Forging an "African Forum" for Interstate Human Rights Disputes: Jurisdiction, Extraterritoriality and Subsidiarity in *DRC v. Rwanda*

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Titolo: Verso un "foro africano" per le controversie interstatali in materia di diritti umani: giurisdizione, extraterritorialità e sussidiarietà in *RDC c. Ruanda*

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1. – On 26 June 2025, the African Court on Human and Peoples' Rights (the African Court, the AfCHPR and the Court) delivered its first inter-State ruling on jurisdiction and admissibility in the case *Democratic Republic of the Congo (DRC) v. Republic of Rwanda*. The application asserted the existence of an international armed conflict between the Congolese armed forces (*Forces armées de la République démocratique du Congo*, AFDRC) and an armed coalition composed of the Rwandan Defence Forces (RDF) and the Mouvement du 23 mars (M23), a rebel movement acting on Congolese territory. The DRC claimed that Rwanda's direct military presence and its material, logistical and political support to M23 resulted in serious and widespread violations of several rights protected by the 1981 African Charter on Human and Peoples' Rights (ACHPR) and by other human rights treaties. In essence, the applicant State sought declarations that Rwanda had violated multiple treaty obligations, together with findings that Rwanda was obliged to withdraw all its troops from the territory of the Democratic Republic of the Congo and to cease forthwith all forms of support to the M23, and that it owed adequate reparation to the DRC and its people as victims of the violations (AfCHPR, *Democratic Republic of the Congo v. Rwanda*, 26-06-2025, [Jurisdiction and Admissibility], §§ 8, 23).

The dispute arose in a complex regional context (on the international law concerns raised by robust UN peacekeeping in Eastern DRC, see M. Longobardo, *Introduction to the Symposium "The MONUSCO Intervention Brigade at Ten" – Ten Years of the MONUSCO Intervention Brigade: International Law Concerns on the Future of Peacekeeping and the Protection of Civilians*, in 15 *Jour. of Int. Hum. Leg. St.* 203 (2024)). Earlier phases of the "Eastern Congo conflict" (on this topic, see J. K. Stearns, *Causality and conflict: tracing the origins of armed groups in the eastern Congo*, in 2(2) *Peacebuilding* 157 (2014)) had already been litigated before the African Commission in *Democratic Republic of the Congo v. Burundi, Rwanda and Uganda*, where the Commission found that the respondents' armed forces – while exercising effective control over parts of the Congolese territory – committed grave and

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massive violations of the African Charter. Specifically, the Commission held the respondent States internationally responsible, ordered immediate withdrawal of their troops and recommended reparations (see African Commission, *DRC v. Burundi, Rwanda and Uganda*, 29-5-2003, [Merit], §§88-97; in literature, J. D. Mujuzi, *The African Commission on Human and Peoples' Rights and the promotion and protection of refugees' rights*, in 9 *Afr. Hum. Rights L.J.*, 160 (2009)). Parallel attempts to litigate the matter before the International Court of Justice (ICJ) in *Armed Activities on the Territory of the Congo (New Application: 2002) (DRC v Rwanda)* ended in 2006 with the ICJ declining jurisdiction for lack of an operative basis of consent: although the DRC invoked several compromissory clauses, they were not effective to Rwanda, *inter alia* due to reservations and/or unmet procedural preconditions (ICJ, *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, 3-2-2006, [Judgement] § 70, §79, § 93, §101 ff; see A. Orakhelashvili, *Case concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Rwanda), Jurisdiction and Admissibility, Judgement of 3 February 2006*, in *55 Int'l & Comp. L.Q.* 753 (2006)). Aspects of the current crisis have also been brought before the East African Court of Justice (EACJ), alleging an act of aggression, violations of sovereignty and massive human rights abuses in North Kivu in breach of the EAC Treaty. As discussed in Sections 2.2 and 3.3 below, the EACJ declined to treat the AfCHPR case as a bar to its own jurisdiction (EACJ, *The Minister of Justice of the Democratic Republic of Congo (DRC) v. The Attorney General of the Republic of Rwanda*, 21-11-2025, [First Instance Division], § 120).

Against this background, the AfCHPR's ruling might represent a pivotal moment in African and – to some extent – regional human rights inter-State litigation. Indeed, while deferring questions of responsibility and reparation to the merits phase, the Court confirmed its jurisdiction over the DRC's inter-State application, clarifying: (i) that allegations of violations of rights protected by the African Charter and by other human rights treaties ratified by Rwanda are sufficient to establish material jurisdiction; and (ii) that acts committed by Rwandan organs and by the M23 movement – when supported or directed by Rwanda – fall within its territorial reach on an extraterritorial basis (AfCHPR, *DRC v. Rwanda*, §§ 76, 158, 169-171, 376-377). This opening decision thus marks the first occasion on which the Court has upheld its jurisdiction in an inter-State contentious case, thereby seeking to strike a balance between collective human-rights enforcement and the political sensitivities of armed conflict in Africa (see, more generally, O. Anne, W. Vandenhole, *Enforcement of extraterritorial human rights obligations in the African human rights system*, in M. Gibney, G. E. Türkelli, M. Krajewski, W. Vandenhole (Eds.), *The Routledge Handbook on Extraterritorial Human Rights Obligations*, 2021, Abingdon-New York, 140-150).

2. – In order to appreciate the implications of the ruling, it seems first appropriate to clarify the procedural and normative architecture governing inter-State access to the African Court (see G. Pascale, *La tutela dei diritti umani in Africa: origini, istituzione e attività della Corte africana dei diritti dell'uomo e dei Popoli*, in *La Comunità internazionale*, 2012, 567-592). In the present case, the Court's jurisdiction is anchored in a specific set of instruments: (i) the ACHPR; (ii) the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol), adopted in 1998 and in force since 2004; and (iii) the 2020 Rules of Court of the African Court on Human and Peoples' Rights (the Rules) (for a systematic reconstruction see N. Rubner, *The African Charter on Human and Peoples' Rights*, Woodbridge, 2023, 75 ff.). Under Article 3(1) of the Protocol, as reflected in Rule 29, the Court exercises contentious jurisdiction over all cases and disputes concerning the interpretation and

application of the Charter, the Protocol and any other relevant human rights instrument ratified by the States concerned, being also bound to examine their jurisdiction. Access for States is enshrined in Article 5(1)(d) of the Protocol and Rule 39(1)(d), which allow a State party to submit the case to the Court when its nationals are alleged victims of human rights violations, without prior resort to the African Commission. This "direct" route co-existed, at least in principle, with the more traditional path of inter-State communications before the African Commission under Articles 47-54 of the Charter, which could lead to a referral to the AfCHPR under Article 5(1)(a) of the Protocol and Rule 36 (for an updated institutional reconstruction see T. Maluwa, *African Court on Human and Peoples' Rights (ACtHPR)*, in *Max Planck Enc. of Public Int. Law*, 2025, §§ 15-28).

