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

TIKE MWAMBIPILE AND EQUALITY NOW

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION No. 042/2020

RULING

1 DECEMBER 2022

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The Court composed of: Blaise TCHIKAYA, Vice-President; Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO, Dennis D. ADJEI – 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"), Justice Imani D. ABOUD, President of the Court and a national of Tanzania, did not hear the Application.

In the Matter of:

Tike MWAMBIPILE and EQUALITY NOW

Represented by:

Advocate Jebra KAMBOLE,
Law Guards Advocates

Versus

UNITED REPUBLIC OF TANZANIA

Represented by:

Dr. Boniface Nalija Luhende, Solicitor General, Office of the Solicitor General

after deliberation,

renders the following Ruling:

I. THE PARTIES

1. The Applicants are Tike Mwambipile, a female national of the United Republic of Tanzania and Equality Now, a Non-Governmental Organisation (NGO) with Observer Status before the African Commission on Human and Peoples' Rights (hereinafter referred to as "the African Commission"). They challenge the Respondent State's policies that exclude pregnant and parenting girls from public schools.

2. The Application is filed against the United Republic of Tanzania (hereinafter referred to as "the Respondent State"), 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 10 February 2006. Furthermore, the Respondent State, on 29 March 2010, deposited the Declaration provided for under Article 34(6) of the Protocol (hereinafter referred to as "the Declaration"), by virtue of which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations. On 21 November 2019, the Respondent State deposited with the Chairperson of the African Union Commission an instrument withdrawing its Declaration. The Court has held that this withdrawal has no bearing on pending cases and new cases filed before the withdrawal came into effect, that is, one (1) year after its deposit, which is on 22 November 2020.[1]

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. The Application concerns an alleged ban by the Respondent State of pregnant girls from attending public primary and secondary schools and preventing them from re-accessing the schools even after delivery. The

[1] *Andrew Ambrose Cheusi v. United Republic of Tanzania,* ACtHPR, Application No. 004/2015, Judgment of 26 June 2020 (merits and reparations), §§ 37-39.

Applicants allege that the ban violates the rights to education and non-discrimination.

B. Alleged violations

4. The Applicants allege that the Respondent State violated the rights of all girls in the Respondent State, notably:

    i. The right to education protected by:

        a. Articles 1 and 17(1) of the Charter;
        b. Article 11 of the African Charter on the Rights and Welfare of the Child (hereinafter referred to as "the African Children's Charter");
        c. Article 12 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (hereinafter referred to as "the Maputo Protocol");
        d. Articles 13 and 23 of the African Youth Charter;
        e. Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter referred to as "CEDAW");
        f. Articles 28 and 29 of the Convention on the Rights of the Child (hereinafter referred to as "the CRC");
        g. Article 13 of the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as "ICESCR");
        h. Article 18(4) of the International Covenant on Civil and Political Rights (hereinafter referred to as "ICCPR");
        i. Articles 1, 3 and 4 of the United Nations Educational, Scientific and Cultural Organization Convention against Discrimination in Education (hereinafter referred to as "the Convention against Discrimination in Education"); and
        j. Article 26 of the Universal Declaration of Human Rights.

    ii. The right to non-discrimination protected by:

        a. Articles 1, 2, 17(1) and 18(3) of the Charter;
        b. Articles 1, 3, 4, 11 and 24 of the African Children's Charter;

c. Articles 2 and 12 of the Maputo Protocol; and
d. Articles 1, 2, 3 and 4 of the Convention against Discrimination in Education.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

5. The Application was filed on 19 November 2020 together with a request for provisional measures.

6. On 22 December 2020, the main Application together with the request for provisional measures and additional evidentiary documents were served on the Respondent State.

7. On 23 April 2021, the Registry wrote to the African Committee of Experts on the Rights and Welfare of the Child (hereinafter referred to as "the ACERWC") and to the African Commission to seek confirmation whether the subject matter of this Application is related to a matter being examined by them. It also requested whether the ACERWC or the Commission, or through any of their Special Mechanisms, would be interested to act as *amicus curiae* in the case.

