AFRICAN UNION
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AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

REVERENDCHRISTOPHER R. MTIKILA

V.

THE UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 011 OF 2011

RULING ON REPARATIONS

The Court composed of:

Sophia A. B. AKUFFO, President; Bernard M. NGOEPE, Vice President; Gérard NIYUNGEKO, Fatsah OUGUERGOUZ, Duncan TAMBALA, Elsie N. THOMPSON, Sylvain ORÉ, El Hadji GUISSE, Ben KIOKO and Kimelabalou ABA, 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 8 (2) of the Rules of Court (hereinafter referred to as the "Rules"), Judge Augustino S. L. RAMADHANI, Member of the Court and a national of Tanzania, did not hear the Application.

In the matter of:

Reverend Christopher R. Mtikila,

represented by:

- Mr Setondji Roland Adjovi, Counsel
- Mr Charles Adeogun-Phillips, Counsel
- Mr Francis Dako, Counsel

v.

The United Republic of Tanzania,

represented by:

- Mr George M. Masaju
  Deputy Attorney General
  Attorney General's Chambers

- Mrs Irene F.M. Kasyanju
  Ambassador and Head of Legal Affairs Unit
  Ministry of Foreign Affairs and International Cooperation

- Mr Yohane Masara
  Principal State Attorney
  Attorney General's Chambers

- Ms Sarah Mwaipopo
  Principal State Attorney
  Attorney General's Chambers

- Mrs Alesia Mbuya
  Senior State Attorney
  Attorney General's Chambers

- Ms Nkasori Sarakikya
  Senior State Attorney
  Attorney General' s Chambers

- Mr Edson Mweyunge

  Senior State Attorney

  Attorney General's Chambers

- Mr Benedict T. Msuya

  Second Secretary/Legal Officer

  Ministry of Foreign Affairs and International Cooperation

After deliberation,

delivers the following Ruling:

The Parties

1. Reverend Christopher R. Mtikila (hereinafter referred to as the "Applicant") is a national of the United Republic of Tanzania. He brings this application in his personal capacity.

2. The Respondent is the United Republic of Tanzania and is brought before this Court because it has ratified the African Charter on Human and Peoples' Rights (hereinafter referred to as the "Charter"), as well as the Protocol. Furthermore, the Respondent has made a declaration in terms of Article 34(6) of the Protocol, accepting to be brought before this Court by an individual or, a Non-Governmental Organisation (NGO) with Observer Status before the African Commission on Human and Peoples' Rights (hereinafter referred to as the "Commission").

Nature of the Application

3. The original Application being *Consolidated Applications Nos. 009 of 2011 Tanganyika Law Society and The Legal and Human Rights Centre v The United Republic of Tanzania and 011 of 2011 Reverend Christopher R. Mtikila v The United Republic of Tanzania* was in respect of the Eighth Constitutional Amendment Act passed by the United Republic of Tanzania, which received Presidential assent in the same year. This Act required that any candidate for Presidential, Parliamentary and Local Government elections had to be a member of, and be sponsored by, a political party. In the said Consolidated Applications, the Applicant herein was the 2nd Applicant.

4. The brief background of that application was that:

i. In 1993, the Applicant filed a Constitutional case in the High Court, being *Miscellaneous Civil Cause No.5 of 1993* challenging the amendment to Articles 39, 67 and 77 of the Constitution of the United Republic of Tanzania and to Section 39 of the Local Authorities (Elections) Act 1979, as later amended by the Local Authorities (Elections) Act No.7 of 2002 through the Eighth Constitutional Amendment Act, claiming that it conflicted with the Constitution and was therefore null and void.

ii. On 16 October 1994, the Respondent tabled a Bill in Parliament (the Eleventh Constitutional Amendment Act No. 34 of 1994) seeking to nullify the right to independent candidates to contest Presidential, Parliamentary and Local Government elections.

iii. On 24 October 1994, the High Court issued its judgment in *Miscellaneous Civil Cause No.5 of 1993* in favour of the Applicant and declaring that independent candidates for Presidential, Parliamentary and Local Government elections are legally allowed.

iv. On 2 December 1994, the Tanzanian National Assembly passed the Bill (Eleventh Constitutional Amendment Act No.34 of 1994) whose effect was to maintain the Constitutional position before *Miscellaneous Civil Cause No.5 of 1993*, by amending Article 21(1) of the Constitution of the United Republic of Tanzania. This Bill became law on 17 January 1995 when it received Presidential assent thus negating the High Court's judgment in *Miscellaneous Civil Cause No.5 of 1993*.

