rights are affected, or whether the State engages in conduct which could reasonably

⁷⁵ Supra. Fn.31 above, para 148.

⁷⁶ Application No. 028/2018, Judgment, 22 September 2022, para 149. See also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice, Advisory Opinion, 09 July 2004, I. C. J. Reports 2004, p. 136 [107–112]; *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, International Court of Justice, Judgment, 19 December 2005, I.C.J. Reports 2005, p. 168 [178–180]; See also *The Matter of Democratic Republic of Congo v Republic of Rwanda, Ruling (Jurisdiction and Admissibility)*, 26 June 2025, AFCHPR App. No. 007/2023

⁷⁷ [Communication 227/99](#). Adopted at the 33rd Ordinary Session held from 19–29 May 2003. accessed August 22 2025

⁷⁸ [Communication 383/10](#). Adopted at the 55th Ordinary Session held from 28 April 2014–12 May 2014, para 134. Accessed August 22 2025

be foreseen to result in an unlawful deprivation of life,”⁷⁹ and further that, “Home States also should ensure accountability for any extraterritorial violations of the right to life, including those committed or contributed to by their nationals or by businesses domiciled in their territory or jurisdiction.”⁸⁰

71. Similarly, the African Charter obligations are owed by States to their nationals, wherever they may be in Africa. Consequently, the obligation to prosecute serious, massive or gross violations of human and peoples’ rights under the African Charter also applies extra-territorially where a State’s national is a victim/survivor of violations committed outside that State’s territory (passive personality jurisdiction).

(ii) Universal jurisdiction obligations

72. Where serious, massive or gross violations of human and peoples’ rights are neither committed on the territory of a State (or territory it controls) nor by or against its nationals, the jurisprudence of the African human rights system on the extra-territorial obligation of said State is not as express. States ordinarily exercise jurisdiction within their own territories. However, international law permits them, in specific circumstances, to legislate for or prosecute crimes committed beyond their borders and which have no direct link to them. PALU submits that international law may empower, or indeed obligate, States to ensure criminal accountability for serious, massive or gross violations of human and peoples’ rights regardless of where such crimes occurred or the nationalities of the victims/survivors or perpetrators. The gravity of these offences, which constitute breaches of *erga omnes* obligations and violations of *jus cogens* norms,⁸¹ engages a global and collective responsibility to ensure criminal

⁷⁹ Adopted at the 57th Ordinary Session held from 04–18 November 2015, para 14.

⁸⁰ Adopted at the 57th Ordinary Session held from 04–18 November 2015, para 18.

⁸¹ In *Case Concerning the Barcelona Traction, Light and Power Company Limited (New Application: 1962) (Belgium v Spain)*, International Court of Justice, Second Phase, Judgment, 05 February 1970, I.C.J. Reports 1970, p. 3 [33–34], the ICJ defined *erga omnes* obligations as those ‘obligations of a State towards the international community as a whole ... [which] [b]y their very nature ... are the concern of all States [and] [i]n view of the importance of the rights involved, all States can be held to have a legal interest in their protection ... [and that] [s]uch obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination’.

accountability. This obligation arises from both express and implied provisions of various treaties, as well as from customary international law.

73. The jurisprudence and practice points to an emerging consensus in the African human rights system that as the obligation to prosecute serious, massive or gross violations of human and peoples' rights is of an *erga omnes* character and often concerns violations of *jus cogens* norms, it is neither limited to the territory on which the crime is committed nor to the requirement of nationality of perpetrators or survivors/victims. In this case, the only link connecting the prosecuting State, the locus State, the perpetrator and the victims/survivors is that both States are parties to the African Charter, hence the obligation herein is owed as between these States and to the peoples of these States. Notably, within the geographically-limited context of the African continent to which the African Charter applies, the treaty has attained near-universal ratification by 54 of Africa's 55 States.
74. To properly and comprehensively appreciate the extent of the obligation under Article 1 of the African Charter, the principle of universal jurisdiction must necessarily be taken into account. In accordance with this principle, States have an obligation to intervene through prosecutions in situations of serious, massive or gross violations of human and peoples' rights even where these violations are neither committed on their territories (or territories that they control) nor by or against their nationals.
75. The first recognition of universal jurisdiction under customary international law emerged in the context of piracy, which principle was subsequently codified in Article 19 of the 1958 Geneva Convention on the High Seas and Article 105 of the 1982 United Nations Convention on the Law of the Sea,⁸² classifying the crime of piracy as one that is subject to universal jurisdiction. Similarly, the 1949 Geneva Conventions explicitly require State parties to exercise universal jurisdiction over grave breaches of international humanitarian law.⁸³ State parties are obligated to search for persons alleged to have committed such crimes,

⁸² Geneva Convention on the High Seas (1958), art 19; United Nations Convention on the Law of the Sea (1982), art 105.

