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

THE MATTER OF

LAURENT MUNYANDILIKIRWA

V.

REPUBLIC OF RWANDA

APPLICATION NO. 023/2015

RULING

2 DECEMBER 2021

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

TABLE OF CONTENTS

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

In accordance with Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") and Rule 9(2) of the Rules of Court (hereinafter referred to as "the Rules") [1], Justice M-Thérèse MUKAMULISA, member of the Court and a national of Rwanda, did not hear the Application.

In the Matter of:
Laurent MUNYANDILIKIRWA
Represented by:

i. International Federation for Human Rights (FIDH)
ii. Robert F. Kennedy Human Rights Foundation (RFK)

Versus

REPUBLIC OF RWANDA

Represented by

i. Mr NTAGANDA N. Felix, Senior State Attorney, Ministry of Justice
ii. MBONIGABA Eulade, Senior State Attorney, Ministry of Justice

after deliberation,
renders the following Ruling in default:

[1] Formerly, Rule 8(2) of the Rules of Court, 2 June 2010.

I. PARTIES

1. Laurent Munyandilikirwa (hereinafter referred to as “the Applicant”) is a national of Rwanda, a human rights lawyer and former president of the Rwandan League for the Promotion and Defence of Human Rights (hereinafter referred to as “LIPRODHOR”). The Applicant alleges that he served LIPRODHOR as President from December 2011 to July 2013 when he was forced to go into exile after having been ‘illegally’ ousted from his position. He challenges the lawfulness of the removal of the Board of LIPRODHOR.

2. The Respondent State is the Republic of Rwanda, which became a party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 21 October 1986 and to the Protocol on 25 May 2004. The Respondent State also filed, on 22 January 2013, the Declaration provided for in Article 34(6) of the Protocol, by which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations. However, on 29 February 2016, the Respondent State deposited with the African Union Commission an instrument of withdrawal of the said Declaration. The Court held, on 3 June 2016, that this withdrawal has no bearing on pending cases and new cases filed before the withdrawal came into effect, that is, on 1 March 2017.[2]

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. The Applicant states that he is the former President of LIPRODHOR, a human rights organisation that has been monitoring the human rights situation and conducting advocacy on human rights issues in Rwanda since 1994.

[2] *Ingabire Victoire Umuhoza v United Republic of Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 562, § 67, *Laurent Munyandilikirwa v. Republic of Rwanda,* Application No. 023/2014, Order on Withdrawal of Declaration of 03 June 2016, § 10.

4. The Applicant alleges that over the years, various forms of administrative obstacles, threats and arbitrary arrests of its leaders, and active interference by the Respondent State's government have constrained the ability of LIPRDODHOR to carry out its independent human rights work. He avers that, notwithstanding the persistent repression, under his leadership, LIPRODHOR remained committed to operating as an autonomous organisation.

5. The Applicant contends that, on 21 July 2013, an informal consultation ('secret meeting') was called to remove the duly appointed leadership of LIPRODHOR, including the Applicant, because they were considered as being too critical of the human rights violations allegedly committed or tolerated by the Respondent State. He submits that the participants at the informal consultation proceeded to conduct a vote, in violation of LIPRODHOR's internal bylaws and Rwandan legislation governing national NGOs. This vote, resulted in the removal from office of the "independent, legitimate leadership of LIPRODHOR and unlawfully elected a new executive committee comprising government sympathizers who would no longer be critical of the Respondent State's observance of its human rights obligations".

6. The Applicant asserts that, despite the highly irregular and unlawful nature of the alleged vote to oust the legitimate board of directors of LIPRODHOR, those who attended the 'secret meeting' decided to qualify it as a General Assembly meeting. He further states that the Rwandan Governance Board, the government body responsible for civil society oversight and recognition, immediately approved the 'illegal' ousting of the legitimate board of directors.

7. The Applicant alleges that on 22 July 2013, in compliance with LIPRODHOR's statute and national laws, he and other members of the legitimate board submitted a complaint to LIPRODHOR's internal dispute resolution organ regarding the purported General Assembly meeting and "election" of the new and 'illegitimate' board of directors.

8. The Applicant contends that, on 23 July 2013, LIPRODHOR's internal dispute resolution organ issued a decision which was favourable to him. According to

the Applicant, the organ decided that the 21 July 2013 'secret meeting' was held in contravention of the organisation's statute, and further declared that the legitimate board should continue to operate as the functioning leadership of LIPRODHOR.

9. The Applicant avers that, despite the internal dispute resolution organ's decision and prior notice to the Rwandan Governance Board on 24 July 2013, the latter sent a letter to LIPRODHOR stating its official recognition of the new, unlawfully elected "board of directors" as the functioning board of LIPRODHOR.

10. According to the Applicant, on 24 July 2013, the Respondent State's police prevented a previously scheduled event organised by LIPRODHOR's 'legitimate board', which was intended to provide information on the process of stakeholder submissions before the Universal Periodic Review of the United Nations Human Rights Council.

11. In response, on 25 August 2013, the Applicant and other members of LIPRODHOR's 'legitimate' board filed a complaint before the *Tribunal de Grande Instance* of Nyarugenge (hereinafter referred to as "the Tribunal") against the 'illegitimate and unlawfully' elected board. They sought a temporary injunction against the transfer of power to the new board and the reopening of LIPRODHOR's bank accounts, which were closed upon the request of the newly elected border members. On 2 September 2013, the Tribunal rejected the request for the temporary injunction indicating that the bank accounts were already reopened and thus, the request for temporary injunction had no merit.

12. The Applicant asserts that a hearing on the merits of the afore-mentioned complaint at the Tribunal was held on 6 March 2014. Despite being an action for injunctive relief, and while the Rwandan Governance Board acted swiftly to approve the 'illegitimate' board within three (3) days of the illegal vote, roughly nine (9) months elapsed between the time the legitimate board filed their complaint before the Tribunal and when it heard the case on the merits.

13. On 8 August 2014, the Tribunal dismissed the case on a technicality, holding that the complainants should have named “LIPRODHOR” as the defendant rather than the members of the ‘illegitimate and unlawfully elected’ board. The Tribunal also found that the Applicant and the legitimate board members did not obtain a decision from the internal dispute resolution organ before filing a complaint with the court.

14. Dissatisfied with the decision of the Tribunal, the Applicant and other members of the LIPRODHOR’s ‘legitimate board’ appealed to the High Court of Kigali on 24 February 2015.

15. On 23 March 2015, the High Court reversed the Tribunal’s finding that the case was not submitted against the right defendant. However, according to the Applicant, despite the evidence establishing the contrary, the High Court erroneously upheld the Tribunal’s decision on the second ground of appeal that the complainants did not attempt to resolve the conflict through LIPRODHOR’s internal dispute resolution organ.