v. In 2005, the Applicant instituted *Miscellaneous Civil Cause No. 10 of 2005, Christopher Mtikila v Attorney General* in the High Court of Tanzania, challenging the amendments to Articles 39, 67 and 77 of the Constitution of the Republic of Tanzania as contained in the Eleventh Constitutional Amendment Act of 1994. On 5 May 2007, the Court again found in his favour, holding that the impugned amendments violated the democratic

principles and the doctrine of basic structures enshrined in the Constitution. By this judgment, the High Court allowed independent candidates.

vi. In 2009, in *Civil Appeal No.45 of 2009*, the Attorney General of the Respondent challenged this judgment in the Court of Appeal of the United Republic of Tanzania (the Court of Appeal). In its judgment of 17 June 2010, the Court of Appeal reversed the High Court's judgment of 5 May 2007, thereby disallowing independent candidates for elections to Local Government, Parliament or the Presidency.

vii. The Court of Appeal ruled that the matter was a political one and therefore had to be resolved by Parliament.

5. As the municipal legal order currently stands in the United Republic of Tanzania, candidates who are not members of, or sponsored by a political party cannot run in the Presidential, Parliamentary or Local Government elections.

6. On 14 June 2013, this Court delivered its judgment in the Consolidated Applications herein before referred to and held that:

"1. In respect of the 1st Applicants the Court holds:

- *Unanimously, that the Respondent has violated Articles 10 and 13(1) of the Charter.*

- *By majority of 7 to 2, (Judges Modibo Tounty GUINDO and Sylvain ORÉ dissenting), that the Respondent has violated Articles 2 and 3 of the Charter.*

2. *In respect of the 2nd Applicant, the Court holds:*

- *Unanimously, that the Respondent has violated Articles 10 and 13(1) of the Charter.*
- *By majority of 7 to 2, (Judges Modibo Tounty GUINDO and Sylvain ORÉ dissenting), that the Respondent has violated Articles 2 and 3 of the Charter.*

3. *The Respondent is directed to take constitutional, legislative and all other necessary measures within a reasonable time to remedy the violations found by the Court and to inform the Court of the measures taken.*

4. *In accordance with Rule 63 of the Rules of Court, the Court grants leave to the 2nd Applicant to file submissions on his request for reparations within thirty (30) days hereof and the Respondent to reply thereto within thirty (30) days of the receipt of the 2nd Applicant's submissions.*

5. *In accordance with Rule 30 of the Rules of Court, each Party shall bear its own costs."*

Procedure

7. By a letter dated 25 July 2013, the Applicant filed his submissions on compensation and reparations pursuant to the Court's Judgment of 14 June 2013 which granted his Application, that the United Republic of Tanzania had violated his right to participate in public affairs, his right to freedom of association, and the right not to be discriminated against. By the same Judgment, the Court directed that, in accordance with Rule 34(5) of the Rules, the Applicant must file his submissions on reparations within thirty (30) days of the Judgment.

8. Pursuant to Rule 35(2) of the Rules of Court, the Applicant's submissions were served on the Respondent by a letter dated 29 July 2013 in which the Respondent was advised to file its Response within thirty (30) days of receipt thereof.

9. By a letter dated 8 July 2013, the Applicant's Counsel made an application for legal aid from the Court, to enable them to draft conclusions on remedies prayed for and to present the Applicant's arguments. By a letter dated 2 August 2013, the Registrar advised the Applicant's Counsel that the Court had refused the request for legal aid.

10. By a letter dated 29 August, 2013, the Respondent filed its Response to the Application for reparations submitted by the Applicant.

11. The Respondent's response was served on the Applicant by the Registrar's letter of 30 August 2013.

12. By an electronic mail of 2 September 2013, Counsel for the Applicant requested for the annexes to the Respondent's Response and by an electronic mail of 3 September 2013, the Registry advised the Counsel for the Applicant that the Respondent indicated that it would be sending the hard copies of the said annexes in due course.

13. By a letter dated 11 December 2013, the Registry informed the Applicant's Counsel of the Court's directive that he should file the Reply to the Respondent's Response within thirty (30) days of receipt of the letter.

14. On 31 January 2014, the Registrar wrote to the Counsel for the Applicant reminding him that he is yet to file the Reply to the Respondent's Response to the Application. This Reply was filed on 10 February 2014 and served on the Respondent by the Registrar's letter dated 13 February 2014.

15. By a letter dated 18 March 2014, the Parties were informed that pleadings are closed and that the Court is proceeding to determine the matter on the pleadings before it.

