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

THE MATTER

SAMIA ZORGATI

V.

REPUBLIC OF TUNISIA

APPLICATION NO. 016/2021

JUDGMENT

13 NOVEMBER 2024

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The Court composed of: Imani D. ABOUD, President; Modibo SACKO, Vice President, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Dennis D. ADJEI, Duncan GASWAGA, – Judges; and Robert ENO, Registrar.

In accordance with Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") and Rule 9 (2) of the Rules of Court (hereinafter referred to as "the Rules"), Justice Rafaâ BEN ACHOUR, member of the Court and a national of Tunisia, did not hear the Application.

The Matter of:

Samia ZORGATI
Self-represented

Versus

REPUBLIC OF TUNISIA
Represented by
Ali ABBAS, State Litigation Officer, Ministry of State Property and Land Affairs.

After deliberation,

Renders this Judgment:

I. THE PARTIES

1. Ms. Samia Zorgati (hereinafter referred to as "the Applicant") is a Tunisian national. She challenges the legality of the repeal of the 1 June 1959 Constitution by Decree-Law of 23 March 2011 as well as the adoption of the 27 January 2014 Constitution, without a referendum.

2. The Application is filed against the Republic of Tunisia (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 5 October 2007. On 2 June 2017, the Respondent State deposited with the African Union Commission the Declaration provided for in Article 34 (6) of the Protocol by virtue of which it accepts the jurisdiction of the Court to receive applications from Individuals and Non-Governmental Organisations.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the Application that after President Ben Ali was ousted as president of the Republic of Tunisia, in January 2011, his successor, the acting President Fouad Mebazaa, took oath of office by which he swore to respect the 1959 Constitution then in force in the country. A few days thereafter, he announced that it was no longer possible to abide by this Constitution and subsequently passed Decree-Law of 23 March 2011 reorganizing public powers. On 16 December 2011, the Constituent Assembly passed the constituent law on the provisional organization of public authorities,[1] which complemented the provisions of Decree-Law of 23 March 2011 and concentrated public powers in the hands of the President

[1] See Constituent Law No. 2011-6 of 16 December 2011 on the provisional organisation of public authorities.

of the Republic, the President of the Constituent Constituent Assembly and the Head of Government.

4. It also emerges from the Application that certain decree-laws adopted sought to deprive the Constitutional Council of its prerogatives[2] until the adoption of a new Constitution on 27 January 2014 by the National Constituent Assembly without prior consultation of the people by means of a referendum.

5. The Applicant avers that since then, a feeling of discontent and disenchantment has persisted among the Tunisian people, characterised by the collapse of the rule of law, disintegration of its institutions, constitutional stalemate, political crises, violence of all kinds and increasing crime. It was against this backdrop that she brought present case before this Court, challenging the adoption of a Constitution without consulting the people, and denouncing the violation of the Tunisian people's right to self-determination.

B. Alleged violations

6. The Applicant alleges violation of the following rights:

   i. The right of peoples to self-determination and their right to freely determine their political status, protected by Article 20 of the Charter;
   ii. The obligation to guarantee the independence of the courts and to establish institutions entrusted with the protection of human rights, guaranteed by Article 26 of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

7. The Application was filed at the Registry of the Courton 26 July 2021 and served on the Respondent State on 15 October 2021.

[2] Organic Law No. 2014-014 of 18 April 2014 on the Provisional Institution for the Control of the Constitutionality of Draft Laws (IPCCPL).

8. On 18 January 2022, the Respondent State filed its Response, which was served on the Applicant on 27 January 2022 for her Reply.

9. On 15 March 2022, the Applicant filed her Reply. The said Reply was served on the Respondent State on 16 March 2022.

10. Pleadings were closed on 28 July 2023 and the parties were duly notified.

IV. PRAYERS OF THE PARTIES

11. The Applicant prays the Court to:

    i. Find a violation of the supremacy of the Constitution;
    ii. Declare that the 1959 Constitution is still in force and applicable and order that it be implemented;
    iii. Declare that the 27 January 2014 Constitution is null and void.

12. The Respondent State prays the Court to:

    i. Declare that it lacks jurisdiction to hear the Application;
    ii. Declare that the Application does not satisfy the admissibility requirement under Article 56(5) of the Charter;
    iii. Dismiss the Application and all of the Applicant's claims.

V. JURISDICTION

13. The Court notes that Article 3 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.

14. Under Rule 49(1) of the Rules “The Court shall ascertain its jurisdiction [...] in accordance with the Charter, the Protocol and these Rules”.

15. Based on the above-cited provisions, the Court must conduct a preliminary assessment of its jurisdiction and dispose of objections thereto, if any.

16. The Court notes that, in the present case, the Respondent State raises an objection to its material jurisdiction. The Court will thus rule on this objection before examining the other aspects of its jurisdiction.

A. Objection to material jurisdiction

17. The Respondent State submits that the Court lacks jurisdiction on the grounds that under Article 3 of the Protocol, the Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the Charter, the Protocol and any other relevant human rights instrument ratified by the States. It further submits that all the rights protected by the Court are centred on four rights as set out in the Charter notably: the right to liberty, the right to equality, the right to justice and the right to dignity.

18. The Respondent State submits that the “substance of the Application is vague, unclear, superficial and undefined” insofar as a legislative authority elected in accordance with the law abrogating a State Constitution and adopting a new one cannot be considered a violation of the rights of the Applicant.

19. It further submits that the issue raised by the Applicant falls within the national sovereignty of the African Union Member States which consider it a violation of human rights to infringe the four fundamental rights referred to above or to treat citizens as if they were of lesser value than other human

beings and undeserving of life and dignity. The Respondent State further submits that in their sovereignty, States consider that human rights are violated when they do not guarantee the enjoyment of economic, social and cultural rights without discrimination, but instead are guilty of genocide, torture or enslavement.

20. Finally, the Respondent State submits that the Court should decline jurisdiction to entertain the Application insofar as the Applicant does not bring before the Court an injustice committed against her.

