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

THE MATTER OF

DEMOCRATIC REPUBLIC OF CONGO

V.

REPUBLIC OF RWANDA

APPLICATION NO. 007/2023

RULING

(JURISDICTION AND ADMISSIBILITY)

26 JUNE 2025

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
The Registrar
LE GREFFIER
ARUSHA TANZANIA
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

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The Court composed of: Modibo SACKO, President; Chafika BENSAOULA, Vice President; Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Blaise TCHIKAYA, Stella I. ANUKAM, Imani D. ABOUD, Dumisa B. NTSEBEZA, Dennis D. ADJEI, and Duncan GASWAGA – Judges; and Robert ENO, Registrar.

In the Matter of:

DEMOCRATIC REPUBLIC OF CONGO

Represented by:

i. Advocate Ivon MINGASHANG, Lead Counsel;
ii. Advocate Alphonse Ntumba Luaba LUMU;
iii. Advocate Jean-Paul Segihobe BIGIRA;
iv. Advocate Sylvain Lumu MBAYA;
v. Advocate Marcel WESTH'OKONDA;
vi. Advocate Balingene KAHOMBO;
vii. Advocate Trésor Muhindo MAKUNYA;
viii. Advocate Ezechiel Amani CIRIMWAMI;
ix. Advocate Dieudonné Wedi DJAMBA;
x. Advocate Guy-Prosper Djuma Bilali LOKEMA;
xi. Advocate Jean Paul Mwanza KAMBONGO;
xii. Advocate Glodie Kinsemi MALAMBU;
xiii. Advocate Grâce Ngoy ILUNGA;
xiv. Advocate Dany Bushabu;
xv. Mrs. Rabbie Dimbu MAVUA;
xvi. Advocate Bruno Kalala MBUYI;
xvii. Advocate Alpha Lukaya KAKALA;
xviii. Advocate Munganga Cishugi EMIPHE,

Versus

REPUBLIC OF RWANDA

Represented by:

i. Dr. Emmanuel UGIRASHEBUJA, Minister of Justice/Attorney-General;
ii. Mr. Emile NTWALI, Lead Counsel;
iii. Prof. Dapo AKANDE, Counsel;
iv. Dr. Owiso OWISO, Counsel;
v. Ms Lorraine ABOAGYE, Counsel;
vi. Barrister Epimaque RUBANGO, Counsel;
vii. Mr. Specioza KABIBI;
viii. Mr. Michael BUTERA.

After deliberation,

Renders this Ruling:

I. THE PARTIES

1. The Application was filed by the Democratic Republic of Congo (hereinafter referred to as "the DRC or "the Applicant State"). The Applicant State became a Party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter"), on 20 July 1987, and to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") on 8 December 2020. The Applicant State alleges human rights violations committed in connection with an armed conflict between it and a coalition comprising the March 23 rebel group, known as the M23, and the Rwanda Defence Force (RDF).

2. The Application is filed against the Republic of Rwanda (hereinafter referred to as "Rwanda or the Respondent State") which became a Party to the Charter on 21 October 1986, and to the Protocol on 25 January 2004.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. The Applicant State alleges that, since November 2021, in the North Kivu region, which is in the east of its territory, a conflict has raged between its forces, *Forces Armées de la République Démocratique du Congo* (hereinafter referred to as "the AFDRC") and a coalition comprising the March 23 rebel movement and the RDF (hereinafter referred to as the "Armed Coalition").

4. The Applicant State avers that since 2022, hostilities have intensified due to attacks carried out by the armed coalition against FARDC positions and those of the United Nations Peacekeeping Mission (hereinafter referred to as "the MONUSCO"). It avers that, as at the time of filing this Application, the Armed Coalition had seized several localities in North Kivu province. According to the Applicant State, the atrocities perpetrated by the Armed Coalition have resulted in the death of several people, internal displacement, and the destruction of schools, public infrastructure, and private property.

5. According to the Applicant State, the conflict is a consequence of the "wars of aggression", firstly waged against it by the Respondent State from 1998 to 2002 and from 2008 to 2009, and secondly, by the Respondent State together with a rebel group called the National Congress for the Defence of the People (hereinafter referred to as "the CNDP"), and finally, by the Armed Coalition from 2012 to 2013.

6. The Applicant State avers, in this regard, that, in the context of the first conflict mentioned in the preceding paragraph, the African Commission on Human and Peoples' Rights (hereinafter referred to as "the Commission") found that the Respondent State had violated the provisions of the Charter and recommended adequate reparation for the victims.

7. Finally, the Applicant State emphasizes that the Respondent State has refused to prosecute or extradite persons against whom Congolese courts issued arrest warrants for international crimes following the "wars of aggression", in particular Mr. Laurent Nkunda, former leader of the CNDP as well as leaders of the M23.

B. Alleged violations

8. The Applicant State alleges violation of the following rights and obligations:

i. The obligation to respect and protect rights, protected under Articles 1 of the Charter and 2(1) of the International Covenant on Civil and Political Rights (ICCPR);
ii. 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 in Africa (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;
iii. The right to respect for human dignity and the prohibition of slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment guaranteed by Article 5 of the Charter, Articles 3(1) and (2) of the Protocol on the Rights of Women and Article 7 and 8 of the ICCPR;
iv. The right to liberty and security, protected by Articles 6 of the Charter, and Articles 9(1) and 12(1) of the ICCPR;
v. The rights to be heard, protected by Article 7(1) of the Charter;
vi. The right to education, protected by Article 17 of the Charter, Article 11(1) of the ACRWC, Article 2 of the Protocol on the Rights of Women, Article 13(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and protected under the Pretoria Declaration on Economic, Social and Cultural Rights (Pretoria Declaration);
vii. The right to property, protected by Article 14 of the Charter;
viii. The right to the enjoyment of the best attainable state of physical and mental health, protected by Article 16(1) of the Charter;
ix. The right to protection of the family, protected by Article 18(1) of the Charter;
x. The right to housing, protected by Articles 14, 16 and 24 of the Charter;

xi. The right to food, protected by Articles 4, 16 and 22 of the Charter, and Article 15 of the Protocol on the Rights of Women and the Pretoria Declaration;

xii. The right to economic, social and cultural development, protected by Article 22 of the Charter and Article 19(c) of Protocol on the Rights of Women;

xiii. The right to satisfactory environment, protected by Article 24 of the Charter and Article 18(1) of the Protocol on the Rights of Women;

xiv. The right of peoples to peace, protected by Article 23 of the Charter and Articles 10 and 11 of the Protocol on the Rights of Women.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

9. On 21 August 2023, the Applicant State filed its Application and on 19 September 2023, it filed a request seeking expedited proceedings.

10. On 2 October 2023, the Registry served the main Application on the Respondent State, together with the request for expedited proceedings, for its Responses within 90 days and 30 days, respectively.

11. On 28 October 2023, the Respondent State requested the Registry to provide it with copies of the Application and the request for expedited proceedings in English.

12. On 16 November 2023, the Registry served on the Respondent State the Application and the request in English, for its Responses within the same time-limits as indicated in paragraph 10 above. The Respondent State acknowledged receipt thereof on 4 December 2023.

13. At the lapse of the 30-day period, the Respondent State did not file its Response to the additional Application.

14. On 17 February 2024, it filed its submissions on jurisdiction and on the admissibility of the Application, in English. On 21 February 2024, the

Registry acknowledged receipt of same and informed the Respondent State that, in accordance with Rule 44(1) of the Rules of Court (hereinafter "the Rules"), that its submissions should cover jurisdiction and admissibility as well as the merits and reparations. The Registry also reminded the Respondent State that the time-limit for filing its submissions would elapse on 3 March 2024.

15. On 7 March 2024, the Court issued an Order on the Applicant State's request for expedited proceedings, whose operative part reads as follows:

Unanimously,

i. Dismisses the request for an expedited procedure.
ii. Decides to proceed with the matter in accordance with the Rules, relative to the time-lines for filing pleadings.
iii. Decides to consider the main Application on a priority basis.

16. On 15 March 2024, the Registry transmitted the Respondent State's submissions on jurisdiction and admissibility, translated into French, to the Applicant State, for its Reply within 45 days.

17. On 25 March 2024, the Application was transmitted to the Chairperson of the African Union Commission, and to the Executive Council of the African Union and all other States Parties to the Protocol for their intervention, if necessary. No State Party submitted a request for intervention.

18. On 26 April 2024, the Applicant State filed its Reply on jurisdiction and admissibility, which was transmitted to the Respondent State on 12 September 2024, for its Rejoinder within 30 days.

19. On 18 October 2024, the Respondent State filed its Rejoinder, albeit out of time. The Court decided, on the basis of Rule 45(1) of the Rules, and in the interest of justice, to accept the Respondent State's pleadings.

20. On 28 November 2024, the Registry notified the Parties that a public hearing would be held on 12 February 2025 on jurisdiction and admissibility.

21. The Court held the public hearing on 12 and 13 February 2025, and proceeded to deliberate on the matter.

22. On 26 February 2025, the Registry sent the verbatim report of the hearing to the Parties for their observations within 21 days of receipt. The Parties filed their observations on 20 March 2025.

IV. PRAYERS OF THE PARTIES

23. The Applicant State prays the Court to:

i. Declare that it has jurisdiction and that the Application is admissible;
ii. Declare that the Respondent State violated Articles 1, 4, 5, 6, 7(1)(a), 14, 16, 17, 18(1), 22, 23 and 24 of the Charter; Articles 3(1) and (2), 4, 10, 11, 12, 15, 18(1) and 19(c) of the Protocol on Women's Rights; Articles 5(1) and 11(1) of the ACRWC; Articles 2(1), 6(1), 7, 8, 9(1), 10(1) and 12(1) of the ICCPR, and Articles 12(1) and 13(1) of the ICESCR;
iii. Declare that the Respondent State has an obligation to withdraw all its troops from its territory and to cease forthwith all forms of support to the M23 so as to end the human rights violations for which the Court has found the Respondent responsible;
iv. Declare that the Respondent State has an obligation towards the Democratic Republic of the Congo and its people - victims of the said violations - to provide adequate reparation for all the harm resulting from the violations;
v. Declare that the question of reparation due the Democratic Republic of Congo and its people, victims of the human rights violations perpetrated by the Respondent State, will be settled by the Court, and reserve further proceedings to this end in accordance with the provisions of Article 27(1) of the Protocol and Rules 4, 40 and 69(3) of the Rules of Court taken together;

vi. Order the Respondent State to reimburse the Democratic Republic of Congo all costs incurred in bringing and supporting the present case before the Court.

24. For its part, the Respondent State prays the Court to declare that it lacks jurisdiction to hear the case or, in the alternative, declare the Application inadmissible.

V. JURISDICTION

25. Article 3 of the Protocol provides that:

> 1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant human rights instruments ratified by the States concerned.
> 2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

26. Furthermore, pursuant to Rule 49(1) of the Rules, "the Court shall conduct preliminary examination of its jurisdiction … in accordance with the Charter, the Protocol and these Rules".

27. Based on the above-cited provisions, the Court must, in every application, preliminarily, examine its jurisdiction and rule on objections thereto, if any.

28. The Court observes that the Respondent raises objections to its jurisdiction on which the Court will rule (A) before examining the other aspects of its jurisdiction, if necessary (B).

A. Objections to the jurisdiction of the Court

29. The Respondent raises objections to the material and territorial jurisdiction of the Court, which the Court will examine successively.

i. Objections to material jurisdiction

30. The Respondent State raises three objections to the Court's material jurisdiction, namely: (a) the absence of a dispute; (b) the fact that the Applicant State invokes texts that are not human rights instruments; and (c) that the Applicant State invokes human rights instruments that Rwanda has not ratified.

a. Objection to material jurisdiction based on the absence of a dispute

31. The Respondent State maintains that in inter-state matters, the Court's jurisdiction is predicated on the existence of a dispute within the meaning of Article 3(1) of the Protocol. According to the Respondent State, this provision is similar to Article 38(1) of the Statute of the International Court of Justice (hereinafter referred to as the **"**ICJ**"**)**.** In support of this contention, it cites the ICJ ruling on preliminary objections in the matter of *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Georgia v. Russian Federation*).

32. In support of its argument, the Respondent State points out that the Permanent Court of International Justice (hereinafter referred to as "PCIJ") and the ICJ declined jurisdiction respectively in the matter of *Electricity Company of Sofia and Bulgaria (Belgium v. Bulgaria)* and *Obligations Relating to Negotiations Concerning Cessation of the Nuclear Arms Race and Nuclear Disarmament (Marshall Islands v. India)* involving issues of peace and security, on the grounds that there was no dispute between the parties at the time of filing the applications.

33. The Respondent State further contends that the existence of a dispute, at the time of filing the Application, allows, first, for verification that the question submitted to the Court is capable of giving rise to the exercise of its judicial function and, second, protecting the parties from unnecessary, precipitous or insufficiently substantiated litigation.

34. The Respondent State contends that, in the instant case, the Applicant State has not proved that, prior to the filing its Application, there was a dispute between the Parties in relation to the legal instruments invoked, neither does it mention any dispute in its main Application or in its request for expedited proceedings.

35. Referring to Article 3(1) of the Protocol, the Respondent State argues that a "dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests*"* between the parties, as indicated by the PCIJ in its judgment on preliminary objections *In the Matter of the Mavrommatis Concessions in Palestine (Greece v Great Britain).* According to the Respondent State, it must be established, as the ICJ did in the judgment on preliminary objections in *South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa)***,** that **"**the claim of one party is positively opposed by the other on the question submitted to the Court…" or that the demands of one is manifestly opposed by the other.

36. The Respondent State contends that, as a rule, the existence of a dispute is demonstrated through elements such as statements or documents exchanged between the parties, as held by the ICJ in its judgment on *Obligations Relating to Negotiations Concerning Cessation of the Nuclear Arms Race and Nuclear Disarmament* (*Marshall Islands v. United Kingdom*). According to the Respondent State, the Applicant State has not proved such elements.

37. In conclusion, the Respondent State submits that, prior to the Applicant State filing its Application before this Court, there was no dispute between the Parties within the meaning of Article 3(1) of the Protocol, and accordingly negates the Court's jurisdiction to entertain the present case.

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38. The Applicant State prays the Court to dismiss this objection, arguing that invoking the existence of a dispute derives “from a classical approach to international litigation” before the ICJ. It emphasizes that in the African human rights protection system, proof of a dispute is not required.

39. The Applicant State explains that the ICJ is different from the Court, both in terms of the modalities for accepting jurisdiction and in terms of the “missions” of the two courts.

40. On the first point, the DRC submits that States’ acceptance of the jurisdiction of the ICJ is expressed both through the Charter of the United Nations and Article 36(2) of the Statute of the ICJ, which, in this regard, rendered the *Anglo-Iranian Oil* judgment (*United Kingdom v. Iran*)**.** However, as regards inter-State cases brought before the African Court, acceptance of the latter’s jurisdiction derives solely from ratification of the Protocol.

41. On the second point, the Applicant State indicates that, within the meaning of Article 38 of its Statute, the ICJ’s “mission” is to settle disputes in accordance with international law, whereas the “mission” of the African Court is to protect human rights in Africa as per the Preamble and Article 3 of the Protocol. It further indicates that in Africa, the “mission” of settling disputes belongs to the Court of Justice of the African Union, which is yet to be operationalised, as it emerges from Article 20 of the Protocol of the Court of Justice of the African Union, the provisions of which are similar to Article 33 of the Statute of the African Court of Justice and Human Rights.

