

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

THE MATTER OF

ABDUL OMARY NONDO & OTHERS

V.

UNITED REPUBLIC OF TANZANIA

**APPLICATION Nos. 040/2020 & 043/2020
(CONSOLIDATED APPLICATIONS)**

JUDGMENT

6 MARCH 2026



TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
I. THE PARTIES	2
II. SUBJECT MATTER OF THE APPLICATION.....	3
A. Facts of the matter	3
B. Alleged violations	4
III. SUMMARY OF THE PROCEDURE BEFORE THE COURT	5
IV. PRAYERS OF THE PARTIES.....	6
V. JURISDICTION.....	9
A. Objection to the Court’s temporal jurisdiction	9
B. Other aspects of jurisdiction	12
VI. ADMISSIBILITY	13
A. Objection based on the failure to file the Application within a reasonable time ...	14
B. Other admissibility requirements	18
i. Allegations relating to the composition of the Electoral Commission.....	20
ii. Allegations relating to the eligibility of members of the Electoral Commission	21
iii. Allegations relating to the removal of members of the Electoral Commission	22
iv. Allegations relating to the power of courts to inquire into actions of the Electoral Commission	22
v. Allegations relating to the prohibition to join political parties for persons involved in the management of elections.....	23
VII. MERITS.....	24
A. Alleged violation of the right to equality before the law and equal protection of the law	25
B. Alleged violation of the right to have one’s cause heard	28
C. Alleged violation of Article 1 of the Charter.....	32
VIII. REPARATIONS.....	33
A. Adoption of constitutional and legislative measures	35
B. Publication of the judgment	35
C. Civic education campaigns/programmes for awareness on the Judgment.....	37
D. Implementation and reporting.....	37
IX. COSTS.....	38
X. OPERATIVE PART	38

The Court composed of: Blaise TCHIKAYA, President; Chafika BENSAOULA, Vice-President; Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO, Dennis D. ADJEI, Duncan GASWAGA – Judges, and Grace W. KAKAI, Deputy 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, member of the Court and a national of Tanzania, did not hear the Application.

In the matter of:

Abdul Omary NONDO, Deusdedit RWEYEMAMU & Paul Revocatus KAUNDA

Represented by:

- i. Jebra KAMBOLE, Advocate, Law Guards Advocate; and
- ii. Prisca CHOGERO, Advocate, Centre for Strategic Litigation.

Versus

UNITED REPUBLIC OF TANZANIA

Represented by:

Dr. Ally POSSI, Solicitor General, Office of the Solicitor General.

After deliberation,

Renders this Judgment:

I. THE PARTIES

1. Abdul Omary Nondo, Deusdedit Valentine Rweyemamu and Paul Revocatus Kaunda (hereinafter referred to as “the First Applicant,” “the Second Applicant,” and “the Third Applicant” respectively or “the Applicants” jointly) are all Tanzanian nationals. They filed Applications challenging various provisions in the Tanzanian electoral laws.
2. The Applications are 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 the Protocol on 10 February 2006. It further deposited, on 29 March 2010, the Declaration under Article 34(6) of the Protocol through which it accepted the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organisations (hereinafter referred to as “the Declaration”). 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 had no effect on pending and new cases filed before the entry into force of the said withdrawal one year after its deposit which, in the case of the Respondent State case, was on 22 November 2020.¹

¹ *Andrew Ambrose Cheusi v. United Republic of Tanzania* (merits and reparations) (26 June 2020) 4 AfCLR 219, § 38.

II. SUBJECT MATTER OF THE APPLICATION

A. Facts of the matter

3. The First Applicant contends that articles 74(1),² 74(3),³ 74(5)⁴ and 74(14)⁵ of the Constitution of the Respondent State violate provisions of the Charter, the Universal Declaration of Human Rights (hereinafter referred to as “the UDHR”) and the International Covenant on Civil and Political Rights (hereinafter referred to as “the ICCPR”).⁶ It is also the First Applicant’s contention that the earlier mentioned provisions contravene the Respondent State’s Constitution.

4. The Second and Third Applicants allege that articles 74(1) and 74(12) of the Constitution of the Respondent State and Article 119(13) of the Constitution of Zanzibar⁷ contravene the provisions of the Charter, the UDHR, the ICCPR and the Constitution of the Respondent State.

² Article 74(1): There shall be an Electoral Commission of the United Republic which shall consist of the following members to be appointed by the President:

- (a) a Chairman who shall be a Judge of the High Court or a Justice of the Court of Appeal, who shall be a person with qualifications to be an advocate and has held those qualifications for a period of not less than fifteen years;
- (b) a Vice-Chairman who shall be a person who holds, had held or is capable of holding an office of Judge of the High Court or a Justice of the Court of Appeal;
- (c) (other members to be specified by a law enacted by Parliament.

³ Article 74(3) – The following persons shall not be eligible for appointment as members of the Electoral Commission, that is to say –

- (a) a Minister or Deputy Minister;
- (b) a person holding any kind of office specified by a law enacted by Parliament prohibiting a person’s holding such office to be appointed a member of Electoral Commission;
- (c) a Member of Parliament, a Councillor or other persons holding the kind of office specified by a law enacted by Parliament in terms of the provisions of paragraph (g) of sub article (2) of Article 67 of this Constitution; and
- (d) a leader of any political party.

⁴ Article 74(5) – The President may remove a member of the Electoral Commission from office only for failing to discharge his functions either due to illness or any other reason or due to misconduct or loss of the qualifications for being a member.

⁵ Article 74(14) – It is hereby prohibited for persons concerned with the conduct of elections to join any political party, save only that each of them shall have the right to vote as provided for under Article 5 of this Constitution.

⁶ The Respondent State acceded to the ICCPR on 11 June 1976.

⁷ Article 119(13) – No court shall have jurisdiction to enquire into anything done by the Zanzibar Electoral Commission in the performance of its functions in accordance with the provisions of this Constitution.

B. Alleged violations

5. Generally, the First Applicant alleges that articles 74(1), 74(3), 74(5), and 74(14) of the Respondent State's Constitution violate Articles 1, 3, 13(1) of the Charter; Article 21 of the UDHR; Article 25(a) and (b) of the ICCPR; and article 21(1) of the Respondent State's Constitution.
6. Specifically, the First Applicant contends that, article 74(1), which establishes a National Electoral Commission (hereinafter referred to as "the NEC") comprising of members appointed by the President of the Respondent State "gives total discretion and unfettered power to the President to appoint members of electoral commission without any safeguard". The preceding, according to the First Applicant, violates Articles 7 and 21 of the UDHR and Articles 25 and 26 of the ICCPR which guarantee the right to equality before the law as well as the right to free and fair elections.
7. The First Applicant further alleges that article 74(3) of the Respondent State's Constitution contravenes Articles 1, 3, 13(1) of the Charter by providing in a very narrow manner the persons who do not qualify to be members of the NEC thereby leaving out "other ethical and social issues". According to the First Applicant, article 74(3) of the Constitution is "too wide and capable of being abused".
8. It is also the First Applicant's contention that article 74(5) of the Respondent State's Constitution, which confers power on the President of the Respondent State to remove a member of NEC, violates Articles 1, 3, 13(1) of the Charter, Article 21 of the UDHR, and Article 25(a) and (b) of the ICCPR since it provides for security of tenure in "very narrow and absurd" terms "which totally affects the independence of the electoral commission". The First Applicant contends that article 74(5) does not guarantee the security of the members of the NEC thereby creating the risk that they will "follow what the appointing authority wants, as they can be removed any time".