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21. The Applicant prays that the objection be dismissed. In support, she argues that Article 20 of the Charter protects the inalienable right of all peoples to self-determination and to freely determine their political status to pursue their economic and social development according to the policy they have freely chosen. She states that this provision enshrines the right of peoples to self-determination or the right of peoples to freely determine their destiny as a right that must be respected. She challenges the Respondent State's arguments limiting the scope of the right to self-determination to the extreme cases of genocide, torture and enslavement, and maintains that her Application does indeed relate to the violation of human and peoples' rights protected by the Charter.

22. The Applicant prays the Court to find that her application seeks to re-establish the rule of law in Tunisia and respect for the rights of Tunisian citizens who freely adopted a constitution in 1959.

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23. The Court recalls that under Article 3(1) of the Protocol, it has jurisdiction to examine any application submitted to it, provided that the rights of which a violation is alleged are protected by the Charter or any other human rights instrument ratified by the Respondent State. To this end, the Court has

consistently held that it has jurisdiction to receive and examine any application provided that it alleges violations of any of the provisions of the Charter or international human rights instruments to which the Respondent State is a party.[3]

24. The Court observes that the allegations made in the Application are not vague or imprecise since they relate to rights protected by the Charter. In her application, the Applicant maintains that the Tunisian people have been deprived of their right to self-determination and to participate in the adoption of the constitution, rights protected by Article 20(1) of the Charter, which provides that: “All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen”. Furthermore, the Court notes that the Applicant contends that the Respondent state does not fulfil its obligation to guarantee the independence of the judiciary and to establish institutions for the protection of human rights guaranteed by Article 26 of the Charter.

25. Accordingly, the Court dismisses the Respondent State’s objection and holds that it has material jurisdiction.

B. Other aspects of jurisdiction

26. The Court notes that the Respondent State does not contest its temporal, personal and territorial jurisdiction. Having found that nothing on record indicates that it lacks jurisdiction, the Court holds that it has:

[3] *Alex Thomas v. Tanzania* (merits) (20 November 2015), 1 AfCLR 465, § 45; *Owino Onyachi and Njoka v. Tanzania* (merits) (28 September 2017), 2 AfCLR 65, § 34-36; *Gihana and Others v. Rwanda* (merits and reparations) (28 November 2019) 3 AfCLR 655, § 32 and 33; *Diocles William v. Tanzania* (merits and reparations) (21 September 2018) 2 AfCLR 426, § 28; *Armand Guéhi v. Tanzania* (merits and reparations), (7 December 2018) 2 AfCLR 477, § 33; *Kalebi Elisamehe v. Tanzania* (merits and reparations), (26 June 2020) 4 AfCLR 265, § 18.

i. Temporal jurisdiction, insofar as the violations alleged by the Applicant occurred after the Respondent State became a party to the Charter and the Protocol. [4]

ii. personal jurisdiction, insofar as, as indicated in paragraph 2 of this judgment, on 2 June 2017, the Respondent State deposited with the Chairperson of the African Union Commission the Declaration provided for in Article 34(6) of the Protocol by virtue of which it accepts the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations. As the present Application was filed after that date, the Court's jurisdiction is established**.**

iii. Territorial jurisdiction, insofar as the alleged violations occurred on the territory of the Respondent State, which is a party to the Protocol.

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

VI. ADMISSIBILITY

28. Under 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".

29. According to Rule 50(1) of the Rules, "The Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter and Article 6(2) of the Protocol and these Rules".

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

> Applications filed before the Court shall comply with all of the following

[4] *Jebra Kambole v. United Republic of Tanzania* (merits and reparations) (15 July 2020) 4 AfCLR 460, §§ 51 to 53.

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. Not contain any disparaging or insulting language directed against the State concerned and its institutions or the African Union;
d. 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. Be filed 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;
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

31. In the instant case, the Court notes that the Respondent State raises an objection to the admissibility of the application based on non-exhaustion of local remedies. The Court will, first, consider the said objection before examining other admissibility requirements, if necessary**.**

A. Objection based on non-exhaustion of local remedies

32. The Respondent State submits that the present Application is inadmissible insofar as the allegations raised therein were never examined by domestic courts and, therefore, do not meet the requirement under Article 56(5) of the Charter. In its view, the Applicant did not seize the competent national bodies seeking settlement of the dispute or remediation of the violations she alleges before this Court.

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33. The Applicant prays that the objection be dismissed. She maintains that her application complies with Article 56(5) of the Charter. She alleges that, apart from the Constitutional Council established in the 1990s, no domestic court has jurisdiction to hear the issues raised therein. She also avers that since the interim President came to power, he has "stiffled" the judiciary and, first, by means of the decree-law of 23 March 2011 and the law of 16 December 2011 on the provisional organisation of public authorities, "dismantled" the main institutions of the State, namely the legislature, comprising the Chamber of Deputies and the Chamber of Councils (legislative body), the Economic and Social Council and the Constitutional Council. In her view, the Constitutional Court provided for by the law of 2014 is the domestic judicial body that should hear the violations alleged in her application.

34. The Applicant alleges that there was no remedy available to her and requests the Court to dismiss the Respondent State's objection and declare her application admissible.

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35. The Court recalls that, pursuant to Article 56(5) of the Charter, which in substance restates the provisions of Rule 50(2)(e) of the Rules of Court, applications filed with it must satisfy the requirement of exhaustion of local remedies.[5] The Court also emphasises that the local remedies to be exhausted are those of a judicial nature, which must be available, in the sense that they can be exercised without hindrance by the Applicant, and must be effective and satisfactory, in the sense that the remedy must be capable of settling the dispute.[6] In line with the Court's constant jurisdiction, this requirement is waived only if it is shown that such remedies are unavailable, ineffective or inadequate, or if the proceedings thereof are unduly prolonged.[7]

[5] *Kambole v. Tanzania, supra*, § 36; *Gihana and Others v. Rwanda,* supra, §§ 65 and 66.
[6] *Lohé Issa Konaté v. Burkina Faso* (merits) (5 December 2014), 1 AfCLR 314, §108; *Sébastien Germain Marie Ajavon v. Republic of Benin*, (merits and reparations) (2 December 2021) 5 AfCLR 94, §73.
[7] *Kijiji Isiaga v. Tanzania* (merits) (21 March 2018), 2 AfCLR 218, § 44; *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (26 May 2017), 2 AfCLR 9, §§ 93-94.

