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AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

THE MATTER OF

LEGAL AND HUMAN RIGHTS CENTER AND LIBERATUS MWANG'OMBE

V.

THE UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 041/2020

RULING

6 MARCH 2026

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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"),[1] Justice Imani D. ABOUD, Judge of the Court and a national of Tanzania, did not hear the Application.

In the Matter of:

LEGAL AND HUMAN RIGHTS CENTER AND LIBERATUS MWANG'OMBE

Represented by:

Advocate Jebra KAMBOLE,
Law Guards Advocates

Versus

UNITED REPUBLIC OF TANZANIA

Represented by:

i. Dr Ally POSSI, *Solicitor General*, Office of the Solicitor General;
ii. Vivian METHOD, Principal State Attorney, Office of the Solicitor General; and
iii. Narimbwa SEKIMAGA, Senior State Attorney, Office of the Solicitor General.

After deliberation,

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

Renders this Judgment:

I. THE PARTIES

1. The Application is filed by the Legal and Human Rights Center – LHRC (hereinafter referred to as "the First Applicant") and Liberatus Mwang'ombe (hereinafter referred to as "the Second Applicant"); and hereinafter collectively referred to as the "Applicants".

2. The First Applicant is an independent, non-partisan and non-profit human rights organization which was granted observer status with the African Commission on Human and Peoples' Rights in 2000.[2] The Second Applicant is a national of Tanzania and a human rights advocate. The Applicants allege violations of the right to register and to vote affecting thousands of detainees and citizens residing in the diaspora in the presidential and parliamentary elections.

3. The Application is filed against the United Republic of Tanzania (hereinafter referred to as "the Respondent State"), which became a Party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 21 October 1986 and to the Protocol on 10 February 2006. On 29 March 2010, the Respondent State deposited the Declaration required under Article 34(6) of the Protocol (hereinafter referred to as "the Declaration"), by which it accepted the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organizations. 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 such withdrawal has no bearing on pending and

[2] Observer Status Number 224 granted at the 28th Ordinary Session (2000), African Commission on Human and Peoples' Rights, https://achpr.au.int/en/ngos/legal-and-human-rights-centre (accessed, 1 October 2025).

new cases filed before the withdrawal takes effect, that is, one year after its deposit, in this case on 22 November 2020.[3]

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

4. The Applicants aver that in 1977 the Respondent State adopted a Constitution which prohibits detainees from voting in presidential and parliamentary elections. They further aver that the Respondent State enacted the National Elections Act ("NEA"), which prohibits persons serving certain sentences and citizens living in the diaspora from exercising their right to vote or to participate in the decision-making process.

5. Furthermore, the Applicants contend that citizens residing in the diaspora are not provided with facilities or regulatory mechanisms enabling them to participate in presidential and parliamentary elections process. They also submit that these actions cannot be challenged within the Tanzanian legal system because Article 74(12) of the Constitution prohibits any person from challenging actions taken by the National Elections Commission ("NEC").

6. This situation, in the Applicants' view, has led to restrictions and violations of the rights of certain categories of citizens, namely their rights to register and to vote in presidential and parliamentary elections.

B. Alleged violations

7. The Applicants allege violations of the following rights:

    i. The right to vote and to participate freely in the government of their country, protected under Articles 13(1) of the Charter, 25(a) and (b) of

[3] *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, §§ 37-39.

the International Covenant on Civil and Political Rights (ICCPR), and 21(1) of the Universal Declaration of Human Rights (UDHR);

ii. The right to non-discrimination, protected under Articles 2 of the Charter, 2(1)(2) of the ICCPR, 2 of the UDHR, and 13(2) and (4) of the Constitution;

iii. The right to equality before the law and equal protection of the law, protected under Articles 3 of the Charter and 7 of ICCPR; and

iv. The right to enjoy fundamental human rights, protected under Article 1 of the Charter and Article 2(2) of the ICCPR.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

8. The Application was received at the Registry on 19 November 2020 and served on the Respondent State on 7 December 2020. The Respondent State was given 90 days to file its Response and 30 days to submit a list of its representatives.

9. On 29 September 2021, the Parties were notified that, in accordance with Rule 63 of the Rules, the Court would proceed to render a judgment in default if it did not receive a Response from the Respondent State within 45 days from the date of receipt of the notification. Upon the expiry of the above said deadline, the Respondent State had neither filed a Response to the Application nor submitted a list of its representatives.