9. The First Applicant also contends that article 74(14) of the Respondent State's Constitution, which prohibits "persons concerned with the conduct of elections" from joining any political party, is in contravention of Articles 1, 3, 13(1) of the Charter, Article 21 of the UDHR and Article 25(a) and (b) of the ICCPR. According to the First Applicant "the provision looks to the post appointments and not prior which make the provision absurd and capable of being abuse ...".
10. The Second and Third Applicants allege that articles 74(1) and 74(12)⁸ of the Constitution of the Respondent State and article 119(13) of the Constitution of Zanzibar violate Articles 2, 3 and 7 of the Charter and Articles 7, 8 and 14(1) of the UDHR. They contend that the aforementioned provisions arbitrarily and unreasonably deny individuals from accessing judicial remedies while at the same time restricting the role of courts in the dispensation of justice.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

11. Application No. 040/2020 was filed, by the First Applicant, on 19 November 2020 and served on the Respondent State on 3 December 2020. The Respondent State was given 30 days within which to file its list of representatives and 90 days to file a Response to the Application.
12. Application No. 043/2020 was filed by the Second and Third Applicant on 19 November 2020, and it was served on the Respondent State on 3 December 2020. The Respondent State was given 30 days within which to file its list of representatives and 90 days to file a Response to the Application.

⁸ Article 74(12) – No court shall have power to inquire into anything done by the Electoral Commission in the discharge of its functions in accordance with the provisions of this Constitution.

13. The Court, *suo motu*, ordered the joinder of the above-mentioned Applications, in “the interest of the proper administration of justice”, through an Order dated 30 March 2021. Both Parties were duly notified of the joinder by a Notice dated 31 March 2021.
14. The Respondent State filed its Response to Application No. 040/2020 on 14 February 2022 and this was served on the Applicants on 17 February 2022.
15. On 6 July 2022, the Respondent State filed its Response to Application No. 043/2020. The Response was served on the Applicants on 15 July 2022.
16. Pleadings were closed on 11 September 2024 and the Parties were duly notified.
17. On 25 June 2025 the Respondent State filed a submission to which copies of recently adopted legislation were attached. On 3 July 2025 the submission was transmitted to the Applicants for observations, to be made within 15 days of notification.
18. The Applicants did not file any observations within the time stipulated and, by order dated 15 September 2025, the Court, in the interest of justice, reopened pleadings and deemed the Respondent State’s submission of 25 June 2025 to have been properly filed.
19. Pleadings were, again, closed on 18 September 2025 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

20. The First Applicant prays the Court to:

- i. Declare that Articles 74(1), 74(3), 74(5) and 74(14) of the Constitution of the Respondent State violate Articles 1, 3, 13(1) of the Charter and other international instruments;
- ii. Order the Respondent State to amend its constitutional and legal framework and align it with the Charter to allow for the formation of an Independent National Electoral Commission and Zanzibar Election Commission within 18 months from the date of issuance of judgment;
- iii. Order the Respondent State to report to the Honourable Court every 12 months, starting from the date of the judgment by the Court, on the enforcement of this judgment and related orders until the judgment of the Court is fully enforced;
- iv. Order the Respondent State to publish the judgment of the Court on its Official website in both English and Kiswahili at her own costs and for same to remain published for a period of one year from the date of publication of the judgement;
- v. Order the Respondent State to introduce civic education campaigns/specific programs that will create public awareness about the implications of the judgment of the Court;
- vi. Order the Respondent State to pay the Applicants' costs;
- vii. Grant any other remedy and/or relief that the Honourable Court will deem fit.

21. The Second and Third Applicants pray the Court to:

- i. Declare that the Respondent State is in violation of Articles 1, 2, 3(2) and 7(1) of the Charter;
- ii. Order the Respondent State to amend its constitutional and legal framework and align it with the Charter to allow for the formation of an Independent National Electoral Commission and Zanzibar Election Commission within 18 months from the date of the judgment;
- iii. Order the Respondent State to submit a report to the Honourable Court every 12 months, starting from the date of the judgment by the Court, on its enforcement of this judgment and related orders until the judgment of the Court is fully enforced;
- iv. Order the Respondent State to publish the judgment of the Court on its Official website in both English and Kiswahili at its own cost and for same

to remain published for period of one year from the date the judgement is published;

- v. Order the Respondent State to introduce civic education campaigns/specific programs that will create public awareness about the implications of the judgment of the Court;
- vi. Order the Respondent State to pay the Applicants' costs;
- vii. Grant any other remedy and/or relief that the Honourable Court will deem fit.

22. On jurisdiction and admissibility, the Respondent State prays the Court to:

- i. Find that the Court lacks jurisdiction to hear the Application;
- ii. Find that the Application has not met the admissibility requirements provided in Article 56(6) of the Charter read together with Rule 50(2)(f) of the Rules of Court;
- iii. Declare the Application inadmissible.

23. On the merits of the First Applicant's Application, the Respondent State prays the Court to:

- i. Declare that the provisions of Article 74(1), 74(3), 74(5) and 74(14) of the Constitution of the United Republic of Tanzania, 1977 are consistent with the African Charter on Human and Peoples' Rights, 1981; Universal Declaration on Human Rights, 1948 and International Covenant on Civil and Political Rights, 1966;
- ii. Grant any other order or relief that the Honourable Court will deem fit;
- iii. That the Application be dismissed with costs.

24. On the merits of the Second and Third Applicants' Application, the Respondent State prays the Court to:

- i. Declare that the provisions of Article 74(1), 74(12) of the 1977 Constitution and Article 119(13) of the 1984 Constitution are consistent with the African Charter on Human and Peoples' Rights, 1981; Universal Declaration on Human Rights, 1948 and International Covenant on Civil and Political Rights, 1966;

- ii. Grant any other order that the Court will deem fit;
- iii. Dismiss the Application with costs.

V. JURISDICTION

25. The Court recalls that Article 3 of the Protocol provides that:

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.

26. The Court further recalls that pursuant to Rule 49(1) of the Rules, it “shall preliminarily ascertain its jurisdiction ... in accordance with the Charter, the Protocol and these Rules”.

27. Based on the aforementioned provisions, the Court must, in each case, as a preliminary matter, ascertain its jurisdiction and adjudicate on any objections thereto, should they arise.

28. In respect of both Applications, the Court notes that the Respondent State raised the same objection and this relates to the Court’s temporal jurisdiction. Consequently, the Court shall, as a preliminary matter, address the objection pertaining to its temporal jurisdiction before considering other aspects of its jurisdiction, if necessary.

A. Objection to the Court’s temporal jurisdiction

29. The Court observes that the Respondent State challenges its jurisdiction on the ground that it lacks temporal jurisdiction. Specifically, the Respondent State contends that the violations alleged by the Applicants arise from

constitutional provisions adopted in 1977 and 1984, thereby predating the entry into force of the Protocol. Furthermore, the Respondent State asserts that, at the material time, it had not made the Declaration.

30. The Respondent State contends that the Court is bound by the principle of non-retroactivity of treaties. It further contends that the Court has consistently affirmed that its temporal jurisdiction is to be determined with reference to the date on which the Charter, the Protocol, and the Declaration took effect with respect to the particular State.

