

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS JURISDICTION IN PROSECUTING HUMAN RIGHTS VIOLATIONS BY RWANDA IN THE DEMOCRATIC REPUBLIC OF CONGO

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Abstract

This study investigates the jurisdictional capacity of the African Court on Human and Peoples' Rights (AfCHPR) in adjudicating transnational human rights violations, with a focus on the Democratic Republic of Congo's (DRC) case against Rwanda concerning alleged support for the M23 rebel group. Drawing on normative legal methods and qualitative analysis, the paper examines the limitations of DRC's domestic judicial system in addressing grave human rights abuses, particularly in conflict zones marked by institutional fragility, corruption, and impunity. Despite legal reforms and ratification of major human rights instruments, the DRC remains unable or unwilling to ensure accountability for violations, especially those involving foreign actors. In response to these systemic shortcomings, the DRC has turned to the AfCHPR, marking a significant legal milestone as the first inter-state case before the Court. The paper explores the legal foundations for the AfCHPR's jurisdiction under regional and international instruments, while also analysing Rwanda's objections concerning admissibility and territorial competence. By assessing relevant case law, including *Zongo v. Burkina Faso* and *Ogiek v. Kenya*, the research highlights the AfCHPR's growing legitimacy as a regional mechanism for human rights enforcement. This case signals a broader shift toward accountability and justice in Africa, challenging traditional notions of sovereignty in favour of state responsibility and victim protection.

Keywords: *African Court on Human and Peoples' Rights; Transnational Human Rights Violations; Democratic Republic of Congo (DRC); Unwilling or Unable Doctrine; State Sovereignty and Accountability.*

INTRODUCTION

The conflict between the Democratic Republic of Congo (DRC) and Rwanda has been ongoing for decades, causing significant social, political, and economic impacts. According to the United Nations Security Council, this conflict has resulted in millions of casualties and a prolonged refugee crisis. One of the main issues in this conflict is the involvement of armed groups such as M23, which, according to a report by the International Criminal Court, has links to political and economic interests in the region (France24, 2025). The phenomenon of armed conflict in Africa is not new. According to Clapham, the dynamics of violence in Africa are often influenced by historical, economic, and geopolitical factors (Clapham, C., 1998). The persistent armed conflict in eastern DRC has caused a serious humanitarian crisis, including widespread human rights violations and the displacement of millions of civilians (Human Rights Watch, 2022). The emergence of M23 Movement from the March 23 of the 2009 Peace Accord comprising National Congress for the Defence of the People (CNDP) has seized Goma, North Kivu, in January 2025 (Ndomba, et al., 2025). The M23 movement aims to secure greater political influence and protection for the Tutsi population in eastern DRC (Liwanga, 2025). The DRC accuses Rwanda of arming the M23 and sending troops to support the rebels in the conflict, which is backed by statements from the UN and the US. Regardless, Rwanda continues to deny that it has supported the M23 (BBC, 2025). A UN expert report in June 2022 provided strong evidence of Rwanda's support for M23, with members of the Rwandan Defence Forces (RDF) in the Rutshuru region providing support to M23/ARC operations (Wolters, 2023). This conflict not only affects regional stability but also poses a major challenge to law enforcement and human rights protection in Central Africa.

The United Nations Organisation Stabilisation Mission in the Democratic Republic of the Congo (MONUSCO) was established by the United Nations Security Council in 2010 with the aim of supporting peace

efforts, stabilisation, and the protection of civilians from recurring armed conflict, humanitarian issues, and political transition in the DRC. However, in reality, the MONUSCO programme has not been effective in reducing armed conflict and restoring peace and security across the DRC (Kimathi, et al., 2024). Another UN report in January stated that attacks by the M23 Movement in Goma had caused at least 700,000 people to flee, including around 280,000 children, and 3,000 people had been killed in the surrounding area in Kivu province. As the conflict escalates, the World Food Programme has warned of worsening humanitarian conditions caused by food and water shortages, exacerbated by the seizure and closure of Goma airport by M23 rebels (UN News, 2025).

Although the DRC has made a number of domestic efforts to uphold human rights, widespread human rights violations and continuing impunity show that the country is often considered unwilling or unable to deal with cases of serious violations. Countries with large territories, such as the DRC, often face problems with the inefficiency of the central government, which is unable to control the situation, including the political-military situation, in peripheral areas. Structurally, the enforcement of human rights in the DRC still faces various obstacles, particularly related to corruption, lack of judicial capacity, and political intervention. Some successes have been achieved, such as the 2019 case where a military court in Goma sentenced Marcel Habarugira, a commander of the Nyatura armed group, to 15 years in prison for war crimes including rape and the use of child soldiers (Human Right Watch, 2019). In 2025, 75 Congolese soldiers were also tried on charges of desertion and violence against civilians following a conflict with M23 rebels in South Kivu (Reuters, 2025). Despite some successes, impunity remains a major problem, particularly because legal proceedings are often inconsistent and do not cover all perpetrators, especially when violations involve foreign actors or armed groups supported by neighbouring countries such as Rwanda and Uganda (Inman & Magadju, 2018).