8. On 29 July 2021, the ACERWC informed the Court that it had received a similar communication as the present Application which was pending determination. The ACERWC further informed the Court that it had already declared the Communication submitted to it admissible and had communicated to the Applicants and the Respondent State that it would hold a hearing of the case in its upcoming Session to be held in November 2021. The hearing was scheduled during its previous 37th Session, however, it was deferred to the 38th Session due to the sudden passing of the late president of the Respondent State in the week of the hearing. The ACERWC also informed the Court that since it was already considering the matter under its jurisdiction, it had decided that it would not be in the position to act as *amicus curiae*.

9. The African Commission did not respond to the Court's request.

10. On 24 September 2021, the Court wrote to the Registrar of the East African Court of Justice to seek confirmation whether the subject matter of this Application was related to a matter being examined by the East African Court of Justice.

11. On 4 October 2021, the Registrar of the East African Court of Justice informed the Court that there was a reference filed with the East African Court of Justice on the same subject matter as the present Application challenging the expulsion of pregnant girls backed by the Education (Expulsion and Exclusion of Pupils from Schools) Regulations which was pending determination.

12. On 29 November 2021, the Court decided to consider the request for provisional measures together with the merits of the Application.

13. On 21 February 2022, the Court requested the Respondent State to inform the Court about recent developments, if any, relating to this matter since the submission of its Response.

14. On 22 July 2022, the Respondent State filed submissions on the measures it had taken to address the issues raised by the Applicants in the present Application.

15. The Parties filed their pleadings within the time stipulated by the Court.

16. On 16 September 2022, the ACERWC submitted to the Court its decision in *Communication No: 0012/Com/001/2019 in the matter between Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of Tanzanian girls) against the United Republic of Tanzania*, regarding the expulsion of pregnant girls and mothers from schools in the Respondent State, which it adopted during its 39th Ordinary Session held from 21 March to 1 April 2022.

17. During the proceedings before this Court, seven (7) organisations filed *amicus curiae* briefs which were duly notified to the Parties. These are: (i) Tanzanian Commission for Human Rights and Good Governance; (ii) Amnesty International; (iii) UNESCO; (iv) Tanzania Women Lawyers Association (TAWLA); (v.) Msichana Initiative; (vi) Clooney Foundation for Justice; and (vii) a joint brief by the Initiative for Strategic Litigation in Africa (ISLA), Human Rights Watch (HRW) and Women's Link Worldwide.

18. Pleadings were closed on 22 September 2022 and the parties were duly notified.

IV. PRAYERS OF THE PARTIES

19. The Applicants pray the Court to:

i. Declare that the expulsion and exclusion of pregnant girls and adolescent mothers from accessing public education in the Respondent State violates their right to education.
ii. Declare that the current policy implemented by the Respondent State that prohibits pregnant girls and adolescent girls from attending school both in written policy and in State declarations is grossly unlawful, discriminatory, not in the best interest of the child and that it violates their right to non-discrimination.
iii. Order the Respondent State to immediately revoke the prohibitive policy (both the expulsion regulation and implementation of declarations) and amend its legislation to protect the right to education.
iv. Order the Respondent State to immediately repeal Regulation No. 4 of the Education Regulations (Expulsion and Exclusion of Pupils from Schools) of 2002 to remove "wedlock" as a ground for expulsion and amend the Marriage Act of 1971 to harmonize the age of marriage to 18 for both boys and girls.
v. Order the Respondent State to develop strategies, programmes and nationwide campaigns that focus on addressing the issue of teenage pregnancies through public education or awareness on sexual and

reproductive health and rights as well as on ending child marriages, as this increased community knowledge on family planning and contraceptives will support efforts to address the high rate of teenage pregnancies.