16. The Applicant alleges that the filing of the matter before the national judiciary was followed by numerous death threats against him and other members of the legitimate board, as a continuation of previous harassments related to their human rights work. As a result, the Applicant claims that, fearing for his own safety and the safety of his family, he fled the country on 3 March 2014; yet, the death threats continued to the date of filing the Application.

17. The Applicant asserts that on 21 November 2014, other members of the ‘legitimate board’ were arbitrarily arrested while they were planning for an extraordinary session scheduled for 23 November 2014 to review the status of LIPRODHOR. Although members of ‘legitimate board’ were subsequently released pursuant to an order of the High Court of Kigali, the Mayor of Nyarugenge District issued a Communiqué prohibiting the extraordinary session from being held.

18. The Applicant states that, even though the organisation remains under the name of LIPRODHOR, it no longer operates autonomously, as the unlawfully elected leadership of LIPRODHOR has censored the organisation's human rights work that is deemed to be too critical of the Respondent State's lack of observance of its human rights obligations.

B. Alleged violations

19. The Applicant alleges the violation of his:

i) right to freedom from discrimination (Article 2);
ii) right to equality and equal protection of the law (Article 3),
iii) right to a fair trial (Article 7);
iv) right to receive information and freedom to express his opinions (Article 9);
v) right to freedom of association and assembly (Article 10); and
vi) right to work; and by failing to prevent and sanction private violations of human rights through independent and impartial courts, the Respondent State has violated Articles 1, 2, 3, 7, 9, 10, 11, 15 and 26 of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

20. The Application was filed on 23 September 2015 and served on the Respondent State on 4 December 2015.

21. On 23 August 2016, the Registry notified the Parties of the close of pleadings and drew their attention to Rule 63 of the Rules[3] regarding the submission of additional evidence and judgment in default, respectively.

22. On 9 September 2016, Mr. Maina Kiai, the UN Special Rapporteur on Freedom of Association and Assembly (hereinafter referred to as the "UN

[3] Formerly, Rule 55 of the Rules of Court, 2 June 2010.

Special Rapporteur") sought leave to participate in the proceedings as *amicus curiae*.

23. On 24 September 2016, the legal representative of LIPRODHOR requested that LIPRODHOR should also be heard before the Court reaches a decision that might be prejudicial to the organisation.

24. At its 43rd Ordinary Session, held from 31 October to 18 November 2016, the Court decided to re-open pleadings and to accept the requests of the UN Special Rapporteur to participate in the case as *amicus curiae* and to hear LIPRODHOR.

25. The UN Special Rapporteur, filed his submissions on merits on 5 January 2017.

26. On 16 January 2017 the legal representative of LIPRODHOR filed his submissions on behalf of LIPRODHOR which, together with the submissions of the UN Special Rapporteur, were transmitted to the Parties on 25 January 2017, for their information.

27. On 30 January 2017, the Respondent State notified the Court of its decision to discontinue participating in the proceedings in this Application and it did not file its response to the Application.

28. On 2 October 2018, the Registry sent a letter to the Respondent State again drawing its attention to Rule 63 of the Rules concerning judgment in default.

29. On 22 October 2018, the Applicant filed his submissions on reparations and this was transmitted to the Respondent State on 6 November 2018 with a request that it file its Response within thirty (30) days of receipt. The Respondent State did not file its Response.

30. Pleadings were closed on 2 March 2019 and the parties were duly notified.

31. Having considered the submissions of the Applicant and that of LIPRODHOR, the Court decided to seek clarifications from parties on grey areas and outstanding issues and on 25 August 2020, the Registry sent to the Applicant and LIPRODHOR a notice with a set of issues to respond to within twenty (20) days of receipt of the same. By the same notice, the Applicant was requested to file evidence in support of his claims for reparations.

32. On 17 September 2020, the Applicant requested to be sent documents supposedly filed by LIPRODHOR and to be granted extension of time to respond to the request for clarification of grey areas that the Court had sent him on 25 August 2020.

33. On 12 October 2020, the Registry notified the Applicant of the grant of twenty (20) days' extension of time. The Registry also informed the Applicant that LIPRODHOR had not filed some annexes that it listed in its submissions.

34. On 11 November 2020, the Applicant filed his Reply to the issues for which clarification had been sought, together with additional documents (exhibits) as proof of his claims for reparations.

35. Neither the Respondent State nor LIPRODHOR filed any response to the requests for clarifications on outstanding issues despite reminders to do the same.

IV. PRAYERS OF THE PARTIES

36. The Applicant prays the Court to order the Respondent State to:

i. Publicly recognize and accept responsibility for the violations perpetrated against the Applicant and the legitimate board of LIPRODHOR, giving effect to the decision of the Court and issuing a public apology;

ii. Nullify the respective decisions of the High Court and Rwanda Governance Board denying rightful relief to the Applicant and the legitimate board;

iii. Immediately and fully restore the Applicant and the legitimate board to their rightful positions of leadership in LIPRODHOR prior to their unlawful ousting;
iv. Immediately initiate effective and impartial investigation into the threats and acts of intimidation against the Applicant and the legitimate board, in order to ensure that those responsible are brought to justice;
v. Issue reparations, including prompt and adequate compensation to the Applicant, the legitimate board and their representatives including material damage, psychological and social services material damages, loss of opportunities, and moral damage, among others that the Court should see fit;
vi. Publicly condemn threats and other forms of intimidation against independent human rights defenders and recognize the importance of their action in favour of the promotion and protection of human rights and fundamental freedoms;
vii. Reform the domestic legal framework regulating Non-Governmental Organizations in order to remove impermissible restrictions on the rights to freedom of association, assembly, and expression;
viii. To take immediate and all necessary steps to strengthening independence of the judiciary;
ix. Initiate a broader legal reform process with the purpose of creating an enabling environment for civil society in the country; and
x. Take all other necessary steps to redress the alleged human rights violations.

37. The Applicant further prays the Court to order the Respondent State to:

i. Reinstate the lawful LIPRODHOR 'legitimate board';
ii. Guarantee his safe return from exile;
iii. Investigate ongoing threats and intimidation against him and other members of the 'legitimate board' of LIPRODHOR;
iv. Nullify the respective decisions of the High Court and of the Rwandan Governance Board that denied his rightful relief to him and the legitimate board of LIPRODHOR;
v. Pay monetary compensation in the amount of 1,082, 515 euros for the material prejudice to himself and his family members relating to costs associated with fleeing Rwanda, lost earnings, legal fees, travel expenses as well as for material loss incurred by LIPRODHOR;

vi. Pay 55,000 euros for moral prejudice suffered by the Applicant as result of psychological distress and anguish, reputational harm, disruption of his social and occupational life;
vii. Pay 55,000 euros for moral prejudice suffered by his wife as well as 75,000 euros in compensation for the moral prejudice that his three children have suffered;
viii. Pay 200,000 euros to the other members of the LIPRODHOR's rightful board members and staff;
ix. Pay compensation to LIPRODHOR for the moral damage inflicted through the illegal takeover of its board and the ensuing disparagement of its human rights work;
x. Publication of the Court's judgments and its summary within six months, effective from the date of the judgment in English or French;
xi. Make a public apology and official acknowledgment of wrongdoing;
xii. Issue official declaration restoring the dignity and reputation of LIPRODHOR, the Applicant and other legitimate board members and acknowledge the role of human rights defenders;
xiii. Include an accurate account of this case and information about the importance of civil society organisations in educational materials throughout Rwandan society;
xiv. Guarantee non-repetition by condemning threats and intimidation against independent human rights defenders;
xv. Undertake legal reforms by amending laws governing the freedom of association, assembly and expression; and
xvi. Improve judicial independence and ensure all proceedings thereof abide by due process standards.