Substantively, the application was based on a dense network of African and universal human rights treaties. The DRC alleged grave and large-scale violations of several rights, including the obligation to respect and protect Charter rights, core civil and political guarantees and a range of socio-economic and solidarity entitlements (AfCHPR, *Democratic Republic of the Congo v. Rwanda*, § 8). These rights were pleaded in conjunction with the relevant provisions enshrined in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol, 2003), the African Charter on the Rights and Welfare of the Child (ACRWC, 1990), and the 1966 International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR); the application also referred, as contextual support, to non-binding regional instruments, including the Pretoria Declaration on Economic, Social and Cultural Rights in Africa (2004) (§§ 8, 104-106, 116). Moreover, the applicant asserted that the conflict situation was incompatible – *inter alia* – with the 1945 Charter of the United Nations, the 2000 Constitutive Act of the African Union, the 2006 Pact on Security, Stability and Development in the Great Lakes Region and the 2013 Peace, Security and Cooperation Framework for the DRC and the Region (§ 102), claiming Rwanda's international responsibility.

Within this framework, the ruling is structured around two main clusters of issues – jurisdiction and admissibility – which also organised the remainder of the next two sections (see M. A. Plagis, *Jurisdiction and Admissibility: African Court on Human and Peoples' Rights (ACtHPR)*, in *Max Planck Enc. of Int. Proc. Law*, 2021, §§ 2-9).

2.1 – In its examination of jurisdiction, the AfCHPR relied on Rwanda's first preliminary objection, based on the alleged absence of a prior 'dispute', to clarify that Article 3(1) of the Protocol does not import the ICJ's strict conception of a 'legal dispute' developed in PCIJ/ICJ case law. Rather, it confers *ratione materiae* jurisdiction over 'cases and disputes' concerning the interpretation and application of the Charter, the Protocol, and any other relevant human rights instrument ratified by the State concerned. Indeed, the respondent argued that the Court lacked material jurisdiction because the Protocol presupposed the existence of a legal dispute in the strict sense developed by the PCIJ and the ICJ, and that such a dispute had not crystallised through prior diplomatic exchanges (AfCHPR, *DRC v. Rwanda*, §§ 34-37). On this objection, the Court acknowledged that the notion of "dispute" remained relevant to its work but refused to turn it into an autonomous jurisdictional precondition. Consistently with its case law (AfCHPR, *Ajavon v. Benin*, 2-12-2021, [Jurisdiction and Admissibility], §§ 34, 37-39), the Court treated Article 3(1) as satisfied once the applicant alleges violations of rights arguably protected by the Charter or by any other relevant human-rights treaty binding on the respondent State (§ 76). This 'rights-alleged' threshold does not dispense with basic plausibility: it only means that disputes about the factual truth, attribution

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and evidentiary weight of the allegations belong – in principle – to the merits rather than to an additional jurisdictional filter. On that basis, the African Court dismissed the first objection and refused to graft an ICJ-style prior-dispute test onto the Protocol (§ 72-78, read together with §§ 31-37 and 175).

The second and third preliminary objections invited the AfCHPR to define more precisely what is considered as *other relevant human rights instruments* for the purposes of Article 3(1) in conjunction with Article 7 of the Protocol. Rwanda contended, first, that several texts invoked by the DRC – in particular the Pact on Security, Stability and Development in the Great Lakes Region, the Peace, Security and Cooperation Framework for the DRC and the Region (Addis Ababa Framework) and the Pretoria Declaration on Economic, Social and Cultural Rights in Africa – were essentially political or institutional instruments, directed at regional peace and security rather than at conferring subjective rights on individuals. Secondly, it argued that some of the treaties relied upon by the applicant had not been ratified by Rwanda, so that the requirement that instruments be "ratified by the States concerned" was not met (§§ 79-82). The Court approached these objections as an opportunity to refine, but also to demystify, the notion of relevant human rights instruments. Drawing on earlier case law (AfCHPR, *APDH v. Cote d'Ivoire*, 18-11-2016, [Merits], §§ 49, 57-61, 63-65), the Court considered that a text could fall within Article 3(1) only if it had the status of a treaty and if its object and purpose included the protection of individuals or groups through the explicit enunciation of rights or through binding obligations whose enjoyment presupposed such rights (§§ 108-115). Applying this test, the AfCHPR held that the Pretoria Declaration and the Addis Ababa Framework were not treaties and thus could not be treated as human rights instruments, and that the UN Charter and the AU Constitutive Act – although relevant as interpretative context – did not themselves spell out justiciable rights or correlative obligations for individuals (§§ 111-113, 126). By contrast, certain provisions of the Great Lakes Pact do have a human-rights character, but this finding has limited practical impact: all the core rights pleaded by the DRC were in any event protected by the African Charter, the ICCPR, the ICESCR, the Maputo Protocol and the ACRWC, all of which Rwanda had ratified (§§ 114–116). Therefore, the African Court dismissed the objection on the alleged "non-human-rights" nature of some instruments, clarifying that Article 3(1) jurisdiction hinges on the respondent State's ratification of the relevant human-rights treaties; references to non-ratifiable texts or soft-law documents could, at most, operate as interpretive context and corroborative material, not as autonomous jurisdictional bases (§§ 116–117, 126–128; see AfCHPR, *Omary and Others v Tanzania*, 28-3-2014, [Admissibility], §§ 47-48, 73, 89).