vi. Order the Respondent State to develop strategies and nationwide campaigns to enable teenage mothers to attend school. This may range from providing subsidies to enable girls with children to attend school, to developing alternative schooling offering the same quality and standard of education as offered in mainstream schools as well as developing and implementing relevant re-entry policies for girls who have given birth.

vii. Order the Respondent State to put in place constitutional, legislative and administrative measures to guarantee the right to education, including its enforceability domestically, as well as a right to remedies, including reparations, and eradicate discriminatory laws and policies that impede the right to education within six (6) months.

viii. Order the Respondent State to report to the Court within a period of six (6) months from the date of judgment on the implementation of this judgment and consequential orders.

ix. Order the Respondent State to publish the judgment in this matter on the official website of its judiciary and of the Ministry responsible for legal affairs, within two (2) months from date of notification of the decision.

x. Declare violations of other human rights which were not specifically mentioned by the Applicants in this Application.

xi. Issue any other remedy and/or relief that the Court will deem necessary to grant.

xii. Order the Respondent State to pay the Applicants' costs.

20. In its Response, with regard to the Court's jurisdiction and admissibility of the Application, the Respondent State prays the Court to order as follows:

i. That the African Court on Human and Peoples' Rights is not vested with jurisdiction to adjudicate the Application.

ii. The Application has not met the admissibility requirements provided by Article 56 of the Charter and Rule 50 of the Rules.

iii. The Application be declared inadmissible.

iv. That the Application be dismissed.

21. The Respondent State prays the Court to grant the following orders with respect to the merits of the Application:

    i. That the Respondent State has not violated Article 17(1) of the Charter, Article 11 of the African Children's Charter, and Article 12 of the Maputo Protocol.
    ii. That the Application be dismissed for want of merit.
    iii. That the cost of the Application be borne by the Applicants.

V. JURISDICTION

22. 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.

23. The Court further observes that pursuant to Rule 49(1) of the Rules, it "shall conduct a preliminary examination of its jurisdiction […] in accordance with the Charter, the Protocol and these Rules."

24. In view of the foregoing, the Court must conduct an assessment of its jurisdiction and dispose of objections thereto, if any.

25. The Court notes that the Respondent State claims that it is not vested with jurisdiction to adjudicate this application because the Applicants are aggrieved with the public declarations issued by some of the Respondent State's officials and Regulation No. 4 of the Education Regulations (Expulsion and Exclusion of Pupils from Schools) of 2002 which are both challengeable under the national courts of the Respondent State in

accordance with the provision of the Law Reform (Fatal Accident and Miscellaneous Provision) Act.

26. The Court recalls that by virtue of Article 3 of the Protocol, it has material jurisdiction so long as "the Application alleges violations of provisions of some of the international instruments to which the Respondent State is a party".[2] In the instant matter, the Applicants allege violations of rights guaranteed in the Charter and in other international human rights instruments ratified by the Respondent State.[3]

27. In light of the above, the Court dismisses the Respondent State's objection and holds that it has material jurisdiction.

28. Noting that nothing on record shows that it does not have jurisdiction in respect of other aspects of its jurisdiction, the Court holds that it has:

    i. Personal jurisdiction, given that the Respondent State is a party to the Protocol and had deposited the Declaration under Article 34(6) thereof, which entitled the Applicants to access the Court in terms of Article 5(3) of the Protocol. In reference to paragraph 2 of this judgment, the Court recalls that it has held that the withdrawal of the Declaration does not have any retroactive effect and has no bearing on matters pending prior to the filing of the instrument withdrawing the Declaration, or on new cases filed before the withdrawal takes effect.[4] This Application, having been filed before the withdrawal took effect, is thus not affected by it.