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31. For their part, the Applicants contest the arguments advanced by the Respondent State and submit that the Court possesses temporal jurisdiction to adjudicate the present Application. The Applicants argue that the Court has temporal jurisdiction given the continuous nature of the alleged violations. The Applicants point out that although the Respondent State's Constitution was adopted in 1977, it has undergone several amendments over the years including Act No.15 of 1984, Act No.4 of 1992, Act No.7 of 1993, Act No.3 of 2000 as well as in 2005. The preceding, according to the Applicants, illustrates the continuous nature of the violations perpetrated by the constitutional provisions that they are challenging.

32. As earlier pointed out, the Respondent State contests the temporal jurisdiction of the Court because the violations alleged by the Applicants are, supposedly, based on constitutional provisions which were enacted before it became Party to both the Charter and the Protocol. In this connection, the Court recalls that, generally, its temporal jurisdiction is determined from the date of entry into force of the Protocol which established it and not from the date of deposit of the Declaration, the latter

date relates only to its personal jurisdiction.⁹ One significant exception to the literal application of the preceding rule relates to instances where violations are alleged to have occurred before a State became a party to the Charter or Protocol but the alleged violations are deemed to have persisted subsequent to the entry into force of the two instruments for the concerned State. In such an instance, the Court retains temporal jurisdiction to adjudicate the matter on the basis of the continuing nature of the violations.¹⁰

33. In the instant Application, the violations alleged by the Applicants relate to articles 74(1), 74(3), 74(5), 74(12), and 74(14) of the 1977 Constitution of the Respondent State (as amended from time to time), as well as article 119(13) of the 1984 Constitution of Zanzibar. Although the Respondent State's Constitution, and that of Zanzibar, were enacted prior to the Respondent State's accession to both the Charter and the Protocol, they have also undergone amendments at various points in the past. Significantly, notwithstanding the various constitutional amendments, the provisions challenged by the Applicants continue to form part of the domestic legal framework of the Respondent State to date.
34. Consequently, the Court finds that the alleged violations, although commencing prior to the Respondent State becoming a State party to the Charter and the Protocol, continued after the Respondent State's ratification of the Charter and the Protocol.¹¹ The essence of continuing violations is that they renew themselves for as long as they remain unremedied.¹² Accordingly, the Court holds that it possesses temporal jurisdiction to adjudicate the present matter.

⁹ *Ligue Ivoirienne des Droits de l'Homme (LIDHO) and Others v. Republic of Côte d'Ivoire*, AfCHPR, Application No. 041/2016, Judgment of 5 September 2023 (merits and reparations), § 58.

¹⁰ *Kabalabala Kadumbagula and Dadu Magunga v. United Republic of Tanzania*, AfCHPR, Application No. 031/2017, Judgment of 4 June 2024 (merits and reparations), § 33; *Jebra Kambole v. United Republic of Tanzania* (judgment) (15 July 2020) 4 AfCLR 460, §§ 22-24.

¹¹ *Ibid.*

¹² *Kambole v. Tanzania, ibid.*

35. The Respondent State's objection to the Court's temporal jurisdiction is thus dismissed.

B. Other aspects of jurisdiction

36. The Court observes that the Parties do not dispute other aspects of its jurisdiction. Nevertheless, in accordance with Rule 49(1) of the Rules, it is incumbent upon the Court to independently ascertain that all jurisdictional requirements are satisfied prior to proceeding with the consideration of the Application.
37. With respect to its personal jurisdiction, the Court recalls, as indicated in paragraph 2 of this judgment, that on 21 November 2019, the Respondent State deposited, with the Chairperson of the African Union Commission, an instrument withdrawing its Declaration. The Court further recalls its established jurisprudence to the effect that the withdrawal of a Declaration does not operate retroactively, nor does it affect matters that were pending at the time of filing the withdrawal instrument, or new cases submitted prior to the withdrawal becoming effective.¹³ Given that such withdrawal takes effect one year after the deposit of the notice of withdrawal, the effective date of the Respondent State's withdrawal was 22 November 2020. As the consolidated Applications were both filed prior to the withdrawal becoming effective which is on 19 November 2020, these Applications were thus unaffected by the withdrawal.
38. In view of the foregoing considerations, the Court concludes that it has personal jurisdiction to adjudicate the consolidated Applications.
39. With respect to its material jurisdiction, the Court reiterates its consistent jurisprudence that Article 3(1) of the Protocol vests it with the authority to examine any application, provided that the application contains allegations of violations of rights protected under the Charter or any other human rights

¹³ *Cheusi v. Tanzania, supra.*

instrument ratified by the Respondent State. In the instant matter, the Applicants have expressly invoked their rights under Articles 1, 2, 3, 7, 13 of the Charter.

40. Given also that the Respondent State is a party to the Charter and the ICCPR, the very instruments that the Applicants are alleging it has violated, the Court concludes that its material jurisdiction is duly established.
41. With regard to its territorial jurisdiction, the Court notes that all the alleged violations occurred within the territory of the Respondent State, which is a State Party to the Charter and the Protocol. Accordingly, the Court finds that it has territorial jurisdiction in this Application.
42. In view of the foregoing considerations, the Court holds that it has jurisdiction to hear and determine the present Application.

VI. ADMISSIBILITY

43. 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.
44. According to 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 the Rules”.
45. The Court notes that Rule 50(2) of the Rules, which essentially 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.

46. In the instant Application, the Respondent State has raised an objection to the admissibility of the Application contending that the Applicants failed to file the Application within a reasonable time in line with Article 56(6) of the Charter.

47. Given the preceding, the Court shall, first, consider the objection pertaining to the alleged failure to file the Application within a reasonable time, before proceeding with an analysis of the other admissibility requirements if necessary.

A. Objection based on the failure to file the Application within a reasonable time

48. The Respondent State, relying on Article 56(6) of the Charter, read together with Rule 50(2)(f) of the Rules argues that this Application is inadmissible due to the Applicants' failure to file the same within a reasonable time.

49. The Respondent State submits that it deposited its Declaration, thereby permitting individuals and non-governmental organizations to access the Court, on 29 March 2010. It asserts that this date constitutes the commencement of the time limit within which the Applicant ought to have filed the present Application. It is the Respondent State's contention that the Applicants filed the instant matter ten years and eight months after the commencement of the said time limit. The Respondent State submits that such a delay is unreasonable and cannot be excused.
50. The Respondent State, while invoking the cases of *Attorney General of Uganda & Kenya v. Omar Awadh & Others*; *Attorney General of the Republic of Kenya v. Independent Medical Legal Unit*; *Kolosov and Others v. Serbia*; *Jebra Kambole v. United Republic of Tanzania*; and *Ramadhani Issa Malengo v. United Republic of Tanzania*, submits that the concept of continuing violations, in relation to the determination of the time limit for instituting a case, is not recognized by certain international and regional human rights bodies. According to the Respondent State, the preceding position is premised on the principle of maintaining legal certainty.

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51. The Applicants submit that the Application meets all the admissibility requirements, including Article 56(6) of the Charter read together with Rule 50(2)(f) of the Rules. In relation to the period of ten years mentioned by the Respondent State, the Applicants submit that this period is not applicable in the instant matter as the alleged violations have been recurrent during elections, including the elections held in 2020. Accordingly, the Applicants contend that the Application has been filed within a reasonable time.