42. Furthermore, the Applicant State avers that the terms “dispute” or “case”, which are used interchangeably, refer to an ordinary human rights dispute, as underscored by the Court in its judgment in *Suy Bi Gohore Emile and Others v. Republic of Côte d’Ivoire.* The Applicant State also contends that it is sufficient for an applicant to allege a violation of human rights protected by the Charter or by any human rights instrument for the Court to assert its jurisdiction, as the Court held in its judgment in *Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin* of 4 December 2020**.**

43. It further submits that a combined reading of Articles 47, 48 and 49 of the Charter supports the view that the existence of a dispute is not a prerequisite for the exercise of the Court's material jurisdiction. In its view, the negotiation between parties as required by these articles is merely an option and not intended to prove the existence of a dispute.

44. The Applicant State submits that the Court could draw inspiration from the Commission's practice in inter-State applications as regards the requirement of proof of a dispute. It drew the Court's attention, in this respect, to three inter-state cases brought before the Commission, namely, Communication 277/99 - *Democratic Republic of the Congo (DRC) v. Burundi, Rwanda and Uganda*, Communication 422/12 - *Sudan v. South Sudan* and Communication 478/14 - *Republic of Djibouti v. State of Eritrea*, two of which were declared admissible regardless of the question of the existence of a dispute.

45. The Applicant State submits further that, in any event, there is no difficulty in establishing, in the present case, that a dispute exists, a question which is of substance and not of procedure, as the ICJ held in its judgment on preliminary objections *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation).* It indicates that for this purpose, account should be taken of any statement or document exchanged between the parties as well as any exchanges that took place at multilateral forums, as it emerges from the order for provisional measures issued by the ICJ in the matter of *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel*)**.**

46. The Applicant State also argues that it must be shown that the Respondent State was aware, or could not have been oblivious to the fact that its views were clearly opposed by the Respondent State. It submits that it is not necessary for the Respondent State to have expressly opposed the Applicant State's claims, since the Respondent State's silence may, in certain circumstances, be sufficient. In this respect, it cites the judgments

on preliminary objections handed down by the ICJ in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Gambia v. Myanmar*) and *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Georgia v. Russian Federation*).

47. By way of illustration, the Applicant State references parties' statements and documents exchanged in multilateral forums, especially on the sidelines of the United Nation's 77th Ordinary Session, on 20 September 2022; at the African Union (AU), through various communiqués from the Peace and Security Council (PSC), the East African Community (EAC), under the Nairobi and Luanda processes, as well as in the Southern Africa Development Community (SADC), through communiqués issued by summits of the organization's heads of state.

48. Referencing the ICJ's judgment on preliminary objections in the *East Timor Case (Portugal v. Australia)*, the Applicant State underscores that an examination of the parties' conduct after the filing of an application could help determine the existence of a dispute between them. In this regard, it argues that in the instant case, the official statements of the Parties, including that of its Deputy Prime Minister for Foreign Affairs, the Parties' Permanent Representatives to the United Nations and their Heads of State, confirm the existence of a dispute.

49. Citing the Judgment on Preliminary Objections of the ICJ in *Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation),* the Applicant State further notes that "the Respondent State was aware or could not have been unaware that its views were being expressly opposed by the Applicant State" insofar as other States and credible international organizations have denounced and condemned the allegations of human rights violations cited in the Application.

50. It avers that, according to the United Nations experts' report released on 13 June 2023, several Member States and the European Union have requested the Respondent State to halt its support to M23. The Applicant State emphasizes that, through the said report, the United Nations Security Council's meeting on 19 December 2023 condemned "support to M23 by any external party" and demanded "the cessation of such support and the immediate withdrawal of any such party from the Democratic Republic of the Congo". It holds that the Respondent State is the "external party" mentioned in the report.

51. Finally, the Applicant State argues that, in accordance with the Court's established jurisprudence, notably the judgments in *Anudo Ochieng Anudo v. United Republic of Tanzania* and *Jebra Kambole v. United Republic of Tanzania*, material jurisdiction is established when the rights alleged to have been violated are guaranteed by the Charter or by any other human rights instrument ratified by the State concerned. In this respect, it argues that in *Urban Mkandawire v. Republic of Malawi*, the Court held that the [mere] indication of the subject matter of the application is sufficient to establish its material jurisdiction, and that this is the only one necessary for this purpose. According to the Applicant State, an additional point is the fact that the Court uses the terms "cases" and "disputes" interchangeably.

52. At the hearing, the Applicant State reiterated the content of its submissions. It also submitted that the Respondent State has never disputed that the rights alleged to have been violated are protected by the Charter and by other human rights instruments to which it is a Party.

53. It also underscored that the meaning and scope given by the Respondent State to the terms, "case" and "dispute", which, in any case, have not been defined by the Protocol, cannot constitute an impediment to the Court's material jurisdiction.

54. Finally, the Applicant State points out that assessing the existence of a dispute is a question of substance. It adds that, in any event, there is

sufficient evidence that there is a dispute between the parties in the present case.

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55. In its Response, the Respondent State maintains that the fundamental question regarding the exercise of jurisdiction between the ICJ and the Court, lies in the subject matter of the agreement and not in its mode of expression. It underscores that under Article 3 of the Protocol, the Court's jurisdiction applies to cases and disputes brought before it.

56. The Respondent State argues that the distinction between human rights protection and dispute settlement is inappropriate, since the Court was established to protect human rights, through its judicial function.

57. The Respondent State further submits that while two international jurisdictions can have overlapping missions, in the instant case, the question is not what the jurisdiction of the Court covers. It asserts that the Protocol does not establish a "principal mission" for the Court, and that in any case, Article 3 of the Protocol includes the term "dispute".

58. The Respondent State emphasizes that the Applicant State's argument that the terms "case" and "dispute" are interchangeable runs counter to the fundamental rule of treaty interpretation, which stipulates that a treaty must not be interpreted in such a way as to render certain parts of the text redundant or meaningless. In its view, this principle, known as the principle of effectiveness *ut res magis valeat quam pereat*, requires that the inclusion of terms in a treaty be interpreted to give them a specific meaning and scope, as applied by the ICJ in its judgment on preliminary objections in the matter of *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*.

59. On this point, the Respondent State argues that in the cases cited by the Applicant State, the Court was not asked to intervene since there was no dispute. Moreover, it avers that the Protocol expressly refers to "cases and

disputes" with the conjunction "and", implying that the two terms are not interchangeable.

60. According to the Respondent State, invoking Articles 47 to 49 of the Charter is also inappropriate since they concern the referral of cases to the African Commission. Accordingly, it submits that the provisions of the Charter referred to in Article 7 of the Protocol as sources of law are substantive provisions on rights and duties and do not include the Articles invoked.

61. Citing the ICJ judgment on preliminary objections in the matter of *Obligations Relating to Negotiations for Cessation of the Nuclear Arms Race and for Nuclear Disarmament (Marshall Islands v. United Kingdom)*, the Respondent State adds that several criteria are relevant in assessing the existence of a dispute. To this end, it avers that, while opposition of the Parties' views could also be demonstrated by exchanges made in multilateral settings, the Court must give particular attention, *inter alia*, to the content of the statement[s] and to the identity of the intended addressees, together with any reaction thereto. Moreover, in its view, a statement can only give rise to a dispute if it refers to the subject-matter of a claim "with sufficient clarity for the State, which is the intended addressee of the [said] claim, to recognize that there is or may be a dispute concerning the subject-matter in question".

62. Referencing the judgment of the ICJ in *Questions Concerning the Obligation to Prosecute or Extradite (Belgium v. Senegal),* it argues that it must be given the opportunity to respond to the claim by the Applicant State. According to the Respondent State, this condition is satisfied when an allegation of a violation of law is expressly or implicitly rejected by another State, the implicit nature of the rejection being deducible from the silence of that State in situations where an express response is required. In this respect, the Respondent State references the ICJ judgment in *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia).*

63. The Respondent State asserts that in this respect, it is clear that there is no dispute in the present case. It contends that the Applicant State does not invoke the existence of negotiations between the Parties but rather bases its argument on statements made at multilateral fora, the conduct of the Parties after the emergence of the dispute and the fact that it was allegedly condemned by other States and organizations.

64. Regarding exchanges at multilateral fora, the Respondent State underscores that those that took place in the context of the United Nations General Assembly do not define, with sufficient clarity, the alleged subject matter of the dispute, nor do they relate to the alleged violation of a specific right or obligation. The same goes for the statements made at the 52nd Session of the Human Rights Council. It argues that in accordance with the ICJ judgment on preliminary objections in the matter *of Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation),* its silence can only constitute proof if a request has been clearly made. It submits that the [prevailing] circumstances require a response.

65. The Respondent State adds that the Applicant misrepresents the content of the letter dated 10 June 2022 from the Permanent Representative of Rwanda to the United Nations which merely expressed the latter's concerns about the situation. It makes the same analysis of the letter dated 14 June 2022 from the Applicant State's Permanent Representative to the United Nations which makes no reference to any violation of a specific right or obligation.

66. Furthermore, as regards exchanges at multilateral fora, other than those of the United Nations, the Respondent State underscores that the list of communiqués and the references to consultations and meetings do not in any way prove the existence of a dispute. It argues that the Applicant State has not established that, during the said meetings or consultations, it expressly opposed its allegations of violations of obligations or rights, necessary to prove the existence of a dispute under international law. It cites

the ICJ's judgment on preliminary objections in the matter of *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia).*

67. Similarly, according to the Respondent State, the conduct of the Parties following the filing of the Application would be an important indicator only if the existence of a dispute has been pre-established. In this regard, it emphasizes that there is no evidence in the Applicant State's written submissions that any alleged violations of rights or obligations were expressly condemned by it.

68. Finally, the Respondent State contends that the claim that States and international organizations have called upon it to withdraw its troops from the DRC is unfounded.

69. At the hearing, the Respondent State reiterated the content of its submissions. It added that the existence of a dispute was a requirement in inter-State cases, including those relating to international human rights law, as it emerges from numerous treaties on the subject.

70. The Respondent State contends that, in accordance with the jurisprudence of the ICJ, it must be proved that the claims of one party are contested by the other. In its view, it must be shown that, in the present case, it was aware or could not have been oblivious to the Applicant State's claims. It also submits that, even if evidence of a dispute can be deduced from statements made by State authorities, the Court must pay particular attention to this.

71. The Respondent State concludes by submitting that there is no dispute between the Parties warranting referral to this Court.

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72. The Court observes that, in this case, the issue for determination is whether the terms "cases" and "disputes" referred to in Article 3 of the Protocol

should be understood in accordance with the jurisprudence of the ICJ, as developed under Article 38 of the Statute of the ICJ[1], which provides that "[its] function is to decide […] such disputes as are submitted to it […]".

73. It should be noted, from the outset, that although it is true that the Court may draw inspiration from international jurisprudence, including that of the ICJ, the European Court of Human Rights (ECHR) and the Inter-American Court of Human Rights (IACHR), it nonetheless applies its own procedural texts, namely, its Protocol and its Rules of Court. Consequently, the Court is not bound by the statutes and procedural rules applicable before any of the earlier mentioned courts.

74. The Court emphasises that, in line with its jurisprudence, it does not limit itself to the definitions of the terms "cases" and "disputes" taken separately, but contextually interprets Article 3 in accordance with the object and purpose of the Protocol.

75. The words "all cases and disputes submitted to it" cover, without distinction, all applications submitted to the Court to determine the responsibility of the State concerned relating to alleged human rights violations, and where necessary, to order appropriate reparations.

76. As the Court has consistently held, Article 3(1) of the Protocol gives it jurisdiction whenever an applicant alleges violations of human rights protected by the Charter, or by any other human rights instruments to which

[1] Article 38 of the Statute of the ICJ provides as follows: 1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
b. international custom, as evidence of a general practice accepted as law;
c. the general principles of law recognized by civilized nations;
d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
2. This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.

the State concerned is a Party. This applies regardless of whether an application is filed by individuals, the Commission or States.[2]

77. The Court's jurisdiction to hear a case is, therefore, not subject to any formal requirement to prove the prior existence of a dispute, before the filing of the Application.

78. In the light of the foregoing, the Court dismisses the Respondent State's objection that it lacks jurisdiction to hear this case due to the absence of a dispute.

b. Objection to material jurisdiction on the grounds that certain instruments invoked by the Applicant State are not human rights instruments

79. The Respondent State argues that under Article 7 of the Protocol, the Court is empowered to apply and interpret the Charter or any other relevant human rights instruments ratified by the State concerned. It submits that certain instruments invoked by the Applicant State, including the Charter of the United Nations, the Constitutive Act of the African Union (hereinafter referred to as "the 'Constitutive Act"), the Pact on Security, Stability and Development in the Great Lakes Region (hereinafter referred to as "the Great Lakes Pact") and the Peace, Security and Cooperation Framework Agreement for the Democratic Republic of the Congo and the Region (hereinafter referred to as "the PSC Framework Agreement"), are not human rights instruments.

80. Relying on the Court's jurisprudence on the characteristics of human rights instruments, in particular in *Actions pour la Protection des Droits de l'Homme v. Republic of Côte d'Ivoire,* the Respondent State submits that the said instruments contain neither "an express enunciation of the subjective rights of individuals or groups of individuals, nor [...] mandatory

[2] *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (26 May 2017) 2 AfCLR 9, §51.

obligations on State Parties for the consequent enjoyment of the said rights".

81. The Respondent State avers that while it is true that the Charter of the United Nations and Constitutive Act mention human rights in certain provisions, the mere fact that a treaty mentions such rights is not sufficient for the treaty to be considered a human rights instrument.

82. It asserts that, in any case, the provisions of the instruments referred to by the Applicant relate to the use of force and the maintenance of international peace and security, and cannot, therefore, be considered as human rights instruments within the meaning of Articles 3(1) and 7 of the Protocol.

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83. The Applicant State submits that the objection herein should be dismissed. It argues that the instruments cited by the Respondent State in its submissions are human rights instruments. In its view, the subject matter of these instruments does not necessarily have to deal exclusively with human rights. Rather, they must afford individuals subjective rights, or impose obligations on State Parties, so that individuals are afforded the enjoyment of such rights. It concludes that the objection must be dismissed, since the Respondent State admits "that the Charter of the United Nations and the Constitutive Act mention human rights".

84. Regarding the Constitutive Act, the Applicant State argues that the said instrument is clearly linked to the Charter, notably through its preamble as well as Articles 3(g) and 4, which refer to a clear and express statement of individual rights. In this regard, it submits that the issue is not whether the rights mentioned in the instrument are specific; it is sufficient that the instruments contain "human rights", insofar as such rights are never granted to States, but only to individuals who are nationals or "citizens of the world".

85. The Applicant State further avers that, as regards the compatibility of an application with the Constitutive Act, the Court held in *Mohamed Abubakari v. United Republic of Tanzania*, that the Constitutive Act has the status of "any other relevant human rights instrument."

86. Regarding the Charter of the United Nations, the Applicant State argues that if, in *Franck David Omary and others v. United Republic of Tanzania,* the Court considered that Article 60 of the Charter authorized it to draw inspiration from the said Charter, it was because the Charter is, in whole or in part, a human rights instrument. On this point, it adds that the Charter of the United Nations is part of "international law on human and peoples' rights" and contains "express enunciations of human rights for the benefit of individuals".

87. The Applicant State underscores that this reasoning is applicable to the other instruments whose application the Respondent State is seeking to have set aside in the instant case.

88. Regarding the Respondent State's argument that "the provisions of the instruments in question to which it is seeking to make reference are those concerning the use of force and the maintenance of international peace and security", it argues that there is an inseparable link between the said notions and human rights, as the use of force by one State against another has a negative impact on human rights. It argues, moreover, that the right to peace and security is a human right.

89. According to the Applicant State, even if the said instruments are not human rights instruments, the Court still has jurisdiction if the rights alleged to have been violated are protected by the Charter, as it indicated *in Bernard Anbataayela Mornah v. Republic of Benin and Others, (Sahrawi Arab Republic and Mauritius, intervening States)* and *Mohamed Abubakari v. United Republic of Tanzania*.