The final jurisdictional issue concerns the AfCHPR's territorial reach and the extraterritorial application of the Charter and other treaties. Rwanda invited the AfCHPR to adopt a strict territorial reading of the Charter and the other treaties relied upon, arguing that alleged violations committed in North Kivu fell outside the tribunal's territorial jurisdiction because they occurred on Congolese soil (§§ 129-33). The judges of Arusha instead consolidated a line of authority which extended the reach of Charter-based obligations wherever a State exercised power or effective control outside its borders. Relying on the Commission's decision in *DRC v Burundi, Rwanda and Uganda*, on General Comment No. 31 of the Human Rights Committee and on jurisprudence of the ICJ and other regional human rights courts (§§154-160), the AfCHPR recalled that what mattered was the factual ability of a State, through its organs, to influence or determine the enjoyment of human rights abroad. On the basis of reports by the UN Group of Experts on the DRC and of other evidentiary material, the Court considered that the presence and operations of the RDF and the sustained support provided to M23 amounted to a sufficient

degree of such authority and control over parts of Eastern Congo (§§ 167-168). Therefore, the judges characterised the situation as an international armed conflict between the DRC and Rwanda and concluded that the objection *ratione loci* had to be rejected (§ 169). Being also satisfied with the fact that both parties were bound by the Protocol and the relevant treaties at the material time, the African Court ultimately confirmed its jurisdiction *ratione personae*, *ratione loci* and *ratione temporis* (§§ 172-175).

2.2 – On admissibility, the AfCHPR used Rwanda's objections to draw a line between external admissibility filters, derived from other regional instruments, and the internal admissibility regime laid down in Article 56 of the Charter and Rule 50 of the Rules. The respondent State first relied on the Pact on Security, Stability and Development in the Great Lakes Region and on the AU Constitutive Act, read together with the Protocol on the Peace and Security Council, to argue that the DRC should have attempted negotiation, mediation, conciliation or other non-judicial procedures under Articles 28 and 29 of the Great Lakes Pact before seizing the tribunal (§§ 180-183). However, the African Court explicitly refused to infer such a sequential "peace first, courts later" rule, treating the admissibility criteria for applications – including inter-State applications brought under Article 5(1)(d) of the Protocol – as exhaustively laid down in Article 56 of the Charter and Rule 50 of the Rules. In doing so, the AfCHPR reiterated that – in procedural matters – only the Charter, the Protocol, its own Rules and, where necessary, generally recognised principles of procedure apply. The procedural clauses of the Great Lakes Pact and of the Constitutive Act cannot therefore be invoked to bar proceedings before it (§§ 176-177, 189-193, 203-204).

Still within this "external" cluster, Rwanda raised an objection based on abuse of process, alleging that the application was politically motivated, that the DRC had failed to disclose other proceedings, and that the case duplicated issues pending elsewhere (§§ 206-213, 215-216, 230-235). The AfCHPR reaffirmed that abuse of process is an exceptional notion, reserved for manifestly frivolous or bad-faith applications (§ 236, footnotes 34-35). The mere fact that a case arises in a highly politicised setting, or that it interacts with other regional tracks, does not suffice. Since the DRC's application pursued the protection of rights clearly guaranteed by the Charter and other human rights treaties and was supported by a substantial evidentiary record, the AfCHPR held that no abuse had been shown and dismissed the objection (§§ 237-239).

The second circle of objections shifted the focus to the "internal" filters in Article 56. As to Article 56(2), Rwanda argued that litigating during an ongoing conflict was incompatible with sovereign equality, non-interference and peaceful settlement, and therefore with the AU Constitutive Act (§§ 242-250). The African Court read the provision more narrowly: compatibility is satisfied where an application serves one of the Constitutive Act's objectives, in particular the promotion and protection of human and peoples' rights. It cannot be turned into a "stability clause" shielding armed conflicts from judicial scrutiny (§§ 253-259). Moreover, under Article 56(4), the respondent contended that the application was based essentially on news reports (§§260-265). The AfCHPR judges clarified that this filter only applies where an application rests exclusively on information disseminated by the mass media, understood broadly to include both press material and derivative information intended for the same channels (§§ 273-276). However, in this case, the African Court clarified that the application contained extensive documentation from UN and AU bodies and other institutional sources; such reliance on media reports was at most ancillary, so the objection was dismissed (§§ 273-277).

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The most sensitive issue concerned exhaustion of local remedies under Article 56(5). Rwanda argued that, because the DRC purported to act on behalf of individual victims, it should have sought judicial remedies in Rwanda and, more generally, exhausted available regional and international dispute-settlement procedures before seizing the AfCHPR (§§ 282-291, 315-319). The African judges declined to stretch the exhaustion rule that far, reiterating that: (i) "local remedies" in Article 56(5) refer to domestic judicial or quasi-judicial remedies in the respondent State, and do not extend to diplomatic protection or to political or quasi-judicial procedures at regional or universal level (§§ 308-309, 337-339); (ii) these remedies must be available, effective and sufficient in light of the alleged violations and the rule may be dispensed with in the presence of serious or massive violations of human rights and structural dysfunctions (§§ 309-312). Indeed, according to the Court, in situations of widespread or structural violations – or where it would be unreasonable to expect the applicant State to litigate the respondent's responsibility before that respondent's own courts – the requirement may be relaxed (§ 312). Political or diplomatic avenues, and proceedings before other international bodies, do not qualify as local remedies whose non-exhaustion bars access to the African Court (§§ 326-327, 337-339). On this basis, the judges held that the DRC was not required to bring its claims before Rwandan courts or to complete regional political processes before seizing the AfCHPR (§ 339).

Finally, Rwanda invoked Article 56(7), arguing that the matter was already "being settled" or had been "settled" elsewhere, in particular before the EACJ (§§ 340-345, 360). The African Court, instead, adopted a restrictive reading consistent with the African Commission's approach (AfCHPR, *Gombert v. Cote d'Ivoire*, 22-3-2018, [Admissibility], § 45): prior or parallel processes only preclude an application where there is identity of parties and subject-matter and a final decision on the merits (§ 362). The mere pendency of EACJ proceedings, or the existence of earlier but incomplete legal pathways, does not satisfy this "test", and – more importantly – no decision on the merits has yet been delivered in those proceedings, so that the case cannot be regarded as "settled" within the meaning of Article 56(7) (§ 366). The objection was therefore dismissed, and the AfCHPR refused to transform Article 56(7) into a broad *lis pendens* rule that would allow pending or incomplete processes in other fora to block access to its inter-State procedure (§ 367). Subsequent developments before the EACJ confirm, *ex post*, such narrow construction of non-duplication. On 21 November 2025, the EACJ entertained Rwanda's preliminary objections but did not treat the AfCHPR proceedings as depriving it of jurisdiction or rendering the reference inadmissible *ipso iure* (EACJ, *DRC v Rwanda*, §§ 80-92, §§ 104-111). Read together, the AfCHPR's narrow understanding of Article 56(7) and the EACJ's stance amount to an implicit rejection of any cross-regional *lis pendens*: what matters is not the mere factual overlap, but the distinct treaty basis and institutional function of each forum.