Remedies sought

16. The Applicant alleges that the violations by the Respondent led him to join different political parties in order to participate in elections and later to set up his own party for the same purpose. Consequently the Applicant alleges that these violations have also led him to engage in litigation at various levels including before this Court.

17. The Applicant is claiming moral damages occasioned by stress and subsequent moral harm worsened by various instances of police searches on him and loss of the opportunity to participate effectively in the affairs of his country. The damages he claims in this regard, amount to 831, 322, 637.00 TSH, (Eight Hundred and Thirty One Million, Three Hundred and Twenty Two Thousand, Six Hundred and Thirty Seven Tanzania Shillings).

18. The Applicant is also claiming costs and expenses arising from the human rights violations by the Respondent, including costs of setting up his political party and participating in elections and costs of litigation at the national level. This amounts to 4,168, 667, 363. 00 TZS, (Four Billion, One Hundred and Sixty Eight Million, Six Hundred and Sixty Seven Thousand, Three Hundred and Sixty Three Tanzania Shillings).

19. Further, the Applicant claims Attorney's fees in respect of litigation at the Court amounting to US$ 60,250.00 (Sixty Thousand, Two Hundred and Fifty United States Dollars).

20. The Applicant also asks that the Court sets a timeline for the Respondent to comply with the Court's Judgment and that the Respondent reports every three months on such compliance until the Court is satisfied that the Judgment has been fully complied with.

21. As a consequence, the Applicant prays the Court:

i. "*To set its reparation claims at 5,000,000,000 TSH;*
ii. *To set his lawyer's fees for the international litigation at the scale of the legal aid established by the Court both for the main case and for the subsidiary case on reparation; and*
iii. *To order the Government of the United Republic of Tanzania to report every three months to the Court on the implementation of the Court's orders.*"

Respondent's Response to the Application

22. The Respondent raised objections to the Applicant's Application for reparation on the grounds that:

On the procedure:

i. The granting of the extension of time *ex parte* to the Applicant to file the submissions on reparations was not in line with the principle of equality of arms and natural justice as it was not served on the Respondent and the Respondent was not allowed to submit observations on the request or to indicate its agreement, or otherwise, thereto.

ii. There was no need for the Applicant to be granted an extension of time to file its submissions on reparations. The request for reparations was included in the main application and he was only required to submit the amount of reparations and evidence thereafter. The Applicant's Counsel were present in Court on 14 June 2013 when the Judgment was delivered, therefore, they need not have waited to receive the Judgment and the Separate Opinions thereto to enable them file their submissions on reparations. In any event, the Rules of Court do not require that an Applicant be served with the Judgment and Separate Opinions first before making submissions on reparations.

iii. Even after the Applicant was granted up to 25 July 2013 to file the submissions, the date of receipt by the Registry stamped on the submissions is 29 July 2013, therefore, since the submissions were filed out of time, they should be dismissed.

On the substance of the Application, the Respondent argues thus:

23. i The issue of violations of the provisions of Articles 2, 3, 10 and 13(1) of the Charter did not arise at all since the Applicant had in fact decided to divert to the system of independent candidature after his party, the Democratic Party, was refused registration. The Democratic Party was not registered because the Applicant refused to submit to verification of its members, contrary to the provisions of Sections 10(b) and (c) of the Political Parties Act and also restricted its activities only to the Mainland to the exclusion of Zanzibar, contrary to the Constitution of the United Republic of Tanzania. The Applicant cannot therefore claim to have been prevented from participating in public affairs or to have been forced to join a political party in order to participate in elections. The Applicant's non-compliance with the Political Parties Act and the Constitution was therefore connected to his litigation at the domestic level therefore equity demands that he should not seek reparations for his failure to comply with the law.

ii. The Applicant is put to strict proof on the alleged stress and subsequent moral harm worsened by the various instances of Police searches on him. The Applicant did not claim for these damages, either in his Application, or in his litigation at the national courts, and in respect of the latter, he therefore has not exhausted the local remedies as required, and the Court cannot therefore entertain this claim.

iii. The amount claimed for moral prejudice and loss of opportunity to participate effectively in public affairs is exaggerated. The loss of opportunity to participate in public affairs is premised on very varied and unpredictable political, social and economic factors obtaining in the Respondent State. Furthermore, the Applicant participated voluntarily in the political processes.

iv. The inclusion of the 25,000.00 TZS (Twenty Five Thousand Tanzania Shillings). for provisional registration of the Democratic Party, which was a statutory requirement for anyone wishing to register a Political Party, to the figure in the Applicant's reparation claims is disputed for reasons that the Applicant had to follow the legal procedure for registering a Political Party. Therefore the Respondent submits that the loss should not be attributed to the Respondent as this is a legal requirement.