10. Pleadings were closed on 9 February 2022 and the Parties were duly notified. However, on 9 May 2025, the Respondent State filed a request for the re-opening of pleadings and an extension of time to file pleadings. According to the Respondent State, additional time was required to verify information from its relevant agencies in order to respond appropriately. The request was transmitted to the Applicants on 13 May 2025, and they did not file any objection.

11. On 20 May 2025, the Court, in the interest of justice, granted the Respondent State's request to reopen pleadings and allowed it seven days to file its submissions.

12. On 28 May 2025, the Respondent State filed its Response to the Application, which was transmitted to the Applicants on the same day with a request to file their Reply within seven days. The Applicants did not file a Reply to the Respondent State's Response to the Application.

13. Pleadings were closed on 25 August 2025 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

14. The Applicants pray the Court to:

    i. Find that the Respondent State, by including Article 5(2)(c) in the 1977 Constitution of the United Republic of Tanzania, and by prohibiting prisoners, detainees, accused persons and citizens residing in the diaspora from exercising the right to be registered and to vote, has violated Articles 1, 2, 3 and 13(1) of the African Charter on Human and Peoples' Rights;
    ii. Find that the Respondent State, by including Article 5(2)(c) in the 1977 Constitution of the United Republic of Tanzania, and by prohibiting prisoners, detainees, accused persons and citizens in the diaspora from exercising the right to be registered and to vote, has violated Articles 21(1)(2) and 25(a) and (b) of the International Covenant on Civil and Political Rights, and Articles 2, 7 and 21(1) of the Universal Declaration of Human Rights;
    iii. Declare that prisoners in the United Republic of Tanzania aged eighteen (18) years and above have the fundamental and inalienable right to be registered as voters and to vote in accordance with human rights principles provided under the Charter and other international instruments;

iv. Declare that the exclusion of Tanzanian prisoners, detainees and accused persons in police custody or prisons from voter registration exercises is unlawful and constitutes a violation of their fundamental right to be registered as voters and to participate in elections;
v. Declare that the exclusion of Tanzanian citizens aged eighteen (18) years and above residing in the diaspora from voter registration is unlawful and constitutes a violation of their fundamental right to be registered as voters and to participate in elections;
vi. Order the Respondent State to immediately register such persons as voters to facilitate their participation in subsequent elections;
vii. Find that the Respondent State failed to fulfil its role by excluding the aforementioned citizens from the voting process, a measure that is abusive and amounts to segregation or discrimination;
viii. Order the Respondent State to establish voter registration and polling centres in every prison and to deploy its officials as returning officers in prisons for the 2025 local elections and referenda or any subsequent elections, including the 2025 national elections;
ix. Order the Respondent to liaise with prison authorities and host governments of Tanzanians residing in the diaspora with a view to issuing national identity cards for purposes of voter registration and for the safe keeping of prisoners' voter cards;
x. Find that by failing to register these citizens, the Respondent State violated fundamental human rights protected under the Charter, the Constitution and other international human rights instruments;
xi. Issue a permanent injunction restraining the Respondent State and/or its agents from further unlawful breach of their mandate to register qualified Tanzanians for the electoral process;
xii. Issue a permanent injunction restraining the Respondent State from conducting any elections or referenda that exclude these Tanzanian citizens;
xiii. Make any other orders and directions deemed appropriate, to safeguard the fundamental rights of these citizens;
xiv. Order the Respondent to establish additional polling centres over and above embassies and consulates and to deploy electoral officials as returning officers, or to collaborate with host electoral bodies to provide similar services;

xv. Order the Respondent to adopt constitutional and legislative measures to guarantee the rights provided under Articles 1, 2, 3 and 13(1) of the African Charter on Human and Peoples' Rights and other international human rights instruments;
xvi. Order the Respondent State to report to the Honourable Court, within twelve (12) months from the date of the judgment issued by the Honourable Court, on the implementation of the judgment and related orders;
xvii. Grant any other remedy and/or relief that the Honourable Court deems appropriate; and
xviii. Order the Respondent to pay the Applicants' costs.

15. The Respondent State prays the Court, with respect to jurisdiction and admissibility, to:

i. Declare that the Honourable Court is not vested with jurisdiction to determine the Application;
ii. Declare that the Application does not meet the admissibility requirements under Article 56(5) of the Charter read together with Rule 50(2)(e) of the Rules of Court, 2020; and
iii. Declare the Application inadmissible.