Read together with its approach to jurisdiction, these findings seem to endorse a new path: inter-State litigation before the AfCHPR might not be just a marginal, *extrema ratio* remedy subordinated to political or diplomatic channels, but a potentially fully-fledged enforcement avenue that operates alongside them, being also protected – at least at the admissibility stage – against attempts to re-politicise access through expansive readings of Article 56 (on the structural reasons for underutilisation of inter-State litigation in the AfCHPR see G. Pascale, *La mancata "esplosione" del contenzioso interstatale nel sistema africano di tutela dei diritti umani*, in *Dir. umani e dir. intern.*, 2021, 657-670).

3. – The ruling in *DRC v Rwanda* is certainly important for the way it disposed of Rwanda's preliminary objections, but it is even more significant in that it clarifies

the role that inter-State human rights litigation is meant to play within the African regional system. Up to this case, the AfCHPR's inter-State jurisdiction had existed largely on paper: the Protocol provided for State applications, but practice remained limited to individual and Commission-initiated cases. By accepting the DRC's application in a highly sensitive conflict setting, the African Court turned that latent jurisdiction into a concrete enforcement avenue and, in doing so, sketched a more general template for future inter-State proceedings (more generally, on the renewed use of interstate mechanisms, with particular attention to the risk of lawfare, see M. Sabino, *The Resurgence of Interstate Complaints for Human Rights Violations: Between 'Lawfare' and Collective Enforcement of Human Rights*, in *Dir. umani e dir. intern.*, 2025, 45-70).

Three dimensions are particularly salient for understanding the systemic implications of this ruling: (i) the design of inter-State jurisdiction under Article 3(1) of the Protocol and the notion of "relevant human rights instruments"; (ii) the reach of extraterritorial human rights obligations and the control paradigm in a conflict setting; and (iii) the configuration of subsidiarity and the interaction between the AfCHPR and Africa's crowded judicial and political space, which are examined in Sections 3.1, 3.2 and 3.3.

3.1 – The way in which the AfCHPR construed Article 3(1) of the Protocol goes beyond a technical preliminary objection: it repositions inter-State applications as a device of collective enforcement of human rights obligations, rather than a mere replica of the ICJ's bilateral dispute-settlement model (on the broad topic of inter-State adjudication, see A. Kulick, *Inter-State Adjudication, in Max Planck Enc. of Int. Proc. Law*, 2021). Two moves were decisive.

First, the Court refused to turn the prior existence of a "dispute" into an autonomous jurisdictional filter. Re-reading the formula "all cases and disputes submitted to it", they held that Article 3(1) conferred jurisdiction whenever an applicant – be it an individual, the African Commission or a State – alleged violations of rights protected by the Charter or by other human rights instruments binding on the respondent, and that this applied equally in inter-State proceedings. On this view, ratification of the Protocol already performed the consent function *ex ante*; what mattered at the jurisdictional stage was that the application plausibly engaged treaty-based human rights obligations, not that a legal disagreement had crystallised through prior diplomatic exchanges in the strict ICJ sense. The AfCHPR therefore rejected Rwanda's attempt to import the *Georgia v Russia and Marshall Islands* line of case law (§ 31, § 58) and made clear that its own *ratione materiae* jurisdiction was triggered by the allegation of rights violations, not by proof of a fully-fledged "dispute" pre-dating seisin.

The second step concerned the scope of "*any other relevant human rights instruments ratified by the States concerned*". Here the Court drew on earlier case law (AfCHPR, *APDH v Côte d'Ivoire*) but systematised the test, making a distinction between: *(i)* the general question of what counts as a "human rights instrument" for jurisdictional purposes; and *(ii)* the specific question whether that classification is outcome-determinative in a given case. The AfCHPR clarified that all the rights invoked – life, physical integrity, prohibition of torture and ill-treatment, fair trial, the rights of women and children, socio-economic rights, property and protection of displaced persons – were already protected by the African Charter, the ICCPR, the ICESCR, the Maputo Protocol and the African Charter on the Rights and Welfare of the Child, all unquestionably human-rights treaties ratified by Rwanda. Jurisdiction *ratione materiae* therefore rested securely on this canonical corpus, irrespective of the fate of additional instruments. Nonetheless, the AfCHPR took the opportunity to articulate a general standard. It required, cumulatively, that the

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text be a treaty and that its object and purpose include the protection of human rights through the explicit enunciation of rights or through obligations whose implementation is a necessary condition for the enjoyment of such rights. On this basis, the judges treated the Pretoria Declaration and the Peace, Security and Cooperation Framework as non-treaty instruments, and therefore as lying outside Article 3(1); they considered that the UN Charter and the AU Constitutive Act, while replete with human-rights language, framed institutional objectives and principles rather than directly justiciable rights. By contrast, they recognised that specific provisions of the Great Lakes Pact (notably Articles 5, 8, 12 and 13) "amounted to" human-rights clauses, but immediately added that, even if the Pact were taken into account as a "relevant human rights instrument", this did not alter the basis of jurisdiction in the present case, since the same rights were already covered by the Charter and the other treaties.