v. The Applicant should be put to strict proof on the exaggerated amount of costs and expenses amounting to 4,168, 667, 363.00 TZS (Four Billion, One Hundred and Sixty Eight Million, Six Hundred and Sixty Seven Thousand, Three Hundred and Sixty Three Tanzania Shillings)..

vi. The cost item in the Income and Expenditure Account on independent presidential campaign expenses amounting to 93, 835, 000.00 TZS, (Ninety Three Million, Eight Hundred and Thirty Five Thousand Tanzania Shillings). should be disallowed as the law in Tanzania does not provide for independent candidature.

vii. The itemisation of the expenses in the Applicant's Income and Expenditure Account is contrary to the Political Parties Act and the Election Expenses Act and is fabricated and exaggerated. The expenses are also not itemised in a detailed manner to facilitate detailed responses by the Respondent; and the evidence of the breakdown ought to have been provided with the submissions on reparations within the time limit provided. The Respondent should be given ample opportunity to participate effectively to challenge, verify and authenticate all specific documents related to the transactions.

viii. Generally, the claim for costs of litigation before the domestic courts is contested and is against the order of the Court that each Party shall bear its own costs. Furthermore, the Applicant has not detailed what these costs are and has not submitted evidence to prove that he incurred them. In addition, the Applicant has never been awarded costs by the national courts and the Court cannot award him these particular costs as it will be usurping the jurisdiction of the national courts in this regard.

ix. The current Constitutional review process is sufficient reparation for the non-pecuniary damage claimed.

x. The Respondent strongly disputes the Applicant's claim for costs of litigation before the Court amounting to US$ 60,250.00 (Sixty Thousand, Two Hundred and Fifty United States Dollars). The Respondent contends that this claim is misplaced and contrary to the arrangement between the Applicant and his Counsel. The Respondent states that this is an attempt by the Applicant for "the

retrospective acquisition of funds from the Court yet his Counsel acted for him on a *pro bono* basis."

24. On the basis of the foregoing, the Respondent prays that:

i. *"The Applicant's claim that reparations be set at Five Billion Tanzania Shillings (5,000,000,000.00 Tsh) are strongly disputed for being fabricated, exaggerated and blown up. The Respondent prays for the Court to dismiss the claim with costs".*

ii. *"The Applicant be ordered to submit to the Court and the Respondent a breakdown of the alleged claims and detailed analysis and evidence related thereto for authentication and verification before the hearing of the case".*

iii. The Respondent prays for dismissal of the Applicant's claims that his lawyer's fees for the international litigation before this Court should be set at the scale of the legal aid scheme established by the Court both for the main case and the subsidiary case on reparation. The Respondent maintains that this is an extraneous matter in the Application.

iv. The Respondent prays for the dismissal of the Applicant's prayer on the order to be issued to the Respondent to report every three months, to the Court regarding the implementation of the Court's orders. The Respondent states that this is mere speculation and imaginations on the part of the Applicant.

v. *"That the Court orders that the Respondent is not required to repair the supposed losses claimed by the applicant".*

vi. *That the Court orders that the current Constitutional review process constitutes enough remedy for the Applicant.*

vii. *"The Respondent prays for the dismissal of the reparations claim by the Applicant in its entirety, with costs".*

viii. *The Respondent prays for any other relief(s) that the Court may deem fit to grant."*

The Applicants' Reply to the Respondent's Response to the Application is as follows:

On the procedure

25. i The Applicant maintains that he filed the submissions on reparations on 25 July 2013 and that in any event, the Respondent has in the past benefitted from extensions of time granted by the Court without the Applicant having had a chance to make observations on the same.

ii. The Applicant also maintains that he did not have access to the annexes to the Respondent's Response, as he could not find them, particularly the cases referred to therein though he was involved in these cases. It is up to the Respondent State which referred to the said cases

to produce the documents and is in a position to do so since they are a product of national institutions. In this regard therefore, the Applicant is unable to respond fully to the Respondent's Response.