⁸³ Geneva Convention I, art 49; Geneva Convention II, art 50; Geneva Convention III, art 129; Geneva Convention IV, art 146.

irrespective of the accused's nationality, and prosecute them before their domestic courts, or alternatively in accordance with the principle of *aut dedere aut judicare*, to extradite them to another State party for prosecution. The Conventions do not require any territorial or nationality link between the crime and the prosecuting state.⁸⁴ This framework is further reinforced by the 1977 Additional Protocol I to the Geneva Conventions, which extends the principle of universal jurisdiction to grave breaches involving the conduct of hostilities in international armed conflict, classifying such acts as war crimes.⁸⁵

76. The Convention against Torture also imposes a mandatory universal jurisdiction regime by requiring State parties to establish jurisdiction over alleged perpetrators found within their territory, regardless of where the offence took place, or the nationalities of the parties involved.⁸⁶ The State must either prosecute the accused or extradite them to a jurisdiction willing and able to prosecute them. Similarly, the International Convention for the Protection of All Persons from Enforced Disappearance obligates State parties to assert jurisdiction over alleged offenders present in their territory, regardless of the location of the crime or the nationality of the perpetrator or victim.⁸⁷ With specific reference to the crime of genocide, the ICJ has also taken the position that the obligation to prevent and punish as codified in the Genocide Convention is of an *erga omnes* character and is therefore not limited to the territory on which the crime is committed [see **Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Yugoslavia)**].⁸⁸ In other words, the obligation to punish the crime of genocide as codified in the Genocide Convention applies to State parties both where the crime is committed within their territory or outside their territory.

⁸⁴ Geneva Conventions I–IV (1949), art 49 GC I, 50 GC II, 129 GC III, 146 GC IV.

⁸⁵ Additional Protocol I (1977), art 85. See also ICRC, *Customary International Humanitarian Law*, vol 1: Rules (Cambridge University Press 2005) rule 157.

⁸⁶ Convention against Torture (1984), art 5, 7. See also Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War crimes and other International Crimes (2023), art 8(3).

⁸⁷ International Convention for the Protection of All Persons from Enforced Disappearance (2006), art 9.

⁸⁸ International Court of Justice, Judgment, Preliminary Objections, [11 July 1996, I.C.J. Reports 1996, p. 595 \[31\]](#). Accessed 22 August 2025

77. Specific to Africa, PALU submits that the continental legal and policy framework recognises universal jurisdiction as a form of extraterritorial obligation of African States. As early as 2006, the AU's Committee of Eminent African Jurists on the Case of Hissène Habré considered that Senegal, on whose territory Hissène Habré was present, and all other African State parties to the Convention against Torture, had an obligation under international law (and jurisdiction), particularly arising from the Convention against Torture, to prosecute Habré, despite the violations having been committed in Chad and against nationals of Chad.⁸⁹
78. The African Union's legal framework, specifically Article 4(h) of the Constitutive Act of the African Union, recognises that the AU has the right to intervene in a Member State when serious crimes like war crimes, genocide and crimes against humanity occur in a Member State.⁹⁰ Notably, Article 4(j) of the Constitutive Act also recognises the right of any AU Member State "to request intervention from the Union in order to restore peace and security". The open-ended nature of this provision means that a Member State can request intervention by the AU on its own territory or on the territory of another Member State, and in whatever form including through criminal accountability. These provisions, taken together, signal African States' recognition that serious, massive or gross violations of human and peoples' rights pose a serious threat to peace and security of the continent as a whole and therefore all AU Member States, collectively under the AU or individually, have an interest in these violations being prevented or addressed. Further, Articles 3(a) and 3(e) of the Constitutive Act highlight solidarity and international cooperation as key principles guiding the AU. This is also reflected in Article 23 of the African Charter which calls for State parties to work together to maintain peace and security. PALU submits that these legal provisions, taken together, form the foundation of universal jurisdiction within the continental legal framework, reflecting the continent's legal, political and historical context.