16. With regard to the merits, the Respondent State prays the Court to:

i. Declare that the Respondent State did not violate Articles 1, 2, 3, 13(1) of the Charter; Articles 2(1), 2(2), 25(a) and (b) of the ICCPR; and Article 2, 7, 21(1) of the UDHR;
ii. Find that the Application is devoid of merits, and dismiss it;
iii. Order the Applicants to bear the costs; and
iv. Grant any other relief this Honourable Court deems appropriate.

V. JURISDICTION

17. The Court notes that Article 3 of the Protocol provides as follows:

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

18. The Court observes that, pursuant to Rule 49(1) of the Rules, it shall conduct a preliminary examination of its jurisdiction […] in accordance with the Charter, the Protocol and these Rules.[4]

19. In light of the foregoing, the Court must assess its jurisdiction and dispose of objections thereto, if any.

20. The Court notes that the Respondent State raises an objection to its material jurisdiction. Accordingly, the Court will first consider this objection before examining other aspects of its jurisdiction, if necessary.

A. Objection to material jurisdiction

21. The Respondent State, citing Article 3(1) of the Protocol and Rule 29(1)(a) of the Rules, contends that the jurisdiction of the Court is limited to interpreting and applying the Charter and other international human rights instruments that it has ratified. It therefore argues that the Court does not have "unlimited jurisdiction" and cannot determine the alleged violations raised by the Applicants, as they fall "purely" within the jurisdiction of its national courts.

22. Further citing the Court's judgment in *Kijiji Isiaga v. Tanzania*, the Respondent State avers that the Court exercises its jurisdiction only after satisfying itself that domestic courts have previously been seized of the alleged violations. The Respondent State contends that, in the present case, the Applicants did not approach any domestic court to challenge the

[4] Rule 39(1), Rules of Court, 2 June 2010.

alleged prohibition against prisoners, detainees (accused persons) and persons residing in the diaspora from voting. The Respondent State therefore submits that the present Application invites the Court to act as a court of first instance, whereas it does not possess such jurisdiction.

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23. The Applicants, for their part, maintain that the Court exercises jurisdiction over an application so long as its subject matter concerns alleged violations of human rights guaranteed under the Charter. They contend that the Court has material jurisdiction in the present case since the Application alleges violations of Articles 1, 2, 3 and 13(3) of the Charter, as well as other human rights instruments ratified by the Respondent State.

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24. The Court notes that the Respondent State raises two objections to its material jurisdiction: first, that the alleged violations fall within the jurisdiction of national courts; and second, that the Court is being called upon to act as a court of first instance, given that the Applicants did not approach domestic courts.

25. Regarding the objection that the alleged violations fall strictly within the jurisdiction of national courts, the Court recalls that, as it has previously held, the fact that issues brought before it have been adjudicated by domestic courts does not preclude it from exercising its material jurisdiction. The Court's material jurisdiction is established so long as it is called upon to determine whether domestic proceedings were conducted in line with the standards set out in the Charter and other human rights instruments ratified by the Respondent State.[5]

[5] *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 490, § 130.

26. The Court therefore dismisses the Respondent State's objection that the Application concerns issues falling within the exclusive jurisdiction of national courts.

27. Regarding the objection that the Court is being asked to act as a court of first instance to examine the alleged prohibition against prisoners, detainees (accused persons) and citizens residing in the diaspora from voting, the Court reiterates its jurisprudence that, pursuant to Article 3(1) of the Protocol, it has material jurisdiction to consider applications filed before it, provided that they allege violations of rights guaranteed in the Charter or any other human rights instruments ratified by the Respondent State.[6]

28. In the instant case, the Applicants allege violations of, inter alia, the rights protected under Articles 1, 2, 3, and 13(1) of the Charter; Articles 2, 7, and 21(1) of the UDHR; and Articles 2(1), 2(2), 25(a) and (b) of the ICCPR, instruments to which the Respondent State is a party. It cannot therefore be said that the Court would be acting as a court of first instance by examining the present Application.

29. Accordingly, the objection that the Court is called upon to act as a court of first instance is likewise dismissed.

30. In light of the foregoing, the Court dismisses the Respondent State's objection and holds that it has material jurisdiction to determine the present Application.

[6] *Thomas v. Tanzania* (merits), § 45; *Kennedy Owino Onyachi and Charles John Mwanini Njoka v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65, §§ 34-36; *Abdallah Sospeter Mabomba v. United Republic of Tanzania,* ACtHPR*,* Application No. 017/2017, Judgment of 22 September 2022 (merits and reparations), § 21; *Brahim Ben Abdelhamid Ben Mabrouk Ayed v. Republic of Tunisia,* ACtHPR*,* Application No. 008/2019, Judgment of 5 February 2025 (merits and reparations), § 30.