On the substance

iii. On the substance, the Applicant states that the creation of the Democratic Party and the subsequent cost of running the party for all these years resulted exclusively from the strategy adopted by the Respondent to prevent any independent candidate from standing for election, in violation of the Charter. Litigation before the African Court on this matter is also a natural consequence of this state of affairs consolidated by the decision of the Court of Appeal, and it can also be said that it is the result of the shortcoming of the Respondent State, as pointed out by the Court in its Judgment of 14 June 2013.

iv. Regarding the claim for compensation for stress and moral harm occasioned to the Applicant, he maintains that this stress is a matter of common sense arising out of the management of any structure of a federal nature (involving Tanganyika and Zanzibar). This is particularly where such a structure is involved in carrying out political and electoral campaigns at different levels and in all the regions, as this can only lead to considerable stress, especially as it was full time work which prevented the Applicant from carrying out any other professional activity. In the instant case, only the Applicant's religious duties were compatible with the management of his political party.

v. Furthermore, the Applicant states that the Accounts Clerks who certified the accounts he submitted to the Court are available and may be called to testify before the Court. It is also up to the Respondent State to show proof of errors, if any, in the Applicant's claim for damages.

vi. Regarding the Attorney's fees for the litigation before the Court, the Applicant submits that the expenses must be imputed on the Respondent State as the Court held it responsible for the violation of its obligations under the Charter, particularly as the Applicant's request for legal aid from the Court was not granted.

vii. The Applicant contends that the Court's Judgment means that the Respondent should be liable for paying the damages, as the Court stated that the electoral laws of the Respondent State are a violation of the Charter in relation to the rights of the Applicant. Article 30 of the Protocol obliges State Parties thereto to implement the decisions of the Court.

viii. The Applicant stated that the position of the Respondent which maintains that the law as it currently is in Tanzania prohibits independent candidates for electoral positions, highlights the need for the Court to draw up a precise calendar to ensure that the Respondent State complies with the Judgment of the Court.

ix. For these reasons, the Applicant prays the Court to reject all the arguments presented by the Respondent and to grant his prayers as per his Application.

The Court's Ruling on the *Ex Parte* extension of time for the Applicant to file its submissions

26. Based on the fact that the Applicant received the Judgment of the Court of 14 June 2013 in *Consolidated Applications Nos. 009 of 2011 Tanganyika Law Society and The Legal and Human Rights Centre v The United Republic of Tanzania and 011 of 2011 Reverend Christopher R. Mtikila v The United Republic of Tanzania* and the Separate Opinions thereto, on 26 June 2013, the Court decided that the thirty (30) days for the Applicant to file submissions on reparations would be reckoned from 26 June 2013. Therefore, the Court gave the Applicant up to 25 July 2013 to file the submissions on reparation. The Registrar communicated this decision of the Court with a copy to Respondent. The electronic mail forwarding the submissions to the Registry was dated 25 July 2013 but the date of receipt stamped on the document was 29 July 2013, therefore the Applicant filed the submissions on reparations within the time directed by the Court. Though the Respondent was not given an opportunity to be heard before the Court decided to grant the Applicant up to 25 July 2013 to file its submissions, the Respondent has had an opportunity to state its position on the matter and did nothing. The Court finds that there has been no miscarriage of justice occasioned. Accordingly the Application for reparation is properly before the Court.

The Court's Ruling on the Merits of this Application

27. One of the fundamental principles of contemporary international law on State responsibility, that constitutes a customary norm of international law, is that, any violation of an international obligation that has caused harm entails the obligation to provide adequate reparation. The *locus classicus* in this regard is the *Germany v. Poland* (*Factory at Chorzów)* Case where the Permanent Court of International Justice (PCIJ) stated the principle thus:

"*... the Court observes that it is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation. In Judgment No. 8, when deciding on the jurisdiction derived by it from Article 23 of the Geneva Convention, the Court has already said that reparation is the indispensable complement of a failure to apply a convention, and there is no necessity for this to be stated in the convention itself. The existence of the principle establishing the obligation to make reparation, as an element of positive international law, has moreover never been disputed in the course of the proceedings in the various cases concerning the Chorzów factory.*"[1]

[1] Merits 1928 PCIJ *Series A*, Judgment of the Permanent Court of International Justice No 17 of 13 September 1928, at 29.

28. This principle of international law is reflected in the Protocol. Article 27(1) of the Protocol provides that:

> *"If the Court finds that there has been violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation."*

A. Compensation

Pecuniary damages

29. The Applicant is claiming pecuniary damages allegedly arising from the human rights violations by the Respondent, including costs of setting up his political party and participating in elections and costs of litigation at the national level. The Commission has recognised the importance of restitution and has held that a State that has violated the rights enshrined in the Charter should "*take measures to ensure that the victims of human rights abuses are given effective remedies, including restitution and compensation.*"[2] Though the Commission recognises a victim's right to compensation, it has not yet identified which factors States should take into account in their assessment of the compensation due. Rather, the Commission has recommended