⁸⁹ Report of the Committee of Eminent African Jurists on the Case of Hissène Habré (2006), paras 16–21, 28–29 & 33. Notably, Article 7 of the Convention against Torture codifies the obligation to prosecute or extradite for prosecution a person suspected of torture.

⁹⁰ See *also* [Pretoria Principles](#) on Ending Mass Atrocities pursuant to Article 4(h) of the Constitutive Act of the African Union, 2012.

79. These legal provisions are reinforced by the AU's policy framework as well as soft-law. In 2012, the AU adopted the Model National Law on Universal Jurisdiction over International Crimes which, in line with the AU's objectives and principles in Articles 3(a), 3(e) and 4(h) of the Constitutive Act, provides a harmonised legal framework to guide Member States in the effective domestication and application of universal jurisdiction. In so doing, the AU recalled the African Charter, re-affirmed its recognition that "certain crimes are of most serious concern to the Member States of the African Union and the international community as a whole that they must not go unpunished" and emphasised the importance of domestic measures to ensure effective prosecution.⁹¹ The Model Law prioritises the principle of complementarity by emphasising that the State in which the alleged international crimes (which by definition include serious, massive or gross violations of human and peoples' rights) occurred retains the primary right and responsibility to investigate and prosecute, depending on its willingness and capacity to do so. However, it also recognises that courts of other States shall also have jurisdiction over these crimes if the alleged perpetrator is on their territory. Similarly, the African Union Transitional Justice Policy, 2019 emphasises investigation and prosecution as integral parts of the justice and accountability pillar of transitional justice, and insists on a wholesome approach involving domestic, hybrid and international (sub-regional, regional and global) responses as appropriate in ensuring prosecution of violations of serious, massive or gross violations of human and peoples' rights.⁹²
80. From the foregoing, it is evident that when analysing the obligations of African States with respect to individual criminal responsibility for persons suspected of having committed serious, massive or gross violations of human and peoples' rights in Africa, and in particular the extra-territorial aspects of these obligations, universal jurisdiction must necessarily be an essential part of the discussion. In other words, seeking justice and accountability for serious, massive or gross violations of human and peoples' rights in Africa is not reserved for those States

⁹¹ Model National Law on Universal Jurisdiction over International Crimes, 2012, preamble. *See also* Decision on the African Union Model National Law on Universal Jurisdiction over International Crimes, Doc. EX.CL/731(XXI)c.

⁹² African Union Transitional Justice Policy (February 2019), paras 77–82.

on whose territory the violations occurred or by or against whose nationals the violations were committed, but it is a responsibility of all African States towards all African peoples.

81. PALU submits that State parties to the African Charter have an obligation to prosecute perpetrators of serious, massive or gross violations of human and peoples' rights regardless of any direct link to their territory or nationals. More specifically, it is submitted that:

- a) Article 1 of the African Charter imposes an obligation on African States to investigate and prosecute serious, massive or gross violations of human and peoples' rights.
- b) A State party's obligations under paragraph (a) above is not limited to a State's territory.
- c) The African Charter imposes an obligation of co-operation and solidarity on African States; that is, to co-operate with one another to ensure the realisation and protection of rights in the Charter. It follows then that State parties to the African Charter are obligated to prosecute perpetrators of serious, massive or gross violations of human and peoples' rights regardless of any direct link to their territory or nationals provided that such violations are committed in Africa, the treaty's membership being limited to African States. In other words, there is sufficient basis arising from the African Charter and the jurisprudence and practice of the African human rights system to posit that the African Charter imposes an obligation on African States to exercise extraterritorial jurisdiction pursuant to the principles of active personality, passive personality and universal jurisdiction to prosecute perpetrators of serious, massive or gross violations of human and peoples' rights in Africa.

D. Relevant collective obligations of African States under the formation of the African Union

82. PALU submits that besides the obligations of African States as individual States, these States also have, as a collective under the formation of the African Union, relevant obligations emanating from the African Charter. Core to this submission

is that the African Union is a collective body of African States through which these States have subscribed to collective obligations and through which they undertake collective action.