52. The Court notes that the issue at hand is whether the time taken by the Applicants to file the present Application is reasonable within the meaning of Article 56(6) of the Charter as read with Rule 50(2)(f) of the Rules.

53. Under Article 56(6) of the Charter, restated in Rule 50(2)(f) of the Rules, an application is admissible only if it is “submitted within a reasonable period from the time 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.”
54. Article 56(6) of the Charter, as the Court has noted before, does not prescribe a specific time limit within which an application must be filed.¹⁴ The provision simply directs that an application must be submitted within a reasonable time. In line with the Court’s jurisprudence, the reasonableness of the period for seizure of the Court depends on the particular circumstances of each case and must be assessed on a case-by-case basis.¹⁵
55. In the present Application, the Court acknowledges that the alleged violations cited by the Applicants are rooted in specific provisions within the Respondent State’s Constitution as well as that of Zanzibar. The Court further notes that the Respondent State deposited its Declaration on 29 March 2010. Accordingly, the timeframe for initiating proceedings against the Respondent State, concerning the violations claimed by the Applicants, was only available from 29 March 2010. The present Application, however, was lodged on 19 November 2020, which amounts to a period of ten years and eight months following the deposit of the Declaration by the Respondent State. Ultimately, the Court is required to assess whether the aforementioned period is reasonable within the context of Article 56(6) of the Charter, as read in conjunction with Rule 50(2)(f) of the Rules.

¹⁴ *Ally Rajabu v. United Republic of Tanzania* (merits and reparations) (25 June 2021) 5 AfCLR 282, § 51; *Ernest Karatta and others v. United Republic of Tanzania* (30 September 2021) 5 AfCLR 465, § 64, and *Cosma Faustin v. United Republic of Tanzania* (30 September 2021) 5 AfCLR 386, § 61.

¹⁵ *Anudo Ochieng Anudo v. United Republic of Tanzania* (merits) (22 March 2018) 2 AfCLR 248, § 57; *Norbert Zongo and Others v. Burkina Faso* (merits) (28 March 2014) 1 AfCLR 219, § 92. See also *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 73.

56. The Court observes that Rule 50(2)(f) of the Rules posits two elements that must be used in assessing the reasonableness of time for filing an Application. The first element is that an “application be filed within a reasonable time from the date local remedies were exhausted.” The second element, alternatively, requires that an application be filed within a reasonable time “from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter”.
57. In the instant Application, the Applicants contend that they were not obliged to exhaust local remedies not only because there was none to exhaust but also because some of the alleged violations were continuous. The Court considers that, in such instances, computation of time cannot materially be based on the date of exhaustion of local remedies since such exhaustion becomes irrelevant. As such the first limb of the Rule 50(2)(f) of the Rules does not apply. As for the second limb of Rule 50(2)(f) of the Rules, the Court recalls that it is mandated to set the date from which the computation of reasonable time for filing an application can commence. Given the Court’s earlier findings, as to the continuous nature of the violations alleged by the Applicant, the Court finds that the Applicants could have filed the Application at any time for as long as the violations remained unremedied. This is because the violations alleged to have been perpetrated by articles 74(1), 74(3), 74(5), 74(12), and 74(14) of the 1977 Constitution, as well as article 119(13) of the 1984 Constitution of Zanzibar, automatically renewed themselves for as long as they were not remedied.
58. The Court holds, therefore, that the Application fulfils the requirement of being filed within a reasonable time as prescribed by Article 56(6) of the Charter and Rule 50(2)(f) of the Rules and, therefore, dismisses the Respondent State’s objection on this point.

B. Other admissibility requirements

59. The Court observes, based on the record before it, that none of the Parties has raised any objection regarding the Application's compliance with the requirements set forth in Article 56, sub-articles (1), (2), (3), (4), (5), and (7) of the Charter, which requirements are reiterated in sub-rules (a), (b), (c), (d), (e), and (g) of Rule 50(2) of the Rules. Notwithstanding the Parties' silence on these admissibility requirements, the Court must still ascertain that the aforementioned requirements have been duly satisfied.
60. The Court finds that, according to the record, the condition stipulated in Rule 50(2)(a) of the Rules has been satisfied, as the Applicants have clearly indicated their identities.
61. The Court notes that the Applicants' claims seek to protect their rights guaranteed in the Charter. It further notes that one of the objectives of the Constitutive Act of the African Union, as stated in Article 3(h) thereof, is the promotion and protection of human and peoples' rights. Furthermore, nothing on file indicates that the Application is incompatible with the Constitutive Act of the African Union. The Court finds, therefore, that the requirement of Rule 50(2)(b) of the Rules is met.
62. The Court further notes, from the record, that the Application does not contain any disparaging or insulting language directed at the Respondent State, its institutions or the African Union thereby satisfying the requirement stipulated in Rule 50(2)(c) of the Rules.
63. With respect to the condition set forth in Rule 50(2)(d) of the Rules, the Court notes that the Application is not based exclusively on information disseminated through the mass media. The Court thus finds that the Application meets the requirements of Rule 50(2)(d) of the Rules.
64. As for the requirement enshrined under Rule 50(2)(e) of the Rules, the Court recalls that this condition requires that all Applicants must exhaust the

available remedies before filing their applications. The Applicants submit that there is no remedy that is available, sufficient or effective for them to exhaust such that the Application should be excused from complying with the requirement for exhaustion of domestic remedies.

65. The Respondent State did not make any submissions addressing the Application's compliance with the requirement for exhaustion of domestic remedies.

66. The Court recalls that the objective of the rule of exhaustion of local remedies is to provide States the opportunity to resolve cases of alleged human rights violations within their jurisdiction before an international human rights body is called upon to determine the State's responsibility for the same according to the principle of subsidiarity.¹⁶
67. For local remedies to be exhausted, an applicant must have presented before domestic courts, at least in substance, the claims that he raises before this Court.¹⁷ The Court recalls that exhaustion of local remedies is assessed as at the time the application is filed before it and compliance with this requirement entails that applicants must await the outcome of pending domestic proceedings before seizing the Court.¹⁸ The only exception to this rule is where proceedings in respect of the applicable remedy are unavailable, inaccessible or unduly prolonged.¹⁹
68. In the present Application, the Applicants make five allegations against the electoral laws of the Respondent State. The Court considers it apposite to assess each of the allegations in order to determine if domestic remedies were exhausted. In considering the Applicants' allegations, the Court is

¹⁶ *Lohe Issa Konate v. Burkina Faso* (merits) (5 December 2014) 1 AfCLR 314, § 78.

¹⁷ *Harouna Dicko and Others v. Burkina Faso*, AfCHPR, Application No. 037/2020, Ruling of 13 November 2024 (jurisdiction and admissibility), § 42.

¹⁸ *Ibid.*, § 43.

