



APPLICATION NO. 007/2023

DEMOCRATIC REPUBLIC OF THE CONGO

V.

REPUBLIC OF RWANDA

RULING ON JURISDICTION AND ADMISSIBILITY

26 JUNE 2025

Arusha, 26 June 2025: the African Court on Human and Peoples' Rights (the Court) has delivered judgment in Application No. 007/2023 - *Democratic Republic of Congo v. Republic of Rwanda*.

On 21 August 2023, the Democratic Republic of Congo (the Applicant State) filed an Application with the Court against the Republic of Rwanda (the Respondent State).

The Applicant State alleged that the Respondent State violated the following rights and obligations: the obligation to respect and protect human rights, guaranteed by Article 1 of the Charter and Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR); the rights to life and physical integrity, protected by Article 4 of the Charter, Article 4 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (Protocol on the Rights of Women), Article 5(1) of the African Charter on the Rights and Welfare of the Child (ACRWC) and Article 6(1) of the ICCPR; the right to respect for the dignity inherent in a human being and the prohibition of slavery, human trafficking, torture and cruel or degrading treatment or punishment, guaranteed by Article 5 of the Charter, Articles 3(1) and (2) of the Protocol on the Rights of Women, and Articles 7 and 8 of the ICCPR; the right to liberty and security of persons, protected by Article 6 of the Charter and Articles 9(1) and 12(1) of the ICCPR; the right to a fair hearing, protected by Article 7(1) of the Charter; the right to education, protected by Article 17 of



the Charter, Article 11(1) of the ACRWC, Article 12 of the Protocol on Women's Rights, Article 13(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and guaranteed by the Pretoria Declaration on Economic, Social and Cultural Rights (Pretoria Declaration); the right to property, protected by Article 14 of the Charter; the right to the enjoyment of the highest attainable standard of physical and mental health, protected by Article 16(1) of the Charter; the right to protection of the family, protected by Article 18(1) of the Charter; the right to housing, protected by Articles 14, 16 and 24 of the Charter; the right to food, protected by Articles 4, 16 and 22 of the Charter, Article 15 of the Protocol on Women's Rights and the Pretoria Declaration; the right to economic, social and cultural development, protected by Article 22 of the Charter and Article 19(c) of the Protocol on Women's Rights; the right to a satisfactory environment favourable to development, protected by Article 24 of the Charter and Article 18(1) of the Protocol on Women's Rights; the right of peoples to peace, guaranteed by Article 23 of the Charter and Articles 10 and 11 of the Protocol on Women's Rights.

In terms of reparations, the Applicant State prayed the Court to order the Respondent State to withdraw all its troops from Congolese territory and to cease forthwith all forms of support for the M23 in order to put an end to the human rights violations for which it has been found responsible by the Court; to pay reparation for the harm resulting from the said violations ; to order any other appropriate reparation measure, to reserve further proceedings for this purpose in accordance with the combined provisions of Article 27(1) of the Protocol and Rules 4, 40 and 69(3) of the Rules of Court; and to order the Respondent State to reimburse the Democratic Republic of the Congo all costs it incurred in bringing and supporting the present case before the Court.

For its part, the Respondent State prayed the Court to decline jurisdiction and, in the alternative, to declare the Application inadmissible.

Jurisdiction

The Respondent State raised an objection to the jurisdiction of the Court. It contended that the Court lacked material jurisdiction owing to the absence of a dispute, arguing that instruments invoked by the Applicant State are not human rights instruments and that the Applicant State



invoked human rights instruments to which Rwanda is not a Party. The Respondent State also contested the territorial jurisdiction of the Court.

Objection to material jurisdiction

With regard to the first limb of the objection, the Respondent State argued that the Court's jurisdiction is contingent on the existence of a dispute, in accordance with Article 3(1) of the Protocol. It submitted that the Applicant State did not prove that, prior to the filing of its Application, there was a dispute between them, and neither did it mention any dispute therein.

The Applicant State submitted that the objection be dismissed, arguing that in the African human rights protection system, proof of a dispute is not required. According to the Applicant state, for the Court to assume jurisdiction, it is sufficient that the rights of which the applicant alleges violation are protected by the Charter or by any other human rights protection instrument.