83. Pursuant to Article 3(h) of the Constitutive Act of the African Union,⁹³ the African Union's objectives include to promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments. Further, pursuant to Article 4(m) and (o) of the Constitutive Act, the principles guiding the functioning of the African Union include respect for human rights and the rule of law and rejection of impunity.
84. As such, African States as a collective under the umbrella of the African Union, have committed to promoting and protecting all human and peoples' rights as codified in the African Charter and in other human rights instruments. Regarding the consequence of the above provisions, some commentators have aptly asserted that, "[A]part from the individual obligations of member states to ensure the guarantee of human rights within their jurisdictions, the AU itself has undertaken an institutional obligation to ensure the effective guarantee of human rights in Africa generally."⁹⁴ The African Charter thus provides authoritative guidance to the African Union as a collective representation of all African States on all matters that pertain to human and peoples' rights.
85. Of particular relevance to this Request are Articles 4(h)⁹⁵ and (j)⁹⁶ of the Constitutive Act which codify a procedural right or power of African States to collectively intervene through the African Union, in furtherance of and to give effect to the substantive obligations discussed above.

⁹³ Constitutive Act of the African Union, 11 July 2000, 2158 UNTS 3.

⁹⁴ Ademola Abass and Mashood A. Baderin, 'Towards Effective Collective Security and Human Rights Protection in Africa: An Assessment of the Constitutive Act of the African Union' XLIX *Netherlands International Law Review* 1, 29 (2002). See also Owiso Owiso, 'A Cosmopolitan International Law: The Authority of Regional Inter-Governmental Obligations to Establish International Criminal Accountability Mechanisms' (Doctoral thesis, University of Luxembourg 2022), cap 6.

⁹⁵ See also Article 4(j) of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union.

⁹⁶ A similar provision is also found in Article 8(2) of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 2009, and in Article 4(k) of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union.

86. Article 4(h) of the Constitutive Act codifies “right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity”, while Article 4(j) codifies “the right of Member States to request intervention from the Union in order to restore peace and security within its territory or within the territory of another Member State.”⁹⁷
87. The Applicant reiterates its earlier submission that war crimes, genocide and crimes against humanity, referred to as “grave circumstances” in Article 4(h) of the Constitutive Act, constitute serious, massive or gross violations of human and peoples’ rights. Similarly, serious, massive or gross violations of human and peoples’ rights inherently threaten national and continental peace and security and are therefore envisioned as forming the subject to intervention requests under Article 4(j) the Constitutive Act.⁹⁸
88. The practice of the African Union indeed confirms that the AU considers that accountability for serious, massive or gross violation of human and peoples’ rights falls within its competence. For instance, following the 2006 recommendation by the African Union’s Committee of Eminent African Jurists on the Case of Hissène Habré,⁹⁹ in 2007 the AU Assembly of Heads of State and Government, citing Articles 3(h), 4(h) and 4(o) of the Constitutive Act, affirmed that “the crimes of which Hissène Habré is accused [torture] fall within the

⁹⁷ See Owiso Owiso, ‘A Cosmopolitan International Law: The Authority of Regional Inter-Governmental Obligations to Establish International Criminal Accountability Mechanisms’ (Doctoral thesis, University of Luxembourg 2022), 166–172; Dire Tladi and John Dugard, ‘The African Union’s Right to Intervene and the Right to Life: Tension or Concordance?’ in Frans Viljoen and others (eds), *A Life Interrupted: Essays in Honour of the Lives and Legacies of Christof Heyns* (Pretoria University Law Press 2022) 258–265; Busingye Kabumba, ‘Soft Law and Legitimacy in the African Union: The Case of the Pretoria Principles on Ending Mass Atrocities Pursuant to Article 4(h) of the AU Constitutive Act’ in Ololade Shyllon (ed), *The Model Law on Access to Information for Africa and other Regional Instruments: Soft Law and Human Rights in Africa* (Pretoria University Law Press 2018) 179–187; Eki Yemisi Omorogbe, ‘The African Union, Responsibility to Protect and the Libyan Crisis’ 59 *Netherlands International Law Review*, 141, 149–152 (2012); Ntombizozuko Dyani-Mhango, ‘Reflections on the African Union’s Right to Intervene’ (2012) 38 *Brooklyn Journal of International Law* 1, 11–17; Abdulqawi A. Yusuf, ‘The Right of Forcible Intervention in Certain Conflicts’ in Abdulqawi A. Yusuf and Fatsah Ouguergouz (eds), *The African Union: Legal and Institutional Framework – A Manual on the Pan-African Organization* (Martinus Nijhoff Publishers 2012) 339–342; Dan Kuwali, ‘The End of Humanitarian Intervention: Evaluation of the African Union’s Right of Intervention’ (2009) 9 *African Journal on Conflict Resolution* 41, 44–50.