V. *AMICUS CURIAE* SUBMISSIONS

38. The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, intervening as *amicus curiae*, filed submissions on the merits. The Special Rapporteur recalls that the Respondent State is a full member of the United Nations and thus, is bound by the human rights obligations set out in regional and universal human rights treaties to which it

is a party as well as by the interpretations and standards expounded by the implementing bodies enforcing the treaties.

39. The Special Rapporteur submits that the right to freedom of association protects a group of individuals or legal entities collectively involved in an act to express, pursue or defend common interests. In this regard, citing international human rights jurisprudence[4], he asserts that the Respondent State has dual obligations: first, a positive obligation to create an enabling environment, in law and in practice, in which individuals freely exercise their right to freedom of association; and second, a negative obligation to refrain from interference with the rights guaranteed. The Special Rapporteur further states that any restrictions to freedom of association must be provided by law; serve a legitimate aim such as collective security, morality, common interest and the rights and freedoms of others; and be necessary and proportionate towards that aim sought within a democratic society.

VI. ON THE DEFAULT OF THE RESPONDENT STATE

40. Rule 63 (1) of the Rules provides that:

> Whenever a party does not appear before the Court, or fails to defend its case within the period prescribed by the Court, the Court may, on the Application of the other party, or on its own motion, enter decision in default after it has satisfied itself that the defaulting party has been duly served with the Application and all other documents pertinent to the proceedings.

[4] *Ouranio Toxo and others v. Greece*, App. No. 74989101, Eur. Cl H.R., para.43 (Oct. 20, 2005), Human Rights Committee, CCPR General Comment No. J1 (The Nature of the General Legal Obligation Imposed on States Parties to the Covenant), CCPR/C/2liRev. Li Add.l3, tl8 (May 26.20014); *Civil Liberties Organisation (in respect of Bar Association) v. Nigeria,* Comm. No 101/93, Afr. Comm'n H.P.R., para.l4-16 (Mar.22, 1995); see also *International Pen and Others (on behalf of Saro-Wira) v. Nigeria*, Comm. 137194,139194,154/96 and161197, Afr. Comm'n H.P.R., para.107-10 (Oct. 31, 1998), *Tanganyika Law Society, the Legal and Human Rights Centre v. Tanzania*, Application 009/2011; *Reverend Christopher R. Mtikila v Tanzania*, Application 011/2011 (Consolidated Applications), Judgment, 14 June 2013 (2013) 1 AfCLR 34.

41. The Court notes that the afore-mentioned provision sets out three cumulative conditions for the passing of a decision in default, namely: i) the default of a party; ii) the notification to the defaulting party of both the application and the documents pertinent to the proceedings; and iii) a request made by the other party or the court acting on its own motion.[5]

42. With regard to the first requirement of default by a party, the Court notes that the Application was served on the Respondent State on 1 August 2018 and several reminders and extensions of time to file its response were sent, including on 5 February 2016, 14 July 2020, and 20 March 2017. The Respondent State communicated its decision to withdraw from participating in the proceedings on 9 February 2017 alleging lack of impartiality and independence of the Court. The Respondent State's attention was drawn to Rule 63 of the Rules concerning judgment in default, on 20 March 2017 and 2 October 2018 but it still failed to file its response within the prescribed time. It is clear, therefore, that the Respondent State decided not to defend itself.

43. On the application for a judgment in default, the Court notes that, in his response to the withdrawal of the Respondent State's Declaration under Article 34 (6) of the Protocol, the Applicant prayed the Court to proceed with the examination of the Application, in effect, requesting the Court to enter a judgment in default.

44. Lastly, with regard to the notification of the defaulting party, the Court notes that the Application was filed on 23 September 2015. It further notes that from 1 August 2018, the date of service of the Application on the Respondent State to 2 March 2019, the date of close of the pleadings, the Registry transmitted to the Respondent State all the pleadings and documents pertinent to the proceedings that were submitted by the Applicant and the *amicus curiae, the UN Special Rapporteur on the rights to Freedom of peaceful assembly and association.* Furthermore, the Registry, upon the request of the Court,

[5] *Léon Mugesera v Republic of Rwanda*, ACtHPR, Application No. 012/2017, Judgment of 27 November 2020 (merits and reparations), § 14.

apprised the Respondent State of all other additional documents that were filed after close of pleadings. In this regard, the Court also notes from the record the proof of delivery of those notifications.

45. The Court thus concludes that the Respondent State was duly notified of the Application and the pertinent documents and the failure to file its Response is as a result of its decision not to participate in the proceedings.

46. The required conditions having thus been fulfilled; the Court concludes that it may rule by default.[6]

VII. JURISDICTION

47. The Court observes that Article 3 of the Protocol provides as follows:

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

48. The Court further observes that in terms of Rule 49(1) of the Rules [7]: "[t]he Court shall conduct preliminary examination of its jurisdiction and the admissibility…."

[6] *African Commission on Human and Peoples' Rights v. Libya* (merits) (3 June 2016) 1 AfCLR 153, §§ 38-43. See also *Léon Mugesera v Republic of Rwanda*, ACtHPR, Application No. 012/2017, Judgment of 27 November 2020 (merits and reparations), § 18. See *also Yusuph Said v United Republic of Tanzania*, ACtHPR, Application 011/2019, Judgment of 30 September 2021 (Jurisdiction and Admissibility), § 18.

[7] Formerly Rule 39(1) of the Rules of Court, 2 June 2010.

49. On the basis of the above-cited provisions, therefore, the Court must, preliminarily, conduct an assessment of its jurisdiction and dispose of objections, if any, to its jurisdiction.

50. The Court notes that, even though nothing on the record indicates that it lacks jurisdiction, it is obligated to determine if it has jurisdiction to consider the Application.