In the case of the DRC, many cases of serious violations remain unresolved due to political pressure and institutional limitations, necessitating intervention through international mechanisms (United Nation High Commission of Refugee, 2023). Ultimately, the DRC chose to bring the case regarding Rwanda's involvement to the African Court on Human and Peoples' Rights (AfCHPR) as part of regional efforts to obtain justice that could not be achieved through domestic courts. This step was also driven by the need to ensure international support and judicial independence, especially when involving perpetrators who have diplomatic ties or political support from other countries. The DRC's efforts to resolve the conflict through diplomacy and bilateral negotiations have not yet yielded significant results (United Nation Press, 2023). In this context, the DRC took legal action by filing a case with the AfCHPR, a regional judicial institution established to uphold human rights on the African continent. The filing of this case in August 2023 marks the first transnational case handled by the AfCHPR, signifying an important milestone in the history of African human rights adjudication (Oxford Human Right Hub, 2025).

Through AfCHPR, the DRC is demanding that Rwanda being held accountable for alleged human rights violations, that it cease its support for armed groups, and that it provide reparations to the victims. On the other hand, Rwanda questioned the court's jurisdiction and rejected the charges brought against it (African Court, 2025). This case is an important test of the ACHPR's effectiveness in peacefully resolving conflicts between countries and upholding justice for victims of human rights violations in Africa. The main issue addressed in this study is the role of the AfCHPR as an African regional court in resolving conflicts between countries. The conflict between the DRC and Rwanda is a protracted one that has been ongoing for several decades. The existence of a legal framework and international protocols in the African region is being questioned in relation to the resolution of this conflict. First, the kind of efforts have been made by domestic courts to demonstrate the sovereignty of the DRC and accountability for human rights violations occurring in the DRC. Second, the existence of the AfCHPR as a solution to provide legal consequences for human rights violations in Africa in the context of inter-state conflicts. Therefore, it must be determined whether the role of the AfCHPR in the African region can help protect victims of human rights violations involving two countries, thereby causing international disputes.

LITERATURE REVIEW

To further understand the background of this paper, the author presents three previous pieces of literature that discuss the main points of the paper. The research is titled "Unwilling and Unable Test in Gross Human Rights Violations in Indonesia". This literature provides an overview of the indications of whether a country is unwilling and unable to resolve issues involving human rights violations. Indications of a country's unwillingness and inability can be assessed based on political agendas, corruption, weak legal systems, and limited resources. This limits legal accountability to effectively prevent or follow up on human rights violations. This study highlights two approaches to addressing human rights violations: advocating for institutional reform, accountability mechanisms, and international pressure to force the Indonesian government to fulfil its obligations to protect human rights. The second

piece of literature that forms the basis of this paper discusses human rights in an international context through the literature “Exploring Mechanisms for Enforcing Human Rights within the Context of International Law: Issues and Challenges”, written by Antai. Antai explains that there is an urgency or need for follow-up on human rights violations outside of state sovereignty and the need for global enforcement of human rights. Antai bases his writing on the legal framework of international organisations and alternative solutions such as sanctions and pressure from civil society. In addition, the growth of ‘soft law’ as public pressure can also be a solution played by NGOs and the media. Beyond the legal framework, this research explores the Responsibility to Protect (R2P) framework, which allows for intervention in extreme human rights violations beyond issues of sovereignty. Antai also acknowledges the existence of international pressure, including economic sanctions against certain countries and diplomatic actions. Furthermore, the power of civil society and grassroots movements to reduce impunity can be a viable solution.

The final literature that forms the basis of this paper is a journal discussing the European Court of Human Rights (ECtHR) in inter-state cases, titled “Inter-state Application at the ECtHR as a Method to Benefit International Disputes” by Zurab Aznaurashvili. The ECHR has objectives that align with those of the Council of Europe, namely to provide legal rules, democracy, enforcement of human rights, and improve relations between conflicting parties. The presence of the ECHR is considered to play an important role in achieving peace in Europe. The inter-state settlement procedure at the European Court can provide legal clarification, which is a fact, as well as the recommendations needed to follow up on a conflict and negotiate the actions that have taken place. Therefore, a legal framework, namely methods and procedures, is needed to resolve inter-state conflicts. The ECHR also plays a role in compelling conflicting parties to refrain from further human rights violations and to exercise greater caution to ensure compliance with the rights guaranteed by the ECHR and its protocols.