⁹⁸ See also African Commission on Human and Peoples’ Rights Study on Transitional Justice and Human and Peoples’ Rights in Africa (2019), para 173.

⁹⁹ Report of the Committee of Eminent African Jurists on the Case of Hissène Habré (2006), paras 16–21, 28–29 & 33.

competence of the African Union”¹⁰⁰ and mandated Senegal “to prosecute and ensure that Hissène Habré is tried, on behalf of Africa, by a competent Senegalese court with guarantees for fair trial.”¹⁰¹ In 2009, the African Union High-Level Panel on Darfur recommended a Hybrid Court (for Darfur) to prosecute serious/gross violations of human and peoples’ rights in Darfur and envisioned that the AU would nominate non-Sudanese staff (as prosecution, registry and investigative staff) and also play a key role in the nomination and appointment of the non-Sudanese judges on the court.¹⁰²

89. Similarly, appreciating their collective obligations under the auspices of the AU as discussed herein, the AU Assembly of Heads of State and Government adopted the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Malabo Protocol) on 27 June 2014 which, *inter alia*, seeks to establish an international criminal law section of the African Court of Justice and Human and Peoples’ Rights with jurisdiction over international crimes including genocide, crimes against humanity, war crimes, terrorism, mercenaryism, and trafficking in persons, drugs and hazardous waste, which all constitute serious, massive or gross violations of human and peoples’ rights. More recently in April 2024, the Chairperson of the African Union Commission appointed the first-ever Special Envoy for the Prevention of the Crime of Genocide and other Mass Atrocities, underscoring African States’ acknowledgment of the scourge of mass atrocities and the need for more dedicated focus on their prevention.
90. PALU therefore submits that in addition to Article 4(h) and (j) codifying a right of the African States through the African Union to intervene, this provision should necessarily also be read as imposing an obligation on African States through the African Union to intervene in situations of serious, massive or gross violations of

¹⁰⁰ Assembly/AU/ Dec.127(VII), paras 3 and 5(i).

¹⁰¹ Assembly/AU/ Dec.127(VII), para 5(ii).

¹⁰² Report of the African Union High-Level Panel on Darfur, PSC/AHG/2(CCVII) (October 2009), paras 246–254 & 322–333.

human and peoples' rights in Africa.¹⁰³ This is particularly so if, as should necessarily be the case, Article 4(h) and (j) are read together with:

- a) the AU's solidarity and co-operation obligations under Article 3(a), (h) and (e) of the Constitutive Act which demand "solidarity between the African countries and the peoples of Africa," promotion and protection of human and peoples' rights enshrined in the African Charter, and "international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights"; and
- b) Article 23(1) of the African Charter which provides, *inter alia*, that, "the principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States."

91. This interpretation of Article 4(h) and (j) is further strengthened by the fact that African States have legally committed themselves under Article 4(m) and (o) of the Constitutive Act to respect human rights and the rule of law and to reject impunity in Africa.

E. Relevant collective obligations of African States under the formation of various Regional Economic Communities

92. Pursuant to Article 3(l) of the AU Constitutive Act, one of the objectives of the African Union is to "coordinate and harmonize the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union." It is therefore evident that the Constitutive Act envisions RECs as an integral part of the architectural design of the African Union, which necessarily means that they are bound by the principles and objectives of the African Union, including as expressed in Articles 3(a), (e) and (h) and 4(m) and (o) of the Constitutive Act. In other words, as part of the African Union governance architecture, African States have the same collective obligations of solidarity, co-operation and promotion and protection of human and peoples'

¹⁰³ See also Owiso Owiso, 'A Cosmopolitan International Law: The Authority of Regional Inter-Governmental Obligations to Establish International Criminal Accountability Mechanisms' (Doctoral thesis, University of Luxembourg 2022), 169–170; Ademola Abass, 'Prosecuting International Crimes in Africa: Rationale, Prospects and Challenges' (2013) 24 European Journal of International Law 933, 938

rights under the formation of RECs as they do under the formation of the African Union.