B. Other aspects of jurisdiction

31. The Court notes that the Respondent State does not contest its personal, temporal and territorial jurisdiction, and that nothing on the record indicates that it lacks jurisdiction in these respects. Nonetheless, in line with Rule 49(1) of the Rules,[7] the Court must satisfy itself that its jurisdiction is established in all aspects before proceeding to determine the Application.

32. In this regard, the Court finds that it has:

    i. Personal jurisdiction, given that, as earlier stated in paragraph 2 of this Judgment, the Respondent State is a Party to the Protocol and, on 29 March 2010, deposited the Declaration with the African Union Commission. Subsequently, on 21 November 2019, it withdrew its Declaration. The Court recalls its jurisprudence that the withdrawal of a Declaration does not apply retroactively and only takes effect one year after the date of deposit of the notice of such withdrawal, in this case on 22 November 2020.[8] As the present Application was filed before the withdrawal took effect, that is, on 20 November 2020, it is not affected by it.

    ii. Temporal jurisdiction, since the alleged violations arise from the Respondent State's Constitution of 1977, as amended in 2005, in particular Articles 5(2)(c) and 74(12); and Section 11(1)(c) of the NEA, enacted in 2015, all of which were in force after the Respondent State became a party to the Protocol. The Court notes that even though the Constitution was adopted before the entry into force of the Protocol in respect of the Respondent State, both the Constitution and the NEA were in force at the time when the present Application

[7] Rule 39(1) of Rules of Court, 2 June 2010.
[8] *Cheusi v. Tanzania* (merits and reparations) *supra*, §§ 37-39.

was filed. As such, the alleged violations were continuing in nature at the time the present Application was brought before this Court.[9]

iii. Territorial jurisdiction, given that the alleged violations occurred within the territory of the Respondent State, which is a Party to the Charter and the Protocol.

33. In the light of the foregoing, the Court holds that it has jurisdiction to determine the present Application.

VI. ADMISSIBILITY

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

35. In line with Rule 50(1) of the Rules, "the Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter, Article 6(2) of the Protocol and these Rules."

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

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

[9] *Norbert Zongo and Others v. Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 197, § 68; and *Igola Iguna v. United Republic of Tanzania,* ACtHPR, Application No. 020/2017, Judgment of 1 December 2022 (merits and reparations), § 18.

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.

37. The Respondent State raises an objection to the admissibility of the Application with respect to the exhaustion of local remedies, as provided under Article 56(5) of the Charter, read together with Rule 50(2)(e) of the Rules of Court. The Court will therefore consider this objection before examining other admissibility requirements, if necessary.

A. Objection to the admissibility of the Application

38. The Respondent State avers that the Applicants challenge a number of actions, provided for under its Constitution and laws governing elections. According to the Respondent State, some of the alleged actions have already been subjected to internal judicial scrutiny, while others were never challenged before domestic courts.

39. The Respondent State contends that the alleged prohibition involving prisoners' and detainees' rights to vote had previously been subjected to domestic judicial scrutiny. It avers that a similar claim had been considered by the High Court in the public interest case of *Tito Elia Magoti and Another vs National Electoral Commission and two Others,* where the court declared the provisions of Section 11(1)(c) of the NEA unconstitutional and void. It further submits that an appeal in that case is pending before the Court of

Appeal,[10] whose outcome the Applicants in the present Application are obliged to await in order to fulfil the requirement of exhaustion of local remedies. The Respondent State buttresses its submissions with many other domestic cases that have neither been concluded or remain pending before the Court of Appeal.[11]

40. The Respondent State further submits that the Applicants did not exhaust local remedies with regard to the claim relating to the prohibition of citizens residing in the diaspora from voting. According to the Respondent State, the Applicants' allegation that Article 74(12) of the Constitution bars national courts from adjudicating on actions taken by the NEC, including those affecting the rights of citizens residing in the diaspora to vote, constitutes a misconstruction of the Constitution.[12]

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41. The Applicants, for their part, submit that there is no remedy to exhaust, as Article 74(12) of the Constitution prohibits any person from challenging the actions of the NEC, whose mandate is to oversee and manage national elections and whose operational law categorically prohibits certain categories of citizens from registering and voting.