36. The Court notes that the Respondent State merely asserts that the Applicant seized the Court directly without first affording domestic courts the opportunity to rule on the alleged irregularities, without indicating the remedies that the Applicant should have exhausted before seizing this Court. The Court notes however, that the present application seeks to have it examine the legality of the adoption procedure in respect of the 27 January 2014 Constitution, to nullify it and to declare that the Respondent State's 1959 Constitution remains in force.

37. The Court further notes that under Article 3 of Organic Law 2014 - 14 of 18 April 2014 establishing the Interim Bureau for the verification of constitutionality of draft bills (Instance Provisoire de Contrôle de la Constitutionnalité des Projets de Lois) (hereinafter "IPCCPL"),[8] this body may be seized with a constitutional challenge in respect of draft laws at the behest of the President of the Republic, the Head of Government, or by, at least thirty (30) parliamentarians. It also follows from the same provision that the IPCCPL cannot examine a constitutional challenge in respect of laws already promulgated prior to its establishment and that the courts lack jurisdiction to review the constitutionality of laws.

38. The Court observes that the Applicant is not one of the persons entitled to bring an action relating to the 27 January 2014 Constitution before the IPCCPL.

39. The Court further notes that with the adoption of the Organic Law N0. 2015-50 of 3 December 2015 (herein after referred to as "Organic Law of 3 December 2015",[9] constitutional challenges are the preserve of a category of persons expressly mentioned in the Article 120 of the Constitution as follows:

[8] See also Organic Law No. 2014-014 of 18 April 2014 on the Provisional Institution for the Control of the Constitutionality of Draft Laws (IPCCPL), *supra*, note 2.
[9]Organic Law No. 2015-50 of 3 December 2015 on the Constitutional Court, Official Gazette of the Republic of Tunisia, 8 December 2015, Article 45 and s.

"The Constitutional Court shall have exclusive jurisdiction to rule on constitutional matters:

- draft laws, at the request of the President of the Republic, the Head of Government or thirty members of the Assembly of People's Representatives [...];
- constitutional bills submitted to it by the President of the Assembly of People's Representatives in accordance with Article 144 or to monitor compliance with constitutional amendment procedures; [...]."

40. It emerges from this provision that, in the Respondent State's system, the remedy of constitutional challenge of laws or review of constitutional amendment procedures are only open to the President of the Republic, the Head of Government or thirty (30) members of the Assembly of People's Representatives.

41. The Court notes, as it did in *Ibrahim Ben Mohamed Ben Ibrahim Belguith v. the Republic of Tunisia*, that despite the enactment of Organic of 3 December on the Constitutional Court, the said Court has yet to be set up.[10]

42. In light of the foregoing, the Court notes that the remedies before the IPCCPL and the Constitutional Court are not available to citizens. In addition, the Constitution adopted on 27 January 2014, that is, before the IPCCPL was set up on 18 April 2014, cannot be challenged before the said Court, even by those expressly empowered by law. It follows that the Applicant had no remedy to exhaust prior to bringing the case before this Court.

43. Consequently, the Court dismisses the objection based on non-exhaustion of local remedies and holds that the Application meets the requirement of Article 56(5) of the Charter.

[10] *Ibrahim Ben Mohamed Ben Ibrahim Belguith v. Republic of Tunisia,* ACtHPR, Application No. 017/2021, Judgment of 22 September 2022, §§ 72 and 79.

B. Other admissibility requirements

44. The Court notes that it is not in contention that the Application complies with the requirements under Article 56 (1), (2), (3), (4), (6) and (7) of the Charter as restated in Rule 50(2) (a), (b), (c), (d), (f) and (g) of the Rules. Nevertheless, the Court must ensure that these requirements are met.

45. In this regard, the Court notes that the requirement under Rule 50(2)(a) is met as the Applicant has clearly indicated her identity.

46. The Court notes that the Applicant's requests seek to protect her rights guaranteed by the Charter and other instruments ratified by the Respondent State. It further notes that one of the objectives of the Constitutive Act of the African Union (hereinafter referred to as "the Constitutive Act") as stated in Article 3(h) thereof is the promotion and protection of human and peoples' rights. The Court, therefore, considers that the Application is compatible with the Constitutive Act and the Charter and that it meets the requirement of Rule 50(2)(b).

47. The Court further notes that the Application does not contain disparaging or insulting language against the Respondent State, its institutions or the African Union, which makes it compatible with the requirement in Rule 50(2)(c) of the Rules.

48. Regarding the requirement contained in Rule 50(2)(d) of the Rules, the Court notes that the Application is not based exclusively on news disseminated through the mass media but is based on the Applicant's findings and analysis of political and social life in her country since 2011.

49. With regard to the requirement that the application be filed within a reasonable time, Rule 50(2)(f) of the Rules provides that applications must be filed "… within 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".

50. It emerges from this provision that there are two alternative options for determining reasonable time for the Court's referral. Reasonableness of time can be determined from the date of exhaustion of local remedies or alternatively, from the date chosen by the Court as limit for bringing a case before the Court. Having found, in the present case, that there was no local remedy to exhaust, the Court must determine the start date for calculating the time limit for its referral.

51. In the present case, the Applicant seized this Court on 26 July 2021 challenging the adoption and promulgation of the 27 January 2014 Constitution without a referendum. The Court considers that the start date for calculating the time limit for its referral would therefore be from 27 January 2014. However, it should be noted that at that time, the avenue of submitting applications to the Court against the Respondent State under Article 34(6) of the Protocol was not available to individuals and NGOs having observer status with the Commission. The avenue of bringing an action before the Court against the Respondent State was only afforded individuals from the date of filing of the Declaration on 2 June 2017. It is therefore on this date that the time limit for seizing the Court commences.[11] As the Application was filed with the Court on 26 July 2021, a period of four years, one month and 24 days elapsed between the date on which the Declaration was deposited and the date on which the case was filed with the Court. It is, therefore, the reasonableness or otherwise of this duration that the Court must examine.