Taken together, these determinations invite a more structural reading. By decoupling its jurisdiction from a formal "dispute requirement", the African Court quietly aligned inter-State access under Article 5(1)(d) with the logic of ECtHR Article 33 and IACtHR inter-State cases: States do not appear primarily as adversaries vindicating reciprocal interests, but as institutional actors entrusted with the supervision of a common normative order (for a comparative overview of regional human rights protection regimes and interstate recourse mechanisms see P. Pustorino, *Introduction to International Human Rights Law*, The Hague, 2023, 67-73). The underlying obligations are, in substance, *erga omnes partes* within the treaty community. This does not mean that the AfCHPR endorsed an unlimited *actio popularis* in the strict sense, since the applicant State must still allege violations affecting individuals or groups and must itself be party to the instruments invoked, but it does mean that the existence, content and seriousness of the violations move to the merits, rather than being filtered through a preliminary inquiry. An alternative design would have insisted on a stricter "dispute" filter to dampen the risk of strategic or retaliatory filings in highly politicised conflicts. To this end, the African Court consciously chose the opposite route: they kept the doors procedurally open and shifted the burden of discipline onto the definition of the substantive instruments that can ground jurisdiction.

Indeed, the test for "other relevant human rights instruments" plays exactly this disciplining role. It narrows the normative palette that can be brought before the AfCHPR, even as access for States remains broad. From one angle, this might be considered a form of self-restraint, because – by declining to treat the UN Charter, the AU Constitutive Act or the PSC Framework as human-rights treaties under Article 3(1) – the Court resisted the temptation to constitutionalise its own mandate and to reconfigure itself as a general court of peace and security (on the Court's material jurisdiction and the bolder implementation of its remedial power see F. Capone, *APDH and IHRDA v Mali: recent developments in the jurisprudence of the African Court on Human and Peoples' Rights*, in 24 *Int. J. Hum. Rts.* 580 (2019)). From another angle, however, one can question whether the treaty-plus-rights test is too restrictive. Many of the "constitutional" instruments excluded by the Court – the UN Charter, the Constitutive Act, the Great Lakes Pact as a whole – articulate human-rights commitments in ways that are increasingly understood as part of an integrated normative fabric. A more functional approach could have treated at least some of those commitments as "relevant human rights obligations" and entrusted the Court with the task of giving them concrete judicial content (on the relevance of human rights instruments integration supporting convergence on a regional and/or universal level, see A. Rachovitsa, *The African Court on Human and Peoples' Rights: A Uniquely Equipped Testbed for (the Limits of) Human Rights Integration?*, in E. Bribosia, I. Rorive (Eds.), *Human Rights Tectonics: Global Dynamics of Integration and Fragmentation*, Ottignies, 2018, 69-88).

Therefore, the choice made by the AfCHPR might have an ambivalent systemic effect. On one hand, it pushes States that wish to litigate broader legality issues – for instance, the legality of cross-border uses of force or the consistency of regional security arrangements with AU principles – to reframe their claims within the vocabulary of individual and collective rights protected by classic human-rights treaties. This may be welcomed as a way of "humanising" inter-State disputes and of keeping the focus about affected populations (on this topic, see L. Lixinski, *On the Circumscribed and Problematic Resurgence of Inter-State Human Rights Cases*, in *3 Eur. Con. on Hum. Rts. L. Rev.* 174 (2022)). At the same time, it risks producing a misalignment between the formal basis of jurisdiction and the substantive concerns that motivate litigation: questions of aggression, occupation or political interference will continue to surface, but only insofar as they can be translated into violations of Charter rights. A sceptical reading of the AfCHPR's approach, might lead to the creation of an artificial compartmentalisation, in tension with emergent ideas of African constitutionalism in the field of peace, security and human rights (see more M. Chanock, *African constitutionalism from the bottom up*, in H. Klug, S. E. Merry, *The New Legal Realism Studying Law Globally (vol. II)*, 2016, Cambridge, 13-31). An optimistic reading might, on the other hand, reply that, given the political sensitivity of inter-State conflicts and the still fragile authority of the Court, a jurisdictional design that combines broad standing – a focused normative basis and an insistence on human-rights language – is a defensible compromise: it enables judicial scrutiny of mass violations in situations like Eastern DRC, without over-claiming a general power to adjudicate all aspects of regional peace and security.

3.2 – The ruling is equally notable for its extraterritoriality reasoning. In §§ 153-171, the Court combines a control-based notion of 'jurisdiction' with an IHL-framed reconstruction of Rwanda's involvement in North Kivu. The result is a three-layered approach: (i) a person-centred control model; (ii) IHL tests on conflict classification and 'internationalisation'; and (iii) an expressed separation between classification and State responsibility; moves that sometimes reinforce, and sometimes blur, each other.

On the first layer, the AfCHPR clarified that neither the African Charter nor the Protocol defined a strictly territorial scope of application and that the increasing extra-territorial undertakings of States – together with the erosion of sovereignty-based objections – had undermined the classical presumption that jurisdiction was confined to national territory (§§ 154–156). Endorsing the HRC's formula in General Comment No. 31, the Court affirmed that anyone

> [...] under the power or effective control of the forces of a State Party operating outside its territory enjoys extraterritorial protection [...]" (§ 157, footnote 20).

On that basis, the Court concluded that its jurisdiction *ratione loci* was not limited to situations in which the facts had occurred within the borders of the respondent State but also extended to acts performed by a State outside its territory (§ 158). This led the AfCHPR to examine whether Rwanda exercised sufficient power or control through the RDF's presence and operations, and through its support to M23 in Eastern Congo. Relying on the UN Group of Experts' findings, the Court held that RDF involvement in support of M23 was established and affected the course of hostilities (§§ 165-168). Once that threshold of power or effective control was considered met, the Court held that Rwanda's obligations under the Charter, the ICCPR, the ICESCR, the African Charter on the Rights and Welfare of the Child and the Maputo Protocol were, in principle, capable of applying extraterritorially to the alleged situation (§§ 114-116, 157-158). In this

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respect, the ruling aligned the AfCHPR with the African Commission's approach in *DRC v Burundi, Rwanda and Uganda*, as well as with the control-oriented readings of "jurisdiction" developed by the ECtHR (ECtHR, *Loizidou v. Turkey*, 18-12-1996, [Judgement, GC]; *Al-Skeini and Others v. United Kingdom*, 7-7-2011, [Judgement, GC]) and by the ICJ (ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9-7-2004, ICJ Rep. 2004, 136).