42. The Applicants contend that the National Assembly of Tanzania on 10 June 2020, passed the Written Laws (Miscellaneous Amendments Act) (No. 3) of 2020, which amended Section 4 of the BRADEA, introducing new Sub-

10 Civil Appeal No. 157 of 2024.

11 Misc Civil Cause No. 20 of 2021, *Odero Charles Odero v. Attorney General of Tanzania and Another*- judgment rendered on 19 December 2022; Civil Appeal Nos. 32 and 42 of 1994, *Attorney General and 2 Others v. Dr Aman Walid Kabourou; Amy B. Kibatala v. Attorney General and Another; and Tito Elia Magoti; John Boniface Tulla v. National Electoral Commission and Others* and *Paul Revocatus Kaunda v. the Speaker of the National Assembly and Another,* Misc. Civil Cause No. 20 of 2021; *Paul Revocatus Kaunda v. the Speaker of the National Assembly and Another*, Civil Appeal No. 167 of 2021; *Rev. Christopher Mtikila v. Attorney General* [1995], T.L.R 66; *Muhammed Nawaz Sharif* (18) at 601; and *Humphrey Simon Malenga v. the Hon. Attorney General,* Miscellaneous Civil Cause No. 7 of 2023.

12 Article 74(12) of the 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".

sections 4(2), 4(3), 4(4) and 4(5).[13] They argue that Sub-section 4(2) of the BRADEA as amended in 2020, bars the High Court of Tanzania from admitting a constitutional petition unless the petitioner demonstrates in an affidavit (at the stage of admission) the extent to which the alleged contravention of the provisions of Articles 12 to 29 of the Constitution has affected him or her personally.[14] They submit that the provision effectively restricts access to the court to individuals whose rights have been or are likely to be violated personally, eliminating the possibility of public interest litigation, as is the nature of the case brought before this Court.

43. The Applicants submit that in the case of *Tito Elia Magoti and Another vs National Electoral Commission and 3 Others*, cited by the Respondent State, the petitioners challenged the constitutionality of Section 11(1)(c) of the NEA, which imposed a blanket restriction on voting rights for inmates serving death sentences and those imprisoned for more than six months. They contend that in the *Magoti* case, the petitioners argued that the above cited provision was inconsistent with Article 5(2)(c) of the Tanzanian Constitution, following which the High Court held that the right to vote of remandees aged above 18 years who are citizens of Tanzania, is protected under Article 5(1) of the Constitution. Hence the provision of paragraph (c) to subsection (1) of Section 11of the NEA was declared unconstitutional to the extent of its inconsistency with the Constitution.

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44. The Court recalls that, pursuant to Article 56(5) of the Charter, whose provisions are restated in Rule 50(2)(e) of the Rules, any application filed before it must fulfil the requirement of exhaustion of local remedies, unless the same are unavailable, ineffective and insufficient or the domestic proceedings relating thereto are unduly prolonged.[15] The Court further

[13] See Section 7 of the Written Laws (Miscellaneous Amendments Act (No. 3) of 2020.
[14] Miscellaneous Cause N0.9 of 2021.
[15] *Peter Joseph Chacha v. United Republic of Tanzania* (admissibility) (28 March 2014) 1 AfCLR 398, §§ 142-144; *Almas Mohamed Muwinda and Others v. United Republic of Tanzania*, ACtHPR, Application No. 030/2017, Judgment of 24 March 2022 (merits and reparations), § 43.

notes that an applicant is only required to exhaust ordinary judicial remedies[16] which offer prospects of success.[17]

45. As the Court has previously held, the rationale for the rule of exhaustion of local remedies is to provide States with an opportunity to address alleged human rights violations within their jurisdiction before such matters are brought before international scrutiny in line with the principle of subsidiarity.[18]

46. In the instant case, the Respondent State avers that the Applicants failed to exhaust local remedies. The Applicants, for their part, contend that the domestic system restricts litigation regarding the alleged violations or that the issues raised have already been adjudicated by national courts, thereby rendering the exhaustion of local remedies redundant.

47. The Court observes that the issue arising in respect of exhaustion of local remedies in the present Application is whether the legal system of the Respondent State provides judicial remedies for redress and, if so, whether such remedies are available to the Applicants to challenge the alleged restrictions, and if available, whether they are effective and sufficient to address the alleged violations.