METHOD

This research is conducted based on normative legal study that focuses on the examination of international legal norms relevant to the resolution of conflicts between the DRC and Rwanda. Normative legal research is used to analyse various international legal instruments, including AfCHPR regulations and resolutions and conventions related to the resolution of armed conflicts. In addition, this study also adopts a descriptive-analytical method, which aims to provide a systematic explanation of the role of international law in dealing with the DRC-Rwanda conflict and the obstacles faced in implementing existing legal instruments. This analysis is carried out by examining relevant decisions, legal provisions, and case studies. To obtain a comprehensive analysis, this study uses two legal approaches, namely the Statute Approach and the Conceptual Approach. The Statute Approach is used to examine the legal instruments governing the jurisdiction of the African Court and the role of the African Union.

Primary sources of law consist of: the African Charter on Human and Peoples' Rights; the International Covenant on Civil and Political Rights; the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; the African Charter on the Rights and Welfare of the Child; the Protocol on the Rights of Women in Africa; the Pretoria Declaration on Economic, Social and Cultural Rights; the Protocol on the Rights of Women. Secondary sources of law include: academic books discussing the African Court and its decisions; scientific journals discussing the issue; official reports from international institutions such as the African Court. Data collection was conducted through library research, namely by reviewing academic literature, international legal regulations, and relevant official documents. This library research included reviewing international court decisions, international treaty documents, as well as reports and scientific literature discussing the role of international law in resolving humanitarian conflicts. The data obtained will be analysed qualitatively to understand the patterns and dynamics in the application of international law in the cases of the DRC and Rwanda conflicts.

The data analysis technique used in this study is qualitative. The author will identify relevant primary, secondary, and tertiary legal sources. The data obtained will then be examined based on applicable legal provisions and how these provisions are applied in resolving conflicts in the DRC and Rwanda. Based on the results of the analysis, this study will formulate recommendations for resolving issues through international legal mechanisms in dealing with humanitarian conflicts in Africa.

RESULTS AND DISCUSSION

DRC Domestic Court Effort in Enforcing Human Rights Violations

On July 20, 1987, DRC ratified the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights (“the Banjul Charter”), and the UN Conventions on The Rights of Children and Women. The DRC has ratified all the main international instruments on human rights and humanitarian law, including the UN

Convention on Civil and Political Rights and the UN Convention on Social, Economic, and Cultural Rights. The Constitution is based on The Bill of Rights in 2006 which included human rights protection such as life and the prohibition on cruel, inhuman, and degrading treatment. DRC uses International treaties and agreements as the second source of its legal system, as mentioned by Article 215 of the constitution. This legal system is also known as monist. The implementation of International law within the Constitution is still being limited by Article 214 and 2016, whereas international law needs to be subjected and required domestic legislation for specific kinds of international treaties. Even though the application of international law is uncommon; its military court depends on Article 215 to apply international law in a handful of cases (Zongwe, et al., 2025).

There's a constraint in implementing this legal framework into an actual case. One of those is the prosecution of gender-based violence (GBV). Despite legal reform, such as the 2002 amendments to the Military Justice Code and the 2006 laws on sexual violence (Laws No. 06/018 and 06/019)—enforcement remains weak. These reforms allow GBV to be prosecuted as war crimes and crimes against humanity, yet prosecutions are rare and fragmented. Military courts have handled a limited number of cases, and only a few have reached the International Criminal Court. Fear of reprisals, lack of centralized judicial records, and the weakness of the justice system; including corruption, poor infrastructure, and underfunding that continue to obstruct justice. Although the Constitution guarantees fair trial rights, these are inconsistently upheld, revealing a clear gap between legal provisions and their effective implementation (Human Right Report, 2024).

The limitation of its domestic law can also be seen in legal consequence in the case of sexual violence as weapon of war where the perpetrator are military officers and rebel groups (Kitharidis, 2015). The United Nations Joint Human Rights Office (UNJHRO) reported that despite the effort that has been made by the Congolese authorities in arresting the alleged perpetrator, they barely get to the court. People who are sentenced and imprisoned find chances to escape due to the declining conditions and insufficient security in facilities across the country (UNJHRO Report, 2014). Furthermore, there are challenges where victims in the area are unable to pay for the legal costs and travel expenses linked to judicial processes (Henry, 2009). Additionally, the judicial system seems to be essentially defective with its underfunded administration, insufficiency of sustainable regulation and its interference by both the political and military hierarchy in the region (Human Right Watch, 2014).

There's also obstacles in legal proceedings, where it's obligatory that litigants have to pay administrative fees to institute lawsuits hampers women's prospects to exercise their right to be heard before competent tribunals. The legal system has failed to consider that most of the victims in sexual violation are living in poverty (Makunya, 2023). According to Act 22/065 2022 on Fundamental Principles on the Protection of Victims of Conflict Related Sexual Violence and Other Serious Crimes Against Peace and the Security of Humankind, in instances of sexual violence perpetrated by military personnel, compensation is typically mandated but not disbursed by the state as the employer of the soldier. On account of the African colonial past, sovereignty is frequently referenced in relation to non-interference in the domestic matters of nations as a justification for non-intervention (Omach, 2000). This reasoning can be used as a way to shield a country from facing its legal responsibility especially in human right violations. The political concept of sovereignty as protection was employed to challenge the Court's legal reasoning because of the significant number of cases involving Tanzania and the possible financial damages and legal expenses. Similarly, the criticism from Rwanda, Benin, and Côte d'Ivoire regarding the Court's jurisprudence and jurisdiction indicates their perception of the Court's rulings as an intrusion into their internal political and legal issues, particularly concerning opposition members and matters relating to fair trials.