The Court recalled that under Article 3(1) of the Protocol, it has jurisdiction whenever an applicant alleges violations of human rights protected by the Charter or by other human rights instruments to which the State concerned is a party. It affirmed that the Court's jurisdiction to hear a case is not subject to any formal requirement relating to proof of existence of a dispute prior to the filing of an application. Accordingly, the Court dismissed the objection.

On the second limb of the objection, the Respondent State submitted that the Charter of the United Nations, the Constitutive Act of the African Union (hereinafter "Constitutive Act"), the Pact on Security, Stability and Development in the Great Lakes Region (hereinafter "Great Lakes Pact") and the Framework Agreement on Peace, Security and Cooperation for the Democratic Republic of the Congo and the Region (hereinafter "the PSC Framework Agreement") are not human rights instruments but relate to the use of force and the maintenance of international peace and security. According to the Respondent State, these instruments cannot be regarded as human rights instruments applicable before the Court.

The Applicant State submitted that the objection should be dismissed, arguing that the instruments referenced by the Respondent State are human rights protection instruments. In its



view, they do not necessarily have to deal exclusively with human rights, but must rather expressly enunciate subjective rights accruing to individuals, or impose obligations on State Parties with a view to ensure the enjoyment of those rights.

The Court observed at the outset that all the rights of which the Applicant State alleges violation are protected by the Charter, the Protocol on Women's Rights, the ICCPR and the ICESCR, all of which are manifestly human rights protection instruments which it applies. It therefore considered that the said instruments suffice to establish the Court's jurisdiction without having to determine whether those invoked by the Applicant State are human rights protection instruments. The Court considered, however, that there was nothing to prevent it from ruling on the question. In this regard, it noted that, in line with its settled jurisprudence, an instrument is a human rights instrument if its purpose is stated, which purpose must be defined either by express enunciation of subjective rights accruing to individuals or groups of individuals, or by imposing on States obligations entailing the consequent enjoyment of the same rights. In the light of these criteria, the Court held that the Pact of the Great Lakes Region is a human rights protection instrument. However,, it declined to confer the same status on the Charter of the United Nations, the Constitutive Act and the PSC Framework Agreement.

With regard to the third limb of the objection, the Respondent State submitted that the Court lacked jurisdiction insofar as, in accordance with Article 3(1) of the Protocol, it has jurisdiction to apply or interpret only instruments ratified by the State concerned. According to the Respondent State, neither the Pretoria Declaration nor the PSC Framework Agreement are treaties and therefore could not be regarded as human rights protection instruments ratified by the States concerned.

The Applicant State, for its part, submitted that the Court's jurisdiction is not contingent on ratification for purposes of applying certain instruments, having regard to their nature. In that regard, it pointed out that the Court generally applies the Universal Declaration of Human Rights (UDHR), even though the said instrument is a "resolution of the General Assembly of the United Nations [which] has not been ratified by States". The Applicant State considered that the same should apply to the Pretoria Declaration, the PSC Framework Agreement and any other



instrument, since the human rights violations alleged are predicated on the relevant provisions of human rights protection instruments.

The Court recalled its jurisprudence that the Pretoria Declaration and the Addis Ababa Framework Agreement are not human rights instruments, even though it was not necessary to make such a characterisation insofar as the rights alleged to have been violated are all protected by human rights instruments ratified by the Respondent State. It therefore dismissed the objection and assumed material jurisdiction.

Objection to territorial jurisdiction

Referencing the Court's jurisprudence, the Respondent State argued that the Court has jurisdiction only if the alleged violations occur in the territory of the State concerned. It asserted, however, that in the present case, the events did not take place on its territory. It therefore submitted that the Court lacked territorial jurisdiction.

The Applicant State prayed that the objection be dismissed, arguing that the Court has territorial jurisdiction provided that the violations alleged take place on the territory of a State Party to the Protocol, the Charter and any other relevant human rights instrument applicable before the Court. It pointed out that the criterion to be taken into account is not the status of the respondent, but rather that of State party to the relevant instruments, which confers jurisdiction on the Court, provided that the facts take place on the territory of one of the State Parties to the Protocol and the Charter.

The Court recalled that it has consistently held that it has territorial jurisdiction where the facts take place in the territory of the Respondent State. It however emphasised that it may decide, in certain circumstances, to assume territorial jurisdiction when the alleged violations take place outside the territory of the Respondent State. In this respect, in line with its jurisprudence, that of the ICJ and international human rights instruments, the Court has held that it has territorial jurisdiction not only where the facts of the case take place in the territory of the State against which an application is filed, but also outside that territory. In other words, the Court's territorial jurisdiction follows the jurisdiction of the States.