51. Regarding its material jurisdiction, the Court has previously held that Article 3(1) of the Protocol gives it the power to examine an Application provided that it contains allegations of violations of rights protected by the Charter or any other human rights instruments ratified by the Respondent State[8]. The present Application contains allegations of violations of several rights and freedoms guaranteed under Articles 1, 2, 3, 7, 9, 10, 11, 15 and 26 of the Charter. Accordingly, the Court has material jurisdiction to examine this Application.

52. Concerning its personal jurisdiction, the Respondent State is a Party to the Protocol and deposited the Declaration prescribed under Article 34 (6) of the Protocol, which enabled the Applicant to file this Application, pursuant to Article 5 (3) of the Protocol. The Court recalls in this regard that, the withdrawal of the Declaration does not have any retroactive effect and it also has no bearing on matters pending prior to the deposit of the instrument of withdrawal of the Declaration, as is the case with the present Application. [9] Accordingly, the Court has personal jurisdiction

53. The Court holds that it has temporal jurisdiction on the basis that the alleged violations were committed in 2013, after the Respondent State became a party to the Charter, that is, on 21 October 1986, to the Protocol on 25 May 2004

[8] *Alex Thomas v. United Republic of Tanzania* (merits) (2015) 1 AfCLR 465, § 45; *Oscar Josiah v. United Republic Tanzania,* ACtHPR, Application No. 053/2016, Judgment of 28 March 2019 (merits), § 24. *Lohé Issa Konaté v Burkina Faso* (merits) (2014) 1 AfCLR 314, §§ 35-36; *Godfred Anthony and Anthony lfunda Kisite v. United Republic of Tanzania*, ACtHPR, Application No. 015/2015, Ruling of 28 September 2019 (Jurisdiction and Admissibility), §§ 19-21.

[9] *Ingabire Victoire Umuhoza v. Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 540, § 67; *Laurent Munyandilikirwa v. Rwanda (*Order on Withdrawal of Declaration), § 10.

and deposited the Declaration required under Article 34 (6) thereof on 22 January 2013

54. The Court also holds that it has territorial jurisdiction given that the facts of the case occurred in the territory of the Respondent State.

55. In light of the foregoing, the Court holds that it has jurisdiction to hear this Application.

VIII. ADMISSIBILITY

56. Pursuant to Article 6(2) of the Protocol, "the Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter."

57. Pursuant to Rule 50(1) of the Rules[10], "the Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter, Article 6 (2) of the Protocol and these Rules."

58. Rule 50 (2) of the Rules, which in essence restates the provisions of Article 56 of the Charter, provides that:

> Applications filed before the Court shall comply with all the following conditions:
>
> a) Indicate their authors even if the latter request anonymity,
> b) Are compatible with the Constitutive Act of the African Union and with the Charter,
> c) Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union,
> d) Are not based exclusively on news disseminated through the mass media,
> e) Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,

[10] Formerly Rule 40 Rules of Court, 2 June 2010.

f) Are submitted within a reasonable time from the date local remedies were exhausted or from the date the Court is seized with the matter, and

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

59. The Applicant submits that his Application fulfils all admissibility conditions specified under Rule 50 of the Rules. Despite the lack of submissions by the Respondent State on the admissibility of the Application, the Court will undertake an assessment of compliance with these conditions, based on the record before it.

60. Regarding identity, the Applicant's identity is known. Accordingly, the Court holds that the Application fulfils the requirement of Rule 50 (2)(a) of the Rules.

61. On the compatibility of the Application with the Constitutive Act and the Charter, the Court notes that the claims made by the Applicant seek to protect his rights guaranteed under the Charter. It further notes that one of the objectives of the African Union stated in Article 3(h) of its Constitutive Act is the promotion and protection of human and peoples' rights and that nothing on the file indicate that the Application is incompatible with the two instruments. Therefore, the Court holds that the Application meets the requirement of Rule 50(2)(b) of the Rules.

62. Regarding the language used, there is nothing in the Application that would, be considered as disparaging or insulting within the terms of Rule 50 (2) (c) of the Rules. Accordingly, the Court holds that the Application complies with Rule 50 (2) of the Rules.

63. On the nature of evidence used, the Court observes from the record that the Applicant cited some media reports. However, the Application was not exclusively based on such reports, which the Applicant mentions only to shed

some light on the general human rights situation in the Respondent State. [11] The Court therefore holds that the Application fulfils the requirement of Rule 50(2)(d) of the Rules.

64. With respect to Rule 50(2)(e) of the Rules on exhaustion of local remedies, the Applicant avers that he first sought to get redress for his grievances at the Internal Dispute Resolution Mechanism of LIPRODHOR, then filed his matter at the *Tribunal de Grande Instance* and dissatisfied with the decision of the Tribunal, he later appealed to the High Court. According to the Applicant, based on Article 28 of Rwanda's Organic Law Determining the Organisation, Functioning and Jurisdiction of the Supreme Court, the Applicant and the legitimate board did not have a basis for appealing their case from the High Court to the Supreme Court.

65. The Applicant argues that even though he went through the motions of obtaining a final decision from the Respondent State's judiciary, he should not be required to exhaust local remedies as local remedies were not available, effective, and sufficient. The Applicant asserts that despite domestic remedies being formally available, evidence suggests that they are in reality not available, effective, and sufficient in practice, in particular when a case involves an individual or entity known to be critical of the government, because the political atmosphere robs the judiciary of its independence. The Applicant cites reports of Human Rights Watch and Freedom House to substantiate this.

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66. The Respondent State, having failed to participate in the proceedings, did not respond to these allegations.

67. The lawyer representing LIPRODHOR disputes the Applicant's submissions. He asserts that, contrary to Article 27 of Organic Law N° 04/2012 of 9 April

[11] *Frank David Omary and Others v United Republic of Tanzania* (admissibility) (2014) AfCLR 358, § 96.

2012, the Applicant prematurely took his matter to the *Tribunal de Grande Instance* on 25 July 2013 despite the fact that the Internal Dispute Resolution Committee of LIPRODHOR had summoned the Applicant and other members of the 'lawful board' and the 'unlawful board' to a hearing on the matter on 2 August 2013. According to the lawyer for LIPRODHOR, pursuant to Article 19 of the Statute of LIPRODHOR, the decision of the Committee would be final only after it is referred to the General Assembly and the latter made its own decision.

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68. The Applicant contests the submissions of the lawyer for LIPRODHOR and contends that, the Dispute Resolution Committee has made a final determination as far as his issues are concerned and his decision to take his matter to the tribunal on 25 July 2013 was legitimate and complied with the provisions of Article 19 of the Statute and Article 27 of Organic Law N° 04/2012 of 9 April 2012. He states that members of the 'unlawful board' convened the illegal meeting of 21 July 2013 alleging that the Applicant and other members of the lawful Board decided to withdraw LIPRODHOR from the Coalition League for the Defence of Human Rights (hereinafter referred to as "CLADHO") without consulting the General Assembly.