48. The Court notes that, as acknowledged by the Parties, the Applicants could have pursued two local remedies in the present Application, namely: (i) challenging the constitutionality of the NEA to seek harmonious interpretation of Article 5(2)(c) and Article 74(12) of the Constitution and (ii)

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[16] *Oscar Josiah v. United Republic of Tanzania*, AfCHPR, Application No. 053/2016, Judgment of 28 March 2019 (merits), § 38 and *Diocles William v. United Republic of Tanzania*, AfCHPR, Application No. 016/2016, Judgment of 21 September 2018 (merits and reparations), § 42. See also *Alex Thomas v. Tanzania* (merits), §§ 63-65, *Wilfred Onyango Nganyi and 9 Others v. United Republic of Tanzania,* Application No. 006/2013 Judgment (merits), § 95.

[17] *Norbert Zongo and Others v. Burkina Faso* (merits) (28 March 2014) 1 AfCLR 219, § 68; *Lohé Issa Konaté v. Burkina Faso* (merits) (5 December 2014) 1 AfCLR 314, §§ 92 and 108; *Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin* (merits and reparations) (4 December 2020) 4 AfCLR 133, § 99.

[18] *Lohe Issa Konate v. Burkina Faso* (merits) (5 December 2014) 1 AfCLR 314, § 78; *Chacha v. Tanzania*, *ibid*; *Muwinda and Others v. Tanzania*, *ibid*.

challenging the restriction of the rights in question before the High Court under the BRADEA. The Court will examine these two remedies in turn.

i. Challenging the constitutionality of the NEA

49. As noted earlier, the allegation brought before this Court concerns the restriction of the right to vote of detainees and citizens residing in the diaspora as imposed under Section 11(1)(c) of the NEA and Article 5(2)(c) of the Constitution. Therefore, the issue for determination is whether the Applicants challenged the constitutionality of Section 11(1)(c) of the NEA and sought a harmonious interpretation of Article 5(2)(c) of the Constitution. A related question is whether the Applicants in this case had standing to challenge the constitutionality of the NEA.

50. In this regard, the Court notes that Article 5(2)(c) of the Constitution provides that "…Parliament may enact a law imposing conditions restricting a citizen from exercising the right to vote by reason of any of the following grounds: … (c) being convicted of certain specified criminal offences…"

51. Section 11(1)(c) of the NEA provides that "No person shall be qualified for registration, or be registered as a voter under this Act if he is - … under sentence of death imposed on him by any Court in Tanzania or under sentence of imprisonment exceeding six months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court."

52. The Court further observes that Article 74(6) of the Constitution empowers the NEC to oversee and supervise national elections for the offices of the President and Members of the National Assembly.[19] Finally, Article 74(12) of the Constitution provides that: "[n]o court shall have power to inquire into

[19] Article 74(6) of the Constitution states the mandate of the National Elections Commission as follows:
1. Register voters for the union presidential and parliamentary elections.
2. Supervise the conduct of the presidential and parliamentary elections.
3. Review and demarcate the electoral boundaries.
4. Perform any other function as per the law such as organize referendums.

anything done by the Electoral Commission in the discharge of its functions in accordance with the provisions of this Constitution."

53. Having noted the foregoing, this Court observes that Article 26(2) of the Constitution provides that: "[e]very person has the right, in accordance with the procedure provided by law, to take legal action to ensure the protection of this Constitution and the laws of the land*"*. Similarly, Article 108(2) of the Constitution provides that: "[w]here this Constitution or any other law does not expressly provide that any specified matter shall first be heard by a court specified for that purpose, then the High Court shall have jurisdiction to hear every matter of such type..."

54. In making its determination, the Court finds it pertinent to refer to the matter of *Tito Elia Magoti and Another vs National Electoral Commission and Three Others,*[20] relied upon by both Parties in support of their submissions. Notably, in the *Magoti* case, the Respondent State's High Court adjudicated on the voting restrictions imposed on remandees awaiting trial and prisoners, issues that also arise in this Application. The High Court declared Section 11(1)(c) of the NEA unconstitutional and inconsistent with Article 5(2)(c) of the Tanzanian Constitution which provides that: "…Parliament may enact a law imposing conditions restricting a citizen from exercising the right to vote by reason of any of the following grounds: … (c) being convicted of certain specified criminal offences…"

55. This Court finds it immaterial that the provision declared unconstitutional by the High Court remained in force pending legislative amendment. This is because the essence of the requirement of exhaustion of local remedies lies not in the outcome of the proceedings initiated by an applicant, but rather in the fact that domestic courts had an opportunity to adjudicate on the issue in question, as was the case in this Application.

[20] *Tito Elia Magoti & Another v. National Electoral Commission and 3 Others* (Misc. Civil Cause 3 of 2022) [2022] Tzhc 15383 (19 December 2022).