90. At the hearing, the Applicant State reiterated the content of its submissions.

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91. In its Response, the Respondent State argues that it is essential in the instant case, as the Court held in *Anaclet Paulo v. United Republic of Tanzania,* that the subject matter of the Application relate to rights protected by the Charter or any other relevant human rights instrument ratified by the State concerned. In its view, Article 3(1) of the Protocol and the Court's jurisprudence is consistent and clear on this point.

92. Citing the Court's judgment in *Actions pour la Protection des Droits de l'Homme (APDH) v. République de Côte d'Ivoire*, the Respondent State emphasises that the relevant criteria for determining whether a treaty is a human rights instrument is that it must expressly enunciate subjective rights accruing to individuals or groups of individuals and impose mandatory obligations on State Parties for consequent enjoyment of such rights.

93. In its view, the first criterion, that is, express enunciation of the subjective rights of individuals or groups of individuals, requires actual express enunciation (by the relevant instrument) of the specific rights that individuals should enjoy, noting that it is not the case for the instruments listed in paragraph 79 of this Ruling.

94. Regarding the second condition relating to mandatory obligations on imposed on States Parties, the Respondent State contends that in the *APDH v. Côte d'Ivoire* judgment*,* the Court held that a treaty need not provide for mandatory obligations on States. Rather, it makes reference to "the prescription of obligations on States for meaningful enjoyment of human rights".

95. As regards the Charter of the United Nations, the Respondent State agrees that while the Court may draw inspiration therefrom, the mere fact that the

said Charter refers to human rights does not make it a human rights instrument within the meaning of Article 3(1) of the Protocol.

96. Regarding the Constitutive Act, the Respondent State argues that the assertion that a reference to human rights is sufficient to qualify a treaty as a human rights instrument is unsubstantiated. It submits that the judgments used as basis by the Applicant State on this point should be disregarded**.** It submits that in *Jean Claude Roger Gombert v. Republic of Côte d'Ivoire*, the Court held that it could rule on violations of the rights of individuals and groups, and not on those of private or public corporate entities. In the same vein, it adds that in *Mohamed Abubakari v. United Republic of Tanzania*, the Court held that an application cannot be declared inadmissible simple because the applicant fails to cite the relevant provision of the Constitutive Act or the Charter.

97. In conclusion, the Respondent State submits that the Court cannot hear cases based solely on the Constitutive Act and Charter of the United Nations.

98. At the hearing, the Respondent State reiterated the content of its submissions. It added that it was important for the Court to decide whether the United Nations Charter, the Constitutive Act of the AU, the Great Lakes Pact and the PSC Framework Agreement were human rights instruments.

99. In this regard, the Respondent State argued that the Court's mandate is to hear allegations of human rights violations and not to deal with questions of peace and security. In its view, the Applicant State seeks to broaden the jurisdiction of the Court by invoking, in support of its allegations, the United Nations Charter, the Constitutive Act and other peace and security instruments.

100. According to the Respondent State, the fact that an application filed with the Court must be compatible with the Constitutive Act does not make the latter a human rights instrument. With regard to the United Nations Charter, the

Respondent State contends that this is also not a human rights instrument since it does not specify any right relating thereto. Finally, it argues that Article 60 of the Charter applies to the Commission and not the Court.

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101. The Court confirms that whether a treaty is termed as a human rights instrument is relevant only when, in a given case, the rights alleged to have been violated are protected solely by that treaty. On the contrary, there is no need for such a designation when the rights alleged to have been violated are protected by other treaties which are manifestly and universally recognized as human rights instruments.

102. The Court recalls that in its Application, the Applicant State accuses:

> *the Respondent State of being directly responsible for the violations of human rights perpetrated by its armed forces in disregard of the relevant provisions of the Charter, the Protocol, the Maputo Protocol and the ICCPR, following acts of aggression and other unlawful and continuous military activities it has been conducting in Congolese territory since November 2021, in a manner that is incompatible, inter alia, with the Charter of the United Nations, the Constitutive Act of the African Union, the Pact on Security, Stability and Development in the Great Lakes Region (Great Lakes Pact), and the Addis Ababa Peace, Security and Cooperation Framework for the DRC and the Region (Addis Ababa Framework Agreement) of 24 February 2013.*

103. The Court further recalls that it has consistently held that although Rule 40(2) of the Rules provides that the Application shall specify the alleged violation, there is no insistence with regard to formal indication in an application of the instrument from which the provision of the alleged violation is based. Therefore, the fact that an applicant references a declaration has

no effect on its jurisdiction, as long as the alleged violation is of a right that is also provided for by a treaty ratified by the State concerned.[3]

104. The Court notes that in its statement of alleged violations, the Applicant State did not reference the Charter of the United Nations, the Constitutive Act of the AU, the Great Lakes Pact and the PSC Framework Agreement. On the other hand, it alleged violation of paragraph 6 of the Pretoria Declaration[4] concerning the right to education and the right to property, rights which are also protected by the Charter.

105. In any event, it is clear from the Application that all the rights alleged to have been violated are protected by the Charter, the Protocol to the African Charter on the Rights of Women (hereinafter "Protocol on the Rights of Women"), the ICCPR and the ICESCR, all of which are incontestably human rights instruments.

106. The above cited instruments are sufficient to establish the Court's jurisdiction without it being necessary to determine whether the Pretoria Declaration, the Great Lakes Pact, the Constitutive Act, the United Nations Charter and the PSC Framework Agreement are human rights protection instruments.

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[3] *Franck David Omary and Others v. United Republic of Tanzania* (jurisdiction and admissibility) (28 March 2014) 1 AfCLR 358, § 74.

[4] The Pretoria Declaration on Economic, Social and Cultural Rights in Africa was adopted by the African Commission on 17 September 2004. Paragraph 6 provides that: The right to work in Article 15 of the Charter entails among other things, the following: equality of opportunity of access to gainful work, including access for refugees, disabled and other disadvantaged persons; conducive investment environment for the private sector to participate in creating gainful work; effective and enhanced protections for women in the workplace, including parental a leave; fair remuneration, a minimum living wage for labour, and equal remuneration for work of equal value; equitable and satisfactory conditions of work, including effective and accessible remedies for workplace-related injuries, hazards and accidents; creation of enabling conditions and taking measures to promote the rights and opportunities of those in the informal sector, including in subsistence agriculture and in small scale enterprises activities; promotion and protection of equitable and satisfactory conditions of work of women engaged in household labour; the right to freedom of association, including the rights to collective bargaining, strike and other related trade union rights; prohibition against forced labour and economic exploitation of children, and other vulnerable persons; the right to rest and leisure, including reasonable limitation of working hours, periodic holidays with pay and remuneration for public holidays.

107. Notwithstanding the foregoing, the Court considers that there is nothing to prevent it from examining the question whether the instruments referenced are human rights protection instruments.

108. The Court underscores that to qualify as a human rights instrument, within the meaning of Article 3 of the Protocol, the text in question must first be a treaty. Similarly, it is necessary to refer in particular to the purposes of such an instrument, which are reflected either by an express enunciation of the subjective rights of individuals or groups of individuals, or by mandatory obligations on State Parties for the consequent enjoyment of the said rights.[5] Therefore, mere references to the term "human rights" in a treaty is not sufficient to make it a human rights instrument.[6]

109. In the present case, the Court observes that the Pretoria Declaration is not a treaty. Clearly therefore, it does not qualify as a human rights instrument.

110. The same applies for the Addis Ababa Framework Agreement,[7] which establishes an oversight mechanism to review progress in the implementation of the unilateral commitments of the DRC, the East Africa region and the international community "relative to the local and regional peace processes initiated at that time laid the foundation for relative peace and stability in large parts of the DRC […]".

111. With regard to the Charter of the United Nations, the Court notes that it does not expressly state the subjective rights of individuals or groups of individuals. Neither does it lay down mandatory obligations for the consequent enjoyment of such rights. Its references to human rights and fundamental freedoms are meant to indicate the organisation's commitment to these concepts.[8] Consequently, the United Nations Charter cannot be considered as a human rights instrument.

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[5] *APDH v. Republic of Côte d'Ivoire* (merits) (18 November 2016) 1 AfCLR 668, § 57.
[6] *Pan African Parliament*, Advisory Opinion (jurisdiction) (2021) 5 AfCLR 889, § 43.
[7] Signed in Addis Ababa on 24 February 2013.
[8] The terms "human rights", "fundamental rights" or "fundamental freedoms", are mentioned in the Charter of the United Nations, as follows: Preamble: "We the Peoples of the United Nations,

112. With regard to the AU Constitutive Act, the Court notes that it does not expressly enunciate the subjective rights of individuals or groups of individuals. Neither does it lay down any obligations for the consequent enjoyment of such rights. As in the case of the Charter of the United Nations, the references made to human rights indicate the Union's commitment to respect for human rights.[9] Therefore, the Court considers that the Constitutive Act is not a human rights instrument.

113. Furthermore, the Court underscores that although the Charter of the United Nations and the Constitutive Act are not human rights instrument, the Court may draw inspiration from them, in accordance with Article 60 of the Charter.

114. As regards the Great Lakes Pact, the Court notes that some of its provisions impose obligations on Member States. This is the case, particularly in Article 5,[10] whereby the Parties undertake to maintain peace and security, which is

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Determined […] to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small…"; Article 1(3): "The Purposes of the United Nations are: […] To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion […]"; Article 13(1)(b): The General Assembly shall initiate studies and make recommendations for the purpose of […] promoting international cooperation in the economic, social, cultural, educational and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." Article 55(b): "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote […] universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." Article 62(2) "[The Economic and Social Council] It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all." Article 68 "The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions". Article 76 (a):"The basic objectives of the trusteeship system, in accordance with the Purpose of the United Nations laid down in Article 1 of the present Charter, shall be: […] to encourage respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world […]".

[9] Article 3(e)(h) and (m) of the Constitutive Act: "The objectives of the Union shall be to:[…] encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights; […] promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments; […]; "The Union shall function in accordance with the following principles: […] respect for democratic principles, human rights, the rule of law and good governance;"

[10] Article 5 of the Great Lakes Pact provides that: " The Member States undertake to maintain peace and security in accordance with the Protocol on Non-aggression and Mutual Defence in the Great Lakes Region, and in particular: a) To renounce the threat or the use of force as policies means or instrument aimed at settling disagreements or disputes or to achieve national objectives in the Great Lakes Region; b) To abstain from sending or supporting armed opposition forces or armed groups or insurgents onto

a corollary of the right to peace and security, and Article 8,[11] under which they undertake to condemn and eliminate all forms of discrimination and discriminatory practices which, for individuals, correspond to the right to non-discrimination. Similarly, under Article 12,[12] State Parties undertake to provide protection and assistance to displaced persons, while under Article 13[13] of the said Pact, they undertake to protect the property rights of this category of persons, and those of refugees.

115. Consequently, the articles of the Great Lakes Pact mentioned in the preceding paragraph can be considered as human rights provisions.

116. In any event, it is clear from the Application that all the rights alleged by the Applicant to have been violated are protected by the Charter, the ICCPR and the ICESCR, the African Charter on the Rights and Welfare of the Child (hereinafter "the ACRWC"), as well as the Protocol on the Rights of Women, which are all human rights instruments ratified by the Respondent State. In the circumstances, the objection to the Court's jurisdiction herein cannot be sustained.

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the territory of other Member States, or from tolerating the presence on their territories of armed groups or insurgents engaged in armed conflict of involved in acts of violence or subversion against the Government of another State."

[11] Article 8 of the Great Lakes Pact provides that: "The Member States, in accordance with the Protocol on the Prevention and the Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all forms of Discrimination, recognize that the crime of genocide, war crimes, and crimes against humanity are crimes under international law and against the rights of peoples, and undertake in particular: a) To refrain from, prevent and punish, such crimes; b) To condemn and eliminate all forms of discrimination and discriminatory practices; c) To ensure the strict observance of this undertaking by all national, regional and local public authorities and institutions; (d) To proscribe all propaganda and all Organization's which are inspired by ideas and theories based on the superiority of a race or a group of people of a particular ethnic origin, or which try to justify or encourage any form of ethnic, religious, racial or gender based hatred or discrimination."

[12] Article 12 of the Great Lakes Pact: "The Member States undertake, in accordance with the Protocol on the Protection and Assistance to Internally Displaced Person, to provide special protection and assistance to internally displaced persons and in particular to adopt and implement the Guiding Principles on Internal Displacement as proposed by the United Nations Secretariat."

[13] Article 13 of the Great Lakes Pact provides that: "The Member States undertake, in accordance with the Protocol on the Property Rights of Returning Persons, to provide legal protection for the property of internally displaced persons and refugees in their countries of origin, and in particular: a) Adopt legal principles whereby the Member States shall ensure that refugees and internally displaced persons, upon returning to their areas of origin, recover their property with the assistance of the local traditional and administrative authorities."

117. Considering the foregoing, the Court dismisses the objection that some of the texts and instruments invoked by the Respondent State are not human rights instruments.

c. Objection to material jurisdiction on the ground of non-ratification of human rights instruments invoked by the Applicant State

118. The Respondent State submits that the Court lacks jurisdiction insofar as, in accordance with Article 3(1) of the Protocol, the instruments which it has jurisdiction to apply and interpret should be treaties which must have been ratified by the State concerned.

119. It submits, however, that neither the Pretoria Declaration nor the PSC Framework Agreement are treaties and, thus, cannot be considered as human rights instruments ratified by the States concerned, under the terms of Articles 3(1) and 7 of the Protocol.

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120. In its Reply, the Applicant State submits that the objection should be dismissed, contending that for the Court's jurisdiction to be established, ratification is not necessary for the application of certain instruments, taking the nature of such instruments into consideration. It emphasizes that in its constant practice, the Court applies the Universal Declaration of Human Rights (hereinafter "the UDHR"), which is, however, only "a resolution of the General Assembly of the United Nations [which] is not ratified by the States", as it did *in Franck David Omary and Others v. United Republic of Tanzania*. In its view, the same should apply to the Pretoria Declaration, the PSC Framework Agreement and any other instrument, as long as the allegations of human rights violations are based on the relevant provisions of human rights instruments.

121. At the hearing, the Applicant State reiterated the content of its written submissions.

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122. In its Response, the Respondent State asserts that the Applicant State's arguments must be dismissed insofar as, first, the requirement of ratification of human rights instruments, as provided for in Articles 3(1) and 7 of the Protocol, confers jurisdiction on the Court to hear applications relating to interpretation and application of such instruments.

123. It contends that the fact that the Court declared that it had jurisdiction to deal with alleged violations of the UDHR does not remove the requirement of ratification of human rights instruments, since the Court's jurisdiction was based on the fact that the UDHR had attained the status of customary international law. Citing the decision in *Franck David Omary v. United Republic of Tanzania,* it asserts that an applicant's reference to the UDHR has no effect on the Court's jurisdiction as long as the alleged violation was also provided for in a treaty ratified by the State concerned.

124. According to the Respondent State, the Pretoria Declaration and the PSC Framework Agreement are not treaties and cannot, as such, be described as "any other relevant human rights instrument ratified by the States concerned." It submits that the Court lacks jurisdiction insofar as the Application is based on violations of the provisions of the Pretoria Declaration and/or the PSC Framework Agreement.

125. At the hearing, the Respondent State reiterated the content of its written submissions. It submitted that the requirement that a treaty invoked before the Court must have been ratified by the parties emanates from Article 3(1) of the Protocol.

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126. The Court recalls that it has found that the Pretoria Declaration and the Addis Ababa Framework Agreement are not human rights instruments, within the meaning of Article 3(1) of the Protocol, as they are not treaties.