93. Further, the legal instruments specific to the various RECs also impose certain collective obligations upon Member States of these RECs with respect to the human and peoples' rights enshrined in the African Charter. As provided in Article 4(g) of the Revised Treaty of the Economic Community of West African States, 1993 (Revised ECOWAS Treaty),¹⁰⁴ member States have collectively bound themselves to the fundamental principle of "recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights."¹⁰⁵ Article 56(2) of the Revised ECOWAS Treaty further obligates these States to co-operate in realising the African Charter's objectives. Consequently, ECOWAS Member States have collectively committed themselves to promoting, protecting and giving effect to all human and peoples' rights as enshrined in the African Charter, including through co-operation.
94. It is also notable that Article 3(h) of Protocol A/P.1/12/99 Lomé Protocol empowers ECOWAS Member States collectively under the umbrella of ECOWAS to "constitute and deploy a civilian and military force to maintain or restore peace within the sub-region, whenever the need arises." Article 25(d) thereof empowers intervention "[i]n event of serious and massive violation of human rights and the rule of law."
95. In this regard, PALU submits that firstly, the circumstances under which serious, massive or gross violations of human and peoples' rights are committed constitute a threat to peace and security. Secondly, having committed themselves to co-operate in protecting and ensuring African Charter rights pursuant to Articles 4(g) and 56(2) of the Revised ECOWAS Treaty, ECOWAS Member States under the collective umbrella of ECOWAS are obligated to intervene in a Member State where serious, massive or gross violations of human and peoples' rights have or are being committed. Thirdly, the mode of

¹⁰⁴ Treaty of the Economic Community of West African States (adopted 24 July 1993, entered into force 23 August 1995) (1996) 35 ILM 660 (Revised ECOWAS Treaty).

¹⁰⁵ See *also* Article 2 of the Protocol A/P.1/12/99 Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (Lomé Protocol).

intervention could be by military or non-military measures including criminal accountability mechanisms.¹⁰⁶

96. Similarly, the Treaty for the Establishment of the East African Community (EAC Treaty)¹⁰⁷ imposes relevant obligations upon Partner States collectively under the formation of the East African Community. Specifically, Article 5(3)(f) of the EAC Treaty mandates the promotion of peace, security and stability as a fundamental objective of the Community, while Article 6(d) enshrines “good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and peoples’ rights in accordance with the provisions of the African Charter on Human and Peoples’ Rights” as fundamental Community principles.
97. The above objectives and principles are reinforced by the obligation under Article 7(2) of the EAC Treaty for Partner States to “abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights.” Notably, the East African Court of Justice has, on numerous occasions, held that the rule of law, accountability and human rights principles in Article 6(d) and the obligation under Article 7(2) are express, specific, unambiguous and actionable/justiciable [see **James Katabazi and 21 others v Secretary General of the East African Community and the Attorney-General of the Republic of Uganda**,¹⁰⁸ **Attorney General of the Republic of Kenya v Independent Medical Legal Unit**,¹⁰⁹ **The Attorney General of the Republic of Rwanda v. Plaxeda Rugumba**,¹¹⁰ **Democratic Party v The Secretary-General of the East**

¹⁰⁶ [Joint Declaration by the Economic Community of West African States, the African Union and the United Nations on The Political Situation of the Islamic Republic of The Gambia \(adopted 21 January 2017\)](#); See also [Para 59, Final Communiqué, 66th Ordinary Session of the Authority of Heads of State and Government \(adopted 15th December 2024\)](#).

¹⁰⁷ Adopted 30 November 1999, entered into force 7 July 2000 (as amended in 2006 and 2007).

¹⁰⁸ EACJ [Reference 1 of 2007](#), Judgment, 01 November 2007, pp. 15–23.

¹⁰⁹ EACJ [Appeal No. 1 of 2011](#), Judgment, 15 March 2012, pp. 9–13. accessed 25 November 2025

¹¹⁰ EACJ [Appeal 1 of 2012, Judgment](#), 22 June 2012, paras 23–27, accessed 25 November 2025

African Community & 4 others¹¹¹ and The Attorney-General of the Republic of Uganda v Tom Kyahurwenda.¹¹²