Alternatively, the Court does not undermine sovereignty; rather, it operationalises the new African understanding of sovereignty as responsibility not just control (Eborah, 2011). In some cases, the Court affirmed its authority to scrutinize national laws where they contradict human rights obligations, reinforcing that national sovereignty cannot override fundamental rights (Windridge, 2017). Sovereignty claims served as a means of opposition to the Court – viewed as a human rights tribunal – where its rulings were expected to make governments answerable in significant legal and political areas (Ravn, et al., 2025). To further address in seeking legal responsibility to international court, there's need to bridge DRC into the determination as unwilling and unable states. The test stated, "State X, which has suffered an armed attack by an insurgent or terrorist group, to use force in State Y against that group if State Y is unwilling or unable to suppress the threat" (Deeks, 2012). This formulation attempts to bridge the gap between the traditional requirements of state responsibility under international law and the practical realities of contemporary security threats posed by non-state actors (Bhaskaran, 2022). The test's premises conflict with the DRC's constitutional emphasis on sovereignty and territorial integrity (Ntamwira, 2024), and its application is complicated by the alleged involvement of Rwanda in supporting the M23 rebels. While the DRC faces significant capacity constraints in addressing security threats in eastern DRC, these limitations appear as its inability (BTI

Report, 2024). DRC often lacks control over areas in the east and depends on UN forces like MONUSCO to handle armed groups.

Referring to The Fund of Peace, DRC is positioned as 5th out of 197 of the fragile countries in the world, the CASE indicator used to measure the state's vulnerability and effect in the field, illustrated DRC is presenting a weak state. The DRC's status as a weak state is closely tied to its weak state institution, political instability, and ineffective use of its military forces (Lukamba-Muhiya, 2023). Its weak legal system and repeated failures to stop cross-border attacks also support this. At times, there are claims that some officials tolerate or support certain rebel groups, which could show unwillingness. In regards to these matters, DRC then sought legal remedies in AfCHPR. The DRC believes that the AfCHPR could be a solution to Rwanda's involvement in humanitarian issues occurring in its territory. There's a positive image that shows the credibility and transparency of AfCHPR. African jurists and legal specialists achieved an extraordinary milestone, creating a uniquely post-colonial perspective on human rights and equipping the ACTHPR with an unparalleled authority to ensure governmental accountability (Sanchez, 2023). The DRC wishes that Rwanda can ultimately be held accountable for its crimes.

The Jurisdiction of the AfCHPR to Adjudicate Human Rights Violations that Occurred during the conflict between the DRC and Rwanda

The legal mechanism of the AfCHPR refers to the Protocol to The African Charter on Human and Peoples' Rights on The Establishment of an African Court on Human and People's Right. The protocol was adopted in 1998 to strengthen the regional human rights protection system in Africa within the African Union. It establishes the AfCHPR as a judicial body meant to complement the African Commission's role by providing binding decisions on alleged human rights violations. The Protocol outlines the Court's jurisdiction, composition, procedures, and accessibility, including the key provision under Article 34(6) that allows individuals and NGOs to bring cases directly, provided the relevant state has made a special declaration. This legal instrument represents a significant development in Africa's human rights landscape by creating a mechanism for legal accountability at the continental level. It is made as the supplement of The African Charter on Human and Peoples' Rights that was adopted in 1981, that sets out the human and peoples' rights for which the African states must protect—civil, political, economic, social, and cultural rights. The DRC has ratified the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights on December 10, 2003, thereby formally accepting the African Court's jurisdiction. Rwanda has also ratified the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on December 5, 2003.

Under Article 3 of the Protocol, the Court holds jurisdiction to hear all cases and disputes concerning the interpretation and application of the African Charter, the Protocol itself, and any other applicable human rights instruments that have been ratified by the states involved. The court may issue an advisory opinion as said in Article of the Protocol, on any legal matter concerning the Charter or other relevant human rights instruments, upon request by an AU Member State, an AU organ, or any African organization recognized by the AU—so long as the issue is not currently under consideration by the Commission. Essentially, the AfCHPR can take any case that has been brought up by its member if they have ratified those legal instruments according to the African Union.