69. The Applicant asserts that the Committee's summoning of illegal board members for a meeting on 2 August 2013 was just to hear members of the 'unlawful board' about their underlying dispute relating to the said withdrawal from CLADHO, not with regard to the issue of leadership of LIPRODHOR. He contends that the Committee did not summon the Applicant or other members of the legitimate Board. According to the Applicant, the Committee had already determined with finality the dispute over who rightfully controlled leadership of LIPRODHOR, and this question was no longer an issue and was not on the agenda for any further proceedings to take place at the 2 August 2013 meeting. Accordingly, he submits that he did not need to wait until the said date for him to seize the competent court.

70. As regards the purported requirement that decisions of the Dispute Resolution Committee should be submitted to the General Assembly, the Applicant contests the submissions of the lawyer for LIPRODHOR and avers that the General Assembly did not need to adopt or endorse the decision of the Dispute Resolution Committee for it to be final. The Applicant alleges that the lawyer's argument seems to be based on the French version of Article 19 of the LIPRODHOR Statute, which appears to require that the decision of the Internal Dispute Resolution Committee should be submitted to the General Assembly for adoption before the same is taken to the competent Rwandan Court.

71. The Applicant submits that both the English and Kinyarwanda versions of Article 19 of the LIPRODHOR Statute do not have such a requirement of adoption by the General Assembly. In this regard, he argues that both LIPRODHOR's common practice as well as national law and practice determine acceptance of Kinyarwanda as the controlling text of the Statutes. The Applicant also submits that Article 8 of the Rwandan Constitution identifies Kinyarwanda as the national language and the first official language while English and French are listed as other official languages.

72. In addition, the Applicant contends that, nowhere in LIPRODHOR's Statute is the General Assembly given any role or power in relation to the Internal Dispute Resolution Committee save that the Committee's members are elected by the Assembly. Consequently, he asserts that the Court should not rely on the French version alone to introduce an additional requirement into Article 19 of the LIPRODHOR Statute.

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73. The Court notes that the rule of exhaustion of local remedies aims at providing States the opportunity to deal with human rights violations within their

respective jurisdiction before an international human rights body is called upon to determine the State's responsibility for the same.[12]

74. The Court has previously held that this requirement can be dispensed with only if local remedies are not available, they are ineffective or insufficient or the domestic procedure to pursue them is unduly prolonged. [13] The Court has also emphasised that an Applicant is only required to exhaust ordinary judicial remedies.[14]

75. In the instant case, the Court takes note of the Applicant's submissions that following the 'unlawful' takeover of the LIPRODHOR's leadership and transfer of power to the 'illegitimate' board, he and other members of the 'legitimate board' filed a complaint on 25 July 2013 and sought a temporary injunction at the *Tribunal de Grande Instance* of Nyarugenge. On 2 September 2013, the Tribunal rejected the request for a temporary injunction.

76. It is evident from the record that a hearing of the case was held on 6 March 2014 and that on 8 August 2014, the Tribunal dismissed the case on a technicality. The Tribunal held that the complainants should have named "LIPRODHOR" as the defendant rather than the members of the 'illegitimate and unlawfully elected' board. The Tribunal also found that the Applicant and the legitimate board members did not obtain a decision from the internal dispute resolution organ of LIPRODHOR before filing a complaint with the court.

77. The Court notes that following the decision of the Tribunal, the Applicant and the other members of the 'legitimate Board' appealed to the High Court on 24

[12] *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (26 May 2017) 2 AfCLR 9, §§ 93-94.
[13] *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabe des Droits de l'Homme et des Peuples v. Burkina Faso* (preliminary objections) (21 June 2013 (2013) 1 AfCLR 197, § 84. *Alex Thomas* v *Tanzania* (merits), § 64. See also *Wilfred Onyango Nganyi and Others v United Republic of Tanzania (merits)* (2016) 1 AfCLR 507, § 95.
[14] *Alex Thomas v. Tanzania* (merits), § 64. See also *Wilfred Onyango Nganyi and 9 Others v*. *Tanzania* (merit), § 95; *Oscar Josiah v*. *Tanzania* (merits and reparations), § 38; *Diocles William v*. *United Republic of Tanzania*, ACtHPR, Application No. 016/2016, Judgment of 21 September 2018 (merits and reparations), § 42.

February 2015. On 23 March 2015, the High Court dismissed the case, on the ground that the complainants did not attempt to resolve the conflict through LIPRODHOR's internal dispute organ, as required by law.

78. The Court notes that both the Tribunal and the High Court based their decisions on Article 27 of Organic Law N° 04/2012 of 9 April 2012, Governing National Non-governmental organisations, which prescribes that:

> Any conflict that arises in the national non-governmental organisation or among its organs shall be first resolved by the organ charged with conflict resolution….
>
> In case that procedure fails, the concerned party may file a case to the competent court of Rwanda.

79. The Court takes note of the Applicant's contention that he has complied with this provision and adduced Minutes of the Internal Dispute Resolution Committee of LIPRODHOR dated 23 July 2013. In the said Minutes, the Committee found that the meeting of 21 July 2013 in which the Applicant and other Board Members were removed was not in accordance with the bylaws of LIPRODHOR and concluded that:

> …we consider that the means followed to resolve the problem have not respected the statutes and the Rules of the League. We also believe that the body which is the Board of Directors is empowered to take the decision to continue working with CLADHO or to withdraw, on the understanding that it represents the members who elected it.
>
> For these reasons, we seek:
>
> 1) The summon of the member who chaired the meeting of 21/07/2013, namely Mr. Gahutu Augustin and the members elected to different administrative positions during this meeting, on 02/08/2013
> 2) We request the Board of Directors elected by the General Assembly at the meeting of 9-10/12/2011 to continue to discharge its functions

3) To forward the conclusions of the Committee to the Members, after hearing both parties, for adoption by the General Assembly of LIPRODHOR.

80. In view of this, the key issue for determination is whether the Applicant could be said to have finalised the dispute resolution process through the Internal Dispute Resolution Committee before he took his matter to the competent court, in compliance with the provisions of Article 27 of Organic Law N° 04/2012 of 9 April 2012 and in compliance with Article 19 of the Statute of LIPRODHOR.

81. The Court observes that in accordance with the aforementioned provision of Article 27 of Organic Law N° 04/2012 of 9 April 2012, ordinary courts of the Respondent State cannot entertain cases relating to disputes occurring in a national Non-Governmental Organisation unless such disputes are first addressed by the internal dispute resolution organ of the organisation in question. In this regard, the Applicant also agrees that the resolution of the disputes in the internal dispute resolution organ is a prerequisite to access "the competent court of Rwanda" in terms of Article 27. The Applicant's assertion however is that he did so and met this requirement before he filed his case at the *Tribunal de Grande Instance* on 25 July 2013.