The Court then examined whether there was an armed conflict in the territory of the DRC, the Applicant State and, if so, whether the Respondent State was involved in the conflict. To this end, and having regard to the documents in the case file, in particular reports of United Nations experts, the Court considered, first, that there is indeed an armed conflict between the M23 and the FARDC and, secondly, that the Respondent State, through its armed forces (RDF), was involved in the conflict. The Court therefore held that the Respondent State's exercise of extraterritorial jurisdiction could not be challenged. The Court stated that the Respondent State's involvement does not prejudice its responsibility for the human rights violations alleged by the Applicant State.

Consequently, the Court dismissed the objection based on lack of territorial jurisdiction and assumed jurisdiction in this respect.

The Court subsequently examined the personal and temporal aspects of its jurisdiction and declared that it had jurisdiction over those aspects.

In the light of the foregoing, the Court found that it had jurisdiction to hear the Application.

Admissibility

The Respondent State raised objections to the admissibility of the Application, first, based on admissibility requirements not provided for in the Charter and, secondly, on admissibility requirements provided for in the Charter.

Objections to admissibility based on admissibility requirements not provided for in the Charter

With regard to the first limb of objection, the Respondent State asserted that the Applicant State failed to comply with the prior non-judicial procedures provided for in the Great Lakes Pact, insofar



as it did not meet the requirements prior to referral to this Court, according to which parties to a dispute must first attempt to settle same by negotiation, third-party intervention, investigation, mediation or conciliation, as provided for in the said Pact. The Respondent State alleged in this regard that the Applicant State never attempted to settle through non-judicial means the matters which are the subject of the present Application, as provided for in Articles 28 and 29 of the Great Lakes Pact, that is, through negotiation, third-party intervention, investigation, mediation, conciliation or any other political means available to the parties under the Great Lakes Pact. It concluded that as the Applicant State failed to meet this requirement, the Application was inadmissible.

The Applicant State submitted that referral to the Court is not subject to any requirement of prior negotiation or mediation. In its view, the requirements under Article 28 of the Great Lakes Pact would only have been binding if the Application had been initiated within the framework of “dispute settlement” mechanisms established by the International Conference on the Great Lakes Region, which is not the case here. It therefore prayed that the objection be dismissed.

The Court emphasised that, as regards questions of procedure, it applies the Charter, the Protocol, the Rules emanating therefrom and, where applicable, generally accepted principles of procedure. The Court held that the procedural rules set out in the Great Lakes Pact could not validly be invoked to defeat proceedings before it. It therefore dismissed the objection.

With regard to the second objection alleging that the Applicant State failed to comply with the prior non-judicial procedure provided for in the Constitutive Act, the Respondent State argued that the fundamental issues raised in the Application concern peace, security, sovereignty and territorial integrity as guaranteed by Articles 3(b) and (f) and 4(a), (e), (f) and (i) of the said Act and by the Protocol on to the Establishment of the Peace and Security Council of the African Union (PSC Protocol). It further submitted that as the Court of Justice of the African Union provided for in Article 18 of the Constitutive Act is not operational, the Applicant State should have referred the matter to the Assembly of Heads of State and Government of the African Union in accordance with Article 26 of the Constitutive Act, and not to this Court. It therefore prayed that the Application be declared inadmissible.



In reply, the Applicant State argued that the objection should be dismissed. It asserted that exhausting the non-judicial remedies referenced by the Respondent State is not a prerequisite for referral to the Court or an admissibility requirement for filing applications before it.

The Court recalled that, as regards procedural issues and, more specifically, issues of admissibility of the Application, it could not apply instruments other than the Charter, the Protocol, its Rules of Procedure and the generally accepted principles of procedure. The Court therefore held that the rules established by the Constitutive Act could not validly be invoked to defeat proceedings before it. It accordingly dismissed the objection.

On the third objection that the Application constitutes abuse of process, the Respondent State explained that the Applicant State initiated parallel proceedings with the same facts and seeking the same measures, including the proceedings pending before the East African Court of Justice (EACJ). It further asserted that, at the time of filing the Application, the Applicant State failed to disclose and file material facts relevant to the Application, contrary to Rule 41(3)(c) of the Rules, under which the Application must be accompanied by copies of documents relating to any other international investigation or settlement proceedings relevant to the Application.