127. The objection is therefore dismissed.

128. In view of the foregoing, the Court dismisses the Respondent State's objection to its material jurisdiction, and declares that it has material jurisdiction to hear this case.

ii. Objection to the Court's territorial jurisdiction

129. Referring to Article 2 of the ICCPR and the Court's jurisprudence, the Respondent State contends that the Court only has jurisdiction if the alleged violations took place on the territory of the State in question. In this case, however, the Respondent State submits that the events alleged by the Applicant State to be the subject of the Application, did not take place on its territory.

130. The Respondent State recognises, however, that human rights bodies "have accepted extraterritorial jurisdiction": (i) based on specific provisions and wording of the relevant treaties; (ii) in exceptional cases; and (iii) "reluctantly", in situations of armed conflict outside the territory of the State concerned, where the latter is involved. To this end, it cites Article 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the European Convention on Human Rights"), which refers to jurisdiction and not territory, and the case law of the European Court of Human Rights (hereinafter referred to as "the ECHR").

131. The Respondent State holds that the Charter and the Protocol do not contain a similar provision and, therefore, considers that it is proper for the Court to limit its jurisdiction to events occurring in the territory of the State concerned. In addition, it argues that the Applicant State fails to prove the existence of exceptional criteria enabling the Court to reverse its jurisprudence by declaring that it has jurisdiction based on extraterritoriality.

132. The Respondent State argues that the conditions for the exercise of a state's extraterritorial jurisdiction are not met in respect of the alleged military operations that the Court is prayed to examine, particularly during the active phase of hostilities in an international armed conflict.

133. The Respondent State submits, in conclusion, that the Court lacks territorial jurisdiction in the instant case.

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134. In its Response, the Applicant State submits that the objection should be dismissed, arguing that the Court's territorial jurisdiction is established if the events took place on the territory of a State Party to the Protocol, to the Charter and to any other relevant human rights instrument applicable before the Court. In its view, the Court has affirmed this approach in several judgments, including *Leon Mugesera v. Republic of Rwanda*, *Ingabire Victoire Umuhoza v. Republic of Rwanda*, and *Rutabingwa Chrysanthe v. Republic of Rwanda*.

135. The Applicant State avers that, in the instant case, the criterion to be considered is not the status of the Respondent State, but rather the status of the State Party to the relevant instruments, which confers jurisdiction on the Court, provided that the events took place on the territory of one of the State Parties to the said instruments. In its view, this is a general principle of international law.

136. The Applicant State submits that the Respondent State deliberately confuses the criterion for determining territorial jurisdiction, which is a matter of form, with that for determining its responsibility for serious, massive and repeated violations of human rights committed on the territory of the Applicant State, which is a matter of substance. The Applicant State contends that, at this stage, it is not seeking to demonstrate the responsibility of the Respondent State. For the Court's territorial jurisdiction to be established, it must be proven that the acts were committed on the territory of a State Party to the Protocol and the Charter.

137. Furthermore, in the Applicant State's opinion, the Respondent State's assertion that the alleged violation of human rights must have been committed on the territory of the Respondent State for the Court to have territorial jurisdiction implies that if a State Party to the Charter, to the Protocol and to other human rights instruments committed such violations on the territory of another State Party, it would not be held responsible before the Court.

138. The Applicant State asserts that in the instant case, the issue of extraterritorial jurisdiction does not arise since the question for determination is not that of the jurisdiction of the national courts of a State beyond its borders but rather that of the Court, which is a human rights protection body in Africa. According to the Applicant State, "the issue at stake is not either that of the application of the Charter by the Court given that the latter is not called to apply the said instrument on the territory of a random State".

139. The Applicant State argues that, in the instant case, **it** is praying the Court to apply the Charter to alleged human rights violations committed by the Respondent State on the territory of a State Party to this human rights instrument.

140. The Applicant State further avers that the Court can only apply extraterritorial jurisdiction if the alleged violations of human rights took place on the territory of a State which is not a party to the Protocol or the Charter. However, in such a situation, other conditions would have to be met, particularly, the acceptance by the State concerned of the Court's jurisdiction, which is not the case here.

141. At the hearing, the Applicant State reiterated the content of its submissions. It maintained, moreover, that no interpretation of Article 3 of the Protocol could reasonably limit the Court's territorial jurisdiction solely to alleged violations that took place on the territory of the Respondent State. It points

out that the obligation of State Parties to the Charter to protect the rights they recognize has no limitation.

142. The Applicant State also points out that the fact that the Protocol does not limit territorial jurisdiction to the territory of the Respondent State reflects the deliberate intention of its drafters to broaden its scope.

143. According to the Applicant State, the Court's territorial jurisdiction is established, provided that the alleged violations are committed in the territory of any of the AU Member, which is a State party to the Protocol.

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144. In its Reply, the Respondent State asserts that the judgments referred to by the Applicant State may give the wrong impression that the only relevant criterion is that the event[s] in question took place on the territory of a State Party. It argues that the content of the said judgments simply means that territorial jurisdiction had been established because the alleged violations took place on the territory of a State Party, precisely, the Respondent State.

145. The Respondent State reiterates that the Court has territorial jurisdiction only where the facts of the case or the alleged violations took place in the territory of the Respondent State, as it emerges from two recent judgments delivered by the Court in *Safinaz Bint Mohamed Ben Elmejoul Ben Ali and Others v. the Republic of Tunisia* and *Lompo Bahanla v. Burkina Faso*.

146. The Respondent State argues that if the sole relevant criterion were the status of State party, the Court would not have consistently stated in the English and French versions of the rulings that jurisdiction was established since the facts took place in the territory of the Respondent State.

147. The Respondent State further argues that the Court’s website indicates that “[it] may only hear cases filed against countries that have ratified the Protocol and deposited the declaration provided for in Article 34(6) in cases

involving individuals and non-governmental organisations. The cases must concern allegations of human rights and the alleged violations must have occurred in the State concerned after ratifying the Protocol, except where the violations are ongoing".

148. As for the procedure and conditions for filing a case, it notes that "territorial jurisdiction requires the alleged violations to have occurred in the State concerned".

149. Lastly, the Respondent State submits that it has no understanding of the Applicant State's suggestion that a different approach to territorial jurisdiction would enable the Court to recognise its jurisdiction over States which are not parties to the Protocol and the Charter.

150. At the hearing, the Respondent State reiterated the content of its submissions. It added that territory is the sole criterion for assessing territorial jurisdiction, because it is only in this area that it could fulfil the obligations arising from the treaties it had ratified. It emphasises that the Applicant State, through the new parameter that it purports to establish, seeks to involve the Court in matters relating to the use of force, peacekeeping and security.

151. Lastly, the Respondent State points out that establishing territorial jurisdiction on the basis of ratification of the Protocol creates confusion, insofar as such ratification does not apply to personal jurisdiction..

152. The Respondent State thus submits that the Court cannot deviate from its established jurisprudence and should accordingly decline jurisdiction insofar as the facts occurred outside its territory.

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153. The Court recalls that it emerges generally from its jurisprudence that in most of the applications brought before it by individuals and NGOs with

observer status before the Commission, the facts must have taken place on the territory of the Respondent State. This is the case because a priori, every State is under obligation to guarantee human rights protection within the confines of its territory. The Court has, therefore, consistently held that it has territorial jurisdiction in the light of this fact. In the instant Application, however, the Court has to decide whether, in certain circumstances, it may exercise territorial jurisdiction where the alleged violations occurred outside the territory of the Respondent State.

154. In *Bernard Anbataayela Mornah v. Republic of Benin and Others,*[14] the Court held that the Charter does not specify the territorial scope of its application and neither does the Protocol. The Court noted that the increasing extra-territorial undertakings of States and the erosion of the defence of sovereignty relating to human rights violations has resulted in changes to the classical notion of territorial jurisdiction. One such notable result is that "the obligation to protect or at least, not to violate human rights extends beyond the traditional confines of State territories."[15]

155. The Court notes that a State's jurisdiction may be exercised outside its territory since "*in accordance with a well-established rule of international law of a customary character, the conduct of any organ of a State must be regarded as the act of that State*",[16] whether that conduct took place within or outside its territory.

156. In this regard, the Court observes that this legal reality is reinforced by the fact that international human rights instruments are applicable to acts of a State acting in the exercise of its jurisdiction outside its own territory.[17] For example, as the ICJ has held

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[14] § 146.
[15] § 149.
[16] *The matter of Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005, p. 242 § 213; Dispute relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999 (I), p. 87, para. 62. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports, p. 179 §§ 109.
[17] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda),* Judgment, I.C.J. Reports 2005, p. 168 § 215. *Legal Consequences of the Construction of a Wall in the*

"the International Covenant on Civil and Political Rights is applicable to the acts of a State acting in the exercise of its jurisdiction outside its own territory".[18]

157. The same applies to international human rights instruments given that none of the said instruments excludes the application of the principle of extraterritorial jurisdiction.[19] The Court affirms, as does the Human Rights Committee, that "anyone who is under the power or effective control of the forces of a State Party operating outside its territory enjoys extraterritorial protection".[20]

158. It follows that the Court has territorial jurisdiction not only where the facts of the case occurred in the territory of the respondent State, but also extends to acts performed by a State outside its territory. In other words, the Court's territorial jurisdiction is not limited to the physical boundaries of a particular state.

159. In the instant case, the Applicant State alleges human rights violations caused by an armed conflict on its territory between it and the armed group M23, a conflict in which the Respondent State is involved, allegedly, by reason of its support to the said armed group. It is thus proper for the Court to examine whether, in the instant case, there is truly an armed conflict on the territory of the Applicant State and, if so, determine the involvement of the Respondent State in the said conflict.

160. The Court emphasizes that involvement in an armed conflict is distinct from the question of State responsibility. In this regard, it endorses the ICJ's

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*Occupied Palestinian Territory, Advisory Opinio*n, July 9, 2004; I.C.J. Reports, pp. 178 - 179 §§ 106 and 109. *Legal consequences arising from Israel's policies and practices in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, § 98.

[18] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, July 9, 2004; I.C.J. Reports, pp. 178-179, § 111.

[19] Communication 227/99, *Democratic Republic of Congo v. Burundi, Rwanda et Uganda*, May 2003, 33rd Ordinary Session, Niamey, Niger.

[20] Human Rights Committee, General Comment No. 31 (2004), § 10.

position that the characterization of an armed conflict and State responsibility are two very different questions. This is so since the degree and nature of a State's involvement in an armed conflict taking place on the territory of another State are the conditions required for that conflict to be characterized as international. However, those conditions could very well, without logical contradiction, be different from those required for that State to be held responsible for a particular act committed during the conflict in question.[21]

161. The Court notes that, “armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State”.[22] In the first instance, the armed conflict is international in nature, while in the second instance,[23] it is non-international.

162. The Court recalls that the period mentioned in the Application is the period spanning November 2021 and 11 August 2023 and that the locality concerned is the province of North Kivu, in the eastern part of the DRC.

163. To determine the existence of an armed conflict in North Kivu, it is proper for the Court to verify two conditions[24] first, whether M23 is an organized armed group and, secondly, whether the clashes have reached the minimum intensity required.

164. The Court notes that it is not disputed that M23 is an armed group operating on the territory of the Respondent State. It is equally uncontroverted that, during the period covering the facts that are the subject of the present Application, the M23 was in open conflict with the FARDC, the regular/national army of the Applicant State. The Court further notes that

[21] ICJ, *Implementation of the Convention on the Prevention and Punishment of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgement dated 26 February 2007, Compendium 2007, § 405.
[22] *The Prosecutor v. Dusko Tadic*, ICTY, 2 October 1995, Case No. IT-94-1-AR72, §70
[23] Article 2 Common to the Geneva Conventions
[24] ICTY, *The Prosecutor v. Ramushi Haradinak, Idriz Balaj and Lahi Brahimaj*, Case No. IT-04-84-T, Judgement of the Trial Chamber of 3 April 2008, § 63.

the said conflict was manifested in particular by the intensity of the clashes, their number, their duration, the types of weapons and military equipment used, the quantity of munitions and the extent of the destruction.[25][26]

165. In the light of the foregoing, the Court finds that the armed conflict between M23 and FARDC is non-international in nature, within the meaning of Article 3 common to the Geneva Conventions.

166. The Court stresses that two alternative criteria[27] are used to assess the internationalization of a local conflict: Either directly, where the third State sends its own troops alongside the armed group against the national forces, or indirectly, where it controls the operations of the armed group. In the first hypothesis, the involvement should have an impact on the course of hostilities, while in the second hypothesis, an effective[28] or a comprehensive control[29] could be enough, according to international jurisprudence.

167. According to reports from the Group of Experts, eyewitnesses, including armed group leaders and combatants, officials of the Respondent State, and diplomatic sources [also] reported the presence of RDF troops in border areas, towns occupied by M23, and newly created RDF and M23 positions,[30] including Kishehe and Bambu, Rutshuru, in the Mushaki area. In February and March 2023, RDF soldiers of the Eleventh Battalion were present in the area.[31]

168. In a nutshell, the Group of Experts indicates, in its reports, that there is substantial evidence to establish that there has been direct involvement of the RDF on the territory of the Applicant State in support of M23/ARC and

[25] The mid-term report was submitted on 23 November 2022 to the Security Council Committee established pursuant to Resolution 1533(2004) on the Democratic Republic of Congo, which considered it on 9 December 2022. The report was transmitted to the President of the Security Council on 13 June 2023. See also § 30 of the mid-term report and § 40 of the final report.
[26] Annex 23 of the mid-term report; §§ 36 and 37 of the mid-term report.
[27] ICC, *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, 29 January 2009, § 209.
[28] ICTY, Tadic, 15 July 1999.
[29] ICJ, *Military or paramilitary activities in Nicaragua (Nicaragua v. United States of America)*, Judgement of 27 June 1986, [1986] ECR 115.
[30] § 55 of the final report.
[31] § 57 of the final report.

to establish the supply of arms, ammunition and uniforms to the said armed group.[32]

169. In the light of the foregoing, the involvement of the RDF, in the conflict between M23 and FARDC is established. It is also established that the said involvement had an impact on the hostilities carried out. The Court also finds that the Respondent State is involved in the conflict between M23 and the Applicant State while the Applicant State is involved through FARDC making the armed conflict an international armed conflict.

170. Consequently, the Court declares that the exercise by the Respondent State of its extraterritorial jurisdiction cannot be contested. In the circumstances, the Court dismisses the objection regarding lack of territorial jurisdiction and confirms its jurisdiction accordingly.

171. Accordingly, the Court holds that it has territorial jurisdiction to hear the present Application.

B. Other aspects of jurisdiction

172. The Court notes that its personal and temporal jurisdiction are not in dispute. Nevertheless, under Rule 49(1) of the Rules, it must ensure that all aspects of its jurisdiction are satisfied before continuing to examine the Application.

173. With regard to personal jurisdiction, the Court notes that this being an inter-State matter, both the Applicant State and the Respondent State are Parties to the Protocol. The Court therefore finds that it has personal jurisdiction to hear the present Application.

174. As regards temporal jurisdiction, the Court notes that the facts relating to the alleged violations are said to have occurred from November 2021, that

[32] Summary of midterm report.

is, after the entry into force of the Protocol in respect of the Respondent State. Accordingly, the Court finds that it has temporal jurisdiction.

175. In view of the foregoing, the Court holds that it has jurisdiction to hear the present Application.

VI. ADMISSIBILITY

176. Article 6(2) of the Protocol states that: "the Court shall rule on the admissibility of cases taking into account the provisions of article 56 of the Charter".