82. The Court also notes that Article 19 of the Statute of LIPRODHOR is written in three languages: English, French and Kinyarwanda. The English and Kinyarwanda versions are identical but the French version has an additional clause that gives a role to the General Assembly of LIPRODHOR in the process of a dispute resolution. The relevant part of the provision is reproduced in French and translated to English below:

> Tout litige qui surgit au sein de la ligue entre les organes ou entre les membres et la ligue doit être réglé préalablement par l'organe de résolution des conflits avant d'être soumis à l'Assemblée générale.

> À défaut de règlement par cet organe, la partie intéressée peut soumettre le litige à la juridiction rwandaise compétente après décision de l'Assemblée générale.
>
> *English translation*
> Any dispute arising within the league between the organs or between the members and the league must first be settled by the conflict resolution body before being referred to the General Assembly.
>
> In the event the dispute is not settled by this body, the party concerned may refer the dispute to the competent Rwandan court after a decision of the General Assembly. (Translation by the Court)

83. The Court observes that the Statute does not contain any provision dealing with potential divergences between the different versions and similar to laws enacted in the Respondent State, uses the three languages each being equally authoritative and authentic. In this regard, the Court notes that although it makes Kinyarwanda a national language, Article 8 of the 2013 (as amended in 2015) Constitution of the Respondent State makes Kinyarwanda, English and French official languages, thereby making all the three equally authoritative.

84. As far as the practice of LIPRODHOR is concerned, it may indeed be the case that Kinyarwanda is generally used as the default language of communication and business. Nonetheless, it appears from the Minutes of the Internal Dispute Resolution Committee, which the Applicant himself relies on for his Application, that the Committee used the French version of the Statute. In the conclusions reproduced in paragraph 81 above, the Committee held that it sought "to forward the conclusions of the Committee to the Members, after hearing both parties, for adoption by the General Assembly of LIPRODHOR".[15] It can be inferred from this that the Committee considered adoption of the conclusions by the General Assembly as a necessary phase in the dispute resolution mechanism that must be followed before a dispute is

[15] Emphasis added.

referred to the competent Rwandan Court in accordance with Article 19 of the Statute of LIPRODHOR.

85. In this regard, the Applicant has not claimed that the decision that he obtained from the Internal Dispute Resolution Committee had been submitted to the General Assembly for adoption, before he took his case to Tribunal on 25 July 2013. In fact, as indicated above, the Committee had already summoned members of the new Board for a meeting on 2 August 2013, "to hear both parties" and submit its decision to the General Assembly for adoption. It is therefore clear that the Applicant took his matter to the "competent court" before the process in the internal dispute resolution committee was finalised. It is for this same reason that both the *Tribunal de Grande Instance* and the High Court decided to dismiss his case at its preliminary stage, without making a determination on the merits.

86. Regarding the Applicant's contention that the General Assembly is not mandated in the Statute of LIPRODHOR to adopt the decisions of the Internal Dispute Resolution Committee, the Court notes that under Article 9 of the Statute, the provision setting out the powers and functions of the General Assembly, the Assembly has the power, among others "to elect and dismiss…members of the Board of Directors…". It is evident from the substance of the Applicant's submissions that, his Application relates to the dismissal of the former members of the Board of Directors including the Applicant himself. His matter therefore falls within or at least, relate to the power of the General Assembly as regards the dismissal of members of the Board of Directors.

87. The Court has also considered the Applicant's assertion that the meeting of 2 August 2013 was to resolve the underlying sources of disputes in the organisation relating to the withdrawal of LIPRODHOR from CLADHO, not on who has the right to control leadership. Nevertheless, the Court does not find anything in the Minutes of the Internal Dispute Resolution Committee suggesting that the meeting of 2 August 2013 would only consider the issue of LIPRODHOR's withdrawal from CLADHO. The Committee clearly stated

that it sought to “hear both parties” on the matter without specifying that the hearing will only cover the purported underlying issues.

88. Furthermore, the Court takes note of the Applicant’s contention that, though he had accessed the national courts, he should not be required to do so as the Respondent State’s remedies are not properly available, effective, and sufficient as a result of the lack of independence of the Courts. The Court has considered the various reports of human rights organisations and bodies on the Respondent State that the Applicant filed to substantiate his contention.

89. The Court however reiterates its position as established in previous cases, “[i]t is not enough for the Complainants to cast aspersion on the ability of the domestic remedies of the State due to isolated incidences” [16] to justify their exemption from the obligation to exhaust the local remedies. In the final analysis, “it is incumbent on the Complainant to take all necessary steps to exhaust or, at least, attempt the exhaustion of local remedies”.[17] Resultantly, the Applicant’s general contention in this regard lacks merit.

90. Finally, the Court notes that despite his doubts on the effectiveness of the remedy available in national courts, the Applicant has attempted to access the Courts of the Respondent State. Nonetheless, the Respondent States’ Courts were not able to make determination on the merits of his case because of the Applicant’s own failure to meet the requirement of exhaustion of the internal dispute resolution mechanism of LIPRODHOR. In this regard, the Court finds nothing manifestly erroneous in their assessment requiring its intervention or from the information available on record, for it to draw a different conclusion.

[16] *Peter Joseph Chacha v United Republic of Tanzania* (admissibility) (28 March 2014) 1 AfCLR 398, § 143; *Frank David Omary v United Republic of Tanzania* (admissibility) (28 March 2014) AfCLR 358, § 127 . See also ACHPR, Communication No. 263/02: *Kenyan Section of the International Commission of Jurists, Law Society of Kenya and Kituo Cha Sheria v Kenya*, in 18th Activity Report July-December 2004, para 41;ACHPR, Communication No.299/05 Anuak Justice Council v Ethiopia, in 20th Activity Report January – June 2006, § 54.
[17] *Peter Joseph Chacha v Tanzania* (admissibility), § 144.

91. The Court also underscores that a mere attempt to access ordinary judicial remedies is not sufficient to meet the requirement of exhaustion of local remedies within the terms of Rule 50 (2) (e) of the Rules. This is particularly important when an applicant fails to fulfil procedural or substantive legal requirements to access domestic courts, which is the case in the instant Application.

92. In view of the foregoing, the Court holds that the Applicant has not exhausted local remedies as required under Rule 50 (2) (e) of the Rules.

93. The Court recalls that, the conditions of admissibility of an Application filed before it are cumulative, such that if one condition is not fulfilled then the Application becomes inadmissible.[18] In the present case, since the Application has failed to fulfil the requirement under Article 56(6) of the Charter which is restated in Rule 50(2)(f) of the Rules, the Court, therefore, finds that the Application is inadmissible.