The African Court on Human and Peoples' Rights (AfCHPR) delivered its landmark judgment in *Beneficiaries of the Late Norbert Zongo and Others v. Burkina Faso* (2014), holding Burkina Faso internationally responsible for failing to conduct an effective investigation into the 1998 assassination of journalist Norbert Zongo and three others (Bhaskaran, 2022). The Court found violations of Articles 1, 7, and 9 of the African Charter, relating to the right to access justice, fair trial, and freedom of expression. Notably, Burkina Faso became one of the few African states to fully comply with a Court judgment. The government reopened investigations, initiated legislative reforms, compensated the victims' families, and submitted implementation reports to the Court. This case is widely regarded as a model for constructive engagement with the African regional human rights system, demonstrating that genuine political will and pressure from civil society can facilitate meaningful state compliance (Center Global Law and Justice, 2014). In *African Commission on Human and Peoples' Rights v. Republic of Kenya application 006/2012*, the African Court on Human and Peoples' Rights issued a landmark judgment in 2017, holding that the forced eviction of the Ogiek people from the Mau Forest constituted a violation of several rights under the African Charter, including the rights to property (Article 14), culture (Article 17), natural resources (Article 21), and development (Article 22). The Court later issued a reparations judgment in 2022, ordering Kenya to provide restitution, compensation, and legal recognition of the Ogiek's status as an Indigenous people. The reparative orders included land return, financial compensation, and institutional measures aimed at non-repetition. Notably, Kenya has demonstrated substantial compliance, initiating a multi-agency taskforce, conducting community consultations, and

reporting progress to regional bodies. This case not only affirms the enforceability of Indigenous rights within the African human rights system but also serves as a leading example of voluntary state compliance with AfCHPR decisions, reflecting a growing norm of regional accountability and engagement (AfCHPR, 2024). The described implications of the AfCHPR's two decisions on the Ogiek case not only set a precedent for other cases involving these rights, in particular the land rights of Indigenous Peoples in Africa, but it is also conceivable that the case may serve as precedent in the international context. This decision will provide a solid framework for analysing claims over Indigenous lands (Olofsson, 2023).

DRC has submitted its case against Rwanda for its intervention in the M23 Movement that caused a humanitarian crisis in DRC territory on 21 August 2023. In its application DRC mentioned several international conventions that allegedly been violated by Rwanda, including : African Charter on Human and Peoples' Rights; International Covenant on Civil and Political Rights; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; African Charter on the Rights and Welfare of the Child; International Covenant on Economic Social and Cultural Rights; and Pretoria Declaration on Economic, Social and Cultural Rights. Understanding that AfCHPR jurisdiction is limited to the ratification of the international law related to the applicant and respondent country, further assessment is needed to determine whether or not AfCHPR is able to continue its case. Both parties have ratified the following convention and are bound to the AfCHPR jurisdiction. DRC demanded the Court to hold the Respondent State responsible, order troop withdrawal, end support for M23, and provide reparations for damages and victims.

On Wednesday, 12 February and Thursday 13 February 2025 AfCHPR held a public hearing in the matter of the Democratic Republic of Congo v Republic of Rwanda. Rwanda has raised objections to the jurisdiction of the Court and to the admissibility of DRC along with raised objections to the material and territorial jurisdiction of the Court (AfCHPR, 2023). Rwanda argued that the alleged human rights violations occurred outside its territory, thereby placing them beyond the Court's territorial competence. In response, DRC maintained that states can bear responsibility for extraterritorial actions, particularly where there is effective control, as it alleged in relation to the presence and actions of Rwandan forces and their support for the M23 rebel group within DRC territory. Rwanda also contested the existence of a legal dispute, asserting that no formal disagreement had been established. The DRC countered that a dispute need not be formally declared, pointing to the failure of multiple diplomatic efforts as evidence of a genuine dispute. Furthermore, Rwanda objected to the admissibility of the case on the grounds that domestic remedies had not been exhausted (Democracy in Africa, 2025) .

Rwanda's team of lawyers stated that "These (national legal) mechanisms are fully operational, accessible and effective, a fact that the applicant has utterly failed to rebut, preferring to believe it is not bound by the usual rules of admissibility" (All Africa, 2025). This argument from Rwanda is shown to be incorrect. For example, the existence of the International Criminal Tribunal for Rwanda (ICTR) established in 1994 to address genocide and crimes against humanity, the ICTR failed to indict any members of the Rwandan Patriotic Front (RPF) despite credible evidence of retaliatory killings and other abuses perpetrated by RPF forces (Ancietos, 2021). The RPF-led government in Kigali, after the genocide, deliberately obstructed investigative efforts and refused to cooperate, undermining the tribunal's jurisdictional power. As a result, the ICTR has faced significant criticism for enforcing "victor's justice," focusing on prosecuting mainly Hutu offenders while neglecting to hold the RPF accountable for its crimes (Ryngaert, 2013). DRC also argued that requiring thousands of victims to seek remedies within Rwanda was impractical in the context of ongoing insecurity and widespread violations.