[2] See *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania* (merits) (23 March 2018) 2 AfCLR 287, § 36.
[3] The Respondent State became a State Party to the Charter on 21 October 1986, to the African Children's Charter on 9 May 2003, to the Maputo Protocol on 7 May 2007, to the African Youth Charter on 21 March 2013, to CEDAW on 19 September 1985, to CRC on 10 July 1991, to ICESCR on 11 September 1976, to ICCPR on 11 September 1976 and to Convention against Discrimination in Education on 3 April 1979.
[4] *Andrew Ambrose Cheusi v. United Republic of Tanzania,* §§ 35-39.

ii. Temporal jurisdiction, given that the alleged violations took place after the ratification of the Charter, the Protocol and the depositing of the Declaration by the Respondent State.

iii. Territorial jurisdiction, given that the facts on which the alleged violations are based occurred in the territory of the Respondent State.

29. In light of the above, the Court holds that it has jurisdiction to hear the present Application.

VI. ADMISSIBILITY

30. 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".

31. In line with Rule 50(1) of the Rules, "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."

32. The Court notes that Rule 50(2) of the Rules, which in substance restates the provisions of Article 56 of the Charter, provides as follows:

> Applications filed before the Court shall comply with all of the following conditions:
>
> a. Indicate their authors even if the latter request anonymity;
> b. Are compatible with the Constitutive Act of the African Union and with the Charter;
> c. Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union;
> d. Are not based exclusively on news disseminated through the mass media;

e. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
f. Are submitted within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter; and
g. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of African Union or the provisions of the Charter.

33. The Court notes that the Respondent State raises three objections to the admissibility of the Application. The Court will, therefore, consider first the said objections (A) and then examine other conditions of admissibility (B), as applicable.

A. Objections to the admissibility of the Application

34. The Respondent State raises three objections to the admissibility of the Application. The first objection relates to the contention that similar applications are already pending before the ACERWC and the East African Court of Justice. The second objection relates to the requirement of exhaustion of local remedies and the third one concerns the question whether the Application was filed within a reasonable time.

35. Concerning the first objection, the Respondent State contends that a communication which raises similar allegations to the instant Application had been filed before the ACERWC, namely, *Communication No: 0012/Com/001/2019 in the matter between Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of Tanzanian girls) against the United Republic of Tanzania*.

36. The Respondent State submits that the communication before the ACERWC raises allegations with respect to the right to education and non-

discrimination as protected by the Charter and other regional and international instruments, including the African Children's Charter. The Respondent State refers to some of the allegations in the said communication, including the allegation that girls in primary and secondary school who are found to be pregnant are expelled from school with no possibility of re-admission.

37. Furthermore, the Respondent State refers to another Application instituted before the East African Court of Justice, namely *Reference No. 10 of 2020 Inclusive Development for Citizens and Center for Strategic Litigation versus the Attorney General of the United Republic of Tanzania,* which it claims also raises similar allegations to the instant Application.

38. The Respondent State argues that under the circumstances, the instant Application cannot be admissible as similar allegations have been raised and are awaiting determination before another international forum with jurisdiction to determine it. The Respondent State submits that this Application is a fit case to apply the doctrine of *res subjudice* so as to prohibit two international courts of competent jurisdiction to simultaneously determine a matter raising similar allegations.

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39. The Applicants claim that the Rules do not recognise *res subjudice* as per Rule 50(2)(g) of the Rules which restates in substance Article 56(7) of the Charter.

40. The Applicants submit that the question of the illegality of the education ban premised on Regulation No. 4 of the Education Regulation (Expulsion and Exclusion of Pupils from Schools) and cemented by the public declarations as a government policy are yet to be determined by any forum of equivalent jurisdiction to the Court.

41. The Applicants maintain that the cases at issue were lodged by different parties, that they deal with distinguishable matters, are founded on different arguments and that no decision has been made by another body on the merits of the cases.

42. The Applicants, therefore, contend that since there are no similar applications that have been settled before courts of equivalent jurisdiction, that the Application before the Court does not fall within Article 56(7) of the Charter and is for that reason admissible.