177. Under Rule 50(1) of the Rules: "the Court shall ascertain the admissibility of an Application […] in accordance with Article 56 of the Charter and Article 6(2) of the Protocol and these Rules." Rule 50(2) of the Rules, which in substance embodies Article 56 of the Charter, states that:

> Applications filed before the Court shall comply with all of the following conditions:
>
> a. Indicate their authors even if the latter request anonymity,
> b. Are compatible with the Constitutive Act of the African Union and with the Charter,
> c. Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union,
> d. Are not based exclusively on news disseminated through the mass media,
> e. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,
> f. Are submitted within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter, and

g. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the Charter.

178. The Court notes that the Respondent State raises two objections to the admissibility of the Application, firstly, based on conditions not provided for in the Charter (A) and, secondly, on the basis of conditions listed in the Charter (B).

A. Objections to admissibility based on conditions not provided for in the Charter

179. The Respondent State argues that the Application should be declared inadmissible on the grounds that, the Applicant State failed to comply with the preliminary non-judicial procedures required by the Great Lakes Pact (i), and the Constitutive Act (ii) and because it constitutes abuse of process (iii).

i. Objection based on alleged non-compliance with the preliminary non-judicial procedures required by the Great Lakes Pact

180. The Respondent State contends that the Applicant State has not fulfilled the preliminary requirements of referral to the Court, according to which it must first seek a settlement through negotiation, good offices, investigation, mediation or conciliation, as required by the international instruments cited in the Application, notably, the Great Lakes Pact

181. To that end, the Respondent State submits that the Applicant State was under an obligation, under Articles 28 and 29 of the Great Lakes Pact, prior to any judicial proceedings, to attempt the settlement of the dispute "through negotiation, good offices, investigation, mediation, conciliation or any other political means within the framework of the Conference's Regional Follow-up Mechanism". It further submits that the purpose of this requirement is to

notify the State party concerned of the dispute and to specify its nature and scope.

182. The Respondent State contends that the Applicant State did not at any time attempt to resolve the matters raised in the Application by the non-judicial means available under Articles 28 and 29 of the Great Lakes Pact, that is, through “negotiation, good offices, investigation, mediation, conciliation” or any other political means available to the parties within the framework of the Great Lakes Pact.

183. The Respondent State, therefore, submits that the Application is inadmissible for failure to comply with the preliminary requirements of referral to the Court.

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184. In its Reply, the Applicant State argues that the objection should be dismissed, reiterating that the instant case is not a dispute in the traditional sense of the term, but a particular type of human rights litigation.

185. It argues that referral to the Court is not subject to any preliminary requirement of negotiation or mediation, and that the preliminary conditions required by Article 28 of the Great Lakes Pact would only have been necessary if the Application had been filed within the framework of the mechanisms for settling “disputes” set up by the International Conference on the Great Lakes Region, which is not the case presently.

186. The Applicant State further submits that Article 29 of the Great Lakes Pact is not relevant either, since it is applicable only if Article 28, to which the Respondent State refers, is itself applicable, that is, “when recourse to the instruments referred to in Article 28(2), (3) and (4) proves unsuccessful”.

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187. In its Response, the Respondent State reiterates its arguments to the effect that, under Articles 28 and 29 of the Great Lakes Pact, the Respondent State was obliged to comply with the procedural requirements therein, since it was raising issues within the context of the Pact.

188. At the hearing, the Respondent State reiterated the content of its submissions. In addition, it pointed out that Article 3 of the Great Lakes Pact expressly provides that, prior to initiating any judicial proceedings, the State Parties undertake to attempt non-judicial avenues of conflict resolution such as mediation, conciliation and other political means within the framework of regional follow-up mechanisms, namely the International Conference of the Great Lakes Region.

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189. The Court notes that in support of its objection, the Respondent State invokes Articles 28[33] and 29[34] of the Great Lakes Pact. The first of these articles provides for a preliminary and amicable procedure for settling disputes between the State Parties whilst the second provides that all disputes concerning the interpretation or application of all or part of the Great Lakes Pact be submitted to the African Court of Justice.

190. The Court underscores that in matters of procedure, it applies the Charter, the Protocol and its Rules and if necessary, well-established general principles of procedure. This principle remains the same irrespective of the instruments cited in support of the Applicant's allegations.

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[33] For this purpose, the Member States undertake to settle disputes through negotiation, good offices, investigation, mediation, conciliation or any other political means within the framework of the Conference's Regional Follow-up Mechanism;
The Member States undertake to have recourse to the means of settling disputes described in paragraph 2 above before having recourse to any other political, diplomatic or judicial mechanisms;
The Member States may resort to the means of peaceful settlement provided for in the United Nations Charter and in the Constitutive Act of the African Union after recourse to the peaceful settlement of disputes in paragraphs 2 and 3 above.

[34] The Member States agree to submit any dispute which may arise between them in relation to the interpretation or application of all or part of the Pact to the African Court of Justice if recourse to the means referred to in Article 28 (2) (3)(4) turn out to be unsuccessful.

191. It does not escape the Court's notice that the "African Court of Justice", to which the parties agree to submit their disputes concerning the interpretation or application of the Great Lakes Pact, is different from this Court, not to mention that it has not been operationalised by the AU.

192. The Court, therefore, finds that the rules of procedure outlined under the Great Lakes Pact are not applicable before it and, therefore, cannot be invoked to bar proceedings before it. \

193. Consequently, the Court dismisses the Respondent State's objection to the admissibility of this Application based on non-compliance with the procedure laid down in Articles 28 and 29 of the Great Lakes Pact.

ii. Objection based on alleged non-compliance with the preliminary non-judicial procedure required by the Constitutive Act

194. The Respondent State argues that the Application is inadmissible for failure to comply with the preliminary dispute settlement procedure under Article 26 of the Constitutive Act of the AU.

195. According to the Respondent State, the fundamental issues raised in the Application relate to peace, security, sovereignty and territorial integrity, as enshrined in Articles 3(b) and (f) and 4(a), (e), (f) and (i) of the Constitutive Act and the Protocol Relating to the Establishment of the Peace and Security Council (hereinafter referred to as "the PSC Protocol"). It contends that the Applicant State is accusing it of committing acts that are incompatible, in particular, with the Constitutive Act, which means that its Application is substantially based on the interpretation and/or implementation of the Act.

196. The Respondent State argues that, despite the fact that the Applicant State frames its issues before the Court as human rights matters , the subject-matter of its Application remains, first and foremost, a matter of peace and

security for which the Constitutive Act provides an elaborate settlement mechanism.

197. The Respondent State argues that, since, as at the time of the filing of the Application, the Court of Justice of the African Union provided for by Article 18 of the Constitutive Act was not operational, the Applicant State should have referred the matter to the Assembly of Heads of State and Government of the African Union (AU Assembly) as required by Article 26 of the Constitutive Act.

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198. In Reply, the Applicant State argues that the objection should be dismissed and submits that the non-judicial remedies relied on by the Respondent State are neither a preliminary condition for referral to this Court nor a condition for the admissibility of applications before it.

199. The Applicant State contends that, even if that were the case, the Respondent State recognises that this Court is different from Court of Justice of the African Union envisaged in Article 18 of the Constitutive Act. It, therefore, submits that the argument concerning preliminary procedure for referral to the Court is untenable, since the Court cannot apply a procedure specific to another court.

200. At the hearing, the Applicant State reiterated the content of its submissions.

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201. In its Response, the Respondent State reiterates its argument concerning the applicability of the procedure under Article 26 of the Constitutive Act, as the issues raised in the Application relate to the said Act.

202. At the hearing, the Respondent State reiterated the content of its submissions.

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203. The Court reaffirms, as it has already held in paragraph 190, that with regard to procedural issues and, more specifically issues relating to the admissibility of Applications, it cannot apply texts other than the Charter, the Protocol, its Rules, and, if necessary, universally accepted general principles of procedure. It, therefore ,follows that the rules prescribed by the Constitutive Act cannot be cited to bar proceedings before this Court.

204. Accordingly, the objection to admissibility based on non-compliance with the prior non-judicial procedure under the Constitutive Act is dismissed.

iii. Objection to admission based on abuse of process

205. Citing the jurisprudence of the ICJ, in particular the judgments on preliminary objections in the matters of *Immunities and Criminal Proceedings (Equatorial Guinea v. France)* and *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, the Respondent State argues that abuse of process may be a ground for inadmissibility of an application. It asserts that such an abuse is

> *[t]he improper use of procedural rights or instruments by one or more parties for purposes other than those for which they were intended, in particular for purposes which are fraudulent, dilatory or frivolous, with a view to causing prejudice or gaining an improper advantage, [...] reducing or eliminating the effectiveness of another available procedure, or for purposes of pure propaganda ... [or] an action with a view to securing a fair hearing .... [or an] action with malicious intent or in bad faith.*

206. The Respondent State contends that the present Application is an abuse of process insofar as, first, for the same facts and remedies sought, proceedings have been initiated or are pending before the East African Court of Justice (hereinafter referred to as “the EACJ”), and second, at the time of filing the present Application, the Applicant State failed to disclose or produce material facts relevant to the Application, contrary to Rule 41(3)(c)

of the Rules, which requires that the Application be accompanied by copies of documents relating to any other international investigation or settlement procedure relevant to the Application.

207. The Respondent State submits that the proceedings pending before the EACJ are at a more advanced stage as it has filed its pleadings on jurisdiction, admissibility and the merits.

208. The Respondent State argues that through these parallel proceedings, the Applicant State has gained and is seeking to gain an unfair and illegitimate advantage since, with the pleadings before the EACJ, it is able to pre-empt the strategy of the latter Court. It adds that, the likelihood of the Applicant obtaining a favourable ruling is higher. It argues further that in the event of conflicting rulings, the authority and legitimacy of both courts would be undermined.

209. The Respondent State requests the Court to draw inspiration from the approach adopted by the Arbitral Tribunal established under Article 287 Article 1 of Annex VII of the United Nations Convention on the Law of the Sea in *The MOX Plant Case* (*Ireland v. United Kingdom*) which, in the face of a similar situation of parallel proceedings before the Court of Justice of the European Union, ruled that

> *it would be inappropriate [...] to continue to hear the parties on the merits of the case without having resolved the issues raised [...] and that it would not be helpful for the parties to resolve the matter in such a way as to arrive at two conflicting rulings on the same matter.*

210. The Respondent State further buttressed its arguments by citing Communication *Mpaka-Nusu André Alphonse v. Zaire,* which was ruled inadmissible by the Commission, as it had already been dealt with by the Human Rights Committee. Similarly, it was pointed out, the Commission suspended *sine die* its examination of *Interights (on behalf of the Pan-*

African Movement and others) v. Eritrea and *Ethiopia,* as it was already pending before the Ethiopian and Eritrean Complaints Commission.

211. The Respondent State adds that the ECOWAS Court of Justice has adopted a similar position, notably in *El Haji Mame Abdou Gaye v. La République du Sénégal* and *The Registered Trustees of the Socio-Economic Rights & Accountability (SERAP) v. Federal Republic of Nigeria and another,* as it does not receive any applications alleging human rights violations if the same case is already before another international court.

212. As to the failure to produce relevant documents, the Respondent State contends that the current Application was not supported by relevant factual documents and that the Applicant State thus failed to inform the Court of the proceedings pending before the EACJ and the ongoing investigations into the situation in the East of the DRC by the International Criminal Court, referred to it in April 2004 and in May 2023.

213. The Respondent State argues that this requirement enables the Court to be cognisant of all relevant facts likely to have an impact on any decision to be taken in the present case.

214. The Respondent State submits that the acts and omissions of the Applicant State reveal a strategy aimed at misleading the Court as to the relevant elements and obscuring the true nature of a political ploy devised to cause political embarrassment to the Respondent State rather than to achieve a judicial settlement of an alleged dispute. In its view, the Applicant State is seeking to pass off a political ploy as a legal dispute by using the Court to settle political scores.

215. It argues that the Application displays the Applicant State's indifference to the Court's authority and its procedural requirements, by seeking to gain an unjust and illegitimate political advantage.

216. The Respondent State contends that the Application was made in bad faith and is, therefore, an abuse of the right to institute proceedings, and submits, therefore, that the Application should be declared inadmissible.

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217. In its Reply, the Applicant State submits that the objection be dismissed. First, it argues that the existence of multiple applications against the same State does not constitute an abuse of process. It maintains that in *XYZ v. Republic of Benin* of 27 November 2020 the Court laid down criteria for determining whether proceedings constitute an abuse of process, and ruled that, for an application to be regarded as an abuse of process, it must be manifestly frivolous and lodged in bad faith. Moreover, according to the Applicant State, the mere fact that an applicant files several applications against the same Respondent State does not necessarily indicate a lack of good faith.

218. The Applicant State avers that the instant Application cannot be regarded as frivolous given the serious nature of the grave and massive violations of human rights it alleges, particularly, as it has good reason to believe that the Respondent State is responsible for them. It submits that the Application has not been lodged in bad faith as it does not run counter to "the general principles of law and the established procedures of judicial practice."

219. The Applicant State concedes that it has lodged an application before another international court against the Respondent State, but points out that the two proceedings are still pending and are neither based on the same subject-matter nor on the same legal grounds.

220. The Applicant State also argues that, under Rule 41(3)(c) of the Rules, it is optional to inform the Court of any proceedings pending before another court, since the phrase "where appropriate" is used. It adds that the application against the Respondent State before the EACJ was filed after

the instant case. It follows, in its view, that even if this obligation did exist, it would not be subject to it.

221. At the hearing, the Applicant State reiterated the content of its submissions. It also argued that it could not be faulted for having duly referred a matter to a court of competent jurisdiction if it has not been established that this referral was for purposes other than those for which the said court was established.

222. It further submitted that it referred the matter to this Court in accordance with its enabling procedural framework, and that the present proceedings cannot be declared abusive in the absence of any evidence of manifest bad faith.

223. Lastly, the Applicant State asserts that, in any event, under the Court's jurisprudence, in particular *XYZ v. Republic of Benin,* abuse of the right to institute proceedings cannot be dealt with at the admissibility stage, but rather after examination of the merits of the case.

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224. In its Response, the Respondent State reiterates its arguments in support of the objection.

225. In addition, with regard to the Applicant State's argument as to the criteria for classifying an application as an abuse of process, the Respondent State argues that frivolity or bad faith are not the only such criteria. It notes, however, that the phrase '*inter alia*' used in *XYZ v. Republic of Benin* clearly indicates that, for the Court, abuse of process is determined on a case-by-case basis and may result from a number of circumstances such as instances of deliberate parallel proceedings.

226. The Respondent State contends that the case before the EACJ and the instant Application are substantially similar in terms of their circumstances,

alleged human rights violations, evidence adduced and remedies sought. It submits that, additionally, just like this Court, the EACJ has jurisdiction to hear human rights violations. It references the EACJ's decision in *James Katabazi and 21 Others v. Secretary General of the East African Community and Another*.

227. On the objection that the abuse of process can only be dealt with on the merits of the case, the Respondent State submits that the abuse of process, particularly the existence of parallel proceedings, is a fundamental preliminary procedural question which should be resolved before any examination of the merits. It submits that the interests of justice would not be served if the Court were to examine the merits before ruling the application inadmissible and that, in any event, the case of *XYZ v. Republic of Benin* is different from the instant case.

228. The Respondent State further argues that the fact that none of the parallel proceedings has been determined reinforces the argument that the Application before this Court is an abuse of process and increases the risk of conflicting rulings.

229. The Respondent State urges the Court to be mindful of its own communiqué following the second tripartite judicial dialogue between it, the EACJ and the Economic Community of West African States Court of Justice, in which the three courts affirmed their commitment to judicial dialogue.

230. As for the Applicant's failure to disclose material facts, the Respondent State submits that the two applications were lodged within the space of a month. It argues that the Applicant State could not conceivably have been oblivious to the fact that it intended to refer a similar case to the EACJ.