98. Additionally, Article 6(e) of the Treaty Establishing the Common Market for Eastern and Southern Africa (COMESA Treaty)¹¹³ enshrines recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter, as a fundamental principle of COMESA. This provision is reinforced by Articles 6(f), (g) and (i) which affirm accountability, the rule of law and the maintenance of peace and security as fundamental principles of COMESA. Similarly, pursuant to Article 4(c) of the Consolidated Treaty of the Southern African Development Community (SADC Treaty), "human rights, democracy and the rule of law" are fundamental principles guiding the Community, and the defunct SADC Tribunal in fact asserted in **Mike Campbell (PVT) Ltd and 78 Others v Republic of Zimbabwe** that these principles are express and actionable/justiciable,¹¹⁴ and in so doing referred extensively to State obligations under the African Charter.
99. Article 3 of the Amended Treaty of the West African Economic and Monetary Union (*Traité Modifié de l'Union Economique et Monétaire Ouest Africaine*) (Amended UEMOA Treaty) also provides that Member States of the Union collectively undertake to respect "the fundamental rights set out in the 1948 Universal Declaration of Human Rights and the 1981 African Charter on Human and Peoples' Rights."
100. From the foregoing, it is apparent that African States collectively under the umbrella of the various RECs are bound by the African Charter's provisions not only because these RECs are an integral part of the architectural design of the African Union which then means that they have the obligation as expressed in the above-referenced provisions of the AU Constitutive Act to promote and protect human and peoples' rights as enshrined in the African Charter. The

¹¹¹ EACJ [Appeal No. 1 of 2014](#), Judgment, 28 July 2015, paras 49–75. Accessed 25 November 2025

¹¹² EACJ [Case Stated No. 1 of 2014](#), Preliminary Ruling, 31 July 2015, paras 62–69. Accessed 25 November 2025

¹¹³ Adopted 5 November 1993, entered into force 8 December 1994 (amended 2009) (1994) 33 ILM 1067.

¹¹⁴ [SADCT Case No. 2/2007](#) [2008] SADCT 2, Judgment, 28 November 2008, pp. 24–25. Accessed 23 November 2025

constituent instruments of the various RECs expressly obligate these States collectively under the formation of the RECs to promote and protect human and peoples' rights as enshrined in the African Charter. Consequently, PALU submits that African States collectively under the formation of the various RECs are obligated to ensure African Charter rights, and ensuing obligations, pursuant to Article 1 thereof, and this includes the obligation to prosecute serious, massive or gross violations of human and peoples' rights.

F. PALU's Position on the Questions Posed

101. In light of the arguments advanced herein, PALU submits that a constructive and purposive reading of Articles 1 and 58(1)-(2) of the African Charter and of the provisions of applicable legal instruments cited should lead to the following conclusions:

- i. The expression "serious, massive or gross violations of human and peoples' rights" should be understood as referring to violations of human and peoples' rights of a grave nature and/or committed in a systematic or large-scale manner and necessarily include those violations that amount to international crimes such as war crimes, genocide and crimes against humanity.
- ii. African States have an obligation under the African Charter and under the referenced relevant international legal standards to seriously, promptly and effectively investigate serious, massive or gross violations of human and peoples' rights in Africa and to prosecute those responsible, irrespective of the State/territory in which these violations are committed, and irrespective of the nationality of the persons involved.
- iii. Failure by African States to investigate serious, massive or gross violations of human and peoples' rights in Africa and to prosecute those responsible constitutes a violation of their obligations under international law.
- iv. African States collectively under the umbrella of the African Union and/or the RECs have an obligation under the African Charter and the referenced relevant international legal standards to intervene in the event of serious,

massive or gross violations of human and peoples' rights in Africa and to investigate these violations and cause to be prosecuted those responsible.

- v. Failure by the African States collectively under the umbrella of the African Union and/or the RECS to intervene and investigate and cause effectively to be prosecuted serious, massive or gross violations of human and peoples' rights in Africa constitutes a violation of their collective obligations under international law.
- vi. African States collectively under the umbrella of Regional Economic Communities have a general obligation under the African Charter and the referenced relevant international legal standards to co-operate with one another and with the African Union in ensuring serious, prompt and effective investigation and prosecution of serious, massive or gross violations of human and peoples' rights in Africa.
- vii. Failure by African States collectively under the umbrella of Regional Economic Communities to co-operate with the African Union and with one another in ensuring serious, prompt and effective investigation and prosecution of serious, massive or gross violations of human and peoples' rights in Africa constitutes a violation of their obligations under international law.

102. The conclusions in paragraph 101 above are informed by a plain and purposive reading and interpretation of the above-cited treaty provisions and of customary international law, as well as by the authoritative and persuasive jurisprudence of international courts, including this Honourable Court and other global, regional and sub-regional courts.