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43. The Court notes that the Respondent State avers that the applicable admissibility rule in the instant matter is that of *res subjudice*. However, the Court notes from the record that the ACERWC has already adopted its decision No. 002/2022 in *Communication No: 0012/Com/001/2019 in the matter between Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of Tanzanian girls) against the United Republic of Tanzania*, during its 39th Ordinary Session held from 21 March to 1 April 2022.

44. The Court is, therefore, of the view that the issue at hand is no longer a question of *res subjudice,* but rather whether the matter has been settled in accordance with the principles of one of the instruments invoked in Article 56(7) of the Charter.

45. The Court notes that pursuant to Article 56(7) of the Charter, whose provisions are restated in Rule 50(2)(g) of the Rules, any application filed before it shall fulfil the requirement that they "[d]o 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 African Union or the provisions of the Charter".

46. The Court recalls that the rationale behind the rule in Article 56(7) of the Charter is to prevent States from being asked to account more than once in respect of the same allegations of human rights.[5]

47. The Court further recalls that in its earlier decisions in *Gombert Jean-Claude Roger v. Republic of Côte d'Ivoire*[6] and *Dexter Eddie Johnson v. Republic of Ghana*,[7] it developed three cumulative criteria to determine whether the admissibility criteria established in Article 56(7) of the Charter and Rule 50(2)(g) of the Rules have been met.

48. The Court stated in *Dexter Eddie Johnson v. Republic of Ghana* that:

> the notion of "settlement" implies the convergence of three major conditions: (1) the identity of the parties; 2) identity of the applications or their supplementary or alternative nature or whether the case flows from a request made in the initial case; and 3) the existence of a first decision on the merits.[8]

49. Regarding the first criterion, "identity of the parties", the Court notes that the Respondent State in the proceedings before the ACERWC and in the present Application is the same. The Court notes, however, that the Applicants in the proceedings are different.[9] Before the ACERWC, the Communication was filed by two NGOs, namely, the Legal and Human Rights Center and the Center for Reproductive Rights. Before the Court, the Application was filed by an individual and a different NGO, that is, Tike Mwambipile and Equality Now.

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[5] *Dexter Eddie Johnson v. Republic of Ghana* (jurisdiction and admissibility) (28 March 2019) 3 AfCLR 99, § 55.
[6] *Gombert v. Côte d'Ivoire* (jurisdiction and admissibility) (2018) 2 AfCLR 270, § 45.
[7] *Dexter Eddie Johnson v. Republic of Ghana* (jurisdiction and admissibility) (28 March 2019) 3 AfCLR 99, § 48.
[8] *Dexter Eddie Johnson v. Republic of Ghana* (jurisdiction and admissibility) (28 March 2019) 3 AfCLR 99, § 48.
[9] Before the ACERWC, the Application was brought on 17 June 2019 by two NGOs, the *Legal and Human Rights Center and the Center for Reproductive Rights.* Before the East African Court of Justice, the Application was brought on 24 April 2020 by two NGOs, *Inclusive Development for Citizens* and *Center for Strategic Litigation*. Before the African Court on Human and Peoples' Rights, the Application was brought on 19 November 2020 by a female national and an NGO, *Tike Mwabipile* and *Equality Now.*

50. The Court considers, however, that both cases can be qualified as instances of public interest litigation. As the Court has established in its jurisprudence, the identity of parties in different Applications can be considered as being similar to the extent that they both aim to protect the interest of the public at large, rather than only specific private interests.[10]

51. Accordingly, the Court holds that the criterion of "same identity" of the parties has been met.

52. The second criterion concerns the similarity of the subject-matter of the applications. When considering the subject-matter of the applications, it becomes apparent that both applications challenge the same law, that is Regulation No. 4 of the Education Regulations (Expulsion and Exclusion of Pupils from School) of 2002, and the same practice of excluding pregnant and young mothers from schools as well as other associated discriminatory practices, including mandatory pregnancy testing.