Furthermore, Rwanda claimed that the DRC's parallel proceedings before the East African Court of Justice constituted an abuse of process. However, the DRC clarified that it had complied with the African Charter's procedural rules, which only prohibit submitting a matter that has already been conclusively settled by another judicial mechanism. The East African Court has yet to deliver a ruling on Rwanda's preliminary objections (East African Court of Justice, 2024). Regardless of its strong opposition by Rwanda, if the AfCHPR choose to move forward, it must comply with the court decision since both parties have accepted the court legal commitment.

CONCLUSION

The Democratic Republic of Congo (DRC) has undertaken various legal efforts through its domestic judicial mechanisms to demonstrate state sovereignty and address human rights violations within its territory. These include the ratification of major international human rights instruments, such as the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights, which are integrated into its legal system through a monist constitutional approach. Military courts have prosecuted select war crimes, including cases of rape and the use of child soldiers, and legislative reforms such as Laws No. 06/018 and 06/019 have enabled the prosecution of

gender-based violence as crimes against humanity. Nevertheless, implementation remains fragmented due to persistent challenges, such as institutional corruption, political interference, lack of funding, and weak judicial capacity, which have fostered widespread impunity, especially in regions affected by conflict. These constraints are further compounded by the DRC's fragile status, as recognized in global fragility indices, and its inability to assert effective control over eastern territories. Thus, while sovereignty is formally asserted, these systemic deficiencies render the DRC effectively “unwilling or unable” to ensure accountability, particularly when human rights violations involve foreign-supported armed groups like M23.

In response to the limitations of its domestic legal system, the DRC has turned to the African Court on Human and Peoples' Rights (AfCHPR) to seek justice and accountability at the regional level. The filing of a case against Rwanda in August 2023, alleging state responsibility for human rights violations committed through support of the M23 rebellion highlights the AfCHPR's evolving role as a mechanism for adjudicating interstate human rights conflicts in Africa. This action reflects a broader regional shift from traditional notions of sovereignty toward a model emphasizing state responsibility and regional accountability. Although Rwanda has raised objections regarding the Court's territorial and material jurisdiction, the DRC has maintained that the principle of effective control justifies extraterritorial responsibility under international law. The AfCHPR's previous jurisprudence, such as in *Zongo v. Burkina Faso* and *Ogiek v. Kenya*, demonstrates the Court's capacity to provide meaningful reparations and affirm state obligations under the African Charter. In this context, the AfCHPR serves not only as a forum for legal redress but as a cornerstone of continental human rights enforcement, capable of addressing legal vacuums where domestic remedies fall short.

REFERENCES

- Act 22/065 on Fundamental Principles on the Protection of Victims of Conflict Related Sexual Violence and Other Serious Crimes Against Peace and the Security of Humankind 26 December 2022.
- African Court on Human and Peoples' Right : *Thomas v Tanzania*, AfCHPR (Reparations, 4 July 2019)
- African Court on Human and Peoples' Rights . 2023. “Official Statement on AfCHPR Case.” Page. 2
- African Court on Human and Peoples' Rights Press Release. November 14th. 2024. “African Court Sets Deadline For Kenya To Comply With The Ogiek Judgment.” Available on website: <https://www.african-court.org/wpafc/african-court-sets-deadline-for-kenya-to-comply-with-the-ogiek-judgment/#:~:text=The%20Court%20reserved%20its%20decisions,ratified%20by%20the%20concerned%20States> Access date 19 June 2025
- African Court on Human and Peoples' Rights Press Release. February 10th. 2025. “African Court On Human And Peoples' Rights To Hold A Public Hearing In Application No. 007/2023, Democratic Republic Of Congo V Republic Of Rwanda, 12 And 13 February 2025.” Available on website: <https://www.african-court.org/wpafc/african-court-on-human-and-peoples-rights-to-hold-a-public-hearing-in-application-no-007-2023-democratic-republic-of-congo-v-republic-of-rwanda-12-and-13-february-2025/> Access date 23 Mei 2025
- African Commission On Human And Peoples' Rights : Application 006/2012 African Commission On Human And Peoples' Rights V. The Republic Of Kenya.
- Antai, G., Mulegi, T., Barongo, E., Ekpenisi, C., Kisubi, E., & Okonji, I. (2024). Exploring Mechanisms for Enforcing Human Rights within the Context of International Law: Issues and Challenges. *NIU Journal Of Legal Studies*, 10(1), 59-70. doi:10.58709/niujs.v10i1.1943
- Azaurashvili Z. (2023). Inter-state Application at the ECHR as a Method to Benefit International Disputes. *ESI Preprints*. <https://doi.org/10.19044/esipreprint.12.2023.p574>
- Bhaskaran, S.D. (2022). Self-Defence Against Non-State Actors: Reconceptualising the Legality of the ‘Unwilling or Unable’ Test in Light of the Doctrine of Necessity in International Law. *LSE Law Review*, 7(3), p. 301-326. Available at: <https://doi.org/10.61315/lselr.303>.
- BTI. 2024. “Congo, DR Country Report 2024.” Available on website: <https://bti-project.org/en/reports/country-report/COD> Access date 23 May 2025