The Applicant State dismissed the objection. Firstly, it argued that the existence of multiple applications against the same State does not constitute abuse of process. In that regard, it submitted that the Court, in its jurisprudence, has laid down criteria for determining whether proceedings constitute abuse of process, holding that, for an application to constitute abuse of process, it must be manifestly frivolous and filed in bad faith. It added that the mere fact that an applicant files several applications against the same Respondent State does not necessarily indicate a lack of good faith on the part of the applicant.

The Court recalled that an application is abusive if, *inter alia*, it is manifestly frivolous or if it cannot be discerned that an applicant has filed it in bad faith, contrary to the general principles of law and the established procedures of judicial practice. In this regard, it emphasised that the mere fact that an applicant files several applications against the same Respondent State does not necessarily indicate a lack of good faith on the part of the applicant. The Court also considered that the fact of not disclosing information or failing to file documents on the relevant material facts



does not suffice to declare an application abusive since, in accordance with Rule 51(1) of its Rules, it can, in the course of the proceedings and whenever it considers it necessary, request the parties to produce any relevant document and to provide any relevant explanations. The Court therefore considered that abuse of process was not established and dismissed the objection.

Objections based on admissibility requirements provided for by the Charter

With regard to the first objection alleging that the Application was incompatible with the Constitutive Act and the Charter, the Respondent State submitted that the Constitutive Act is the principal instrument governing relations between the Member States of the African Union and that, accordingly, the Charter and its related protocols, including the Protocol, must be interpreted in such a way as to ensure consistency with that Act.

The Respondent State emphasised that the Applicant State, being a member of the AU and a State Party to the Constitutive Act and the PSC Protocol, was obliged, by virtue of Article 7(2), (3) and (4) of the said Protocol, to recognise and respect the authority of the PSC to act on matters of peace and security, to cooperate with it and to facilitate its work. It alleged that by dissimulating a political issue relating to peace and security as a human rights issue, the Applicant State failed to fulfil its obligations under the Constitutive Act and the PSC Protocol. In the Respondent State's view, seizing the Court with peace and security issues distorted both the object and purpose of the Constitutive Act as well as the mandate and function of the PSC. It concluded that the Application was incompatible with the Constitutive Act.

The Applicant State noted that an application is compatible with the Constitutive Act and the Charter where the violations alleged therein are capable of being examined in light of those instruments and are clearly not outside their scope. According to the Applicant State, it is also clear from the Court's jurisprudence that an application is compatible with those instruments if it is worded in such a way as to achieve the objectives set out therein. It therefore prayed that the objection be dismissed.

The Court recalled that compatibility of the application with the Constitutive Act presupposes that it relates to one of the objectives of the Constitutive Act. In this respect, the Court noted that the



present Application is compatible with Article 3(h) of the said Act, namely, the promotion and protection of human and peoples' rights. It therefore dismissed the objection.

As regards the second objection that the Application was based exclusively on news disseminated through the mass media, the Respondent State asserted that Rule 50(2)(d) of the Rules seeks to ensure that proceedings are not conducted on the basis of unverified and/or false allegations. According to the Respondent State, a close examination of the Application and the documents produced showed that very few of them were relevant and that in the present case there was nothing to give them probative value since they were based exclusively on press articles and hearsay. It therefore submitted that the requirement under Rule 50(2)(d) of the Rules was not met.

The Applicant State prayed that the objection be dismissed, arguing that it produced documents from multiple sources, so that it could not be said that they came from news disseminated through the mass media.

The Court considered that the expression "means of mass communication" refers, in particular, to posters, the cinema and the written and audiovisual press, but does not include information emanating from governmental or intergovernmental sources. The Court therefore considered that the Application was not based exclusively on mass media and accordingly dismissed the objection.

With regard to the third objection based on non-exhaustion of local remedies, the Respondent State submitted that the Applicant State did not exhaust the local remedies available under the rules of diplomatic protection, or existing international and regional remedies. On the first limb of the objection, it explained that Rwandan courts are accessible to any person who is victim of an alleged violation of human rights, irrespective of where it was committed, provided that it is punishable under Rwandan law. To this end, it cited Article 11 of Law No. 68/2018 of 30 August 2018 spelling out offences and penalties in general, which provides for the punishment of Rwandan citizens who commit offences outside the territory of Rwanda. It stated that, having decided to act on behalf of the alleged victims, the Applicant State had to prove that it took concrete steps to comply with the rule of exhaustion of local remedies before its courts, which it



did not do in the present case. With regard to the second limb of the objection, the Respondent State submitted that any inter-state procedure is subject to prior dialogue between the States concerned, in accordance with Article 47 of the Charter, and must allow time for reflection to enable them to reach a mutually satisfactory solution in accordance with Article 48 of the Charter. It pointed out that the Applicant State did not prove that it exhausted or attempted to exhaust such a remedy, which rendered its Application inadmissible.