52. The Court has consistently held that "the reasonableness of a time limit of seizure will depend on the particular circumstances of each case and should

[11] *Fidèle Mulindahabi v. Republic of Rwanda,* (jurisdiction and admissibility) (June 26, 2020) 4 AfCLR, 328, §§ 50 and 51; *Mohamed Abubakari v. United Republic of Tanzania* (merits) (June 3, 2016) 1 AfCLR 599, § 93; *Alex Thomas v. United Republic of Tanzania* (merits) (November 20, 2015) 1 AfCLR 465, § 73. [21] *Alex Thomas v. United Republic of Tanzania* (merits) (November 20, 2015) 1 AfCLR 465, § 73.

be determined on a case-by-case basis".[12] Among other factors, the Court has taken into account the fact that the litigation brought by the Applicant was in the public interest.[13] It has further considered that the time taken by the Applicant to decide to bring the case and to prepare the application should be taken into account in determining whether or not the time limit in question was reasonable.[14]

53. In the present case, the Court notes that the facts of the case present a deleterious situation characterised by the "dismantling of republican institutions, which has led to a feeling of discontent and disavowal among the Tunisian people, resulting in the collapse of the rule of law, disintegration of its institutions, constitutional stalemate, political crises, violence of all kinds and the rise of crime". It follows that the present Application raises allegations that jeopardize public order and social cohesion, which are eminently in the public interest. The Court considers that in such circumstances, the reasonable time requirement should be assessed with circumspection and applied in context.

54. Thus, the Court considers that even assuming that the Applicant was aware of the filing of the Declaration on the above-mentioned date, she inevitably must have taken time not only to decide whether or not to seize this Court but could have also taken the time required to prepare her application. The process can take a considerable amount of time, which must be taken into account when determining whether or not the time limit for referral is reasonable.

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[12] *Alex Thomas v. United Republic of Tanzania* (merits) (November 20, 2015) 1 AfCLR 465, § 73; *Christopher Jonas v. United Republic of Tanzania* (merits) (September 28, 2017), 2 AfCLR 101, § 54; *Amir Ramadhani v. United Republic of Tanzania* (merits) (May 11, 2018) 2 AfCLR 344, § 83.

[13] *Robert John Penessis v. United Republic of Tanzania*, (merits and reparations) (November 28, 2019), 3 AfCLR 593, §§ 44-46; *Glory Cyriaque Hossou and another v. Republic of Benin*, (provisional measures) (2020) 4 AfCLR 538, § 20; *Ali Ben Hassen Ben Youcef Den Abdelhafid v. Republic of Tunisia* (jurisdiction and admissibility) (June 25, 2021) 5 AfCLR 193, § 40.

[14] See *Norbert Zongo and others v. Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 197, §§ 122-123; *Mohamed Abubakari v. United Republic of Tanzania* (merits) (3 June 2016) 1 AfCLR 599, §§ 92-96.

55. From the foregoing, the Court considers that the duration of four years, one month and 24 days taken by the Applicant in the present case is reasonable within the meaning of Article 56(6) of the Charter and, therefore, holds that the Application complies with Rule 50(f) of the Rules.

56. Finally, regarding the requirement contained in Rule 50(2)(g) of the Rules**,** the Court notes that the Application does not concern a matter which has already been adjudged and determined by the parties, pursuant to the principles of the United Nations Charter, the Constitutive Act and the Charter.

57. Accordingly, the Court holds that the Application meets all admissibility requirements under Article 56 of the Charter, as restated in Rule 50(2) of the Rules, and accordingly declares it admissible.

VII. MERITS

58. The Applicant alleges that the Respondent State violated the Tunisian people's right to self-determination and their right to freely determine their political status (A), as well as its obligation to guarantee the independence of the courts (B). Without expressly doing so, the Applicant also alleges in her pleadings a violation of the principle of independence of the legislature from the executive (C). The Court will address each of the allegations individually.

A. Alleged violation of the right to self-determination and the right of the Tunisian people to freely determine their political status.

59. The Applicant alleges that the Respondent State violated the Tunisian people's right to freely determine their political status, protected by Article 20 of the Charter. She maintains that the failure to hold a referendum before the promulgation of the 27 January 2014 Constitution is a violation of the people's right to self-determination insofar as they were not afforded the

opportunity to know the content of the text with a view to express their will by either accepting or rejecting same. She further submits that the 2014 Constitution was drawn up, and its provisions crafted, without the approval of the people, seeing as the people took cognisance of its provisions only after it had been promulgated.

60. The Applicant contends that the 1959 Constitution, which should have governed the transfer of power and the holding of a referendum in the event of a constitutional amendment was shelved, notwithstanding that the said Constitution is the one that all Tunisians adopted in the 1959 referendum. She further submits that since then, the Tunisian people have been unable to act, since their right to self-determination has been illegally confiscated by the political class.

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61. In reply, the Respondent State submits that the 27 January 2014 Constitution was drafted by a Constituent National Assembly whose members were legitimately and lawfully elected by the Tunisian people. It further contends that the fact that its members were elected conferred on the Constituent National Assembly the legitimacy to draft and adopt the new Constitution. The Respondent State maintains that the alleged violations are not established, which renders the Application moot.

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62. Article 20(1) of the Charter provides:

> All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

63. It emerges from this provision that the organisation of powers and the choice of the form of State is the prerogative of the people, who must exercise free choice. The Court observes that the right to self-determination confers on the people economic, political and social prerogatives including, in particular, the right to determine its own political status, to dispose freely of its resources, to choose its own Government, to define the legal framework within which it intends to live, to determine the organisation of powers and the methods of delegation of powers. As the people are the depository of power, they exercise it either directly, through universal suffrage, or indirectly through their elected representatives.

64. The Court further observes that the right to self-determination is in essence a participatory right and requires the people's approval in taking decisions and undertaking acts that affect the country. It also notes that drafting and adoption of the Constitution as the fundamental law of the country and the embodiment of the people's aspirations is part of a consultative institutional framework that must also be broadly participatory, from start to finish.

65. In this regard, several consultative procedures are possible, including referendums, which call on the people to accept or reject a draft Constitution, whether it originates from a parliament, in this case the National Constituent Assembly, or from a commission specially set up to draft it.