IX. COSTS

94. The Applicant prays the Court to order the Respondent State to pay for the costs of the Application.

95. The Respondent State did not file a Response.

***

[18] *Mariam Kouma and Ousmane Diabaté v Republic of Mali* (jurisdiction and admissibility) (21 March 2018) 2 AfCLR 246, § 63; *Rutabingwa Chrysanthe v Republic of Rwanda* (jurisdiction and admissibility) (11 May 2018) 2 AfCLR 373, § 48; *Collectif des anciens travailleurs ALS v Republic of Mali*, ACtHPR, Application No. 042/2015, Judgment of 28 March 2019 (jurisdiction and admissibility), § 39; *Dexter Johnson v Ghana*, ACtHPR, Application No. 016/2017. Ruling of 28 March 2019 (Jurisdiction and Admissibility) § 57.

96. The Court notes that Rule 32(2) of its Rules[19] provides that "unless otherwise decided by the Court, each party shall bear its own costs."

97. Therefore, the Court decides that each Party shall bear its own costs.

X. OPERATIVE PART

98. For these reasons,

THE COURT,

Unanimously

On Jurisdiction

i. *Declares* that it has jurisdiction

By a majority of Eight (8) for, and Two (2) against, Justice Rafaâ BEN ACHOUR and Justice Ben KIOKO dissenting

On admissibility

ii. Declares that the Application is inadmissible

On costs

iii. Orders each Party to bear its own costs

Signed:

Imani D. ABOUD, President;

Blaise TCHIKAYA, Vice President;

[19] Formerly Rule 30(2) of the Rules of Court, 2 June 2010.

Ben KIOKO, Judge;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Stella I. ANUKAM, Judge;

Dumisa B. NTSEBEZA, Judge;

Modibo SACKO, Judge;

and Robert ENO, Registrar.

In accordance with Article 28(7) of the Protocol and Rule 70(1) of the Rules, the Dissenting Opinions of Justice Rafaâ BEN ACHOUR and Justice Ben KIOKO are appended to this Ruling.

Done at Dar es Salaam, this Second Day of December in the Year Two Thousand and Twenty One in English and French, both the French and English texts being equally authoritative.

DISSENTING OPINION OF JUDGE BEN KIOKO

THE MATTER OF LAURENT MUNYANDILIKIRWA
V
REPUBLIC OF RWANDA

APPLICATION NO. 023/2015

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

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

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

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

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

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

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

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

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

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

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

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

Signed:

Ben KIOKO, Judge;

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

Dissenting Opinion of Judge Rafaâ Ben Achour

Application No. 023/2015, *Laurent Munyandilikirwa v. Republic of Rwanda*

1. I do not agree with the Court's near-unanimous decision that found Application No. 023/2015 *Laurent Munyandilikirwa v. Republic of Rwanda* inadmissible on the ground that the Applicant failed to exhaust local remedies.

2. Contrary to the near-unanimous ruling of the Court, I am convinced that the Applicant exhausted all normal, available, effective legal and other remedies. (**I**). Besides, the Court relied on a provision in the Respondent State's law in one of the three versions of Article 19 of the Rwandan League for the Promotion and Defence of Human Rights (LIPRODHOR), to the exclusion of the other two equally authentic versions of the said law in English and Kinyarwanda (**II**).

I. The Applicant exhausted all local remedies

3. It should be noted that this Application was filed in response to a decision taken on 21 July 2013 based on a vote at a "consultation meeting", which meeting was subsequently qualified as a General Assembly of the Rwandan League for the Promotion and Defence of Human Rights (LIPRODHOR), and as a result of which LIPRODHOR's Board of Directors, chaired by the Applicant since 1994, was ousted and replaced by another Board[1].

4. The Applicant challenged the decision before several bodies. In accordance with the provisions of the law on NGOs [2] and LIPRODHOR statute, he first referred the matter to the LIPRODHOR's internal dispute resolution body, complaining about a vote held during a consultation described as a General Assembly and the election of a new Board of Directors (a). As LIPRODHOR failed to comply with the decisions of the internal dispute resolution body, he turned to the Respondent State's courts for redress (B).

[1] Officially, the "consultation meeting" was convened to discuss LIPRODHOR's decision to leave the Rwandan Collective of Leagues and Associations for the Defence of Human Rights (CLADHO), an umbrella organization of eight human rights associations including LIPRODHOR.

[2] Organic Law No. 04/2012 of 9 April 2012 on the organization and functioning of national non-governmental organizations.

a. Referral to LIPRODHOR's internal dispute resolution body

5. The law on NGOs provides:

> "Any conflict that arises in the domestic non-governmental organisation or among its organs shall be first resolved by the body in charge of conflict resolution….
>
> In case this procedure fails, the concerned party may file a case to the competent court of Rwanda[3]".

6. The Applicant submits that, in accordance with the provisions of Article 27 of the above-mentioned Law on NGOs and LIPRODHOR statute, he referred the matter to LIPRODHOR's internal dispute resolution body on 22 July 2013.

7. That same day, the Applicant and members of the ousted board of directors filed an application with the Rwandan Governance Office in which they denounced "the illegal meeting wrongly described as a General Assembly and the illegitimacy of the newly elected Board of Directors"[4].

8. On 23 July 2013, LIPRODHOR's internal dispute resolution body issued a decision in favour of the Applicant, in which it held that the 21 July secret meeting (described as a General Assembly) was held in contravention of the organization's statute, and that the board of directors chaired by the Applicant should continue to operate as the functioning leadership of LIPRODHOR[5]

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[3] *Idem*.
[4] Paragraph 34 of the Initial Application.
[5] In the said Minutes, the Committee found that the meeting of 21 July 2013 contained the following:

> …we consider that the means followed to resolve the problem have not respected the statutes and the Rules of the League. We also believe that the body which is the Board of Directors is empowered to take the decision to continue working with CLADHO or to withdraw, on the understanding that it represents the members who elected it.
>
> For these reasons, we seek:
>
> 1) The summon of the member who chaired the meeting of 21/07/2013, namely Mr. Gahutu Augustin and the members elected to different administrative positions during this meeting, on 02/08/2013.
> 2) We request the Board of Directors elected by the General Assembly at the meeting of 9-10/12/2011 to continue to discharge its functions.

9. However, and in spite of the internal dispute resolution organ's decision, and in spite of the decision having been notified, the Rwandan Governance Board, the government body responsible for the oversight and registration of civil society [6], on 24 July 2013 decided to ignore the findings of the internal dispute resolution body and hastily sent a letter to LIPRODHOR, by which letter it officially approved the ouster of the Board of Directors chaired by the Applicant, and legally recognized the new Board of Directors elected on 21 July 2013 as LIPRODHOR's functioning board .

