

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

THE MATTER OF

ADO SHAIBU AND OTHERS

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 046/2020

JUDGMENT

6 MARCH 2026



TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
I. THE PARTIES.....	2
II. SUBJECT MATTER OF THE APPLICATION	3
A. Facts of the matter.....	3
B. Alleged violations.....	3
III. SUMMARY OF THE PROCEDURE BEFORE THE COURT	4
IV. PRAYERS OF THE PARTIES.....	6
V. JURISDICTION	7
A. Objection to material jurisdiction	8
B. Other aspects of jurisdiction	9
VI. ADMISSIBILITY	10
A. Objections to the admissibility of the Application	11
i. Objection that the Application is exclusively based on news disseminated by the mass media	12
ii. Objection based on failure to exhaust local remedies	13
iii. Objection based on previous settlement of the case	17
B. Other conditions of admissibility	19
VII. MERITS	21
A. Alleged violation of the right to have one’s cause heard.....	22
B. Alleged violation of the obligation under Article 1 of the Charter	24
VIII. REPARATIONS	25
A. Adoption of constitutional and legislative measures	26
B. Other measures of reparations	27
IX. COSTS.....	28
X. OPERATIVE PART	28

The Court composed of: Blaise TCHIKAYA, President, Chafika BENSAOULA, Vice-President, Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO, Dennis D. ADJEI, Duncan GASWAGA – Judges; and Grace W. KAKAI, Deputy-Registrar.

In accordance with Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") and Rule 9(2) of the Rules of Court (hereinafter referred to as "the Rules"), Justice Imani D. ABOUD, Member of the Court and a national of Tanzania, did not hear the Application.

In the Matter of:

Ado SHAIBU, Ezekiah Dibogo WENJE, Omar Mussa MAKAME, Dorah Seronga WANGWE, Enock Wegesa SUGUTA and Kassim Ali HAJI.

Represented by:

- i. Prof Chidi Anselm ODINKALU, Advocate;
- ii. Mr Ibrahima KANE, Advocate; and
- iii. Mr Donald DEYA, Executive Director, Pan African Lawyers Union.

Versus

UNITED REPUBLIC OF TANZANIA

Represented by:

- i. Dr Ally POSSI, Solicitor General, Office of the Solicitor General;
- ii. Ms Sarah Duncan MWAIPOPO, Deputy Solicitor General, Office of the Solicitor General; and
- iii. Mr Hangi M. CHANG'A, Deputy Director, Constitution, Human Rights and Election Petitions, Office of the Solicitor General.

After deliberation,

Renders this Judgment:

I. THE PARTIES

1. Mr Ado Shaibu, Mr Ezekiah Dibogo Wenje, Mr Omar Mussa Makame, Ms Dorah Seronga Wangwe, Mr Enock Weges Suguta and Mr Kassim Ali Haji (hereinafter referred to as “the Applicants”) are all nationals of the United Republic of Tanzania and members of the political party “Alliance for Change and Transparency” (hereinafter referred to as “ACT Wazalendo”). They allege that their rights were violated preceding, during and immediately after the 2020 general elections¹ in the United Republic of Tanzania.
2. The Application is filed against the United Republic of Tanzania (hereinafter referred to as “the Respondent State”), which became a Party to the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”) on 21 October 1986 and to the Protocol on 10 February 2006. Furthermore, the Respondent State, on 29 March 2010, deposited the Declaration prescribed under Article 34(6) of the Protocol (hereinafter referred to as “the Declaration”), through which it accepted the jurisdiction of the Court to receive Applications from individuals and non-governmental organisations (hereinafter referred to as “NGOs”). On 21 November 2019, the Respondent State withdrew its Declaration. The Court has held that such withdrawal has no bearing on pending and new cases filed before the withdrawal takes effect one year after its deposit, in this case, on 22 November 2020.²

¹ Refers to the Local Government, Parliamentary, and Presidential Elections.

² *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, §§ 37-39.