66. The issue is whether the failure to submit the draft 27 January 2014 Constitution to a referendum deprived the people of their right to participate in its approval.

67. Article 13(1) of the Charter provides that:

> "Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law".

68. The Court recalls that the power of the constituent bodies to legislate or execute derives from universal suffrage. In the present case, the 27 January 2014 Constitution was drafted and adopted by a Constituent National Assembly comprising two hundred and seventeen (217) members elected by direct universal suffrage on 23 October 2011. It comprised twenty-eight (28) political parties[15] and sixteen (16) independent members. By voting in the election of 23 October 2011, the Tunisian people exercised their sovereign right by delegating to the members of the Constituent National Assembly the power to draft the new Constitution.

69. On this point, the Court finds that the people participated indirectly in the drafting of the 27 January 2014 Constitution.

70. With regard to the people's participation in the adoption and promulgation of the 27 January 2014 Constitution, the Applicant submits that it is the 1959 Constitution that should have governed the transfer of power and the holding of a referendum in the event of a constitutional amendment. To this end, the Court notes that the 27 January 2014 Constitution is not an amendment to the 1959 Constitution but a completely new Constitution. Based on this finding, the Court holds that the provisions of the 1959 Constitution relating to the holding of a referendum in the event of a constitutional amendment did not apply in the present case. At the time, the 1959 Constitution was no longer in force insofar as it had been suspended and replaced by the Constituent Law of 16 December 2011.

71. The Court notes that, according to the tenets of constitutional law, the procedures for adopting and promulgating a new Constitution are spelt out

[15] The groups are : Mouvement Ennahda (90) ; Congrès pour la République (30) ; Forum Démocratique pour le Travail et les Libertés (21) ; Al Aridha populaire pour la liberté, la justice et le développement (19); Parti Démocrate Progressiste (17) ; Pôle Démocratique Moderniste (5) ; Parti l'Initiative (5) ; Afek Tounes (4) ; Al badil thawri PCOT (3) ; Mouvement des Démocrates Socialistes (2) ; Mouvement des Patriotes Démocrates (2) ; Mouvement du Peuple Haraket Achaab (2) ; L'*Indépendant (2*) ;*Union Patriotique Libre (1) ; Parti du Néo-Destour (1) ; Parti de la Nation, Culturel et Unioniste (1) ; Mouvement du Peuple Unioniste Démocrate (1) ; Parti de la Lutte Progressiste (1) ; Parti de l'Equité et de l'Egalité (1) ; Parti Démocrate-social de la Nation (1) ; Parti Libéral Maghrébin (1) ; Fidélité aux Martyrs (1) ; Liste l'Espoir (1) ; Voix Libre (1) ; Parti de la Lutte Sociale (1) ; Liste pour le Front National Tunisien (1) ; Liste de la justice (1) ; liste de la fidélité (1).*

in the Constitution itself and that "the entry into force of a new Constitution drawn up by a process external to the Constitution in force is decided in the new text itself".[16]

72. The Court notes that Article 147 of the 27 January 2014 Constitution reads as follows:

> "After the adoption of the Constitution in its entirety, in accordance with the provisions of Article 3 of Constituent Law No. 2011-6 of 16 December 2011 on the provisional organisation of public powers, the Constituent National Assembly shall hold an extraordinary plenary session within a maximum period of one week. During this session, the Constitution shall be promulgated by the President of the Republic, the President of the Constituent National Assembly and the Head of Government. The President of the Constituent National Assembly shall order the Constitution to be published in a special issue of the Official Gazette of the Republic of Tunisia. It shall come into force immediately after its publication. The President of the Constituent National Assembly shall announce the publication date in advance".

73. The Court notes that, although the above provision appears in the "Final Provisions" of the new Constitution, it is an integral part of all the provisions of that Constitution, which was drafted by representatives of the people elected on 23 October 2011 by universal suffrage. This delegation of power empowered members of the Constituent National Assembly to validly decide on the procedures for adopting and promulgating the Constitution. Having already established that the people participated indirectly in the drafting of the new Constitution as a whole, the Court considers that the failure to submit this Constitution to a referendum does not violate the right of the people to participate in the government of their country, protected by Article 13 of the Charter.

[16] Michele Brandt, Jill Cottrell, Yash Ghai, Anthony Regan, in *Le processus constitutionnel : élaboration et réforme - Quelles options* ? op. cit. page 246 who stated that "the submission of a draft Constitution to referendum, while highly desirable, is not compulsory and is not imposed as a constitutional principle".

74. Moreover, the Court observes that although the drafting of a constitution by Parliament or by a Constituent National Assembly does not exclude the possibility of a referendum, no provision of the African Charter or of any other human rights instrument makes a referendum a mandatory requirement.[17]

75. In view of the foregoing, the Court finds that in the present case the people participate indirectly in the drafting and adoption of the 27 January 2014 Constitution as well as in its promulgation.

76. Accordingly, the Court, holds that the Respondent State did not violate the people's right to self-determination, protected by Article 20 of the Charter.

B. Alleged violation of the obligation to guarantee the independence of the courts

77. The Applicant alleges that since his ascension to power, the President of the Respondent State has incapacitated the judiciary. She maintains that with the adoption of Organic Law No. 2014-014 of 18 April 2014 on the Provisional Institution for the Control of the Constitutionality of Draft Laws, the Constitutional Court was "dissolved" and its powers devolved to the IPCCPL. She contends that under the same Organic Law No. 2014-014 of 18 April 2014, it is the same IPCCPL that has oversight responsibility for the judiciary since the High Judicial Council has also been "dissolved".

78. The Applicant further alleges that, the adoption of the Organic Law on the Constitutional Court on 3 December 2015 and the abolition of the IPCCPL on 22 September 2021 notwithstanding, the Constitutional Court has not yet been set up and that, according to supporters of the President of the Republic, "its much sought-after installation is to settle scores with the Head of State".

[17] See Michele Brandt, Jill Cottrell, Yash Ghai, Anthony Regan, in Le processus constitutionnel: élaboration et réforme - Quelles options?. Ed. Interpeace, February 2015, page 34.