The AfCHPR, however, did not endorse such person-centred principle by directly asking whether the victims of the alleged violations in North Kivu were under Rwanda's power or effective control, or whether RDF or proxy forces exercised stable control over a defined area. Instead, it moved to a second layer of analysis centred on conflict classification. Drawing on common Article 3 of the Geneva Conventions and on the ICTY's jurisprudence (ICTY, *Prosecutor v. Duško Tadić*, 2-10-1995, [Appeals Chamber], § 70), the Court distinguished between international and non-international armed conflicts and confirmed that the situation between M23 and AFDRC in North Kivu met the organisational and intensity criteria for a non-international armed conflict (§§ 161–165). The AfCHPR then turned to the internationalisation of this local conflict. Relying on the ICC's and the ICJ's case-law (ICC, *Prosecutor v. Thomas Lubanga Dyilo*, 29-01-2009, [Trial Chamber], § 209; ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, 27-6-1986, [Judgement], § 115), it identified two alternative routes: direct involvement, where a third State deploys its own troops alongside the armed group, or indirect involvement, where it controls the group's operations (§ 166). In the first hypothesis, the involvement must affect the course of hostilities; in the second, either "effective" or "comprehensive" (overall) control may suffice, "according to international jurisprudence" (§ 166). Based on the UN Group of Experts' mid-term and final reports, the AfCHPR considered that RDF troops had been present in border areas and in localities occupied by M23, that they had supplied arms, ammunition and uniforms, and that their involvement had had a concrete impact on the conduct of hostilities (§§ 167-169). On that record, the Court treated Rwanda's involvement as sufficient, at this stage, to internationalise the hostilities and dismiss the ratione loci objection (§§ 169-171). This finding should not be read as already settling the authority/effective-control link vis-à-vis specific victims, which remains the harder merits question.

This reasoning might be considered both innovative and incomplete. On the one hand, the AfCHPR clearly joined what doctrine often describes as the "control family" of extraterritoriality models – those built around spatial, personal and "cause-and-effect" control (see M. Milanović, *Extraterritorial Application of Human Rights Treaties. Law, Principles and Policy*, Oxford, 2011; M. Gondek, *The Reach of Human Rights in a Globalising World: Extraterritorial Application of Human Rights Treaties*, Antwerp–Oxford, 2009). By insisting that human rights obligations follow State forces and proxies beyond borders – and by rejecting territorial formalism as a jurisdictional defence – the Court removed the "provided-that-it-happens-abroad" loopholes (on this topic, see A. Berkes, *International human rights law beyond state territorial control*, 2021, Cambridge, 19-92). On the other hand, this case left important aspects of the control paradigm potentially under-specified. The AfCHPR did not disentangle, at this stage, different forms and gradations of control – territorial control over an area, personal control over individuals, or functional control over specific operations – and it did not address whether "remote" forms of support (financing, training, weapons, intelligence) to a non-State armed group could suffice to trigger jurisdiction in the absence of direct troop deployment. To this end, the Court aligned with control-based readings of jurisdiction but remained non-committal as to the exact threshold they will require beyond near-occupation scenarios. This open-endedness sits uneasily with the insistence – prominent in

academic work on extraterritoriality (M. Gondek, *The Reach of Human Rights in a Globalising World: Extraterritorial Application of Human Rights Treaties*, *cit.*) – that fine-grained distinctions between these models matter decisively in armed-conflict settings. It also suggests, as underlined by scholarship on judicial borrowing and "semantic authority" (M. L. Christensen, *In someone else's words: Judicial borrowing and the semantic authority of the African Court of Human and Peoples' Rights*, in 36 *Leiden J. Int. Law* 1049 (2023)), that the AfCHPR has deliberately appropriated the language of control from other regimes without yet fully internalising its taxonomic subtleties.

A second layer of analysis concerns the interaction between human rights law and IHL. The African Court relied explicitly on common Article 3 of the 1949 Geneva Conventions and on ICTY jurisprudence to distinguish international from non-international armed conflicts (§§ 161-166; ICTY, *Tadić*, cit.), and they carefully separated the criteria for conflict characterisation from the conditions for State responsibility (§ 160, citing ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, 26-02-2007, 43). Yet, while using IHL concepts to frame the situation in North Kivu, the AfCHPR did not suggest that the existence or type of armed conflict narrows the scope of its human rights jurisdiction. On the contrary, it affirmed the extraterritorial applicability of human rights instruments in a context that it classified as an international armed conflict, at least as between Rwanda and the DRC (§§ 165-169). This stance seems consistent with an emerging line of authority, where IHL does not "switch off" human rights obligations but co-exists with them, operating at most as *lex specialis* at the level of interpretation (J. d'Aspremont, E. Tranchez, *The quest for a non-conflictual coexistence of international human rights law and humanitarian law: which role for the lex specialis principle?*, in R. Kolb, G. Gaggioli, (eds.) *Research Handbook on Human Rights and Humanitarian Law*, 2013, Cheltenham-Northampton, 223-250). What the AfCHPR did not do, however, was to explain how particular Charter rights should be read in light of IHL norms (for instance, how the right to life will be adjusted to targeting and proportionality rules, or how liberty guarantees will interact with security detention in armed conflict). The ruling therefore opened the door to concurrent application of human rights law and IHL without yet specifying the interpretive method that will govern their coordination.

Such a combination of choices might have a future ambivalent effect. On the one hand, by rejecting territorial formalism and insisting that jurisdiction follows State forces and proxies, the AfCHPR made clear that the Charter travels with African States when they project power extraterritorially. On the other, the absence of a clearer account of the required degree of control, and of the precise interface between Charter rights and IHL, leaves a significant margin of uncertainty. A restrictive reading of "effective control" could confine the Court's extraterritorial reach to almost-occupation scenarios (see more B. Boutin, *Attribution of conduct in international military operations: A causal analysis of effective control*, in *Melb. J. Int. Law*, 2017, vol. 18, no. 2, 154-179). A more functional reading could extend it to complex patterns of support and influence over non-State armed groups, to stress positive obligations of prevention, supervision and non-assistance in fragmented conflict settings (see B. S. Akca, *Supporting non-state armed groups: a resort to illegality?*, in 32 *J. Strateg. Stud.* 589 (2009)). Therefore, this case could anchor the AfCHPR in the control-based extraterritoriality and IHL-human rights co-applicability, but it also signals that the hardest questions – how to calibrate control tests, how to distribute burdens of proof and how to translate conflict classification into concrete positive duties – have been consciously deferred to the merits and to future inter-State cases.