56. The relevance of the *Magoti* case in the present Application therefore lies not primarily in the legal issues adjudicated therein, but rather in the nature of the proceedings and the standing required to utilise the said remedy.

57. In this regard, the Court observes that both Applicants in the present Application had standing to challenge the constitutionality of the NEA given that, pursuant to Article 26(2) of the Respondent State's Constitution, access to the courts is afforded to "any person" for the purpose of ensuring the protection of the Constitution and the laws of the land. The *Magoti* case exemplifies such an understanding of standing, as the High Court expressly held that the matter was one of public interest litigation.[21] As this Court has previously held, public interest litigation implies that any person may approach courts without having to demonstrate that they are directly or personally affected by the alleged violation.[22]

58. This conclusion is notwithstanding the fact that the *Magoti* case remains pending final determination before the Respondent State's Court of Appeal. As previously recalled, the availability of a remedy is assessed not on the basis of its outcome but rather on the opportunity to utilise it. In this Application, the Applicants had an opportunity to challenge the constitutionality of the NEA but failed to do so.

59. In view of the foregoing, the Court finds that the Applicants did not exhaust the remedy of challenging the constitutionality of the NEA and accordingly upholds the Respondent State's objection in this regard.

ii. Challenging the alleged restrictions under the BRADEA

60. The Respondent State avers that the Applicants could have instituted a constitutional petition before the High Court under the BRADEA. It contends

[21] *Tito Elia Magoti and John Boniface Tulla v. National Electoral Commission and Others*, High Court of Tanzania in Dar es Salaam, Miscellaneous Civil Cause No. 3 of 2022, Ruling of 10 June 2022, operative section, order on costs; and Judgment of 16 December 2022 in the same matter, operative section, order on costs.
[22] *Centre for Human Rights and Others v. United Republic of Tanzania*, ACtHPR, Application No. 019/2018, Judgment of 5 February 2025 (merits and reparations), §§ 67 - 72.

that this remedy had been successfully pursued in practice, as demonstrated by existing jurisprudence.[23]

61. The Applicants, for their part, assert that they are barred from pursuing a petition under the BRADEA unless they can demonstrate that their personal rights have been infringed.

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62. The Court recalls its jurisprudence that the procedure for the protection of rights under the BRADEA is not a remedy that must necessarily be exhausted by an applicant where it is not an ordinary remedy within the judicial system of the Respondent State.[24] In this regard, the Court considers that once the Court of Appeal of Tanzania has reached a final decision on an applicant's appeal, it would be unreasonable to require the same applicant to then lodge a fresh application regarding the violation of his or her human rights before the High Court, which is a subordinate court.[25] It is relevant to note that this position of the Court was adopted in matters arising from challenges to criminal proceedings that had already been adjudicated by domestic courts. In such circumstances, a petition under BRADEA would manifestly constitute an extraordinary remedy.

63. This position is, however, distinguishable from a situation where an initial claim has never been adjudicated in any domestic court, as is the case at hand. In such circumstances, the remedy cannot be considered extraordinary; rather, it constitutes an ordinary remedy.

[23] *Tito Elia Magoti and John Boniface Tulla v. National Electoral Commission and Others*, High Court of Tanzania in Dar es Salaam, Miscellaneous Civil Cause No. 3 of 2022, Ruling of 10 June 2022, operative section, order on costs; and Judgment of 16 December 2022 in the same matter, operative section, order on costs.
[24] *Wilfred Onyango and 9 Others v. United Republic of Tanzania* (merits) (18 March 2016) 1 AfCLR 507, § 95.
[25] *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 62; *Mohamed Abubakari v. United Republic of Tanzania* (merits) (3 June 2016) 1 AfCLR 599, § 72.

64. As such, the Applicants in the present Application ought to have exhausted and made use of the petition under BRADEA which existed and was applicable to the issues raised. The question that arises at this juncture is whether the Applicants had standing to do so.

65. In this regard, the Court recalls its precedent in *Centre for Human Rights and Others v. United Republic of Tanzania*, where it held that "local remedies need not be exhausted in circumstances where NGOs representing the interests of individuals are proscribed from seizing the domestic courts of the Respondent State, as the local remedy is then considered unavailable."[26] The Court reached this conclusion after examining whether a petition under BRADEA constitutes an effective remedy under Article 56(5) of the Charter. It found that, under the domestic system of the Respondent State, any person who cannot demonstrate victimhood is barred from pursuing a petition under the BRADEA.[27]

66. It follows that, in the present Application, neither of the two Applicants had standing to make use of a petition under the BRADEA. Consequently, this remedy was not available to them and should be considered as exhausted.