79. She further contends that all these draconian, illegal and unconstitutional measures, which are supposedly temporary, are still in place, so that the establishment of the rule of law, justice and respect for human has been shelved indefinitely.[18] The Applicant prays the Court to find a violation of Article 26 of the Charter.

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80. The Respondent State submits that legislative and judicial powers constitute a branch of its sovereignty, symbolising, in part, its internal authority. It follows that no one may interfere with them or compel the Respondent State to make decisions that violate its domestic law. The Respondent State asserts that it is not amenable to any external control that seeks to influence its decisions.

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81. It emerges from the Applicant's allegations that by interfering in the judicial sphere, the President of the Republic, who is head of the executive, seeks to (i) replace the Constitutional Court and the High Judicial Council by a provisional body and (ii) to confer on the Head of State the powers of the public prosecutor. The Court will examine each of these alleged violations of the independence of the judiciary.

i. Replacing the Constitutional Court and the High Judicial Council with a provisional body

82. Article 26 of the Charter provides:

> States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

[18] Presidential Decree of 24 August 2021 extended indefinitely the provisional measures taken on 25 July 2021.

83. The Court recalls its jurisprudence that guaranteeing the independence of the courts as provided for in Article 26 of the Charter imposes on States not only the obligation to enshrine that independence in their legislation, but also the obligation to refrain from interfering in the work of the courts and in the conduct of proceedings, at all echelons of judicial procedure[19]. What is at stake is the judiciary's credibility, which must not be eroded by the perception that it is influenced by outside pressure or actors[20].

84. It emerges from record that under Article 22 of the 16 December 2011 Constituent Act, a provisional representative body was to be established to "supervise judicial justice and replace the High Judicial Council". It is in this context that the IPCCPL was established by Organic Law No. 2014-14 of 18 April 2014. The IPCCPL acted as a constitutional review body in place of the Constitutional Court until 22 September 2021, when it was abolished by Decree No. 2021-117 of 22 September 2021 pertaining to exceptional measures.[21]

85. The Court notes that even before the abolition of the IPCCPL, the Respondent State had enacted an organic law on the Constitutional Court on 3 December 2015.[22] Under Article 148(5)(2) of the 27 January 2014 Constitution, the Constitutional Court shall be established within one year of parliamentary elections. The Court notes that the election of the people's representatives took place on 26 October 2014 and that, in accordance with constitutional provisions, the Constitutional Court should have been established at least as of October 2015.

86. The Court notes that, despite the promulgation of the law on the Constitutional Court on 3 December 2015, the said court has not yet been

[19] *Sébastien Germain Ajavon v. Benin* (merits) (29 March 2019) 3 AfCLR 130, § 280.
[20] ACHPR, Communication 396/11, *Mohammed Abderrahim El Sharkawi v. Republic of Egypt*, 20 October 2021, § 297; Communication 294/04; *Zimbabwe Lawyers for Human Rights and IHRDA (on behalf of Andrew Barclay Meldrum) v. Republic of Zimbabwe*, April 2009, § 119.
[21] See Article 22 of Presidential Decree No. 2021-117 of 22 September 2021 pertaining to exceptional measures.
[22] Organic Law No. 2015-50 of 3 December 2015, relating to the Constitutional Court.

established as at the date of this judgment. The Court considers that the failure to establish the Constitutional Court from the parliamentary elections of 26 October 2014 up until the adoption of the 17 August 2022, creates a legal vacuum in the Respondent State's judicial and legal order. This vacuum is all the more obvious given that constitutional control has been completely absent since the IPCCPL was abolished on 22 September 2021.[23]

87. With regard to the abolition of the High Judicial Council (HJC), the Court notes that by Decree-law No.22-11 of 12 February 2022,[24] the Respondent State dissolved the HJC and replaced it with a provisional body. Under this decree-law, the President of the Republic is also empowered to dismiss judges. Accordingly, the Court finds that this law empowers the Head of State to intervene in the discipline and dismissal of judges,[25] in violation of the obligation to guarantee the independence of the judiciary.

88. The Court observes that independence of the judiciary implies that judges must be free from any influence or pressure exerted by the executive, pressure groups or any other socio-professional entity or by parties to proceedings.[26] It also observes that the independence of the judiciary is curtailed if other authorities have to intervene in judges' career, particularly as regards their promotion or the cycle of judicial discipline. In this regard, the Court recalls that it has already stated that neither the executive nor the legislature may interfere, directly or indirectly, in the judiciary's decision-making powers, including the power to manage the careers of magistrates, who are the embodiment of the judiciary.

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[23] Belguith v. Tunisia, ACtPHR, Application No. 017/2021, Judgment of 22 September 2022, *supra*, §100.
[24] See Decree-Law no. 2022-11 of 12 February 2022, on the creation of the Provisional High Council of the Judiciary (Official Gazette, 2022-02-13, no. 16), repealing Organic Law No. 2016-34 of 28 April 2016, on the High Judicial Council. Under the Organic Law of 28 April 2016, the Council was made up of judges appointed ex officio and others elected by their peers.
[25] On 1 June 2022, the President dismissed 57 judges by presidential decree.
[26] *Sébastien Germain Marie Aîkoué Ajavon v. Benin* (merits and reparations) (4 December 2020), 4 AfCLR 133, § 312; ACtHPR, Application No. 008/2024: *Hammadi Rahmani et al v. Republic of Tunisia* (provisional measures), (3 October 2024) §§ 33-35.

89. In the instant case, the Head of State's intervention in the promotion, discipline and dismissal of judges constitutes interference in the judiciary and truncates its independence.

90. In view of the foregoing, the Court holds that the Respondent State violated the independence of the judiciary, protected by Article 26 of the Charter.

ii. Exercise of the powers of the public prosecutor by the Head of State

91. The Applicant submits that by virtue of the so-called exceptional measures taken pursuant to the Decree of 22 September 2021, the Head of State is the head of the Public Prosecutor's Office.