231. In the alternative, the Respondent State argues, that even if the Applicant State had been unaware that it would be making a referral to the EACJ, it should have informed the Court of this important fact as soon as the application was lodged or shortly thereafter. It argues further that failure to

disclose this information was indicative of bad faith on the part of the Applicant State.

232. With regard to the Applicant State's argument that Rule 41(3)(c) of the Rules is optional, the Respondent State avers that the verb "shall" therein indicates a requirement and that the phrase "where appropriate" should be understood *sensu generis*. It argues that the fact that parallel proceedings existed or were imminent was relevant information that should have been disclosed to the Court.

233. Similarly, the Respondent State contends that the Applicant State was under an obligation to provide the Court with information and/or documents concerning the ongoing investigations before the International Criminal Court, to which it referred the case in April 2023.

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234. At the hearing, the Respondent State reiterated the content of its submissions. In the alternative, it requested a stay of proceedings pending the decision in the case before the EACJ.

235. It argued that such a practice is standard in international litigation, referencing in particular the judgment of the ECOWAS Court of Justice in *Simone Ehivet and Michel Gbagbo v. Republic of Côte d'Ivoire,* andCommunication 233/99-234/99 – *Interights (on behalf of Pan African Movement and Citizens for Peace in Eritrea) v. Ethiopia* and *Interights (on behalf of Pan African Movement and Inter African Group) v. Eritrea*.

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236. The Court recalls that it has held that an application constitutes abuse of process if it is manifestly frivolous or if it can be established that an applicant has lodged it in bad faith, contrary to the general principles of law and the established procedures of judicial practice. In this respect, an applicant filing

several applications against the same Respondent State does not necessarily mean that he/she lacks good faith.[35] More substantiation is required to establish bad faith on the part of an Applicant.[36]

237. The Court considers that failure to disclose information or to file evidence on relevant material facts does not constitute sufficient grounds to declare an application as abuse of process. In any event, in accordance with Rule 51(1) of the Rules, it may, in the course of the proceedings and whenever it considers it necessary, request the parties to produce any relevant document and provide any relevant explanations. Notwithstanding, the Court will take note of any failure to produce documents or explanations.

238. In the light of the foregoing, the Court finds that the filing of the present Application does not constitute abuse of process.

239. Accordingly, the Court dismisses the Respondent State's objection to the admissibility of this Application based on abuse of process**.**

B. Objections to admissibility based on requirements provided for in the Charter

240. The Respondent State raises objections to the admissibility of the Application on the grounds that the Application is incompatible with the Constitutive Act of the AU (i) and is based on news disseminated by the mass media (ii). It submits that the Application was not filed after exhaustion of domestic remedies (iii) and that the Application concerns cases that were settled in conformity with the principles of the Charter of the United Nations, the Constitutive Act or the provisions of the Charter (iv).

[35] *Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin* (merits and reparations) (4 December 2020) 4 AfCLR 133, § 64 ; XYZ v. Republic of Benin (merits and reparations) 4 AfCLR 83, § 42.
[36] *Ajavon v. Benin*, *ibid*; *XYZ v. Benin*, *supra*, § 45.

241. The Court will rule on the objections raised by the Respondent State, before examining, if necessary, the other admissibility requirements not in contention.

i. Objection alleging the incompatibility of the Application with the Constitutive Act of the AU

242. The Respondent State asserts that the Application is incompatible with the provisions of the Constitutive Act of the AU and is, therefore, contrary to Article 6(2) of the Protocol and Article 56(2) of the Charter and Rule 50(2)(b) of the Rules. It contends that the Constitutive Act is the principal instrument governing relations between Member States of the African Union and that, accordingly, the Charter and Protocols adopted by the AU, including the Protocol, must be interpreted in such a way as to ensure consistency with the Constitutive Act.

243. For the Respondent State, an interpretation of the aforementioned instruments implies an assessment of consistency with the Charter as well as with the Constitutive Act, particularly in the case of inter-State applications. An application lodged by a State must, therefore, be compatible with the provisions of the Constitutive Act. In examining the admissibility of an inter-State application, the Respondent State submits, that the Court must ensure its compatibility with the principles and objectives of the Constitutive Act.

244. The Respondent State argues that the principles of the African Union, enshrined in Articles 3 and 4 of the Constitutive Act, include peace, security, sovereignty and territorial integrity. The objective and responsibility of the African Union, as contained in Article 3(b) and (f) of the Constitutive Act, include "*defending the sovereignty, territorial integrity and independence of its Member States" and "promoting peace, security and stability on the Continent".*

245. According to the Respondent State, in implementing Articles 5(2) and 9 of the Constitutive Act, and in achieving the aforementioned principles and objectives, the Assembly of the AU adopted the PSC Protocol as a permanent policy organ whose primary mission is to address issues of peace and security in Africa. It argues that the PSC Protocol clearly defines the modalities and procedures to be followed for the peaceful resolution of matters of peace and security between Member States. Article 16 of the PSC Protocol recognises that regional mechanisms are part of the AU's security architecture. It underscores that the AU remains the primary custodian of peace and security in Africa.

246. The Respondent State argues that, as the Applicant State is a member of the AU and a State Party to the Constitutive Act and the PSC Protocol, it is required, under Article 7(2), (3) and (4) of the PSC Protocol, to recognise and respect the authority of the PSC in matters of peace and security, and to cooperate with and facilitate its work.

247. The Respondent State further contends that since the matters raised in the Application relate wholly to peace and security, the Applicant State is required by the Constitutive Act and the PSC Protocol to first refer any grievance to the PSC, whose intervention will be in accordance with the modalities set out in the Constitutive Act and the PSC Protocol.

248. The Respondent State alleges that by masquerading a political matter involving peace and security as a human rights matter, the Applicant State has failed to fulfil its obligations under the Constitutive Act and the PSC Protocol. According to the Respondent State, referring matters of peace and security to the Court distorts and undermines the object and purpose of the Constitutive Act, as well as the clearly defined mandate and function of the PSC, and is therefore inconsistent with the Constitutive Act.

249. The Respondent State notes that in Communication *Spilg and Mack & Ditshwanelo v. Botswana*, the Commission ruled that:

Article 56(2) of the Charter requires that the Communication be consistent with the Constitutive Act of the African Union or with the African Charter. In the light of the Constitutive Act, the African Commission does not receive a communication brought before it requesting a measure contrary to any provision of the Constitutive Act. Thus, in Katangese People's Congress v. Zaire, an action that infringed the doctrine of uti possidetis juris under Article 3 of the OAU Charter, now Article 4 (b) of the Constitutive Act, was dismissed by the African Commission, and the Communication declared inadmissible.

250. Recalling that the African Commission reiterated this position in the case of *Law Society of Zimbabwe and Others v. Zimbabwe,* the Respondent State submits that the Application, in its entirety, is incompatible with the Constitutive Act.

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251. The Applicant State did not address this objection in its submissions.

252. At the hearing, the Applicant State prayed that the objection be dismissed, arguing that the Respondent State clearly confuses issues of jurisdiction with those of admissibility.

253. Referencing the Court's judgment in *Mohamed Abubakari v. United Republic of Tanzania*, the Applicant State submits that an application is compatible with the Constitutive Act and the Charter when the violations alleged therein can be examined in the light of these instruments and clearly do not fall outside their scope. According to the Applicant State, it also follows from the Court's jurisprudence that an application is compatible with these instruments if it is formulated in such a way as to achieve the objectives stated therein.

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254. In Response, the Respondent State submits that its objection should be allowed since, in its written submissions, the Applicant State has not refuted its arguments.

255. At the hearing, the Respondent State reiterated the content of its submissions. It further argued that the Application was crafted in language that suggested that it relates to human rights violations, in order to persuade the Court to examine it. According to the Respondent Case, it is the case, however, that the Court cannot interfere with the mandate of AU political organs.

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256. The Court recalls that it has consistently held that compatibility of an application with the Constitutive Act presupposes that it relates to one of the objectives of the Act. In this regard, the Court notes that the present Application is compatible with Article 3(h) of the Constitutive Act, namely, the promotion and protection of human and peoples' rights.[37]

257. The Court notes in the instant case that, categorising an application as relating to peace and security matters does not preclude the possibility that it may also relate to the protection of human rights. Furthermore, even if an applicant has chosen to bring a case before the Court alleging violations of human rights and has not submitted his or her questions to the PSC, this cannot render an application before this Court inadmissible.

258. The Court finds that the instant Application contains allegations of human rights violations and is, therefore, compatible with one of the objectives of the Constitutive Act, in particular Article 3(h).

259. Accordingly, the objection to admissibility on the grounds that the Application is compatible with the Constitutive Act and the Charter is dismissed.

[37] *Glory Cyriaque Hossou v. Republic of Benin*, AfCHPR, Application No. 012/2018, Judgment of 13 November 2024 (merits and reparations), § 37.

ii. Objection alleging that the Application is based on news disseminated by the mass media

260. The Respondent State submits that the purpose of Rule 50(2)(d) of the Rules is to ensure that the proceedings are not conducted on the basis of unverified and/or frivolous allegations. In this regard, it cites the Court's decision in the matter of *Bernard Mornah v. Republic of Benin and Others*.

261. The Respondent State submits that it may appear, *prima facie*, that the Application is not based exclusively on press articles, given that its annexes do not contain only news disseminated by this means of communication. However, according to the Respondent State, it is for the Court itself to determine the subject-matter of the dispute, not by limiting itself to the arguments of the parties, but by making its own objective assessment, as the ICJ did in the judgment on preliminary objections in the matter of *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*.

262. The Respondent State considers in this respect that the exhibits submitted by the Applicant State are merely a façade. In its view, the expression "mass media" should not be interpreted as referring only to press articles *stricto sensu*, but as a term which also includes any information, from governmental or international sources, which is based primarily on press articles or which is intended for dissemination by the same means of communication. To this effect, it refers to *Dawda K. Diawara v. Republic of Gambia.* In its view, to make a distinction between a press article and its source would be tantamount to disregarding several exhibits, including press releases emanating from the Respondent State, in application of the rule of *nemo judex in causa sua*.

263. According to the Respondent State, the term "means of communication" also includes any information emanating from think-tanks or NGOs, whose communication methods are media-oriented - which influences the "information" they claim to transmit in their reports. It points out that in a recent case, the ECHR emphasised the distinction between "press articles"

and “investigative journalism”. It submits that the Court should consider, in the absence of evidence of original investigation or analysis going beyond the use of press information, that any report published by a think-tank or an NGO should falls into this category.

264. The Respondent State argues that a careful examination of the Application and its annexes submitted shows that very few of them are relevant, and that in the instant case, nothing can give them probative value insofar as they are based on news articles and hearsay.

265. The Respondent State, therefore, submits that the Application be declared inadmissible.

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266. The Applicant State did not address this objection in its Response.

267. At the hearing, the Applicant State submitted that the objection be dismissed, and submitted that from the Court's jurisprudence, the *ratio legis* in Article 56(4) of the Charter seeks to prohibit the exclusive use of news disseminated through the mass media as the sole source of the allegations contained in an application, without prohibiting the possibility of obtaining that information from other sources.

268. Referencing communications 147/95 and 149/96 - *Dawda Jawara v. Gambia*, it argued that it would be prejudicial if an application were to be rejected because certain aspects of its content were taken from information disseminated through the mass media.

269. The Applicant State further contends that, in any event, it submitted documents whose diverse sources do not allow the conclusion that they emanated from news disseminated through the mass media.

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270. In its Response, the Respondent State argues that the Applicant State has entirely ignored this objection. In its opinion, this only confirms its over-reliance on the mass media to establish its claims, since it repeatedly refers to media sources in support of its allegations.

271. At the hearing, the Respondent State reiterated the content of its submissions. It contended that the objection should be upheld insofar as the Applicant State exclusively references media reports, some of which are dubious.

272. The Respondent State further submitted that the documents from United Nations bodies or the communiqués from regional bodies attached to the Application dealt only with the general situation prevailing in the eastern part of the Applicant State's territory.

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273. The Court observes that the expression "mass media" refers, especially, to posters, cinema and the written or audiovisual press. It does not extend to information from a governmental or intergovernmental sources.

274. The Court notes that in the present case, although it is true that the Applicant State attached to its Application press releases and other media publications, among other documents, the fact remains that they are only intended to substantiate its allegations. Additionally, apart from these press releases and media publications, the Applicant State attached various documents to the Application, from a variety of sources, including the African Union and the United Nations.[38]

275. In addition, the Court considers that these documents are only intended to support the allegations contained in the Application. Additionally, the term "exclusively" refers to Applications based solely on the mass media.

[38] United Nations report.

276. The Court, therefore, finds that the Application is not based exclusively on news disseminated through the mass media.

277. Consequently, the Court dismisses the Respondent State's objection**.**

iii. Objection alleging non-exhaustion of local remedies

278. The Respondent State argues that Rule 50(2)(e) of the Rules reflects the traditional requirement of exhausting local remedies in international law.

279. In the instant Application, thit alleges that the Applicant State exhausted neither the local remedies available under the rules of diplomatic protection(a), nor the existing international and regional remedies (b). The Court will examine each of the two limbs of the objection.

a. On the alleged non-exhaustion of local remedies available under the rules of diplomatic protection

280. Referencing the ECHR's judgment in *Ukraine v. Russia (Crimea)*, the Respondent State submits that there is a distinction between "genuine" inter-State cases and cases in which "the Applicant State does no more than denounce a violation or violations allegedly suffered by individuals whose place, as it where, is taken by the State".

281. The Respondent State argues that the present Application falls into the second category since it relates to "diplomatic protection, where the rights allegedly violated are those of peoples and individuals, and even though none of these persons have been sufficiently identified, which deprives it of its right to examine their grievances on the merits".

282. The Respondent State maintains that it is incumbent on the Applicant State, acting on behalf of alleged individual victims, to exhaust or attempt to exhaust local remedies or to demonstrate that it is impossible for it to do so. It argues, in line with the Commission's position in Communication *Legal*

Defense Centre v. Gambia, according to which it is incumbent upon anyone filing a communication on behalf of the victims to take concrete steps to comply with the provisions of Article 56(5) of the Charter or to demonstrate that it is impossible for them to do so. According to the Respondent State, the Commission also observed that: "the victim does not need to be physically in a country to avail himself of available domestic remedies, such could be done through his counsel".

283. Similarly, the Respondent State recalls that *in the Ukraine and Netherlands v. Russia* judgment, the ECHR, ruled inadmissible individual applications filed by Ukraine concerning children allegedly abducted by Russia, on the grounds that Russian courts should have been seized even if the alleged abductions had taken place in Ukraine.

284. The Respondent State submits that, in the instant case, the Applicant has not proved that it has exhausted available local remedies, even for wrongful acts committed outside Rwanda, nor can it rely on any waiver in this respect.

285. The Respondent State maintains that Chapter IV of its Constitution guarantees the protection of rights and freedoms, with Article 150 thereof conferring on the judiciary, which is independent, the task of protecting the rights whose violation is invoked in this Application.

286. It avers that Rwandan courts are accessible to any person who is the victim of an alleged human rights violation, regardless of where these violations were committed, provided that such violations are punishable under Rwandan law, which is the case. In this regard, it references Article 11 of Law No 68/2018 of 30 August 2018 defining offences and penalties in general, which sets out punishment for Rwandan citizens who commit an offence outside the territory of Rwanda.

287. The Respondent State submits that, depending on the nature of the offence and the penalty incurred, any victim of a human rights violation, with the assistance of the Public Prosecutor's Office or acting on his or her own

behalf, is entitled to bring an action before the primary courts for offences punishable by a term of imprisonment not exceeding five years, except those which are exclusively preserved for other courts. It specifies that the decisions of the primary courts may be appealed before the intermediate courts, as provided for by Article 26 of Law No. 30/2018 of 2 June 2018 on the jurisdiction of the courts.

