DISSENTING OPINION OF JUDGE BEN KIOKO

THE MATTER OF LAURENT MUNYANDILIKIRWA
V
REPUBLIC OF RWANDA

APPLICATION NO. 023/2015

1. Pursuant to the provisions of Rule 70 (2) of the Rules of Procedure of the Court, I hereby declare that I do not share the decision of the majority of the Court that "Declares that the Application is inadmissible" for non- exhaustion of local remedies.

2. I have also read the dissenting opinion of Judge Rafaâ Ben Achour on the rejection by the Court of the Application, and I share his opinion that the Applicant exhausted local remedies since he was not required to seize the General Assembly of LIPRODHOR, a human rights NGO operating in Rwanda, before accessing the First Instance Court and the High Court of Rwanda.

3. In deciding that local remedies were not exhausted, the Court has relied largely on the French version of Article 19 of the Statute of LIPRODHOR which is written in three languages: English, French and Kinyarwanda. While the English and Kinyarwanda versions are identical, the French version has an additional clause that gives a role to the General Assembly of LIPRODHOR in the process of a dispute resolution[1].

[1] The French version (translation by the Court) provides that any dispute arising within the league between the organs or between the members and the league must first be settled by the conflict resolution body **before being referred to the General Assembly.**

4. It is rather strange that the Court resorted to this reliance on the French version to decide that local remedies were not exhausted, even after finding that "although Article 8 of the 2013 (as amended in 2015) Constitution of the Republic of Rwanda makes Kinyarwanda, English and French official languages, it makes Kinyarwanda a national language". Furthermore, the Applicant's assertion that "both LIPRODHOR's common practice, as well as national law and practice, determine acceptance of Kinyarwanda as the controlling text of the Statutes", and that the NGO had always used Kinyarwanda in its deliberations since 1994 until the disputed events in 2013, remains, in my view, uncontroverted.

5. In addition, the Court seems to have placed undue weight to the fact that the Minutes of the Internal Dispute Resolution Committee (IDRC), within the LIPRODHOR, and which the Applicant had used to demonstrate that he had exhausted local remedies, had used the French version of the Statute and ordered that the Minutes be referred to the General Assembly for adoption. The Applicant has explained that, even if such reference was to be accepted, it would have been as a formality since the Assembly has no role in dispute resolution within LIPRODHOR. This was again not controverted by any example to the contrary.

6. Indeed, a careful reading of the French version indicates that the two paragraphs are different. The first paragraph suggests a mere reference to the General Assembly where the IDRC has resolved the matter, as in this case, as opposed to the requirement of an Assembly endorsement, in the second paragraph,

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In the event the dispute is not settled by this body, the party concerned may refer the dispute to the competent Rwandan court **after a decision of the General Assembly**.

where the dispute is not settled by that body. This is one additional reason to conclude that this was an appropriate application in which to grant the benefit of doubt to the Applicant.

7. Curiously, the Court's Ruling is based largely on the facts, analysis and argumentations of one of the *Amici Curiae*, the current LIPRODHOR board, which from their submissions turned out to be an interested party in the case. I am of the view that this development deserved some analysis by the Court and, ultimately, an informed position on, for example, whether this *amicus curiae* ought to have applied to be enjoined as a party to the matter or not. The Court had decided**,** as indicated in the Ruling, to re-open pleadings and to accept the requests of the UN Special Rapporteur to participate in the case as *amicus curiae* and **"***to hear LIPRODHOR",* without defining the nature of that hearing, and without basing the distinction on any specific Rule.

8. In this regard, it should be noted that the only pertinent Rule under the 2010 Rules was Rule 45(2) entitled Measures for Taking Evidence, which stipulated: "*The Court may ask any person or institution of its choice to obtain information, express an opinion or submit a report to it on any specific point*. Since this was the only relevant Rule applicable to both Amicus and any other party to be heard, I am even more convinced that this issue required a deeper examination on, for example, a clarification on its application to both categories.

9. Accordingly, I associate myself with the analysis and arguments contained in the Dissenting Opinion of my colleague, Judge Rafaâ Ben Achour that all available local remedies were exhausted.

Signed:

Ben KIOKO, Judge;

Done at Dar es Salaam, this Second Day of December in the year Two Thousand and Twenty one, in English and French, the English text being authoritative.