¹⁹ *Ibid.*

mindful that although the Applicants have alluded to the way the 2020 General Elections, in the Respondent State, were conducted, their Applications have not sought to directly challenge the manner in which the 2020 Elections were conducted. Their challenge is focused on the legal provisions governing the conduct of elections, which they believe infringe on their rights. Each of the Applicants' allegations will now be considered for compliance with the admissibility requirements in Article 56 of the Charter.

i. Allegations relating to the composition of the Electoral Commission

69. The Applicants aver that the composition of the Electoral Commission in the Respondent State, as decreed by article 74(1) of the Constitution, contravenes Articles 1, 3, 13(1) of the Charter; Article 21 UDHR and Article 25 of the ICCPR.
70. On a careful perusal of the record, the Court observes that, in relation to the allegation that the composition of the Electoral Commission contravenes the Charter, the UDHR and the ICCPR, the Applicants have not led any proof to show that they attempted to exhaust domestic remedies. It thus falls for the Court to determine, therefore, whether there were domestic remedies which the Applicants could have accessed to challenge the manner in which the Electoral Commission is composed.
71. In relation to the exhaustion of domestic remedies, the Court notes that the Applicants have submitted that they could not approach the High Court under the Basic Rights and Duties Enforcement Act given that the provisions they intended to challenge are outside of Chapter III of Part One of the Respondent State's Constitution. They have, however, not elaborated or demonstrated that they could not have, in any other way, triggered the jurisdiction of the High Court to pronounce itself on the provisions they are challenging.

72. In so far as the Applicants' case revolves around the composition of the Electoral Commission, the Court notes that, as at the time of filing of this Application, the composition of the Electoral Commission, in the Respondent State, was governed both by its Constitution and the National Elections Act.²⁰ Given that matters relating to the composition of the Electoral Commission are also governed by applicable statutes, the Court finds that the Applicants were at liberty to commence action before the High Court seeking the determination of the legality of the manner in which the Electoral Commission is composed especially given that the composition of the Election Commission was prescribed not just by the Constitution but also the National Elections Act.²¹ It is the Court's finding, therefore, that the substance of the violation alleged by the Applicants could have been brought for resolution before the Respondent State's High Court.
73. Having never approached any domestic courts with their grievances in respect of the composition of the Electoral Commission, the Court holds that the Applicants failed to exhaust domestic remedies in respect of their claim relating to article 74(1) of the Respondent State's Constitution. The Court thus finds that the Application does not fulfil the requirements of exhaustion of local remedies in respect of this allegation.

ii. Allegations relating to the eligibility of members of the Electoral Commission

74. The Applicants allege that the manner in which article 74(3) delineates those that are not eligible to serve in the Electoral Commission contravenes their rights under Article 1, 3, 13(1) of the Charter, Article 21 of the UDHR and Article 25 of the ICCPR.

²⁰ In 2024, the Respondent State adopted the Independent National Electoral Commission Act, Act No. 2 of 2024. On the composition of the Electoral Commission, the 2024 Act builds on the prescriptions in Article 74(1) of the Constitution. The Respondent State has also subsequently adopted a new law governing the conduct and management of elections - the Presidential, Parliamentary and Councillors' Elections Act, 2024.

²¹ Section 4, National Elections Act.

75. The Court observes that the Applicants have not demonstrated that they attempted to exhaust domestic remedies in respect of this claim. For the same reasons as those outlined in paragraphs 72 to 73 above, the Court finds that this claim is inadmissible for failure to exhaust domestic remedies.

iii. Allegations relating to the removal of members of the Electoral Commission

76. In respect of article 74(5) of the Respondent State's Constitution, the Applicants contend that this provision compromises the independence of the Electoral Commission by giving the Respondent State's President power to remove members of the Electoral Commission from office on grounds that are subjective and unclear.

77. The Court, again, notes that the Applicants have not provided any evidence that they exhausted domestic remedies opting to rely instead on the allegation that there was no remedy to exhaust.

78. Given the Court's earlier findings, in paragraphs 72 to 73 of this Judgment, the Court holds that the Application does not meet the requirements of exhaustion of domestic remedies in respect of this allegation.

iv. Allegations relating to the power of courts to inquire into actions of the Electoral Commission

79. The Applicants argue that article 74(12) of the Respondent State's Constitution and article 119(13) of the Constitution of Zanzibar violate the principles of equality before the law and equal protection of the law as provided in Article 3 of the Charter and Article 14(1) of the ICCPR. Specifically, the Second and Third Applicants argue that article 119(13) of the Constitution of Zanzibar violates the right to have one's cause to be heard under Article 7(1)(a) of the Charter. The basis of the Applicants' argument is that the aforementioned provisions oust the jurisdiction of the courts in the Respondent State.

80. In respect of this allegation, the Court recalls its jurisprudence that provisions which oust the jurisdiction of courts deprive litigants of remedies to exhaust.²² In effect, therefore, given the provisions of article 74(12) of the Respondent State's Constitution and article 119(13) of the Constitution of Zanzibar, the Applicants did not have a remedy that was available, sufficient and effective to exhaust before approaching the Court.

81. The Court, therefore, finds that the allegations in respect article 74(12) of the Respondent State's Constitution and article 119(13) of the Constitution of Zanzibar are admissible.

v. Allegations relating to the prohibition to join political parties for persons involved in the management of elections

82. As for article 74(14) of the Respondent State's Constitution, the Applicants contend that this violates their rights under Articles 1, 3, 13(1) of the Charter, Article 21 of the UDHR and Article 25 of the ICCPR for failing to factor political conduct of persons appointed to manage elections before their appointment. This, according to the Applicants makes article 74(14) "absurd and capable of abuse".

83. The Court notes that the Applicants have not provided any evidence to demonstrate that they exhausted any local remedies in respect of this allegation or that domestic remedies were unavailable. For the same reasons as outlined earlier in paragraphs 72 to 73 of this Judgment, the Court concludes that the Applicants failed to exhaust domestic remedies in respect of their allegations concerning article 74(14) of the Respondent State's Constitution. Accordingly, the Court finds this allegation inadmissible.

²² *Kambole v. Tanzania*, §§ 52-53.

84. In view of the above, and in respect of the requirement of exhaustion of local remedies, the Court finds that the Application fulfils the said requirement only in respect of the allegations relating to article 74(12) of the Respondent State's Constitution and article 119(13) of the Constitution of Zanzibar.
85. Finally, with respect to the requirement laid down in Rule 50(2)(g) of the Rules, the Court finds that the present matter does not pertain to a case that has already been settled between the Parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union. The Court, thus, finds that the Application complies with Rule 50(2)(g) of the Rules.
86. As a consequence of the above, the Court holds that the Application satisfies the admissibility requirements prescribed under Article 56 of the Charter, as reiterated in Rule 50(2) of the Rules, only in respect of the allegations relating to the power of courts to inquire into actions of the Electoral Commission under article 74(12) of the Respondent State's Constitution and article 119(13) of the Constitution of Zanzibar. Accordingly, the Court declares the Application admissible only to the extent earlier outlined herein.

VII. MERITS

87. As clear from the above, The Court has found the Application admissible only in relation to the allegations relating to the power of courts to inquire into actions of the Electoral Commission, under article 74(12) of the Respondent State's Constitution and article 119(13) of the Constitution of Zanzibar. In the circumstances, the Court's consideration of the merits of this Application will be limited to these allegations.

88. According to the Applicants, article 74(12) of the Respondent State's Constitution and article 119(13) of the Constitution of Zanzibar violate the principles of equality before the law and equal protection of the law as provided in Article 3 of the Charter and Article 14(1) of the ICCPR. It is also the Applicants' contention that the same earlier mentioned constitutional provisions also violate the right to have one's cause heard under Article 7 of the Charter. Each of these allegations will be dealt with sequentially. In so far as the Applicants allege violation of provisions of the ICCPR and UDHR, the Court will consider these under the comparable provisions in the Charter, which is the primary instrument that it applies.