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[2]Consolidated Communications 279/03 and 296/05 *Sudan Human Rights Organisation and Centre on Housing Rights and Evictions (COHRE) v Sudan Twenty Eighth Activity Report: November 2009- May 2010* paragraph 229(d).

that a State compensate a victim for the torture and trauma suffered[3], '*adequately compensate the victims in line with international standards*'[4] and ensure payment of a compensatory benefit.[5] The Inter-American Court of Human Rights has held that with regard to pecuniary damages and the circumstances under which compensation is appropriate, pecuniary damages involve "*the loss of or detriment to the victims' income, the expenses incurred as a result of the facts, and the monetary consequences that have a causal nexus with the facts of the case* sub judice."[6] In the *Factory at Chorzów* Case the Permanent Court of International Justice stated that reparation may take the form of compensation *"involving payment of a sum corresponding to the value which a restitution in kind would bear."*[7]

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[3] Communication 288/04 *Gabriel Shumba v Zimbabwe* 2 May 2012 paragraph 194 (1).

[4] Communication 334/06 *Egyptian Initiative for Personal Rights and Interights v Egypt Thirty First Activity Report: May 2011 – November 2011* dispositif paragraph 2.

[5] Consolidated Communications 54/91, 61/91, 96/93, 98/93, 164/97, 196/97 and 210/98 *Malawi African Association and Others v Mauritania Thirteenth Activity Report: 1999 – 2000* dispositif paragraph 3.

[6] Inter American Court of Human Rights (IACHR) *Case of Bámaca Velásquez v Guatemala. Reparations and Costs.* Judgment of 22 February, 2002. *Series C No. 91*, paragraph 43, and *Case of Garcia Cruz and Sánchez Silvestre. Merits, Reparations and Costs.* Judgment of 26 November 2013. *Series 273*, paragraph 212.

[7] See Note 1 at 47.

30. In this case, the Court notes that, though the Applicant submitted his Income and Expenditure Statement, and raised arguments on the same, there were no sufficient evidentiary elements presented to establish that these damages directly arose from the facts of this case and the violations declared in the Judgment of 14 June 2013. Furthermore, the Applicant insisted that he would present his evidence at a yet to be determined hearing and therefore did not adduce cogent evidence in the course of the procedural opportunities the Court granted for this purpose. The Applicant did not produce any receipts to support the expenses he claims to have incurred so there is no evidence of any pecuniary loss as alleged. In addition, by virtue of Rule 27(1) of the Rules, the Court's procedure consists primarily of written proceedings with public hearings being the exception rather than the rule. Therefore, the Applicant, being aware of the Court's procedure failed to provide the evidence of the expenses he claims in his submissions.

31. It is not enough to show that the Respondent State has violated a provision of the Charter; it is also necessary to prove the damages that the State is being required by the Applicant to indemnify. In principle, the existence of a violation of the Charter is not sufficient, *per se*, to establish a material damage.

32. In view of the foregoing, the Court does not have the evidentiary elements to prove a causal nexus of the facts of this case to the damages claimed by the Applicant in relation to the violations declared in its Judgment of 14 June 2013. As such, it considers that it cannot grant any compensation for pecuniary damages.

Non-pecuniary damages

33. The Applicant is also claiming moral damages occasioned by stress and subsequent harm worsened by various instances of police searches on him, and loss of the opportunity to participate effectively in the affairs of his country. This claim amounts to 831, 322, 637.00 TZS, (Eight Hundred and Thirty One Million, Three Hundred and Twenty Two Thousand, Six Hundred and Thirty Seven Tanzania Shillings).

34. The term 'moral' damages in international law includes damages for the suffering and afflictions caused to the direct victim, the emotional distress of the family members and non-material changes in the living conditions of the victim, if alive, and the family. Moral damages are not damages occasioning economic loss.

35. In its jurisprudence, the Commission has recommended compensation for torture and trauma suffered.[8] The Inter-American Court has developed the concept of non-pecuniary damage and has established that it "*may include both the suffering and distress caused to the direct victims and their next of kin, and the impairment of values that are highly significant to them, as well as changes of a non-pecuniary nature in the living conditions of the victims or their family.*"[9]

36. The European Court of Human Rights will award non-pecuniary damages (or moral damages) on the basis of equitable consideration.

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[8] See Note 3 above.

[9] IACHR *Case of Villagrán Morales et al. v Guatemala – Case of de los "Street Children", Reparations and Costs*. Judgment of 26 May 2001. *Series C No 77*, paragraph 84.