II. SUBJECT MATTER OF THE APPLICATION

A. Facts of the matter

3. It emerges from the Application that, preceding, during and immediately after its 2020 general elections, the Respondent State allegedly violated the right of the Applicants to participate in the said elections. The alleged violations included unilateral appointment of commissioners to National Electoral Commission and the Zanzibar Electoral Commission by a single party, “blatant and egregious discrimination on political grounds” against the Applicants, and other electoral malpractices.
4. Furthermore, the Applicants aver that during the same period they suffered discrimination, violence and torture, intimidation, threats, arrest and detention at the hands of the Tanzania Police Force.
5. According to the Applicants, the above-mentioned conduct of the Respondent State cumulatively had the effect of curtailing their rights, as candidates and registered voters, to campaign and to participate in the elections.

B. Alleged violations

6. The Applicants allege that the Respondent State violated the following rights and obligations:
 - i. The duty to adopt legislative and other measures to give effect to the rights in the Charter, as provided under Article 1 of the Charter;
 - ii. The right to non-discrimination protected under Article 2 of the Charter and Article 2 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (hereinafter referred to as the “Maputo Protocol”) as well as the right to equality before the law and equal protection of the law protected under Article 3(1) and (2) of the Charter;

- iii. The right to life protected under Article 4 of the Charter;
- iv. The right to freedom from torture, cruel and degrading punishment and treatment protected under Article 5 of the Charter;
- v. The right to liberty protected under Article 6 of the Charter;
- vi. The right to have their cause heard protected under Article 7(1)(a) of the Charter, Article 2 and 14 of the International Covenant on Civil and Political Rights (hereinafter referred to as the “ICCPR”) and Article 10 of the Universal Declaration of Human Rights (hereinafter referred to as the “UDHR”);
- vii. The right to freedom of information and access to information protected under Article 9(1) of the Charter and 19(3) of the ICCPR;
- viii. The right to protest and freedom of assembly protected under Article 11 of the Charter, Article 21 of the ICCPR, Article 20 of the UDHR, Article 5(d)(ix) of the Convention on the Elimination of Racial Discrimination (hereinafter referred to as the “CERD”);
- ix. The right to participate freely in the government of one’s country guaranteed under Article 13(1) and (2) of the Charter, Articles 21 and 25 of the ICCPR, and Articles 3, 8, 12, and 17 of the African Charter on Democracy, Elections and Governance (herein after referred to as “ACDEG”); and
- x. The right to property protected under Article 14 of the Charter, Article 17 of the ICCPR and Article 17 of the UDHR.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

- 7. The Application was filed on 20 November 2020 and served on the Respondent State on 3 December 2020 for its Response. The Response was filed on 9 September 2021 and transmitted to the Applicants on 21 February 2022. The Parties subsequently filed the other pleadings on the merits and reparations within the time granted by the Court.
- 8. Pleadings were closed on 22 October 2024 and the Parties were notified.
- 9. On 7 February 2025, the Applicants filed a request for the Court to re-open the pleadings.

10. On 13 February 2025, the Robert F. Kennedy Human Rights (hereinafter referred to as the “RFK”) and Institute for Human Rights and Development in Africa (hereinafter referred to as “IHRDA”) filed a request to participate in the proceedings as *amici curiae*.
11. By an Order of 28 February 2025, the Court, by virtue of its inherent powers and with the aim of ensuring the proper administration of justice, granted the Applicants’ request to reopen the pleadings and deemed their submissions as duly filed. The Court further requested the Respondent State to file its Response within 30 days. The Respondent State, however, did not file any submissions.
12. Furthermore, by the same Order of 28 February 2025, the Court granted the request of the RFK and IHRDA to participate in the proceedings as *amici curiae*, and the Registry subsequently received their submissions.
13. Pleadings were closed on 22 April 2025 and the Parties were notified.
14. On 25 June 2025, the Respondent State requested the Court to adjourn proceedings, reopen pleadings and grant it an extension of time to respond to the Applicants’ additional submissions and to file additional evidence.
15. On 2 July 2025, the Respondent State’s request was transmitted to the Applicants for their observations, if any, within seven (7) days.
16. On 10 July 2025, the Applicants filed their observations opposing the request to reopen the pleadings and the said observations were transmitted to the Respondent State on 18 July 2025 for information.
17. On 5 August 2025, the Court, by virtue of its inherent powers, and with the aim of ensuring the proper administration of justice, ordered the re-opening of the pleadings and granted the Respondent State fifteen (15) days within which to file its pleadings.