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3.3 – A third axis along which this ruling recalibrates inter-State litigation concerns how the AfCHPR understands subsidiarity and the interaction between its own mandate and Africa's dense web of political and judicial bodies. The admissibility section of the ruling is not simply a mechanical application of Article 56 of the African Charter and Rule 50 of the Rules: it sketches a particular vision of when human rights adjudication should defer to other fora, and when it should insist on its own autonomy (more generally, see D. Palombo, *Human rights adjudication: between hopes and failures*, in J. Wouters, K. Lemmens, T. Van Poecke, M. Bourguignon (Eds.) *Can We Still Afford Human Rights?*, 2020, Cheltenham-Northampton, 143-171). To this end, three moves are central: (i) the Court's refusal to derive additional admissibility filters from the Great Lakes Pact and from the AU Constitutive Act; (ii) the very high threshold the AfCHPR sets for abuse of process and for the "mass media" clause; and (iii) a strongly internal reading of subsidiarity under Article 56(5) and (7), which sharply distinguishes domestic remedies from regional or international procedures, including those before the EACJ.

A first step concerns the Court's treatment of "external" subsidiarity. Under Article 6(2) of the Protocol and Rule 50(1), admissibility is governed by Article 56 of the Charter and by the Court's own Rules. The AfCHPR therefore refused to read into its procedure the steps envisaged in Articles 28-29 and 34 of the Great Lakes Pact or the more general commitment to peaceful settlement in Article 26 of the AU Constitutive Act. Those mechanisms may shape States' political conduct within the Pact's institutional architecture, but they remain external to the Court's admissibility regime: their non-use may be relevant background, yet it cannot bar access to judicial review.

This refusal to constitutionalise "external" subsidiarity is reinforced by the Court's handling of the abuse-of-process allegation, since the judges reaffirmed a very restrictive approach on this issue. According to the AfCHPR, an application is abusive only if it is manifestly frivolous or clearly lodged in bad faith, in breach of general principles of law and judicial propriety (§ 236). The mere fact that a case arises in a highly politicised context, that it is accompanied by diplomatic and media campaigns, or that other regional bodies are seized of related matters does not suffice. Nor does the filing of multiple applications against the same State, absent concrete evidence of manipulative intent. Having found that the DRC's Application was grounded in treaty-based rights, accompanied by substantial documentation (including UN and AU reports) and framed in terms that fell squarely within the AfCHPR's subject-matter jurisdiction, the judges dismissed the objection. This approach amounts to a conscious rejection of a "political-question" doctrine: the Court does not insulate itself from contentious or sensitive controversies by labelling them abusive; instead, it reserves the abuse label for extreme cases of procedural misconduct (on this point, see C. A. Bradley, *The political question doctrine and international law*, in *Geo. Wash. L. Rev.*, 2023, vol. 91, no. 6, 1555-1584). From a systemic angle, this choice privileges access over insulation: the price is that the AfCHPR accepts to adjudicate disputes that are simultaneously discussed in other fora, rather than using abuse of process as a valve to keep them out.

By contrast, Article 56(5) is treated as an 'internal' subsidiarity rule confined to domestic remedies in the respondent State, assessed through availability, effectiveness and sufficiency. In conflict-related inter-State cases, the Court does not waive exhaustion as such; it treats it as satisfied where recourse to those remedies is not realistically accessible or cannot provide meaningful relief (AfCHPR, *Abubakari v Tanzania*, 3-6-2016, [Merits], § 64; *ACHPR v. Kenya*, 26-5-2017, [Merits], § 97). This aligns the Court with a broader trend in which human rights tribunals adapt subsidiarity to structural constraints rather than treating exhaustion as a rigid, abstract filter, and with scholarship that already views access

barriers to regional courts in Africa as substantial even without an added requirement of exhausting political tracks (see for example T. G. Daly, M. Wiebusch, *The African Court on Human and Peoples' Rights: Mapping resistance against a young court*, in 14 *Int. J.L.C.* 294 (2018)). From the perspective of subsidiarity, the recent EACJ ruling both confirms and problematises the configuration sketched by the AfCHPR. Construing its jurisdiction under the EAC Treaty, the East African Court of Justice frames the ruling under comment primarily as an integration-law dispute (EACJ, *DRC v Rwanda*, §§ 112-121, §125), while the AfCHPR insists on its own mandate to adjudicate victim-centred claims under the African Charter notwithstanding the pending reference. The result is an emerging, and possibly uneasy, vertical division of labour: the EACJ polices the legality of inter-State conduct within the Community, the AfCHPR carries the burden of human-rights adjudication in North Kivu. On a more critical view, this compartmentalisation creates space for "responsibility dumping" across regional fora; on a more optimistic reading, it may evolve into a practice of judicial complementarity. Which of these two trajectories will prevail depends on how both courts, at the merits stage, handle overlapping factual records, evidentiary burdens and the legal characterisation of Rwanda's involvement.

A further element concerns Article 56(7). The Court read 'settled' restrictively: only (i) a binding decision on the merits between the same parties on substantially the same subject-matter, or (ii) a sufficiently conclusive political agreement, can bar a new application (see § 362). Commission decisions and political communiqués do not meet this standard; nor would a judgement by another court declining jurisdiction, which leaves the substantive issues untouched and cannot operate as a bar to proceedings in a forum whose jurisdiction rests on a distinct treaty basis. Concurrent proceedings before sub-regional courts, grounded in different instruments and pursuing different forms of relief, likewise do not trigger *lis pendens* in a way that would preclude the AfCHPR from proceeding. In this respect, the Court's stance reflects the cautious use that other regional courts have made of "already settled" and "pending in another international procedure" clauses in complex and inter-State cases (AfCHPR, *DRC v Rwanda*, §§ 340-367).