For its part, the Applicant State submitted, firstly, that the diplomatic protection procedure is inapplicable in human rights cases heard by regional courts with special jurisdiction in the matter. According to the Applicant State, under international law, diplomatic protection is part of the question of the treatment of foreigners in a another State. It noted that in the present case, the Respondent State did not dispute that the facts of the case took place on Congolese territory, which “substantially deprives the situation of any possibility of considering, even theoretically, the question of diplomatic protection”. It indicated that the requirement of exhaustion of local remedies does not apply in the present case. The Applicant State also submitted that the Respondent State deliberately confused the local remedies provided for in Article 50 of the Charter relative to the alleged international and regional remedies. It refuted the argument that the existence of regional and international remedies was due to the fact that Article 50 does not specify the nature of the remedies to be exercised and that “an examination of the context of Article 50 of the African Charter corroborates this conclusion, since any inter-State procedure requires prior dialogue between the States concerned and must allow time for reflection to enable them to reach a mutually satisfactory solution”. Applicant State concluded that, in the present case, there was no remedy to be exhausted, which made the Application admissible.

The Court noted, with regard to the first limb of the objection, without prejudging the merits of the case, that the alleged violations were systematic and massive, particularly in view of the number of alleged victims. In the circumstances, the Court considered that it was neither reasonable nor practical to require prior exhaustion of local remedies. It therefore dismissed this limb of the objection. As to the second limb of the objection, the Court emphasised that the remedies to be exhausted were domestic remedies, which excluded any regional or international remedies. It also dismissed this this ground. Consequently, the Court dismissed the objection based on non-exhaustion of local remedies.



With regard to the fourth objection alleging that the case had been resolved in accordance with either the principles of the Charter of the United Nations, the Constitutive Act or the provisions of the African Charter, the Respondent State submitted that the same Application was pending before the East African Court of Justice (EACJ) and that if the Applicant State did not prove that it discontinued its action before that court, the Application should be declared inadmissible.

The Applicant State submitted that the objection should be dismissed. To that end, it contended that the Respondent State conflated *res judicata* with *lis pendens*. The Applicant State pointed out that it was not established that the present Application and the one pending before the ECJ have the same subject-matter. It argued that the first application related to the allegation of flagrant, grave and massive violations of human rights, whereas the second related to the interpretation and application of the Treaty for the Establishment of the East African Community in respect of violations of that instrument. It added that there was no previous judicial decision relating to the violations alleged in the present Application. It concluded that the argument relating to failure to comply with the principle of *res judicata* could not succeed in the present case.

The Court recalled that the concept of prior settlement of a case implies that three requirements are met, namely, similarity of the parties, similarity of the claims and existence of a first decision on the merits. In the light of these requirements, the Court held that although the parties are the same in the two applications, the subject-matter of the applications is different. Moreover, no decision had been handed down at the time the present application was lodged. Accordingly, the Court found that the requirement under Rule 50(2)(g) of the Rules of Court was met and therefore dismissed the objection.

The Court also examined the other admissibility requirements not in contention. In this regard, it found that the author of the Application was identified; that the Application did not contain language that is disparaging or insulting to the Respondent State, its institutions or the AU, and that the Application was filed within a reasonable time.

Accordingly, the Court declared that the Application met the requirements under Article 56 of the Charter restated in Rule 50(2) of the Rules of Court and declared the Application admissible.



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JUDGMENT SUMMARY

The Court reserved its decision on the merits, reparations and costs.

Finally, the Court ordered the Respondent State to file its Response on the merits within 90 days of notification of this judgment, and the Applicant State to file its Reply within 45 days of receipt of the Respondent State's Response.

Further Information

Further information on this case, including the full text of the African Court's judgment, is available at <https://www.african-court.org/cpmt/fr/details-case/0072023>.

If you have any further questions, please contact the Registry by e-mail at registrar@african-court.org

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