288. The Respondent State argues that according to Article 29 of Law No. 30/2018 of 2 June 2018 on the jurisdiction of the courts, cases of human rights violations punishable by a term of imprisonment exceeding five years, except those exclusively preserved for other courts, are tried at the first instance, by intermediate courts and may be appealed to the High Court.

289. The Respondent State also states that pursuant to Articles 42 and 53 of the Law of 2 June 2018, a specialised chamber for international and transnational crimes has been set up within the High Court to try such crimes, in particular, at first instance, with its judgments being subject to appeal before the Court of Appeal, and to further appeal before the Supreme Court.

290. Furthermore, the Respondent State points out that in accordance with Article 36 of Law No. 36 of 2 June 2018, it is itself liable to be tried, at first instance, before the Administrative Division of the Intermediate Courts, the decisions handed down by the said Division being subject to appeal before the High Court.

291. The Respondent State recalls that in 2015, its courts heard cases of human rights violations that took place in the eastern part of the territory of the Applicant State as a result of the theft of a large sum of money in Sake, North Kivu. It points out that its own nationals were arrested by the police of the Applicant State and handed over to its authorities for prosecution. It states that the Congolese victim intervened in the case, represented by counsel of his choice, asking for reparations. In this regard, it cites the case of the *Prosecutor v. Mvuyekure Willy and Others*.

292. The Respondent State submits that it has an indisputably effective judicial system, whereby any victim of alleged human rights violations, whether an individual or a legal entity, can be able to appeal against such violations, in accordance with international human rights standards. According to the Respondent State, this reality has been confirmed by countries reputed to be the most fervent defenders of human rights, following the example of Norway, in *Norwegian Prosecuting Authority v. Bandora*, and Canada, in *Mugesera v. Minister of Citizenship and Immigration*, *Minister of Public Safety and Emergency Preparedness,* as well as by international courts, such as the ECHR in the case of *Ahorugeze v. Sweden* and the International Criminal Tribunal for Rwanda *in the matter of Prosecutor v. Jean Uwinkindi*.

293. According to the Respondent State, having decided to act on behalf of the alleged victims, the Applicant State had to prove that it had taken concrete steps to comply with the rule of exhaustion of local remedies before its courts, which it did not do in the instant case.

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294. In its Reply, the Applicant State submits that the objection should be dismissed. It argues that the diplomatic protection procedure is inapplicable in human rights cases dealt with by regional courts with special jurisdiction in the matter.

295. It adds that, in international law, diplomatic protection is part of the issue of the treatment of foreigners on the territory of a State of which they are not nationals. It notes that in the instant case, the Respondent State does not contest that the facts of the case took place on Congolese territory, which substantially deprives the situation of any possibility of considering, even theoretically, the issue of diplomatic protection. It follows that the requirement of exhaustion of local remedies does not apply in the instant case.

296. The Applicant State cites the United Nations International Law Commission's Draft Articles on Diplomatic Protection, which states that "[t]he individual has rights under international law but remedies are few. Diplomatic protection exercised by a State at the inter-State level remains an important remedy for the protection of persons whose human rights have been violated abroad".

297. The Applicant State also indicated that the Commission did not consider Communication 227/99 - *DRC v. Burundi, Rwanda and Uganda* brought before it from the point of view of diplomatic protection, given the nature of human rights litigation.

298. According to the Applicant State, a state can only exercise diplomatic protection when it has established a direct link of nationality with the individual benefiting from such protection. However, in regional human rights protection systems, it is not necessary to prove the nationality of the individual whose rights are being defended.

299. In the same vein, the Applicant State adds that diplomatic protection has always been considered as a procedure that the State exercises for itself, which justifies its right to bring or not to bring an action, its status as a litigant and that of indirect victim. It is also submitted that in the African human rights protection system, however, the status of victim, even indirectly, is not required of an applicant, as the Court recalled in its judgment of 4 December 2020 in the matter of *Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin*.

300. At the hearing, the Applicant State reiterated the content of its submissions. It argued, moreover, that it does not seek to exercise diplomatic protection in the present proceedings. It added that, in any event, the nature and gravity of the alleged violations makes the rule of exhaustion of local remedies inapplicable.

301. According to the Applicant State, the assessment of the efficiency of a remedy is not systematic, and neither is it done in absolute terms. In this regard, it referenced the Court's judgment in the matter of *Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin*.

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302. In its Response, the Respondent State reiterates its position on the need to exhaust local remedies, even in inter-State cases, as is clear from the ECHR's established case law, notably in the matter of *Ukraine and Netherlands v. Russia* judgments. It contends that if the invocation of diplomatic protection is relevant before the ECHR, it is equally relevant before this Court.

303. In this respect, the Respondent State submits that this Application has been filed under Article 5(1)(d) of the Protocol, taken up in substance by Rule 39(1) of the Rules, under which the State party whose national is the victim of a human rights violation may bring the case before the Court. It therefore considers that the Applicant State cannot deny that the present action is equivalent to traditional requests for diplomatic protection.

304. The Respondent State contends that the argument that diplomatic protection only applies to complaints relating to violations committed abroad has not been substantiated and is therefore inapplicable.

305. At the hearing, the Respondent State reiterated the content of its submissions. It added that the fact that the question of exhaustion of local remedies was presented from the point of view of diplomatic protection is irrelevant. In its view, the essential point is that local remedies were not exhausted in the present case. It is the case, however, that this principle of customary international law applies in inter-state cases.

306. The Respondent State further submitted that this requirement does not depend on the subjective opinion of the Applicant State as to availability,

effectiveness and adequacy of local remedies. In that regard, it argued that it was for the Applicant State to show that the alleged victims exhausted the remedies or that those remedies did not meet the required characteristics.

307. The Respondent State contends that the claims of the alleged victims could be examined before its courts and that, consequently, there was no reason not to exhaust local remedies.

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308. The Court notes that, under Article 56(5) of the Charter, restated in Rule 50(2)(e) of the Rules, applications filed before it must be filed after all local remedies have been exhausted, if any, unless it is clear that the proceedings thereof are unduly prolonged.

309. The Court also notes that local judicial remedies must be available, that is, they must be capable of being pursued without impediment. They must also be effective and sufficient, in the sense that they are capable of remedying the situation in question.[39] In accordance with the Court's established jurisprudence, the rule is waived only where such remedies do not meet the requirements of availability, effectiveness and sufficiency or are unreasonably prolonged.[40]

310. In addition, the Court has consistently held that it examines the exhaustion of local remedies in the light of the specific circumstances of each case.[41]

311. The Court notes that, in the present case, the objection alleging non-exhaustion of local remedies is based on the fact that the Applicant State did not exhaust the remedies available under the rules of diplomatic

[39] *Lohé Issa Konaté v. Burkina* Faso (merits) (5 December 2014) 1 AfCLR 314, § 108 and *Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin* (jurisdiction and admissibility) (2 December 2021) 5 AfCLR 94, § 75.
[40] *Kijiji Isiaga v. United Republic of Tanzania* (merits) (21 March 2018) 2 AfCLR 218, § 44; *African Commission on Human and Peoples' Rights v Republic of Kenya* (merits) (26 May 2017) 2 AfCLR 9, §§ 93-94.
[41] *Sébastien Germain Marie Aïkoué Ajavon v Republic of Benin* (merits) (29 March 2019) 3 AfCLR 130, § 110.

protection, namely, according to the Respondent State, the remedies for any victims before Rwandan courts.

312. The Court notes, without prejudging the merits of the Application, that the allegations by the Applicant State suggest systemic and massive violations, notably based on the number of alleged victims.[42] In the circumstances, the Court finds that it is neither reasonable nor practical to require prior exhaustion of local remedies.[43]

313. Accordingly, the Court dismisses this limb of the objection to admissibility based on non-exhaustion of local remedies available under the rules of diplomatic protection.

b. On alleged non-exhaustion of existing regional and international remedies

314. According to the Respondent State, Article 50 of the Charter does not specify exactly which remedies must be exhausted, particularly in inter-State proceedings, which remain exceptional cases before both the Commission and the Court.

315. The Respondent State submits that the determination of such remedies requires examination in the light of the rules of interpretation set out in the Vienna Convention on the Law of Treaties 1969 (VCLT). In this respect, it argues that Article 56(5) of the Charter must be interpreted in the light of Article 31(3)(c), in the sense that "any relevant rules of international law applicable in the relations between the parties" shall be taken into account,

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[42] See p. 4 of Application: 130 dead as a result of the Kishishe-Bambo massacre on 29 and 30 November 2022; 20,000 children deprived of school education; 520,000 internally displaced persons. See pages 6 and 7 of the Application: at least 17 dead as a result of the Ruvumu massacre on 21 June 2022; at least 30 dead as a result of the Kazaroho massacre on 26 February 2023.

[43] African Commission on Human and Peoples' Rights, Communications 54/91-61/91-96/93-98/93-164/97_196/97-210/98 : Malawi Africa Association, Amnesty International, Madam Sarr Diop, Inter-African Union for Human Rights and RADDHO *, Association of Widows and Beneficiaries, , Mauritanian Human Rights Association v. Mauritania; Communications 25/89-47/90-56/91-100/93 Free Legal Assistance Group, Lawyers' Committee for Human Rights, Inter-African Human Rights , Jehovah's Witnesses / Democratic Republic of Congo; Communications 279/03-296/05 : Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) / Sudan Centre for Human Rights.*

which includes customary rules on diplomatic protection, as set out in the arbitral award of the International Centre for Settlement of Investment Disputes in the matter of *Orascom TMT Investments SARL v. People's Democratic Republic of Algeria*. In its view, the Applicant State was obliged to exhaust the remedies available to the persons concerned.

316. The Respondent State further argues that the interpretation must take into account any subsequent practice in the application of the treaty, as set out in Article 31(3)(b) of the VCLT. In this respect, it submits that since 2010, the Commission has amended its Rules of Procedure by introducing, in Article 87(2)(b), the obligation for any State to provide information on "measures taken to exhaust regional or international procedures of settlement or good offices". This means, according to the Respondent State, the remedies to be exhausted also include international and regional remedies, including negotiations, which is logical in the context of the growing role of sub-regional human rights mechanisms.

317. The Respondent State also argues that an examination of the context of Article 50 of the Charter corroborates this position, since any inter-State procedure requires prior dialogue between the States concerned, in accordance with Article 47 of the Charter, and must allow time for reflection to enable them to arrive at a mutually satisfactory solution in application of Article 48 of the said Charter.

318. According to the Respondent State, therefore, the remedies to be exhausted by the Applicant State include not only the relevant remedies for natural persons, victims of the alleged violations, but also any remedies available at the inter-State level, such as negotiations and good offices.

319. The Respondent State maintains that the Applicant has not proven that it has exhausted or attempted to exhaust such remedies, which renders its application inadmissible.

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320. The Applicant State argues, however, that the requirement of exhaustion of domestic remedies cannot be applied in the instant case for three reasons.

321. It submits that, firstly, this requirement applies when the violations of human and peoples' rights are committed by the Respondent State on its territory and the applicant must resort to the jurisdictional and non-jurisdictional bodies of that State. It submits that since the violations have been committed by the Respondent State on the Applicant State's territory, there are no domestic remedies and therefore the requirement to exhaust them does not apply. In this respect, it refers to *Communication 227/99 - DRC v. Rwanda, Uganda and Burundi*, in which the African Commission held that when human rights violations were committed by the Respondent State on the territory of the Applicant State, "local remedies do not exist, and the question of their exhaustion does not, therefore arise". In its opinion, therefore, there is no reason to depart from this jurisprudence, not only because of the complementary nature of the two bodies, but also in order to avoid conflicting decisions.

322. Secondly, as far as the Applicant State is concerned, this Application relates, *inter alia*, to the allegation of serious and massive violations of human rights committed in a context of armed conflict on its territory, involving the armed forces of the coalition. It avers that, in these circumstances, it is inappropriate for it to be required to exhaust the Respondent State's local remedies, which would have been impossible and ineffective.

323. Thirdly, the Applicant State argues that the rule of exhaustion of local remedies is flexible insofar as massive and serious violations of human rights are committed against a State, especially where it is neither practical nor possible to seize domestic courts.

324. The Applicant State submits that in such a case, the Court is called upon to remedy this situation in order to render fair justice. The Applicant State considers that in the instant case, this need is reinforced by the conduct of

the Respondent State, through the practice of its State organs since 1998, by the repeated commission of human rights violations, the impunity of its agents who are perpetrators of the said violations, and the official tolerance of other perpetrators of violations who it knows and who are on its territory but who it refuses to try or extradite despite the requests it has received to this effect.

325. The Applicant State submits that the Court may be guided by the jurisprudence of the ECHR, in particular, in the *matter of Akdivar and others v. Turkey* which held that the rule of exhaustion of local remedies does not apply "where an administrative practice consisting of a repetition of acts incompatible with the Convention and official tolerance by the State authorities has been shown to exist, and is of such a nature as to make proceedings futile or ineffective".

326. Furthermore, the Applicant State argues that the Respondent State deliberately confuses the local remedies provided for under Article 50 of the Charter with the so-called international and regional remedies. It refutes the argument that the existence of regional and international remedies is 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 Charter corroborates this conclusion, since any inter-State procedure requires prior dialogue between the States concerned (Article 47 of the African Charter) and must allow time for reflection to enable them to reach a mutually satisfactory solution (Article 48 of the Charter)".

327. According to the Applicant State, in this respect, the Respondent State specifies that Articles 47, 48 and 49 of the Charter, only refer to the negotiation capacity of the parties, which was broadly confirmed by the African Commission in Communication 227/99 - *Democratic Republic of Congo v. Burundi, Rwanda and Uganda*.

328. The Applicant State submits that, in the instant case, there is no remedy to be exhausted, which makes the Application admissible.

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329. At the hearing, the Applicant State reiterated the content of its submissions. It also argued that in the present case, it is not bound by the obligation arising from Articles 28 and 29 of the Great Lakes Pact since it did not relate to this Court, but rather to the "general mechanisms of justice" established by the AU.

330. It further submitted that the procedure provided for in Articles 47 and 48 of the Charter is optional and that referral to the Court without prior compliance with that procedure does not contravene the Charter.

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331. The Respondent State contends that the Applicant State's argument should not convince the Court. It argues that Communication *DRC v. Rwanda, Uganda and Burundi* must be seen as a different situation, insofar as three different States were involved, making it impossible to exhaust all local remedies. It argues that in this Application, on the other hand, it is a sole Respondent State and its courts are accessible to the Applicant State and to the persons whose rights have allegedly been violated.

332. The Respondent State also submits, on the question of admissibility, that the Court has often diverged from the Commission's view, in particular by holding in *African Commission on Human and Peoples' Rights v. Republic of Kenya*, that while it is true that the admissibility criteria applied by the Commission and this Court are similar in substance, it is the case that the admissibility procedures with respect to an Application filed before the Commission and this Court are distinct and shall not be conflated.

333. It concludes that the position adopted by the Commission in Communication 227/99 – *DRC v Rwanda, Uganda and Burundi* is not decisive and that the Court cannot be guided by it.

334. At the hearing, the Respondent State reiterated the content of its submissions. It also asserted that the Court could only hear the instant case if the parties have previously attempted to settle the case through non-judicial avenues, in particular, through negotiation, conciliation or any other political mechanism, which are conditions laid down in the treaties invoked by the DRC in support of its Application.

335. In this respect, the Respondent State cites Articles 28 and 29 of the Great Lakes Pact, which provide for the settlement, through non-judicial avenues, of any dispute between States Parties, in particular, through negotiation, investigation, conciliation or any other political mechanism within the framework of the Great Lakes follow-up mechanism. On the other hand, it cites Articles 47 *et seq.* of the Charter, which provide for prior amicable settlement in the event of a dispute.