A. Alleged violation of the right to equality before the law and equal protection of the law

89. The Applicants argue that articles 74(12) of the Constitution of the Respondent State, as well as article 119(13) of the Constitution of Zanzibar, violate the right to equal protection of the law under Article 3(2) of the Charter. They assert that these provisions negatively affect both individuals and the judiciary. For individuals, the Applicants claim that these provisions arbitrarily and unreasonably deny access to courts for remedies, thereby depriving individuals of their basic rights and resulting in a discriminatory effect. As for the judiciary, the Applicants argue that these provisions restrict its fundamental function of dispensing justice. The Applicants submit that by mandating that decisions made by the NEC and Zanzibar Electoral Commission (ZEC) are not subject to being judicially reviewed, the provisions effectively render the judiciary functionless in determining complaints arising from such decisions.

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90. The Respondent State argues that articles 74(12) and 119(13) are in conformity with Article 3 of the Charter. It argues that these provisions are intended to ensure the independence of the NEC and the ZEC thereby enabling them to effectively perform their functions and achieve their

objectives in a timely manner. It also contends that under the provisions challenged by the Applicants, both the NEC and the ZEC are required to function according to law and that in the event both institutions fail, their decisions can be challenged before courts of law. In support of its position, the Respondent State cites, among others, the case of *Amy P. Kibatala v. The Attorney General and the Director of the National Electoral Commission of Tanzania*, and *Attorney General and Two others v. Aman Walid Kabourou* emphasizing that the actions of the NEC and the ZEC remain subject to judicial challenge where they contravene the provisions of the 1977 and 1984 Constitutions.

91. The Respondent State also submits that the Court must understand articles 74(12) 119(13) together with other provisions in its 1977 Constitution and the 1984 Constitution of Zanzibar, respectively. On such a joint reading, it is further submitted, articles 74(12) and 119(13) are in conformity with the Charter as they cannot be interpreted so as to protect unconstitutional or illegal acts by the NEC or ZEC.

92. The Court recalls that Article 3 of the Charter provides thus:

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

93. The principle of “equality” in law presupposes that the law protects everyone without discrimination.²³

94. As affirmed in the Court’s jurisprudence, the principle of equality before the law, inherently encompassed within the principle of equal protection of the law, does not peremptorily mandate uniform treatment in all circumstances.²⁴ Rather, it permits differential treatment of individuals or

²³ *APDH v. Côte d’Ivoire*, *supra*, § 146.

²⁴ *Zongo and Others v. Burkina Faso* (merits), *supra*, § 167.

groups situated in objectively distinct contexts, provided that such differentiation pursues a legitimate aim, is proportionate to the aim sought to be achieved, and is not discriminatory in nature.²⁵

95. Consequently, a violation of Article 3 of the Charter does not inevitably arise solely from an alleged instance of differentiated treatment. It is incumbent upon the party alleging a violation of Article 3 of the Charter to discharge the burden of proof by substantiating the allegations with cogent and credible evidence. As the Court has previously held, mere general assertions or unsubstantiated statements alleging that a right has been violated are insufficient to establish a breach of the Charter.²⁶
96. In relation to the provisions challenged by the Applicants, the Court observes that article 74(12) of the Respondent State's Constitution provides that:

No court shall have power to inquire into anything done by the Electoral Commission in the discharge of its functions in accordance with the provisions of this Constitution.

97. The Court further observes that article 119(13) of the Constitution of Zanzibar provides:

No Court shall have jurisdiction to enquire into anything done by the Zanzibar Electoral Commission in the performance of its functions in accordance with the provisions of this Constitution.

98. With regard to these provisions, the Court observes that they do not, in themselves, deny the Applicants equal protection of the laws within the Respondent State. The Applicants, like other citizens, have been guaranteed the same range of rights in terms of contesting the conduct of the NEC and the ZEC. However, the Court finds that, by outrightly shielding

²⁵ *Kambole v. Tanzania, supra*, § 87.

²⁶ *George Maili Kemboge v. United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 369, § 51 and *Minani Evarist v. United Republic of Tanzania* (merits) (21 September 2018) 2 AfCLR 402, § 75.

the NEC and ZEC from judicial scrutiny, articles 74(12) and 119(13) disrupt the balance between institutional independence and accountability, violating the fundamental principle that no institution should be above the law.

99. The Court recalls that, with regard to article 74(12) of the Respondent State's Constitution and article 119(13) of the Constitution of Zanzibar, in *Jebra Kambole v. Tanzania*,²⁷ it adjudicated upon a similar provision in the Respondent State's Constitution – which ousted the jurisdiction of courts to consider any complaint(s) related to the election of the president in the Respondent State. The Court held that such a provision, in the absence of reasonable justification, necessity, or proportionality within a democratic society, constituted a violation of the Charter.²⁸
100. Applying the same reasoning in the instant case, the Court finds that article 74(12) of the Respondent State's Constitution and article 119(13) of the Constitution of Zanzibar oust the jurisdiction of courts to review acts performed by the NEC and the ZEC. Although these provisions appear neutral on their face and, in principle, apply to all citizens within the Respondent State, their practical effect is not uniform across the population. The impugned provisions entail a disproportionate effect on individuals seeking legal redress for potential electoral grievances due to the inability of those individuals to challenge electoral decisions before a judicial body.
101. As a result of the above, the Court holds that article 74(12) of the Respondent State's Constitution and article 119(13) of the Constitution of Zanzibar are in violation of Article 3(2) of the Charter.

B. Alleged violation of the right to have one's cause heard

102. The Applicants argue that article 74(12) of the Constitution of the Respondent State, as well as article 119(13) of the Constitution of Zanzibar,

²⁷ *Kambole v. Tanzania, supra*, §§ 75-83.

²⁸ *Ibid*, § 104.

violate the right to have one's cause to be heard under Article 7(1)(a) of the Charter. They assert that these provisions negatively affect both individuals and the judiciary. For individuals, the Applicants claim that these provisions arbitrarily and unreasonably deny access to courts for remedies, thereby depriving them of their basic rights and resulting in a discriminatory effect. As for the judiciary, the Applicants argue that these provisions restrict its fundamental function of dispensing justice. By prohibiting judicial scrutiny of decisions made by the NEC and the ZEC, the provisions, according to the Applicants, effectively render the judiciary functionless in determining matters arising from such decisions.

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103. In response, the Respondent State submits that the Applicants' allegations are unfounded, asserting that the Applicants have failed to adduce evidence to substantiate their claims. The Respondent State further argues that the impugned provisions are in conformity with the Charter and do not violate the Applicants' rights as alleged.

104. The Court notes that Article 7(1)(a) of the Charter provides:

Every individual shall have the right to have his cause heard. This comprises:

- (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force.