VIII. SUMMARY OF THE REQUEST

103. The Pan African Lawyers Union (PALU), an African organisation recognised by the African Union (AU), has submitted a Request for an Advisory Opinion to the African Court on Human and Peoples' Rights (the Court).

104. PALU makes this Request, having collaborated with African civil society organizations including Atrocities Watch Africa, and other individual experts on

African Union peace and security frameworks, international Human Rights Law, and International Criminal Law.

105. The Request is made in terms of 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 read with Rule 82(1) of the Rules of the African Court. PALU asserts that the Court has the necessary jurisdiction to consider this request, which concerns the human rights obligations of African States in the context of the gross and serious violations of human rights.
106. The primary law upon which the Request is anchored is the African Charter on Human and Peoples' Rights. The Request seeks interpretation of Article 1 of the African Charter with respect to the obligations of African States individually and collectively. PALU also invokes other continental and regional instruments including the AU Constitutive Act, Lomé Protocol, International Conference on the Great Lakes Protocol for the Prevention and the Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all forms of Discrimination, International Conference on the Great Lakes Protocol on the Prevention and Suppression of Sexual Violence against Women and Children, Revised Treaty of the Economic Community of West African States, Amended Treaty of the West African Economic and Monetary Union, Treaty for the Establishment of the East African Community, Consolidated Treaty of the Southern African Development Community, Treaty Establishing the Common Market for Eastern and Southern Africa, as interpretive guides for the Court with respect to determining State obligations to the rights of individuals and Peoples, as guaranteed under the Charter.
107. The request seeks clarification on whether, under the African Charter read alone or in conjunction with the Constitutive Act of the AU and other relevant instruments, African States bear legal obligations to prevent serious and massive human rights violations and, where such violations occur, to ensure effective criminal accountability for those responsible. It further asks whether States' duty under Article 1 of the Charter to adopt legislative and other measures necessarily includes an obligation, acting individually and in cooperation with other States, to

ensure individual criminal responsibility for gross violations of human and peoples' rights.

108. In addition, the request invites the Court to clarify the extent to which African States are required to establish and operationalise effective mechanisms of regional and continental cooperation, through the African Union, Regional Economic Communities, or other frameworks, to secure accountability for international crimes. Finally, if a obligation of this nature, as argued, is found, it seeks guidance on the legal consequences arising from the refusal or failure of African States, acting individually or collectively, to extradite or prosecute persons suspected of having committed serious international crimes
109. PALU submits that African States have a fourfold obligation under international human rights law: to respect, protect, promote and implement the guaranteed rights, including a positive duty to undertake measures ensuring protection of these rights, and an ensuing obligation to effect individual criminal responsibility at the continental, regional and other levels, including nationally.
110. Further, PALU submits that the declaration and fulfilment of an existing obligation of this nature, as argued, is essential for the collective actualisation of the continent's development goals, including matters of peace, security and transitional justice. Additionally, impunity is an antithesis to progression, and the current justice gap, due to inarticulation of state obligations on this matter further exacerbates the perpetuation of mass atrocities against African Peoples.

IX. CONCLUSION

111. From the foregoing, PALU submits that this Request for Advisory Opinion presents an opportunity for the Court to authoritatively identify, clarify and expound upon the obligations of African States individually and collectively under the formations of the African Union and African Regional Economic Communities with respect to persons suspected of committing serious, massive or gross violations of human and peoples' rights in Africa.
112. Further, the Court is presented with the opportunity to solidify its position as "a continental forum for the discursive negotiation of human rights norms and

practices applicable to African states ... [and] the articulation, legitimation, and advancement of the continent's human rights priorities,"¹¹⁵ in particular as concerns individual criminal responsibility for serious, massive or gross violation of human and peoples' rights in Africa.

Signed and dated at ARUSHA, in the UNITED REPUBLIC OF TANZANIA this 24th day of April 2025



AUTHOR/REPRESENTATIVE

To be served upon: -

The Registrar of the African Court on Human and Peoples Rights

Mwalimu Julius Nyerere Conservation Centre

Dodoma Road, P.O. Box 6274, Arusha, United Republic of Tanzania

Email: registry@african-court.org

¹¹⁵ Chidi Anselm Odinkalu, 'Advice without Consent?: Assessing the Advisory Jurisdiction of the African Court on Human and Peoples' Rights' (2023) 45(3) Human Rights Quarterly, 365, 402–403.

INDEX OF ANNEXURES

1. Memorandum of Understanding between the Pan African Lawyers Union and the African Union (2026)