18. On 26 August 2025, the Respondent State filed its Response to the additional submissions of the Applicants and this was transmitted to the Applicants on 2 September 2025, granting them seven days to file a Reply, if any. The Applicants filed their Reply on 17 September 2025, and it was transmitted to the Respondent State on 19 September 2025 for information.
19. Pleadings were closed on 19 September 2025 and the Parties were notified.

IV. PRAYERS OF THE PARTIES

20. The Applicants pray the Court to:
 - i. declare that the Respondent violated the Charter, in particular Articles 1, 2, 3(1)-(2), 7(1), 9 and 13(1)-(2);
 - ii. declare that the Respondent violated Articles 2(3)(a)-(c), 3, and 25(a)-(c) of the ICCPR;
 - iii. declare that the Respondent violated the Maputo Protocol, in particular Articles 2(1)(a)-(b) and 9(1)(a)-(b);
 - iv. order the Respondent to investigate and bring to account all persons found responsible for the violations of the rights of the Applicants;
 - v. order the Respondent to adopt constitutional, legislative, administrative and other measures to remedy the violations of the rights of the Applicants;
 - vi. order reparations to the Applicants, the terms of which are to be determined during the reparations phase of the proceedings; and
 - vii. order the Respondent State to bear the costs of the proceedings.
21. With respect to jurisdiction and admissibility, the Respondent State prays the Court to:
 - i. declare that the African Court on Human and Peoples' Rights lacks jurisdiction to adjudicate the present Application;

- ii. find that the Application does not meet the admissibility requirements provided under Article 56 (4) and (5) of the African Charter, Article 6(2) of the Protocol, and Rules 50(2)(d) and (e) of the Rules of Court;
 - iii. declare the Application inadmissible; and
 - iv. order that the costs of this Application be borne by the Applicants.

22. With respect to the merits and reparations of the Application, the Respondent State prays the Court to:
 - i. declare that it did not violate any of the rights alleged by the Applicants; and
 - ii. order the Applicants to be the costs of the proceedings.

V. JURISDICTION

23. 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.

24. The Court further notes that pursuant to Rule 49(1) of the Rules, it "...shall conduct preliminary examination of its jurisdiction...in accordance with the Charter, the Protocol and these Rules."

25. On the basis of the above-cited provisions, the Court must conduct a preliminary assessment of its jurisdiction and dispose of any objections thereto, if any.

26. The Respondent State raises an objection to the material jurisdiction of the Court. The Court will, therefore, consider the said objection before examining other aspects of its jurisdiction, if necessary.

A. Objection to material jurisdiction

27. The Respondent State 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 submitted by the Applicants as they “purely” fall under its national courts’ jurisdiction.
28. Furthermore, the Respondent State submits that the Applicants are praying the Court to invalidate the 2020 elections which is an issue that falls outside the jurisdiction of this Court as provided for under Article 3 of the Protocol.
29. According to the Respondent State, in the absence of decisions by its national courts regarding the general elections in dispute, this Court has no jurisdiction to consider alleged violations relating to electoral malpractices.
30. The Applicants, for their part, aver that the alleged violations are within the jurisdiction of the Court as they relate, inter alia, to violations of the Charter, the ICCPR and the Maputo Protocol.
31. Citing the matter of *Houngue Eric Noudehouenou v. Benin*, the Applicants contend that this Court is vested with power to “examine all violations alleged before it, including the conformity of national laws with the provisions of the Charter or any other international instruments ratified by the State concerned.”