105. The Court recognizes that the right to have one's cause heard, as guaranteed under Article 7(1)(a) of the Charter, encompasses a broad set of procedural safeguards to ensure due process of law. These include an individual's right to be heard and present their views on matters affecting

their rights; the right to seek redress by filing a petition before competent judicial or quasi-judicial bodies for alleged violations; and the right to appeal to a higher judicial authority if their grievances are not adequately addressed by lower courts.²⁹

106. The protection under Article 7 of the Charter is not confined solely to arrested or detained individuals. Rather, it extends to every person's right to access competent judicial bodies, ensuring that they have their cases heard and receive adequate and effective relief.³⁰

107. All State Parties to the Charter have a legal obligation to ensure that their judicial institutions are accessible to all individuals and that every litigant is provided with a fair and adequate opportunity to present their case before a competent and impartial judicial body.³¹

108. The Court recalls that one of the fundamental elements of the right to a fair hearing, as enshrined under Article 7 of the African Charter, is the right of access to a court for adjudication of grievances, as well as the right to appeal against judicial decisions. In this regard, the Court observes that article 74(12) of the Respondent State's Constitution and article 119(13) of the Constitution of Zanzibar impose limitations on this right. The aforementioned constitutional provisions categorically oust the jurisdiction of courts from reviewing the actions and decisions of the NEC and the ZEC. This absolute exclusion of judicial oversight is comparable to the restriction imposed under article 41(7) of the Respondent State's Constitution, which the Court found to be inconsistent with Article 7(1)(a) of the Charter in the earlier cited case of *Jebra Kambole v. Tanzania*.

109. In *Jebra Kambole v. Tanzania*, the Court reaffirmed that when a State imposes a restriction on fundamental rights, it bears the burden of proving that such a restriction complies with Article 27(2) of the Charter. Specifically,

²⁹ *Werema Wangoko Werema v. United Republic of Tanzania* (merits) (2018) 2 AfCLR 520, §§ 68-69.

³⁰ *Zimbabwe Human Rights NGO Forum v. Zimbabwe* (2006) AHRLR 128 (ACHPR 2006), § 213.

³¹ *Kambole v. Tanzania, supra*, § 97.

the State must establish that the restriction is legally prescribed (both under domestic law and international law), serves a legitimate purpose, and is necessary and proportionate to achieving that purpose. Furthermore, the Court reiterated that a State cannot invoke its internal laws to justify non-compliance with international human rights obligations.³²

110. In the present Application, the Court finds that the Respondent State has failed to establish any of the conditions under Article 27(2) of the Charter to justify the limitation of the right to have one's cause heard. While the Respondent State contends that these provisions are necessary to safeguard the independence of the NEC and the ZEC, it has not substantiated how judicial oversight would compromise this independence. On the contrary, the absence of judicial scrutiny creates a risk of unchecked electoral irregularities, thereby undermining democratic principles and the rule of law. The impugned provisions, therefore, create a situation where the right of access to courts is illusory.

111. The Court thus finds that the restriction imposed by the impugned provisions does not pursue a legitimate aim nor is it proportionate and necessary in a democratic society. Resultantly, the Court finds that a violation of Article 7(1) of the Charter has been established.

112. In the circumstances, the Court holds that article 74(12) of the Respondent State's Constitution and article 119(13) of the Constitution of Zanzibar, insofar as they exclude the jurisdiction of courts to review decisions of the NEC and the ZEC in the discharge of their functions, violate Article 7(1)(a) of the Charter.

³² *Ibid*, §§ 78 and 101.

C. Alleged violation of Article 1 of the Charter

113. Apart from making a general assertion that the Respondent State has violated Article 1 of the Charter, the Applicants did not make specific submissions to substantiate this claim.

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114. Similarly, the Respondent State did not specifically address the alleged violation of Article 1, other than denying the allegation.

115. The Court recalls that Article 1 of the Charter provides as follows:

The Member States of the Organisation of African Unity, parties to the present Charter shall recognise the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.

116. In respect of Article 1 of the Charter the Court has held that:

When the Court finds that any of the rights, duties and freedoms set out in the Charter are curtailed, violated or not being achieved, this necessarily means that the obligation set out under Article 1 of the Charter has not been complied with and has been violated.³³

117. Having found that the Respondent State has violated Articles 3(2) and 7(1)(a) of the Charter, the Court holds that the Respondent State has also violated Article 1 of the Charter.

³³ *Thomas v. Tanzania* (merits), *supra*, § 135.

VIII. REPARATIONS

118. The Applicants pray the Court to:

- i. Declare that the Respondent State has violated of Articles 1, 2, 3 ,7(1) and 13(1) of the Charter;
- ii. Order the Respondent State to amend its constitutional and legal framework and align it with the Charter to allow for the formation of an Independent National Election Commission and Zanzibar Election Commission within 18 months from the date of the judgment;
- iii. Order the Respondent State to submit a report to the Honourable Court every 12 months, starting from the date of the judgment issued by the Court, on its enforcement of this judgment and related orders until the judgment of the Court is fully enforced;
- iv. Order the Respondent State to publish the judgment of the Court on its Official website in both English and Kiswahili at her own costs and for same to remain published for period of one year from the date the judgement is published;
- v. Order the Respondent State to introduce civic education campaigns/specific programs that will create public awareness about the implications of the judgment of the Court;
- vi. Grant any other remedy and/or relief that the Honourable Court will deem fit.

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119. The Respondent State prays the Court to:

- i. Declare that the Respondent State has not violated Articles 1, 2, 3, 7(1)(a) and 13(1) of the Charter;
- ii. Grant any other order or relief that the Court will deem fit; and
- iii. Dismiss the Application with costs.

120. Article 27(1) of the Protocol provides that: “If the Court finds that there has been a violation of a human or peoples’ rights it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation”.
121. The Court considers that, as established in its jurisprudence, for reparations to be granted, the Respondent State must first be internationally responsible for the wrongful act.³⁴ Second, a causal link must be established between the wrongful act and the alleged prejudice.³⁵ Moreover, where reparations are granted, they must fully address the prejudice suffered. Finally, the Applicant bears the burden of providing sufficient justification for the claims made.³⁶
122. The Court also reiterates that measures that a State can be ordered to take to remedy a violation of human rights include: restitution, compensation and rehabilitation of the victim, as well as measures to ensure non-repetition of the violations considering the circumstances of each case.³⁷
123. In the instant Application, the Court has found that aspects of article 74(12) of the Respondent State’s Constitution and article 119(13) of the Constitution of Zanzibar violate Articles 1, 3(2) and 7(1)(a) of the Charter. It is on the basis of this finding that the Respondent State’s responsibility has been established and the Parties’ prayers for reparations will be examined.

³⁴ *Sadick Marwa Kisase v. United Republic of Tanzania* (merits and reparations) (2 December 2021) 5 AfCLR 728, § 88; *Wilfred Onyango Nganyi and 9 Others v. United Republic of Tanzania* (reparations) (4 July 2019) 3 AfCLR 308, § 13; *Ingabire Victoire Umuhoza v. Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 19.

³⁵ *Christopher Jonas v. United Republic of Tanzania* (reparations) (25 September 2020) 4 AfCLR 545, § 20.

³⁶ *Norbert Zongo and Others v. Burkina Faso* (reparations) (5 June 2015) 1 AfCLR 258, § 81. See also *Kennedy Gihana and Others v. Republic of Rwanda* (merits and reparations) (28 November 2019) 3 AfCLR 655, § 139.

³⁷ *Umuhoza v. Rwanda* (reparations), *supra*, § 20.