This head covers such issues as pain and suffering, anguish and distress, and loss of opportunity. This has been awarded in some cases[10] while in others the Court has refused to speculate whether there were such losses.[11]

37. With regard to his claim for non-pecuniary damages, the Applicant has failed to produce any evidence to support the claim that these damages were directly caused by the facts of this case. The Court will not speculate on the existence, seriousness and magnitude of the non-pecuniary damages claimed. In any event, in the view of the Court, the finding of a violation by the Respondent in the Court's Judgment of 14 June 2013 and the orders contained therein are just satisfaction for the non-pecuniary damages claimed.[12]

B. Legal costs and expenses

38. The Applicant claims Attorney's fees in respect of litigation at the Court amounting to US$ 60,250.00 (Sixty Thousand, Two Hundred and Fifty United States Dollars). . These fees are for the three (3) Counsel and their three (3) assistants. The Applicant claimed that, from early May 2011 to June 2011 when *Application 011 of 2011* was filed, each of the

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[10] *Bonisch v Austria 13 EHRR* 409 and *Weeks v UK* 13 EHRR 435 paragraph 13.

[11] *Perks and Others v UK* 30 EHRR 33.

[12] See also International Court of Justice *United Kingdom of Great Britain and Northern Ireland v People's Republic of Albania (Corfu Channel Case), Merits*, Judgment of 9 April 1949, *ICJ Reports 1949* at 36 and IACHR *Case of Garrido and Baigorria v Argentina. Reparations and Costs.* Judgment of 27 August 1998. *Series C No 39* paragraph79.

Counsel spent thirty (30) hours each on the case with the assistants spending forty (40) hours each on the case. Regarding the Reply, the Applicant claims that the Counsel spent a total of fifteen (15) hours and the assistants a total of fifteen (15) hours. For the public hearing, the Applicant claims that the Counsel spent a total of fifteen (15) hours for preparation and attendance by one of them. For the reparation claim, the Applicant claims that each Counsel has spent twenty (20) hours for preparation of the brief. The Applicant claims that the hourly rate is US$ 250.00 (Two Hundred and Fifty United States Dollars). for Counsel and US$150.00 (One Hundred and Fifty United States Dollars). for the assistants. The Applicant claims that this comes to a total of One Hundred and Eighty (180) hours for the Counsel, amounting to (US$ 45,000.00 (Forty Five Thousand United States Dollars). and a total of One Hundred and Thirty Five (135) hours for the Assistants amounting to US$ 20,250.00 (Twenty Thousand Two Hundred and Fifty United States Dollars). Counsel for the Applicant have stated that "*though they believe in the Court, they should not bear the cost of the litigation especially when the Respondent could have avoided further litigation had it implemented the decision of the High Court of Tanzania at Dar es Salaam in* Miscellaneous Civil Cause No. 5 of 1993". In the alternative, Counsel for the Applicant stated that they would accept reimbursement of their costs in line with the scales set out in the Legal Aid Policy of the Court.

39. The Court notes that expenses and costs form part of the concept of 'reparations'. Therefore, where the international responsibility of a State is established in a declaratory judgment, the Court may order the State

to compensate the victim for expenditure and costs incurred in his or her efforts to obtain justice at the national and international levels. .[13]

40. Notwithstanding the foregoing, the Court is of the view that the Applicant has to remit probative documents and to develop arguments relating the evidence to the facts under consideration and, when dealing with alleged financial disbursements, clearly describe the items and justification thereof.[14] As the Applicant bears the burden of proof regarding the reparations claimed and having failed to develop the arguments relating the evidence to the facts under consideration, the Court cannot grant his claims. Furthermore, considering that this application arises from *Consolidated Applications Nos. 009 of 2011 Tanganyika Law Society and The Legal and Human Rights Centre v The United Republic of Tanzania and 011 of 2011 Reverend Christopher R. Mtikila v The United Republic of Tanzania* in respect of which the Court decided that each Party should bear its own costs, then it follows that the costs for the current Application should be borne by each Party.

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[13] IACHR *Case of Garrido and Baigorria v Argentina. Reparations and Costs.* Judgment of 27 August 1998. *SeriesC No 39* paragraph79.

[14] IACHR *Case of Chaparro Álvarez and Lapo Iñiguez v Ecuador Preliminary Objections, Merits Reparations and Costs* Judgment of 21 November 2007 *Series C No 170* paragraph 277.

41. In consideration of the above-mentioned, the evidence presented by the Applicant and the corresponding arguments relating to the Attorney's fees do not allow for a complete justification of the amounts requested, therefore this claim is refused.