10. That was the first essential phase of the recourse to local remedies. It was fully accomplished.

b. ***Referral to the Respondent State's courts***

11. In accordance with Article 27(2) of the law, which provides "[i]n case that procedure fails, the concerned party may file a case with the competent court of Rwanda" and, faced with a legal stalemate, on 25 August 2013, the Applicant and other members of the LIPRODHOR's ousted Board filed an application before the *Tribunal de Grande Instance* of Nyarugenge against the board elected on 21 July 2013 and installed at the head of LIPRODHOR by the Rwandan Governance Office. The Applicants prayed the Court to place an injunction on the installation of a new Board of Directors, and to order the unfreezing of LIPRODHOR's banks accounts which had been frozen at the request of the newly elected Board of Directors.

12. On 8 August 2014, the *Tribunal de Grande Instance* of Nyarugenge dismissed the complaints on the ground that the Applicants should have named LIPRODHOR as the defendant rather than the members of the newly elected Board and that the Applicant and his members did not obtain a decision from the internal dispute resolution body before seizing the court.

3)To forward the conclusions of the Committee to the Members, after hearing both parties, for adoption by the General Assembly of LIPRODHOR.

[6] Article 5(1) of Law No. 56/2016 of 16/12/2016 establishing the Rwandan Governance Office determining its responsibilities, organisation and functioning: « 1 regularly monitor service, delivery and compliance with the principles of good governance in the public and private sectors as well as in non-governmental organizations". .

13. On 24 February 2015, the Applicants lodged an appeal before the High Court of Kigali. On 23 March 2015, the High Court partially upheld the judgement of the *Tribunal de Grande Instance* of Nyarugenge, based on the fact that the co-applicants had failed to attempt to resolve the dispute through LIPRODHOR's internal dispute resolution body.

14. The Applicant's experience before LIPRODHOR's internal dispute resolution body and before the judicial authorities shows that he exhausted the available internal remedies provided by law. However, the Court found otherwise, wrongly agreeing with the position of LIPRODHOR's counsel who argued that the Applicant seized the *Tribunal de Grande Instance* prematurely, and this, after the decision of the internal dispute resolution body, he should have referred the matter to LIPRODHOR's General Assembly. Apart from the fact that it did not exist Recourse to this General Assembly, is by definition ineffective as the Assembly had already endorsed the *fait accompli.*

15.Unfortunately, this Court based its decision on an uncertain text of questionable legality, that is, the French version of Article 19 of the LIPRODHOR Statutes which provides: "[in the absence of a settlement by this body, the concerned party may submit the dispute to the competent Rwandan court after a decision is rendered by the General Assembly". The Court affirms that: "Nonetheless, the Respondent States' Courts were not able to make determination on the merits of his case because of the Applicant's own failure to meet the requirement of exhaustion of the internal dispute resolution mechanism of LIPRODHOR"[7]. The Court further held that: "a mere attempt to access ordinary judicial remedies is not sufficient to meet the requirement of exhaustion of local remedies within the terms of Rule 50 (2) (e) of the Rules. This is particularly important when an applicant fails to fulfil procedural or substantive legal requirements to access domestic courts, which is the case in the instant Application"[8]. The fact that the domestic courts did not raise this issue is not binding on the Court.

16. I am of the view that the Court did not need to take into consideration the provisions of LIPRODHOR's statute because the text, which is strictly internal to the NGO, does not have to add any procedural requirement to a statutory provision that is clear. The Organic Law simply requires that only one condition be met before recourse to the competent jurisdictions,

[7] § 90 of the Judgement.
[8] § 91 of the Judgement.

i.e., recourse to the internal dispute resolution body. The Applicant met all legal provisions. The internal legal text of an organization cannot in any way contradict the law and cannot institute proceedings not provided for by lawmakers. That Article 19 of Article 19 of the Statute of LIPRODHOR was taken into consideration is questionable from a second point of view, which I set out briefly below.

17. Moreover, it makes little sense to insist that the Applicant return before the General Assembly, that is, before the same body that decided to oust the Board of Directors chaired by the Applicant, because that body had refused to comply with the decision of the internal dispute resolution organ and had sanctioned the Applicant and his counsel. This is an ineffective remedy which, according to the Court's jurisprudence [9], does not even need to be attempted.

II. Consideration of the French version of Article 19 of LIPRODHOR's statute

18. The Court ignored the Organic Law on NGOs and relied on a clause in Article 19 of the French version of the LIPRODHOR statute that does not appear in the English and Kinyarwanda versions. In this regard, "The Court also submits that Article 19 of the LIPRODHOR statute exists in three languages: English, French and Kinyarwanda. The English and French versions are identical but the French version has an additional clause that gives a role to the General Assembly of LIPRODHOR's in the process of a dispute resolution. The relevant part of the provision is produced in French:

> Tout litige qui surgit au sein de la ligue entre les organes ou entre les membres et la ligue doit être réglé préalablement réglé par l'organe de résolution des conflits avant d'être soumis à l'Assemblée Générale.
>
> À défaut de règlement par cet organe, la partie intéressée peut soumettre le litige à la juridiction rwandaise compétente après décision de l'Assemblée Générale.

[9] See for example: ACtHPR. *Sébastien Germain Marie Aïkoue Ajavon v. Republic of Benin*, Application No. 065/2019, Judgement of 29 March 2021, § 75 where "The Court emphasises that the local remedies required to be exhausted must be available, effective and adequate".

19. The Court however observes that the Statute does not contain any provision dealing with potential divergences between the different versions and, like similar laws enacted in the Respondent State, uses the three languages, all equally authentic.

20. If all the versions are equally authentic, then the question that arises is why did the Court give precedence to the French version to the detriment of the other two versions of the Statute?

21. To answer this question, the Court uses a reasoning which, in my view, lacks probative force. Indeed, the Court refers to a hypothetical linguistic practice within LIPRODOHR, disregarding the provisions of the Rwandan constitution on the equality of languages. According to the Court, and "as far as the practice of LIPRODHOR is concerned, it may indeed be the case that Kinyarwanda is generally used as the default language of communication and business. Nonetheless, it appears from the Minutes of the Internal Dispute Resolution Committee, which the Applicant himself relies on for his Application, that the Committee used the French version of the Statute"[10].

22. Moreover, instead of diving into the analysis of this linguistic practice of LIPRODOHR, the Court could have given the Applicant the benefit of the doubt owing to the contradictions between the versions of the Statute.

23. In addition to the arguments in the first section, the Court could have based its decision on the two most favourable versions, which moreover, are in accordance with the law or, at any rate, it could have noted that, given the contradiction in the texts and considering their legal nature, it would concentrate only on legal provisions which do not give rise to any doubt.

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24. By finding Application No. 023/2016 inadmissible, the Court leaves the questions raised by the Application on freedom of association unanswered. This is highly regrettable.

Done in French in Dar es Salaam on 02/12/2021

Judge Rafaâ Ben Achour

[10] § 84 of the Judgement.