67. The Court therefore dismisses the Respondent State's objection in this regard.

68. In light of the foregoing, the Court holds that this Application meets the requirement of exhaustion of local remedies with regard to challenging the alleged restrictions under the BRADEA.

[26] *Centre for Human Rights and Others v. United Republic of Tanzania*, AfCHPR, Application No. 019/2018, Judgment of 05 February 2025 (Merits and Reparations), § 71. This is notwithstanding the recent Respondent State Court ruling declaring the Section of BRADEA that requires litigants to be directly affected by alleged violations in order to be eligible to bring suit under the BRADEA to be unconstitutional, as it awaits implementation by the legislature. See *Onesmo Olengurumwa v. Attorney General* (Civil Appeal No. 134 of 2022) [2025] TZCA 587 (13 June 2025).
[27] *Centre for Human Rights and Others v. Tanzania*, *ibid*, § 70.

B. Other conditions of admissibility

69. From the records on file, the Court notes that the Applicants have been clearly identified by name, in fulfilment of Rule 50(2)(a) of the Rules.

70. The Court also notes that the claims made by the Applicants seek to protect their rights guaranteed under the Charter. It further observes 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 Application therefore fulfils the requirement set out in Rule 50(2)(b) of the Rules.

71. The language used in the Application is not disparaging or insulting towards the Respondent State or its institutions, in fulfilment of Rule 50(2)(c) of the Rules.

72. The Application is not based exclusively on news disseminated through mass media, as it relies on legal documents, in fulfilment of Rule 50(2)(d) of the Rules.

73. With regard to the requirement that the application should be filed within a reasonable time after exhaustion of local remedies, the Court notes that Article 56(6) of the Charter does not specify any time frame within which an application must be filed. As the Court has previously held, in instances where the alleged violations are continuous, an application may be filed at any point in time after the Respondent State concerned has become a party to the Protocol.[28] In the present case, the Court notes that the provisions of the NEA and the Constitution being challenged were still in force at the time of the alleged violations and the filing of this Application. Furthermore, the

[28] *Tanganyika Law Society and Legal and Human Rights Center v. United Republic of Tanzania* (merits) (14 June 2013) 1 AfCLR 34; *Beneficiaries of the late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo and Blaise Ilboudo & the Mouvement Burkinabè Human and Peoples' Rights Movement v. Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 197; *Igola Iguna v. United Republic of Tanzania*, ACtHPR, Application No. 020/2017, Judgment of 1 December 2022 (merits and reparations).

violations alleged had never been remedied, and thus their effect is continuing.[29] As such, this Application meets the requirement provided under Rule 50(2)(f) of the Rules.

74. Concerning the admissibility requirement specified in Article 56(7) of the Charter, the Court notes that the Application does not concern a case which has already been settled by the Parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, or the provisions of the Charter. The Court therefore finds that the Application complies with Rule 50(2)(g) of the Rules.

75. In light of the foregoing, the Court finds that all the admissibility conditions of Rule 50(2) of the Rules have been met and declares the Application partly admissible with regard to the alleged restrictions under the BRADEA.

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76. The Court, having found that it has jurisdiction and having declared the Application admissible in part, remains seized of the matter to examine the merits, reparations and costs.

VII. OPERATIVE PART

77. For these reasons:

THE COURT,

Unanimously,

On jurisdiction

[29] *Harold Mbalanda Munthali v. Republic of Malawi,* ACtHPR, Application No. 022/2017, Judgment of 22 June 2022 (merits and reparations), § 63.

i. *Dismisses* the objections to material jurisdiction;

ii. *Declares* that it has jurisdiction.

On admissibility

iii. *Upholds* the objection to exhaustion of local remedies on challenging the constitutionality of the NEA;

iv. *Dismisses* the objection to exhaustion of local remedies regarding the alleged restrictions under the BRADEA;

v. *Declares* that the Application is partly admissible;

vi. *Reserves* its decision on the merits, reparations and costs of the proceedings.

Signed:

Blaise TCHIKAYA, President;

Chafika BENSAOULA, Vice-President;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Stella I. ANUKAM, Judge;

Dumisa B. NTSEBEZA, Judge;

Modibo SACKO, Judge;

Dennis D. ADJEI, Judge;

Duncan GASWAGA, Judge;

and Grace W. KAKAI, Deputy Registrar .

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.