92. The Court recalls that it has already held that the independence of the judiciary requires that courts perform their functions without external interference and without being tributary to any other governmental authority.[27]

93. The Court notes that, speaking on 25 July 2021, the Head of State announced that he would dissolve the Assembly of People's Representatives, lift the immunity of its members and govern by decree. He also indicated that he would be head of the office of the public prosecutor. However, it does not emerge from the decree-law of 22 September 2021 that the President of the Republic presides over the public prosecutor's office.

94. Based on this finding, the Court dismisses the Applicant's allegation on the grounds that she does not sufficiently prove same.

95. The Court holds that on this issue the Respondent State did not violate the independence of the judiciary, protected by Article 26 of the Charter.

[27] *Action pour la protection des droits de l'homme v. Côte d'Ivoire*, (merits) (18 November 2016) 1 AfCLR, 668, § 117; *XYZ v. Republic of Benin*, (merits and reparations) (27 November 2020) 4 AfCLR 83, § 61.

C. Alleged violation of the obligation to guarantee the independence of the legislature vis-à-vis the executive

96. The Applicant alleges that since the adoption of Constitutional Law No. 6/2011 of 16 December 2011 pertaining to the provisional organisation of public authority, the Respondent State has engaged in a vast scheme to dismantle constitutional institutions thereby trampling on the rule of law and all the principles of separation of powers. She maintains that decrees issued by the Head of State have had the effect of abolishing the bicameral legislature and replacing Parliament with a constituent National Assembly.[28]

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97. The Respondent State contends that the principle of non-interference is a concept that is held to be at the heart of the internal authority of the State to safeguard its independence and sovereignty. It is the Respondent State's contention that the only exception to this principle is when State undertakes actions that threaten international peace and security or commits acts of aggression against another State.

98. The Respondent State also asserts that its Constitution enshrines the independence and separation of powers and that no one may interfere in the exercise of the internal authority of a State with a view to compel it to discuss issues relating to the independence of its institutions under the Charter.

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99. The Court emphasises that separation of powers is of capital importance in a democratic society, since it ensures balance of power between the executive and the legislature as well as their proper functioning.

[28] Decree-Law of 23 March 2011 and the election of members of the National Constituent Assembly on 23 October 2011.

100. In the present case, it is the Applicant's case that the Respondent State, in the exercise of its executive power, interfered in the legislative arena in the quest to confer legislative power on the executive. The aim is to abolish the bicameral legislature and vest in the Head of State the legislative prerogative of the Assembly of People's Representatives.

101. It emerges from the Application that after their election on 23 October 2011, members of the Constituent National Assembly, on 16 December 2011, adopted a constituent law[29] which conferred on the Constituent National Assembly the power to draft a new Constitution,[30] in addition to the power to act as a unicameral Parliament and thus exercise the legislative power previously vested in the Assembly of People's Representatives. In effect, it adopts organic and ordinary laws and appoints transitional governments. [31]

102. The Court further notes that, subsequent to the dissolution of the Constituent National Assembly and the election of the People's Representatives Assembly in 2014, the President of the Republic, by decree of 22 September 2021, suspended the powers of the People's Representatives Assembly[32], lifted the immunity of its members, abolished the bonuses and benefits of its members [33] and assumed decree-based legislative power.[34]

103. The Court notes that these exceptional provisional measures, taken for the duration of the civil unrest that broke out on 25 July 2021, were extended for an indefinite period, as announced by the Head of State speaking on 24

[29] See Constituent Law No. 2011-6 of 16 December 2011 on the provisional organization of public authorities.
[30] Article 2 of the Constituent Law.
[31] See Articles 3 and 4 of the Constituent Law.
[32] Article 1 - The powers of the Assembly of People's Representatives are suspended.
[33] Art. 2 - Parliamentary immunity of all members of the Assembly of People's Representatives is lifted. Art. 3 - All bonuses and benefits accruing to the President and members of the Assembly of People's Representatives are abolished.
[34] Art. 4 - Laws are passed by decree-law and are promulgated by the President of the Republic who orders their publication in the Official Journal of the Republic of Tunisia, after deliberation by the Cabinet.

August 2021.[35] Furthermore, by decree of 30 March 2022, the President of the Republic dissolved the People's Representatives Assembly and lifted the immunity of its members.

104. The Court observes that in the event of a serious crisis or when cohabitation between the executive and the legislature has become impossible, dissolving a legislative body must be accompanied by measures to organise legislative elections as soon as possible. In the present case, the Court notes that between 25 July 2021, when the People's Representatives Assembly was suspended, and the election of new representatives of the people on 17 December 2022 and 29 January 2023, a period of one year and three months elapsed. The Court considers that the fact the legislative elections were delayed for so long attests to the real willingness of the executive to exercise legislative functions. The Court considers that all the measures taken by the executive to suspend the People's Representatives Assembly, extend the said suspension and then dissolve the chamber stripped the latter of all its prerogatives and constitute interference in the legislature's functions.

105. The Court recalls that (...) separation of powers requires that the three pillars of the State exercise their powers independently. The executive branch must be seen to be separate from the judiciary, and parliament.[36]

106. In view of the foregoing, the Court holds that the Respondent State violated the principle of separation of powers and the independence of the legislature in relation to the executive.

[35] Decree No. 2021-109 of 24 August 2021, extending the exceptional measures relating to the suspension of the powers of the Assembly of People's Representatives.
[44] ACHPR, *Kevin Mgwanga Gunme and others v. Cameroon*, Communication 266/03, § 211 and 212, 45th ordinary session, 13-27 May 2009.

VIII. REPARATIONS

107. The Court notes that Article 27(1) of the Protocol stipulates that "[i]f the Court finds that there has been violation of a human or peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation".

108. In line with the Court's jurisprudence, for reparations to be granted, the Respondent State should first be found liable for an internationally wrongful act and a causal link must be established between the wrongful act and the harm alleged. Furthermore, where it is granted, reparation should cover the full prejudice suffered.