- Center for Global Law and Justice. April 8th. 2014. "African Court on Human and Peoples' Rights Issues Judgment in Killing of Investigative Journalist." Available on website: <https://cglj.org/2014/04/08/african-court-on-human-and-peoples-rights-issues-judgment-in-killing-of-investigative-journalist/> Access date 18 June 2025
- Clapham, C. (1998). Rwanda: The Perils of Peacemaking, *Journal of Peace Research*, 35(2) 193–210. <http://www.jstor.org/stable/425520>
- Deeks, Ashley S. (2012). Unwilling or Unable: Toward a Normative Framework for Extraterritorial Self-Defense, 52 *Virginia Journal of International Law*, 483–550
- Denisova, T. S., & Kostelyanets, S. V. (2023). The Democratic Republic of the Congo: Political Instability and the Rwandan Factor. *Vestnik RUDN. International Relations*, 23(1), 37-47. doi: 10.22363/2313-0660-2023-23-1-37-47
- Dunia P. Zongwe. (2013). Taking Leaves From the International Criminal Court Statute: The Direct Application of International Criminal Law by Military Courts in the Democratic Republic of Congo, 46 *Israel L. Rev.* 249
- EACJ Press Release. September 27th. 2024. "Court Hears Applications Arising From Case Filed By Drc Against Rwanda Over Alleged Conflicts In North Kivu Region." Available on website: <https://www.eacj.org/?news=court-hears-applications-arising-from-case-filed-by-drc-against-rwanda-over-alleged-conflicts-in-north-kivu-region>. Access date 19 June 2025
- Ebobrah, S.T. (2011). A rights-protection goldmine or a waiting volcanic eruption?, *African Human Rights Law Journal*.
- Fofana, B. February 12th. 2025. "Africa: Rwandan Lawyers Say African Rights Court Lacks Jurisdiction In DR Congo Case." Available on website: <https://allafrica.com/stories/202502130610.html> Access date 19 June 2025
- Global Centre for The Responsibility to Protect. March 14. 2025. "Democratic Republic of the Congo." Available on website: <https://www.globalr2p.org/countries/democratic-republic-of-the-congo/> Access date 23 May 2025
- Inman, D & Magadju, PM . (2018). Prosecuting international crimes in the Democratic Republic of the Congo: Using victim participation as a tool to enhance the rule of law and to tackle impunity. *African Human Rights Law Journal*, 293-318 <http://dx.doi.org/10.17159/1996-2096/2018/v18n1a14>
- Henry, N. (2009) . Witness to rape: The limits and potential of international war crimes trials for victims of wartime sexual violence, 3 *International Journal of Transitional Justice*, 114.
- Human Rights Watch. 2022. "DRC: Crisis in Eastern Congo"
- Kitharidis, S. (2015). Rape as a weapon of war: Combating sexual violence and impunity in the Democratic Republic of the Congo, and the way forward. 15 *African Human Rights Law Journal*, 449-472 <http://dx.doi.org/10.17159/1996-2096/2015/v15n2a11>
- Kimathi, R. K., Okoth, P. G., & Matanga, F. K. (2024). Peace and Security Dynamics as A Result of Conflict Intervention by United Nations Stabilization Mission in the Democratic Republic of Congo. *African Journal of Empirical Research*, 5(4) 1379–1388. <https://doi.org/10.51867/ajernet.5.4.116>
- Liwanga, R.C., (2025). The Undead M23 and the International Human Rights Community's Responses. *Georgetown Journal of International Affair*. <https://gjia.georgetown.edu/2025/04/25/the-undead-m23-and-the-international-human-rights-communities-responses/?utm>
- Lukamba-Muhiya, T. (2023). Failed states in the Central Africa region: A case of the Democratic Republic of Congo. *Journal of Nation-Building & Policy Studies*, 7(1), 29–47. <https://doi.org/10.31920/2516-3132/2023/v7n1a2>
- Makonye, F. (2023). Demystifying March 23 (M23) Rebellion: Case of Eastern Democratic Republic of Congo (DRC). *African Journal of Terrorism and Insurgency Research (AJOTIR)*, 4(2) 5–17. DOI: <https://doi.org/10.31920/2732-5008/2023/v4n1a1>
- Makunya, TM. (2023). Beyond Legal Measures: A Review of the DRC's Initial Report under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. *Journal of African Law*, 67(2):225-240. doi:10.1017/S0021855323000141
- Muia, W., April 24. 2025. "DR Congo and M23 rebels agree ceasefire deal in Qatar talks", Available on website: , <https://www.bbc.com/news/articles/c3evwqxp34o> Access date 23 Mei 2025
- Mwansa, A. (2021). Political opportunism, impunity and the perpetuation of Victor's Justice: A case of the Rwandan Genocide. *African Journal of Political Science and International Relations*, 15(2), 76-89.
- Ndomba, M., Trefon, T., & Kabuyaya, N. (2025). The Conflict in Goma: An Analysis of the M23 Rebellion and its Implications. *European Journal of Applied Sciences*, 13(01), 372–375. <https://doi.org/10.14738/aivp.1301.18302>