A. Adoption of constitutional and legislative measures

124. The Court recalls that, in appropriate cases, it has ordered State Parties to amend their legislation to bring it in conformity with the Charter. For example, in *Tanganyika Law Society, The Legal and Human Rights Centre and Christopher R. Mtikila v. Tanzania*,³⁸ the Court ordered the Respondent State to take constitutional, legislative, and other necessary measures within a reasonable time to remedy the violations found by the Court and to inform it of the measures taken. A similar approach was adopted in *Association pour la Protection des Droits des Femmes (APDF) and Institute for Human Rights and Development in Africa (IHRDA) v. Mali*,³⁹ where the Court ordered the Respondent State to amend its legislation to eliminate discriminatory provisions that violated the Charter. Likewise, in *Jebra Kambole v. Tanzania*,⁴⁰ the Court directed the Respondent State to amend the impugned constitutional provisions to align them with the requirements of the Charter.

125. The Court having found that parts of article 74(12) and article 119(13) violate Articles 3(2) and 7(1)(a) of the Charter, orders the Respondent State to take all necessary constitutional and legislative measures, within a reasonable time, and in any event within 24 months of notification of this decision, to ensure that these provisions are amended and aligned with the provisions of the Charter so as to eliminate the violations of Articles 3(2) and 7(1)(a) of the Charter as established by the Court.

B. Publication of the judgment

126. The Court notes that the Applicants pray the Court to order publication of this judgment in both Kiswahili and English on the Respondent State's

³⁸ *Tanganyika Law Society and Reverend Christopher Mtikila v. United Republic of Tanzania* (merits) (14 June 2013) 1 AfCLR 34, § 126.

³⁹ *APDF and IHRDA v. Mali* (merits) (2018) 2 AfCLR 380, § 130.

⁴⁰ *Supra*.

official website and that the judgment should remain published for a period of one year from the date of publication.

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127. The Respondent State did not specifically address the Applicants' submission on this matter.

128. The Court reiterates that Article 27(1) of the Protocol gives it power to “make appropriate orders to remedy” violations. In the circumstances, the Court reaffirms that it can, by way of reparations, order, among other reliefs, the publication of its decisions, where the circumstances of the case so require.⁴¹

129. In the present case, the violations that the Court has established raise significant matters of public concern, particularly with respect to the management of electoral processes within the Respondent State. The manner in which elections are administered, including ensuring the accountability of election management bodies, is crucial to sustaining a democratic culture in any country.

130. In the circumstances, the Court deems it proper to make an order for publication of this Judgment. The Court, therefore, orders the Respondent State to publish this Judgment within a period of three months from the date of notification, on the websites of the Judiciary and the Ministry for Constitutional and Legal Affairs, and to ensure that the text of the Judgment remains accessible for at least one year after the date of publication. The Judgment must be published both in Kiswahili and English.

⁴¹ *Ramadhani v. United Republic of Tanzania* (reparations) (5 June 2021) 5 AfCLR 303, § 49.

C. Civic education campaigns/programmes for awareness on the Judgment

131. The Applicants pray the Court to “order the Respondent State to introduce civic education campaigns/specific programs that will create public awareness about the implications of the Judgment of the Court”.

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132. The Respondent State did not make any submissions on this matter.

133. In the present case, given the order for publication of the Judgment that the Court has already made, the Court does not find it necessary to make any order for civic education campaigns as requested by the Applicants.

134. The Court thus dismisses the Applicants’ prayer for an order directing civic education campaigns for public awareness of its judgment.

D. Enforcement and reporting

135. As the Court has previously noted, reporting on the enforcement of decisions is required as a matter of judicial practice.⁴² The Court, therefore, orders the Respondent State to submit to it within 12 months from the date of notification of this judgment, a report on the status of implementation of the decision set forth herein and thereafter, every six months until the Court considers that there has been full implementation thereof.

⁴² *Ghati Mwita v. United Republic of Tanzania*, AfCHPR, Application No. 012/2019, Judgment of 1 December 2022 (merits and reparations), § 179.

IX. COSTS

136. In their submissions, both Parties prayed the Court to order the other Party to pay costs.

137. Pursuant to Rule 32(2) of the Rules, “unless otherwise decided by the Court, each party shall bear its own costs”.

138. The Court recalls that it does not charge any fees for any of its procedures and none of the Parties has substantiated its claim for costs.

139. In the circumstances, the Court does not find any reason for departing from its established practice and thus orders that each Party will bear its own costs.

X. OPERATIVE PART

140. For these reasons:

THE COURT,

Unanimously:

On jurisdiction

- i. *Dismisses* the objection to its jurisdiction;
- ii. *Declares* that it has jurisdiction.

On admissibility

- iii. *Dismisses* the Respondent State's objection to the admissibility of the Application;
- iv. *Finds* the Application inadmissible, by reason of failure to exhaust domestic remedies, in so far as it relates to allegations on the composition of the Electoral Commission; the eligibility of members of the Electoral Commission; the removal from office of members of the Electoral Commission; and the prohibition to join political parties for persons involved in the management of elections;
- v. *Declares* that the Application is admissible only in respect of the allegations relating to the power of courts to inquire into actions of the Electoral Commission under article 74(12) of the Respondent State's Constitution and article 119(13) of the Constitution of Zanzibar.

On merits

- vi. *Finds* that the Respondent State has violated Article 3(2) of the Charter in so far as article 74(12) of its Constitution and article 119(13) of the Constitution of Zanzibar oust the jurisdiction of courts for individuals seeking to challenge the actions of the NEC and the ZEC;
- vii. *Finds* that the Respondent State has violated Article 7(1)(a) of the Charter in so far as article 74(12) of its Constitution and article 119(13) of the Constitution of Zanzibar oust the jurisdiction of courts for individuals seeking to challenge the actions of the NEC and the ZEC;
- viii. *Finds* that the Respondent State has violated Article 1 of the Charter.

On reparations

- ix. *Dismisses* the Applicants' prayer for the Respondent State to introduce civic education campaigns to create public awareness about the implications of the Judgment of the Court;
- x. *Orders* the Respondent State to take all necessary constitutional and legislative measures, within 24 months of notification of this Judgment, to ensure that article 74(12) of its Constitution and article 119(13) of the Constitution of Zanzibar are amended and aligned with the provisions of the Charter so as to eliminate violation of Articles 3(2) and 7(1)(a) of the Charter;
- xi. *Orders* the Respondent State to publish this Judgment within a period of three months from the date of notification, on the websites of the Judiciary and the Ministry for Constitutional and Legal Affairs, and to ensure that the text of the Judgment remains accessible for at least one year after the date of publication;
- xii. *Orders* the Respondent State to submit to this Court, within 12 months from the date of notification of this judgment, a report on the status of implementation of the decision set forth herein and thereafter, every six months until the Court considers that there has been full implementation thereof.

On costs

- xiii. *Orders* each Party to bear its own costs.

Signed:

Blaise TCHIKAYA, President;



Chafika BENSAOULA, Vice-President;



Rafaâ BEN ACHOUR, Judge;



Suzanne MENGUE, Judge;



Tujilane R. CHIZUMILA, Judge; *Tujilane R. Chizumila*

Stella I. ANUKAM, Judge; *Stella I. Anukam*

Dumisa B. NTSEBEZA, Judge; *Dumisa B. Ntsebeza*

Modibo SACKO, Judge; *Modibo Sacko*

Dennis D. ADJEI, Judge; *Dennis D. Adjei*

Duncan GASWAGA – Judge, *Duncan Gaswaga*

and Grace W. KAKAI, Deputy Registrar. *Grace W. Kakai*

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