336. According to the Respondent State, the Applicant State makes no mention in its Application of any attempt at conciliation or negotiation, nor did it take any such steps after preliminary objections had been filed.

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337. The Court observes, as it has already indicated in paragraph 308 of this Ruling, that the local remedies to be exhausted are internal judicial remedies, which precludes all regional or international remedies. It follows that the argument that regional and international remedies were not exhausted in this instant application cannot be sustained.

338. Accordingly, this limb of the objection based on non-exhaustion of available regional and international remedies is dismissed**.**

339. In view of the foregoing, the Court dismisses the objection based on non-exhaustion of local remedies.

iv. Objection alleging that the Application concerns cases that have been settled in accordance with either the principles of the Charter of the United Nations, or the Constitutive Act or the provisions of the Charter

340. The Respondent State argues that the admissibility requirement laid down in Article 56(7) of the Charter, reiterated in Rule 50(2)(g) of the Rules, derives from the principles of international law: *ne bis in idem* and *res judicat*a, as underlined by the African Commission in Communication *Bakweri Land Claims Committee v. Cameroon*. The Commission underscored that the requirement under Article 56(7) of the Charter is met when a case involves the same parties and the same issues to a case that has been settled by an international or regional mechanism**,** as it emerges from the Communication *Patrick Okiring and Agupio Samson (represented by Human Rights Network and ISIS-WICCE) v. Republic of Uganda*. It argues that the Court has endorsed this jurisprudence.

341. The Respondent State contends that, in the instant case, the matter has already been settled, or at least brought before various other bodies, in accordance with the principles of the Charter of the United Nations or the Charter, therefore the Application does not meet the requirement of Rule 50(2)(g) of the Rules and must be declared inadmissible.

342. The Respondent State submits that the determination of this admissibility requirement involves considering cases brought before another court or tribunal, as it emerges from Rule 93(2)(j) of the Commission's Rules of Procedure of 2010, which requires individual complainants to provide "an indication that the complaint has not been submitted to another international settlement proceeding as provided in Article 56(7) of the African Charter".

343. In this respect, the Respondent State submits that the Commission would have declared Communication *Patrick Okiring and Agupio Samson v. Uganda* inadmissible if its authors had not withdrawn the parallel proceedings pending before the EACJ. Similarly, the Court would have

declared *Urban Mkandawire v. Republic of Malawi* inadmissible had the Applicant not withdrawn his parallel complaint before the Commission.

344. The Respondent State contends that in the instant case, the matter has already been settled, or at least brought before various other bodies. It argues that it is also pending before the EACJ and that, should the Applicant State fail to prove that it has discontinued its action before that court, this Application should be declared inadmissible.

345. Finally, the Respondent State submits that Rule 83(2)(c) of the Rules of Procedure of the Commission provides, as a condition for the admissibility of inter-State cases, that information be given on "any other procedure of international investigation or international settlement to which the interested State Parties have resorted". In its opinion, although there may be no corresponding provision in the Rules, the fact that the Applicant State failed to inform the Court of the referral to the EACJ should result in the inadmissibility of the Application.

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346. In its Reply, the Applicant State submits that the objection should be rejected. To this end, it argues that the Respondent State confuses the authority of *res judicata* with that of *lis pendens*.

347. Firstly, the Applicant State points out that the *ne bis in idem* principle concerns cases settled under positive international law and precludes any possibility of re-examining of a case that has given rise to a judicial decision once the issues raised by the claimant have been settled there.

348. It submits that, in *Jean Claude Roger Gombert v. Republic of Côte d'Ivoire*, *Suy Bi Gohore Emile et al v. Republic of Côte d'Ivoire* and *Dexter Eddie Johnson v. Republic of Ghana*, the Court held that the application of this principle requires the convergence of three major conditions, namely, the identity of the parties, identity of the applications or their supplementary or alternative nature or whether the case flows from a request made in the

initial case, and the existence of a first decision on the merits. It also argues that in the instant case, the Respondent State has itself acknowledged that there is no decision on the merits concerning the Parties, therefore, it is not necessary to ascertain whether the other conditions are met.

349. The Applicant State avers that, significantly, the identity of subject matter between this Application and the one pending before the EACJ has not been established. It argues that the latter relates to the interpretation and application of the Treaty for the Establishment of the East African Community with regard to violations of that instrument, whereas this Application concerns the allegation of gross, flagrant and mass violations of human rights.

350. Secondly, the Applicant State argues that the principle of *res judicata* should also not be confused with the principle of *non bis in idem*. In its view, it reflects a presumption of conformity with the law predicated upon a judicial decision, which must therefore be binding on the parties. According to the Applicant State , this requirement is laid down in Article 30 of the Protocol, the content of which was clarified by the Court in the matter of *Suy Bi Gohoré Emile and Others v. Republic of Côte d'Ivoire*.

351. In this respect, the Applicant State underscores that *res judicata* prevents a legal issue decided between the same parties from being re-examined, thereby calling into question the authority of an earlier decision which is binding on the parties. It points out that infringement of the principle of *non bis in idem* is always coupled with infringement of the principle of *res judicata*, but the opposite is not always true.

352. It reiterates that the Respondent State itself has acknowledged that there is no previous judicial decision relating to the violations alleged in this Application. It concludes that the argument relating to non-compliance with the *res judicata* principle cannot prosper in the instant case.

353. Thirdly, the Applicant State avers that the question of *lis pendens* does not arise in the instant case, since under Rule 37(1) of the Rules, *lis pendens* can only be invoked where the same case is pending before the Court and the Commission. Furthermore, it observes that, in his dissenting opinion in *Tike Mwambipile and Equality Now v. United Republic of Tanzania*, Judge Ben Achour stressed that "the principle (of *litis pendence*), which is highly controversial, cannot be applied whenever a case is pending before another court or human rights body".

354. The Applicant State points out that if the Court decides to disregard the objection, it must comply with substantive requirements, namely, similarity of the parties and of the subject matter of the cases brought before at least two courts which, moreover, must be of the same order, having regard to the nature of their tasks and their jurisdiction, which is not the situation in the instant case. In this regard, it cites the judgment of the ICJ in the matter of *Certain German Interests in Polish Upper Silesia (Germany v. Poland)*.

355. In this respect, the Applicant State explains that the Court is an international court with jurisdiction over the protection of human rights in Africa, whereas the EACJ is a court whose jurisdiction, mainly relating to the interpretation and application of Community law, is confined to one region in Africa.

356. At the hearing, the Applicant State reiterated the content of its submissions. It asserted that Rule 50(2)(g) of the Rules could not be interpreted differently from the Court's established jurisprudence. It further submitted that the present Application is different from proceedings before the EACJ, and that, in any event, *lis pendens* is not a ground for this Court declaring an application inadmissible.

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357. In its Response, the Respondent State argues that the Applicant's assertion that *lis pendens* has no normative basis in the African human rights protection system, nor in any practice of the instant Court, since it is a

general principle of law, is unfounded. It maintains that it applies to any international dispute settlement system.

358. It further contends that, in this respect, *lis pendens* also covers proceedings before other regional human rights bodies and is, therefore, applicable before this Court.

359. Furthermore, the Respondent State argues that, contrary to the submission by the Applicant State, the instant case and the one pending before the EACJ are similar. It argues that the cases have the same subject, namely, the alleged violations of human rights, and subsequently, the promotion and protection of human and peoples' rights, in accordance with the provisions of the Charter. Moreover, it concerns the same parties. It observes that the assertion that the Court and the EACJ have different mandates is irrelevant, since *lis pendens* is analysed in relation to the identity of the parties, the similarity of the interest in bringing the action and the remedies sought. The Respondent State considers that this criterion is met given that the EACJ proceedings and the instant proceedings concern the same parties, have the same cause of action and the same reliefs sought.

360. At the hearing, the Respondent State reiterated the content of its submissions. It added that the EACJ's jurisdiction to interpret and apply the EAC treaty does not preclude it from hearing human rights issues relating to the said treaty and subsequent claims for reparation as, in its view, it emerges from prolific EACJ jurisprudence. In this respect, it cites the matter of *Katabazi and Parti Démocratique v. the Secretary General of the East African Community and four others*.

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361. The Court notes that it emerges from Article 56(7) of the Charter, restated in Rule 50(2)(g) of the Rules, that on the pain of being declared inadmissible, applications submitted to it must not concern cases which have been settled by the States concerned in accordance with the principles

of the Charter of the United Nations, the Constitutive Act or the provisions of the Charter.

362. The Court further notes that, as it has consistently held, notably in *Jean Claude Roger Gombert v. Republic of Côte d'Ivoire,* the concept of settlement implies convergence of three requirements, namely (i) identical parties, (ii) identical claims, their additional or alternative character or the character of a claim brought in an original case, and (iii) the existence of an original decision on the merits.[44]

363. As regards the first condition, the Court notes, and as it also emerges from the written submissions and the concurring submissions of the parties, that on 15 September 2023, the Applicant State lodged an application with the EACJ against the Respondent State. The requirement as to the parties being identical is, therefore, met.

364. As regards the requirement that the applications must relate to the same subject-matter, the Court notes that the present Application concerns facts connected with an armed conflict that took place between November 2021 and 11 August 2023, when the Application was filed. The purpose of the Application is to establish violations of human rights protected by the Charter, the Protocol on the Rights of Women, the ACRWC, the ICCPR and the ICESCR.[45] The Court also notes that the Application before the EACJ concerns events associated with an armed conflict that took place between 11 July 2022 and 15 September 2023. The Application before the EACJ is requesting it to declare violations of the East African Community's founding treaty.[46]

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[44] *Jean Claude Roger Gombert v. Republic of Côte d'Ivoire* (jurisdiction and admissibility) (22 March 2018) *2* AfCLR 270, § 45.

[45] See the operative part of the Application: The Applicant State requests the Court to declare that the Respondent State violated Articles 1, 4, 5, 6, 7(1)(a), 14, 16, 17, 18(1), 22, 23 and 24 of the Charter; Articles 3, 4, 10, 11, 12, 15, 18(1) and 19(c) of the Protocol to the Charter on the Rights of Women; Articles 5(1) and 11(1) of the African Charter on the Rights of the Child; Articles 2(1), 6(1), 7, 8, 9(1), 10(1) and 12(1) of the ICCPR; Articles 12(1) and 13(1) of the ICESCR.

[46] See page 6 of the Application before the EACJ: The Applicant State alleges violations of Articles 5(3)(f), 6(a), (b),(c),(d), 7(2), 8(1)(c) and 124(1),(2) and (5) of the EAC Treaty. See page 10 of the Application: 'the present proceedings are based on Articles 5(3)(f), 6(a),(b),(c),(d), 7(2), 8(1)(c) and 124(1),(2) and (5) of the ACE Treaty'.

365. The Court, therefore, finds that the two applications have different subject matter and also seek different remedies. Consequently, the second requirement is not satisfied in the instant case.

366. With regard to the third requirement, namely, the existence of a previous decision on the merits, the Court notes that there has been no decision on the merits as at the time of filing the present Application, which means the case has not been settled in accordance with the principles of the United Nations Charter, the Constitutive Act of the African union or the provisions of the Charter.

367. Consequently, the Court dismisses this objection on the grounds that the Application concerns a case which has been settled in accordance with either the principles of the United Nations Charter, or the Constitutive Act or the provisions of the Charter and finds that the Application meets the requirements of Article 56(7) of the Charter, restated by Rule 50(2)(g) of the Rules.

c. Other admissibility requirements

368. The Court notes that the Respondent State does not raise any objection to the admissibility of the Application based on the following requirements: indication of the applicant's identity , the use of disparaging or insulting language, and submission of the Application within a reasonable time after exhaustion of local remedies or after the date specified by the Court as the date on which the time-limit for bringing the case before it began to run. Nonetheless, the Court must satisfy itself that those requirements are met.

369. As regards the identity of the Applicant, the Court notes that the Applicant State has identified itself by its official name and, therefore, the requirement is met.

370. In addition, the Court notes that the Application does not contain any disparaging or insulting language against the Respondent State, its

institutions, or the AU. The Court, therefore, finds that this requirement is also met.

371. As regards filing the Application within a reasonable time, the Court points out that Article 56(6) of the Charter, restated in Rule 50(2)(f) of the Rules, lays down two alternative criteria for determining the starting point of reasonable time: the date of exhaustion of local remedies or the date set by the Court itself. The Court further recalls its established jurisprudence that the reasonableness of time must be assessed on a case-by-case basis, in light of the specific circumstances of each case.[47]

372. The Court emphasises, with regard to the first criterion, that, as it has held at paragraph 312 of this Ruling, the Applicant State cannot be required to exhaust local remedies owing to allegations of serious or massive violations of human rights. Accordingly, this criterion does not apply in the present case.

373. With regard to the second criterion, namely, setting a date on which the time-limit for bringing the case before it begins to run, the Court notes that it emerges from the Application that the facts alleged occurred until at least 26 February 2023, the date of the alleged massacre at Kazaroho in North Kivu, in which at least 30 people were killed. The Court retains this date as when the time-limit for its referral began to run. Between that date and the date of the Court's referral on 21 August 2023, five months and 27 days elapsed. The Court considers that this time-limit is manifestly reasonable.[48]

374. Accordingly, the Court finds that the Application satisfies the requirement under Rule 50(2)(f) of the Rules.

[47] *Anudo Ochieng Anudo v. United Republic of Tanzania (merits)* (22 March 2018) 2 AfCLR 248, § 57; *Norbert Zongo and Others v. Burkina Faso* (merits) (28 March 2014) 1 AfCLR 219, § 92; *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 73.
[48] *Bernard Balele v. United Republic of Tanzania* (merits and reparations) (30 September 2021) 5 AfCLR 338, § 65; Masoud Rajabu v. United Republic of Tanzania (merits and reparations) (25 June 2021) 5 AfCLR 282, § 51.

375. In light of all the foregoing, the Court considers that the Application meets the admissibility requirements under Article 56 of the Charter restated in Rule 50(2) of the Rules. Accordingly, the Court declares it admissible.

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376. The Court, having held that it has jurisdiction, and having declared the Application admissible, remains seized of the matter to examine the merits, reparations and costs.

377. For purposes of examining the merits of the case, the Court orders the Respondent State to file its Response on the merits within 90 days of notification of the present Ruling, and the Applicant State to file its Reply within 45 days of receipt of the said Response, respectively in accordance with Rule 44(1) and 44(2) of the Rules of Court.

VII. OPERATIVE PART

378. For these reasons,

THE COURT,

Unanimously,

On jurisdiction

i. *Dismisses* the Respondent State's objections to jurisdiction;
ii. *Declares* that it has jurisdiction to hear the present Application.

On admissibility

iii. *Dismisses* the Respondent State's objections to the admissibility of the Application;

iv. *Declares* the Application admissible;

v. *Reserves* its decision on the merits, reparations and costs of the proceedings;

vi. *Orders* the Respondent State to file its Response on the merits within 90 days of notification of the present Ruling;

vii. *Orders* the Applicant State to file its Reply to the Response within 45 days of receipt of the Response.

Signed:

Modibo SACKO, President;

Chafika BENSAOULA, Vice-President;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Blaise TCHIKAYA, Judge;

Stella I. ANUKAM, Judge;

Iman D ABOUD, Judge;

Dumisa B. NTSEBEZA, Judge;

Dennis D. ADJEI, Judge;

Duncan GASWAGA, Judge,

Robert ENO, Registrar.

Done at Arusha, this Twenty-sixth day of June in the Year Two Thousand and Twenty-Five in English and French, both texts being equally authoritative.