109. The Court reiterates that the onus is on the Applicant to provide evidence in support of her allegation.[37] With regard to moral prejudice, the Court has consistently held that it is presumed in case of violation and that the requirement of proof is not strict.[38]

110. The Court also recalls that the measures that a state can take to remedy a violation of human rights includes restitution, compensation and rehabilitation of the victim, as well as measures to ensure non-repetition of the violations, taking into account the circumstances of each case.[39]

111. In the present case, the Court has established that the Respondent State violated the independence of the judiciary and the legislature, protected by Article 26 of the Charter. It has also found that the Respondent State violated the principle of separation of powers between the executive and the

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[45] *Kennedy Gihana and others v. Rwanda* (merits and reparations) (28 November 2019) 3 AfCLR 655, § 139; See also *Reverend Christopher R. Mtikila v. Tanzania* (reparations) (13 June 2014) 1 AfCLR 72, § 40; *Lohé Issa Konaté v. Burkina Faso* (reparations) (3 June 2016) 1 AfCLR 346, § 15(d); and *Elisamehe v.Tanzania* (merits and reparations) *supra*, § 97.

[38] *Rajabu and Others v. Tanzania* (merits and reparations), supra, § 136; *Armand Guehi v. Tanzania* (merits and reparations) (December 7, 2018), 2 AfCLR 477, § 55; *Lucien Ikili Rashidi v. United Republic of Tanzania* (merits and reparations) (28 March 2019), 3 AfCLR 13, § 119; *Norbert Zongo and Others v. Burkina Faso* (reparations), § 55.

[47] *Ingabire Victoire Umuhoza v. Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 20. See also, *Alex Thomas v. Tanzania* (merits), § 96.

legislature. Accordingly, the Court holds that the Respondent State's responsibility is established. It will, therefore, examine the Applicant's requests for reparations.

112. The Applicant maintains that the Respondent State's failure to respect the supremacy of the Constitution of 1959 and its violation of the people's right to participate in the process of adopting the new Constitution of 2014 by referendum led to the collapse of the rule of law and, by the same token, of democracy and the sovereignty of the Tunisian people.

113. She prays the Court to declare the 27 January 2014 Constitution null and void, declare that the 1959 Constitution is still in force and applicable and order that it be applied.

114. The Respondent State prays that the claim be dismissed.

i. Annulment of the 27 January 2014 Constitution

115. The Court recalls that it has held that the adoption and promulgation of the 27 January 2014 Constitution without recourse to a referendum did not violate the people's right to self-determination, so that its validity is not impaired. The Court further notes that in May 2022, that is, after its referral, the Respondent State set up a Consultative Commission to draft a new Constitution, which came into force on 16 August 2022 after it had been adopted in the referendum of 25 July 2022.

116. From the foregoing, the Court holds that the Applicant's request seeking annulment of the 27 January 2014 Constitution is moot.

ii. Annulment of laws adopted in violation of the independence of judicial and legislative bodies

117. The Court notes that in the present case, it has found a violation of Article 26 of the Charter on account of the suspension of the High Judicial Council and the ineffectiveness of the Constitutional Court. Even if the Applicant does not expressly request it, the Court considers that the Respondent State should take the necessary steps to establish the Constitutional Court, repeal Decree-Law No. 2022-11 of 12 February 2022 and restore the High Judicial Council.

118. With regard to the restoration of the Assembly of People's Representatives, the Court considers that the election of the people's representatives in the polls of 17 December 2022 and 29 January 2023 renders the request moot.

IX. COSTS

119. The Court notes that none of the parties submitted on costs.

120. Under Article 32(2) of the Rules, "unless otherwise decided by the Court, each party shall bear its own costs, if any".

121. The Court considers that, in the instant case, there is no reason to depart from the principle laid down in that provision. accordingly, the Court decides that each party shall bear its own costs.

X. OPERATIVE PART

122. For these reasons,

THE COURT,

Unanimously,

On Jurisdiction

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

On Admissibility

iii. *Dismisses* the objection to admissibility based on non-exhaustion of local remedies;

By a majority of eight votes for and two against

iv. *Holds* that the Application was filed within a reasonable time;
v. *Declares* the Application admissible.

On merits

vi. *Holds* that the Respondent State did not violate the people's right to self-determination, protected by Article 20 of the Charter in relation to the adoption of the 27 January 2014 Constitution through the Constituent Assembly;
vii. *Holds* that the Respondent State violated the independence of the judiciary, protected by Article 26 of the Charter by interfering in the promotion and discipline of judicial officers pursuant to the Decree-Law of 12 February 2022;
viii. *Holds* that the Respondent State violated the principle of the independence of the legislature vis-à-vis the executive in relation to the application of the Decree of 30 march 2022.

On reparations

ix. *Holds* that the request to nullify the 27 January 2014 Constitution is moot;

x. *Declare* that the prayer to reestablish the Assembly of People's Representatives elected in 2009is moot, following the 17 December 20 and 29 January 2023 elections;

xi. *Orders* the Respondent State to take all necessary measures to operationalise the Constitutional Court within six months from the date of notification of this judgment*;*

xii. *Orders* the Respondent State to repeal Decree-Laws No 2022-11 of 12 February 2022 and to reinstate the High Judicial Council within six months of notification of this judgment.

On implementation and reporting

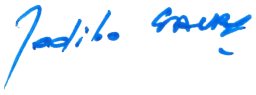
xiii. Orders the Respondent State to submit to it, within six months of notification of this Judgment, a report on the status of implementation of the measures contained therein and, thereafter, every six months until the Court considers that there has been full implementation thereof.

On costs

xiv. *Orders* each party to bear its own costs.

Signed by:

Imani D. ABOUD, President; 

Modibo SACKO, Vice President; 

Suzanne MENGUE, Judge; 

Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Blaise TCHIKAYA, Judge ;

Stella I. ANUKAM, Judge;

Dumisa B. NTSEBEZA, Judge;

Dennis D. ADJEI, Judge;

Duncan GASWAGA, Judge;

and Robert ENO, Registrar.

In accordance with Article 28(7) of the Protocol and Rule 70(1) and (2) of the Rules of Court, the individual dissenting opinion of Judge Modibo Sacko, Vice-President of the Court and Judge Blaise Tchikaya are appended to this judgment.

Done at Arusha this Thirteenth Day of November in the year Two Thousand and Twenty-Four, **in Arabic, English and French, with both the Arabic and French texts being equally authoritative.**