C. Guarantees of non-repetition

Request to adopt measures under domestic law

42. The Court reiterates the obligation of the Respondent State, as set out in Article 30 of the Protocol, to comply with the Court's Judgment. In its Judgment of 14 June 2013, the Court ordered that:

"The Respondent is directed to take constitutional, legislative and all other necessary measures within a reasonable time to remedy the violations found by the Court and to inform the Court of the measures taken."

43. The Court notes that in its Reply to the Applicant's submissions on reparations, the Respondent maintains that the Court's Judgment of 14 June 2013 was wrong since the law in the Respondent State prohibits independent candidature for election to the Presidency, to Parliament and to Local Government. This was despite the Court's judicial finding that this prohibition is not in conformity with the Charter. This stance by the Respondent State is of concern to the Court and more so since the Respondent has never reported to the Court on the measures it is taking to adopt the constitutional, legislative and all other measures necessary to bring its law on candidature for elections to the Presidency, Parliament and to Local Government in conformity with the Charter. In this regard,

therefore, the Court grants the Applicant's prayer but orders the Respondent State to report to the Court, within six (6) months from the date of this Ruling, on the implementation of the Court's judgment of 14 June 2013.

D. Measures of satisfaction

Publication and dissemination of the Judgment of 14 June 2013

44. Though none of the Parties made submissions on measures of satisfaction, pursuant to Article 27 of the Protocol and the inherent powers of the Court, the Court is considering this measure.

45. The Court affirms its position as set out in paragraph 37 hereof, that judgment, *per se,* can constitute a sufficient form of reparation for moral damages.[15] In the light of the concerns of the Court, as expressed in paragraph 43 hereof, the Court orders that the Respondent State must, within six (6) months of the date of this Ruling, publish:

i. the official English summary developed by the Registry of the Court, of the Judgment of the Court of 14 June 2013 which must be translated to Kiswahili at the expense of the Respondent State and published in both languages, once in the official gazette and once in a national newspaper with widespread circulation; and

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[15] For instance, see IACHR *Case of Neira Alegria et al, v Perú. Reparation and Costs.* Judgment of 19 September 1996 *Series C No 29*, paragraph 56.

ii. the Judgment of the Court of 14 June 2013, in its entirety in English, on an official website of the Respondent State, and remain available for a period of one (1) year.

For these reasons:

46. The Court unanimously holds:

1. That the Judgment of the Court of 14 June 2013 in *Consolidated Applications Nos. 009 of 2011 Tanganyika Law Society and The Legal and Human Rights Centre v The United Republic of Tanzania and 011 of 2011 Reverend Christopher R. Mtikila v The United Republic of Tanzania* constitutes *per se* a sufficient form of reparation for non-pecuniary damages.

2. The Applicant's claims for pecuniary damages, having not been proved, are hereby dismissed.

3. The Applicant's claims for legal costs having not been proved are hereby dismissed.

4. The State is hereby ORDERED to submit to the Court, within six months starting from the date of this Ruling, a report on the measures it has taken in compliance with the Judgment of the Court of 14 June 2013 in *Consolidated Applications Nos. 009 of 2011 Tanganyika Law Society and The Legal and Human Rights Centre v The United Republic of Tanzania and 011 of 2011 Reverend Christopher R. Mtikila v The United Republic of Tanzania*.

5. The State is hereby ORDERED to issue the publications indicated in paragraph 45 of this Ruling, within a period of six (6) months from the date of this Ruling. These publications are:

i. the official English summary developed by the Registry of the Court, of the Judgment of the Court of 14 June 2013 which must be translated to Kiswahili at the expense of the Respondent State and published in both languages, once in the official gazette and once in a national newspaper with widespread circulation;

ii. the Judgment of the Court of 14 June 2013, in its entirety in English, on an official website of the Respondent State, and remain available for a period of one (1) year.

6. Within nine (9) months of the date of the Ruling, the State shall submit to the Court a report describing the measures taken under paragraph 4 above.

7. In accordance with Rule 30 of the Rules of Court, each Party shall bear its own costs.

Done at Arusha, on this Thirteenth day of the month of June in the year Two Thousand and Fourteen in English and French, the English text being authoritative.

Signed by:

Sophia A. B. AKUFFO, President

Bernard M. NGOEPE, Vice President

Gérard NIYUNGEKO, Judge

Fatsah OUGUERGOUZ, Judge

Duncan TAMBALA, Judge

Elsie N. THOMPSON, Judge

Sylvain ORÉ, Judge

El Hadji GUISSE, Judge

Ben KIOKO, Judge

and Kimelabalou ABA, Judge

and Robert ENO, Registrar