Placed against scholarship on Africa's "crowded" judicial and quasi-judicial landscape (see G. Pascale, *La tutela internazionale dei diritti dell'uomo nel continente africano*, Napoli, 2017, 296-305) which has highlighted both the risks of fragmentation and forum-shopping and the potential for productive interaction between continental and sub-regional bodies (see F. Viljoen, *International Human Rights Law in Africa*, Oxford, 2012, 469-514) the model that emerges from this ruling might be considered asymmetrical. Subsidiarity is robust in its "internal" dimension, *i.e.* deference to effective domestic remedies in the respondent State where they exist and are realistically accessible, but comparatively weak in its "external" dimension: the mere availability or activation of political and security mechanisms within the AU, ICGLR, SADC, EAC or other regional arrangements does not, as such, bar inter-State access to the Court. Whether this configuration will adopt constructive complementarity or intensify institutional competition will depend, in future cases, on how far the AfCHPR is prepared to take account of the work of other bodies when shaping remedies and supervising compliance (for an updated analysis of compliance in the African system, framing AfCHPR jurisprudence within the broader context of the 'implementation gap' and the need for multi-level accountability, see J. Biegon, *Compliance Studies and the African Human Rights System: Reflections on the State of the Field*, in A. Adeola (ed.), *Compliance with international human rights law in Africa: essays in honour of Frans Viljoen*, Oxford, 2022, 10-34).

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4. – While formally confined to jurisdiction and admissibility, the ruling under comment already pre-structured the terrain for the merits phase. By accepting an inter-State application in a highly conflictual setting and by calibrating access, extraterritorial reach and subsidiarity as examined above, the AfCHPR silently defined the parameters within which it will later assess responsibility and reparations. In this sense, the ruling can be read not only as a procedural decision but as part of a broader attempt to "forge a jurisdictional frontier" for post-colonial human rights adjudication in Africa (on this issue, see M. A. Sanchez, *The African Court on Human and Peoples' Rights: forging a jurisdictional frontier in post-colonial human rights*, in *Int. J.L.C.*, 2023, vol. 19, no. 3, 352-366). Three clusters of problems are likely to determine whether this model will consolidate or remain fragile.

A first cluster concerns evidentiary burdens and control tests for conflict-related extraterritoriality. Having accepted a control-based notion of jurisdiction, the AfCHPR will have to clarify the standard by which Rwanda's involvement with M23 and its forces operating in North Kivu engages its obligations: a restrictive "effective control" test, in line with *Nicaragua*, or a more functional "overall control" approach, closer to *Tadić* and in some strands of human-rights jurisprudence (on this topic, see H. Jamil, *Classification of Armed Conflict: An Analysis of Effective Control and Overall Control Tests*, in 16 *ISIL Year Book of Int'l Hum. & Ref. L.* 185 (2016-2017)). A threshold set too high risks depriving the extraterritorial opening of much of its practical effect in proxy-conflict settings; a more flexible threshold, by contrast, may blur the line between classical attribution of State responsibility and looser notions of influence or support, and will require careful calibration of burdens and standards of proof. This includes the use of UN/AU documentation and NGO fact-finding.

A second cluster relates to the coordination between human rights law and international humanitarian law in an international armed conflict. By affirming that the African Charter, the ICCPR, the ICESCR, the Maputo Protocol and the ACRWC continue to apply in a situation which it explicitly classified – at least between the DRC and Rwanda – as an international armed conflict, the AfCHPR aligned itself with the position adopted by the ICJ, the ECtHR and the Inter-American Court that IHL does not displace human rights obligations, but operates as *lex specialis* at the level of interpretation (on the structural interplay between the use of force abroad, conflict regulation, and the IHL/IHRL interface see M. Longobardo, *The Use of Armed Force in Occupied Territory*, Cambridge, 2018). The real challenge, however, will arise at the merits stage: the African Court will have to decide how far targeting, detention and conduct-of-hostilities rules under IHL may shape the content of Charter rights without hollowing out their protective core. Too much deference to IHL risks turning human rights review into a thin legality check on battlefield behaviour; too little may expose the Court to accusations of ignoring the operational constraints of armed conflict. In this sense, the case will put under pressure the need for jurisdictional restraint in order to rescue the AfCHPR as a human rights court rather than a general war-crimes tribunal (see M. Camara, *Jurisdictional Restraint: Rescuing the African Court on Human and Peoples' Rights*, in *Colum. L. Rev.*, 2024, vol. 124, no. 7, 2148-2151).

A third cluster concerns the design and feasibility of remedies in an inter-State conflict case. Orders on cessation of violations, withdrawal of Rwandan forces, termination of support to M23, guarantees of non-repetition and reparations presuppose a remedial architecture capable of operating in a volatile security environment. In parallel, the Court's practice on provisional measures – especially the threshold of 'irreparable harm to persons' – may become pivotal in conflict-driven inter-State cases to prevent further victimisation pending the merits (see R. Virzo, *La condition du «dommage irréparable à des personnes» dans les ordonnances sur les mesures provisoires de la Cour africaine des droits de l'homme et des peuples*, in *Ord. int.*

e dir. um., 2022, 967-981). However, similar experience – from the ICJ's *Armed Activities* judgement to the ECtHR's practice under Article 46 ECHR – shows how difficult it is to craft remedies that are both normatively meaningful and politically implementable. The AfCHPR will have to calibrate the precision of its orders (general obligations of result versus highly specific steps), their temporal phasing (immediate measures versus gradual reforms) and the intensity of follow-up (reporting duties, supervision of execution). Overly intrusive remedies may provoke resistance and institutional backlash; purely declaratory relief risks appearing symbolic and undercutting the authority of the Court's findings (more broadly, on the political and institutional dimension of the pushback against the Court, see S. A. Ravn, M. A. Plagis, M. R. Madsen, *International courts and sovereignty politics: Design, shielding, and reprisal at the African Court*, in 38 *Leiden J. Int. L.* 597 (2025)).

In conclusion, the interlocutory ruling of the EACJ adds a further layer to an already crowded judicial landscape but does not displace the African Court's distinct role as the continent's human-rights tribunal. By declining to treat *DRC v Rwanda* as a bar to its own jurisdiction, the EACJ confirms that regional integration courts and the AfCHPR may proceed in parallel, each applying its own treaty framework and remedies. This configuration increases the risk of divergent narratives and remedial fragmentation, but it also creates opportunities for cross-fertilisation and mutual reinforcement. Whether the combination of AfCHPR and EACJ proceedings will function as a vector of accountability or as a catalyst of fragmentation will depend on the willingness of both courts to engage in principled judicial dialogue and on the capacity of States and regional organisations to translate their convergent findings into concrete change on the ground.

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