53. In the application before the ACERWC, the Applicants also claim, among others, that the right to non-discrimination and the right to education, is violated, as enshrined in Articles 3 and 11, respectively, of the African Children's Charter. In their Communication they also argue that, in accordance with Article 46, the African Children's Charter should be interpreted with reference to the African Charter, the Maputo Protocol, the CRC as well as other international human rights instruments. Specifically, and in relation to the present Application, the Applicants before the ACERWC refer to Article 2 (right to non-discrimination) and 17 (right to education) of the Charter as corresponding Articles to guarantee children's right to non-discrimination and to education.

54. From these applications it also emerges that the same reliefs are sought, namely the establishment of a violation of the same provisions enshrined in the above-mentioned human rights treaties; orders to change the same

[10] *Suy Bi Gohore Emile & 8 Others v. Republic of Cote d'Ivoire*, ACtHPR, Appl. No. 044/2019, Judgment of 15 July 2020 (merits and reparations), § 105.

legal and policy frameworks governing the issue of exclusion of pregnant girls and young mothers; orders to address the underlying issue of teenage pregnancies and inadequate sexual and reproductive education and health services.

55. The Court notes, in particular, the ACERWC's decision in paragraph 109 where it is stated as follows:

> 109. Based on the foregoing analysis, the Committee finds the Respondent State in violation of its obligations under article 1 (obligation of states parties), article 3 (non-discrimination), article 4 (best interests of the child), Article 10 (protection of privacy) article 11 (education), Article 14 (health and health services), Article 16 (protection against child abuse and torture), and article 21 (protection against harmful social and cultural practices). The Committee, therefore, recommends for the Respondent State to:
>
> - Immediately prohibit mandatory pregnancy testing in schools and health facilities and publicly announce the prohibition;
> - Review the Education (Expulsion and Exclusion of Pupils from School) Regulations, 2002 G.N. No. 295 of 2002 and in doing so remove wedlock as a ground of expulsion and provide an indication that the moral ground of expulsion should be interpreted narrowly and should not apply in cases of pregnancy of schoolgirls;
> - Undertake concrete steps to prevent the expulsion of pregnant and married girls from schools including by providing laws and policies on the same;
> - Remove any policy of non-re-entry of schoolgirls including girls who have drop-out of school due to pregnancy or wedlock;
> - Immediately re-admit schoolgirls who have been expelled due to pregnancy and wedlock and provide special support programmes to compensate for the lost years and ensure better learning outcomes for the returned girls;
> - Provide clear guidance to school administrators that girls who drop out of school due to pregnancy or wedlock with their preference are allowed to come back to school with no preconditions;

- Investigate the cases of detention of pregnant girls and immediately release detained pregnant girls who are being interrogated to reveal who impregnated them and stop such kinds of illegal arrests of pregnant girls;
- Provide sexuality education for adolescent children and provide child friendly sexual reproductive and health services;
- Undertake extensive sensitization of teachers, health care providers, police and other actors with regards to the protection that should be accorded to pregnant and married girls;
- Undertake proactive measures towards the elimination of child marriage and other harmful practices that affect girls including by taking measures to address the underlying factors such as gender-based discrimination, poverty, and negative customary and societal norms;
- Create a conducive reporting and referral mechanism for survivors of sexual violence including child marriage, and provide psychosocial support, rehabilitation and reintegration services for the survivors;
- Investigate and prosecute perpetrators of sexual violence and child marriage;
- Take action against any actors who conduct forced pregnancy testing of any kind, or who discriminate against girls on the grounds of their pregnancy or marital statuses such as expulsion and detention; and
- Provide special support to pregnant and married girls to continue their education in a school of their choice and based on their consent.

56. The Court further notes that the ACERWC in its communication only found violations of the African Children's Charter and not of the Charter and of the other international legal instruments to which the Respondent State is a party. However, the Court also notes that the principles contained in the African Children's Charter, on which the ACERWC gave its views, overlap

with the principles provided for in the provisions of the Charter and other human rights instruments referenced by the Applicants.[11]

57. Substantively, therefore, the Court considers that the ACERWC adjudicated on the same issues that the Applicants have brought before this Court.[12] The Court, therefore, finds that the second criterion has been met.