- News Wires. February 22th. 2025. "UN Security Council demands Rwanda withdraw troops from eastern DR Congo", Available on website: <https://www.france24.com/en/africa/20250222-united-nations-security-council-demands-rwanda-withdraw-troops-from-congo>. Access date 23 Mei 2025
- Ntamwira, T.T. (2024) The Permanent Sovereignty of the State over the Exclusivity of Land Ownership in the DRC: Understanding International Law. *Open Access Library Journal*, 11, 1-18. doi: 10.4236/oalib.1111608.
- Nxumalo, S., February 21th. 2025. "DRC v. Rwanda: The African Court's First Interstate Case." Available on website: <https://ohrh.law.ox.ac.uk/drc-v-rwanda-the-african-courts-first-interstate-case/> Access date 23 Mei 2025
- Olofsson, S. (2023). After Decades of Illegal Evictions – Indigenous Ogiek Win Reparations Ruling Against the Republic of Kenya. *Harvard International Law Journal*
- Omach, P. (2000). The African Crisis Response Initiative: Domestic Politics and Convergence of National Interests, 99 *African Affairs* 73, at 77;
- Ravn, S. A., Plagis, M. A., & Madsen, M. R. (2025). International courts and sovereignty politics: Design, shielding, and reprisal at the African Court. *Leiden Journal of International Law*, 1–20. doi:10.1017/S0922156524000530
- Regional Centre on Small Arms. May 26th. 2023. "DRC Fragility" Available on website: <https://www.recsasec.org/drc-fragility/> Access date 18 June 2025
- Reuters. February 10. 2025. "Dozens of runaway Congo soldiers face trial on violence charges." Available on website: <https://www.reuters.com/world/africa/dozens-runaway-congo-soldiers-face-trial-violence-charges-2025-02-09/> Access date 23 May 2025
- Roth, K. December 30th. 2018. "Democratic Republic of Congo", Available on website: <https://www.hrw.org/world-report/2019/country-chapters/democratic-republic-congo>. Access date 23 Mei 2025
- United Nations. January 30th. 2025. "Hospitals overwhelmed in DR Congo, food running out: Goma faces 'devastation'." Available on website: <https://news.un.org/en/story/2025/01/1159631> Access date 23 May 2025
- United Nations High Commissioner for Refugees. 2023. "Democratic Republic Congo Situation Global Report 2023"
- United Nations Security Council. January 26th. 2023. "Report on DRC Conflict Mediation Efforts." Available on website: <https://press.un.org/en/2025/sc15982.doc.htm> Access date 23 May 2025
- US Department of States. 2023. "Country Reports on Human Rights Practices for 2023" United States Department of State. https://www.state.gov/wp-content/uploads/2024/02/528267_CONGO-DEM-REP-2023-HUMAN-RIGHTS-REPORT.pdf
- The United Nations Joint Human Rights Office Report. 2014. "Progress and obstacles in the fight against impunity for sexual violence in the Democratic Republic of the Congo." Office of the United Nations High Commissioner for Human Rights
- Sanchez, M. A. (2023). The African Court on Human and Peoples' Rights: forging a jurisdictional frontier in post-colonial human rights. *International Journal of Law in Context*, 19(3), 352–366. doi:10.1017/S1744552323000046
- Simanjuntak, N., & Tampubolon, M. (2024). Unwilling and Unable Test in Gross Human Rights Violations in Indonesia. *Asian Institute of Research*. <https://doi.org/10.31014/aior.1996.03.02.116>
- Viljoen, F. March. 2025. "DRC vs Rwanda at the African Court: why it could be a decisive moment for human rights and justice on the continent." Available on website: <https://democracyinafrica.org/drc-vs-rwanda-at-the-african-court-why-it-could-be-a-decisive-moment-for-human-rights-and-justice-on-the-continent/> Access date 19 June 2025.
- Windridge O. (2017). *Zongo v. Burkina Faso*, Judgment & Judgment on Reparations (Afr. Ct. H.P.R.). *International Legal Materials*, 56(6):1091-1143. doi:10.1017/ilm.2017.43
- Wolters, S. (2023). The M23 Crisis – An Opportunity to Bring Sustainable Peace to the Great Lakes Region. *South African Institute of International Affairs*. <http://www.jstor.org/stable/resrep49249>