58. Concerning the third criterion which interrogates whether a first decision on merits exists, the Court notes that the ACERWC, as an "institution that is legally mandated to consider the dispute at international level",[13] has delivered a decision on merits.

59. The Court, therefore, finds that this criterion has been met.

60. In sum, the Court finds that the cumulative criteria set out in the cases *Gombert Jean-Claude Roger v. Republic of Côte d'Ivoire* and in *Dexter Eddie Johnson v. Republic of Ghana* relating to the admissibility requirement established in Article 56(7) have been fulfilled.

61. For this reason, the Court finds that the instant Application raises issues that have already been settled within the meaning of Article 56(7) of the Charter and holds that this admissibility requirement has not been met.

B. Other conditions of admissibility

62. 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

[11] By way of example, Article 3 of the African Children's Charter provides for the right to non-discrimination, and this is mirrored by Article 2 of the Charter; and Article 11 of the African Children's Charter provides for the right to education and this is captured in Article 17 of the Charter.
[12] *Dexter Eddie Johnson v. Republic of Ghana* (jurisdiction and admissibility) (28 March 2019) 3 AfCLR 99, § 52.
[13] *Dexter Eddie Johnson v. Republic of Ghana* (jurisdiction and admissibility) (28 March 2019) 3 AfCLR 99, § 51.

application becomes inadmissible.[14] In the present case, since the Application has already been settled, the Court finds that the Application is inadmissible. The Court, therefore, dismisses it without needing to examine the other objections to admissibility raised by the Respondent State and the other admissibility requirements set out under Article 56 of the Charter and Rule 50 of the Rules.

VII. ON THE REQUEST FOR PROVISIONAL MEASURES

63. The Court recalls that on 29 November 2021, it had decided that it would consider the Applicants' request for provisional measures together with the merits of the Application.

64. The Court notes, however, that the present decision renders the said request moot.

VIII. COSTS

65. The Applicants pray that the Court orders the Respondent State to pay their costs.

66. The Respondent State prays that costs be borne by the Applicants.

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67. The Court notes that Rule 32(2) of the Rules of Court provides that: "unless otherwise decided by the Court, each party shall bear its own costs, if any".

[14] *Jean Claude Roger Gombert v. Côte d'Ivoire* (jurisdiction and admissibility) (22 March 2018) 2 AfCLR 270, § 61; *Dexter Eddie Johnson v. Republic of Ghana* (jurisdiction and admissibility) (28 March 2019) 3 AfCLR 99, § 57.

68. The Court finds that there is nothing in the instant case warranting it to depart from this provision.

69. Consequently, the Court orders that each party shall bear its own costs.

IX. OPERATIVE PART

70. For these reasons:

THE COURT,

On jurisdiction

Unanimously,

i. *Declares* that it has jurisdiction.

On admissibility

By a majority of Eight (8) for, and Two (2) against, Justice Blaise TCHIKAYA and Justice Rafaâ BEN ACHOUR Dissenting

ii. *Declares* that the Application is inadmissible.

On costs

Unanimously,

iii. *Orders* that each Party shall bear its own costs.

Signed:

Blaise TCHIKAYA, Vice President;

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;

Dennis D. ADJEI, Judge;

and Robert ENO, Registrar.

In accordance with Article 28(7) of the Protocol and Rule 70(1) of the Rules, the Joint Dissenting Opinion of Justice Blaise TCHIKAYA and Justice Rafaâ BEN ACHOUR and the Separate Opinion of Justice Chafika BENSAOULA are appended to this Ruling.

Done at Arusha, this First Day of December, in the Year Two Thousand and Twenty-Two in English and French, the English text being authoritative.