32. The Court notes that its jurisdiction is defined by Article 3(1) of the Protocol. Under this provision, the Court may only consider applications alleging violations of rights guaranteed by the Charter, the Protocol, or any other human rights instruments ratified by the Respondent State.³
33. In the instant case, the Applicants allege the violations, *inter alia*, of the rights under Articles 2, 3, 4, 5, 6, 7, 9, 13 and 14 of the Charter and Articles 2, 14, 19, 21 and 25 of the ICCPR, instruments to which the Respondent State is a party.
34. In light of the foregoing, the Court dismisses the Respondent State's objection and finds that it has material jurisdiction to determine the alleged violations raised in this Application.

B. Other aspects of jurisdiction

35. The Court notes that the Parties do not contest other aspects of its jurisdiction. However, being cognizant of Rule 49(1) of the Rules, the Court must satisfy itself that all aspects of its jurisdiction have been met before proceeding to determine the Application.
36. With respect to its personal jurisdiction, the Court notes, as earlier stated in paragraph 2 of this Judgment, that the Respondent State is a party to the Protocol and deposited the Declaration with the African Union Commission on 29 March 2010. Subsequently, on 21 November 2019, it withdrew its Declaration. The Court recalls its settled 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 withdrawal, in this case, on 22 November 2020.⁴ Since this Application was filed before the Respondent

³ *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 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.

⁴ *Cheusi v. Tanzania* (merits and reparations) *supra*, §§ 37-39.

State's withdrawal came into effect, that is, on 20 November 2020, is not affected by it. Consequently, the Court finds that it has personal jurisdiction.

37. With regard to temporal jurisdiction, the Court notes that the alleged violations occurred in 2020, that is, after the Respondent State had ratified the Protocol on 10 February 2006. Moreover, even though the alleged violation regarding Article 41 of the Respondent State's Constitution of 1977 began before the Respondent State became a party to the Protocol, it continued thereafter. Accordingly, the Court finds that it has temporal jurisdiction.
38. The Court also notes that it has territorial jurisdiction, as the alleged violations occurred within the territory of the Respondent State, which is a party to the Charter and the Protocol.
39. In light of the foregoing, the Court holds that it has jurisdiction to hear this Application.

VI. ADMISSIBILITY

40. Article 6(2) of the Protocol provides that "the Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter."
41. Pursuant to Rule 50(1) of the Rules, "[t]he 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."
42. 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 conditions:

- a. Indicate their authors even if the latter request anonymity;
- b. Are compatible with the Constitutive Act of the African Union and with the Charter;
- c. Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union;
- d. Are not based exclusively on news disseminated through the mass media;
- e. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
- f. Are submitted within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seised 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 the African Union, or the provisions of the Charter.

43. The Respondent State raises three (3) objections to the admissibility of the Application: first, that the Application is based exclusively on news disseminated through mass media; second, that the Applicants did not exhaust local remedies; and third, that the application has already been settled in accordance with the Charter. The Court will, therefore, consider these objections before examining the other conditions of admissibility, if necessary.

A. Objections to the admissibility of the Application

44. The Court observes that the Respondent State raises three objections to the admissibility of the Application. These objections will be examined successively.

i. Objection that the Application is exclusively based on news disseminated by the mass media

45. The Respondent State contends that the alleged violations are based on news disseminated through mass media which the Court “is prohibited from entertaining.” It argues that, other than media reports, the Applicants have not adduced any evidence to support their allegations.

46. The Respondent State submits, therefore, that the Application is inadmissible to the extent that the alleged violations are based exclusively on news disseminated through mass media.

*

47. In their Reply, the Applicants aver that their allegations are based not only on media reports, but also on other evidence, including affidavits, and therefore comply with Article 56(4) of the Charter.

48. The Court notes that Rule 50(2)(d) of the Rules, which restates Article 56(4) of the Charter, requires that an application should not be based exclusively on news disseminated through the mass media.

49. The Court observes that Rule 50(2)(d) of the Rules does not absolutely proscribe references to media reports in an application. The term “exclusively” in this provision makes it clear that what is prohibited is the complete reliance of an application on reports obtained from the media. In other words, as long as an application is at least partly based on facts that have not been reported by the media, the Court may consider the application.⁵

⁵ *Ibid*, § 186.

50. In the instant case, the Applicants relied upon some media reports including the document titled “Right the Wrongs” from Journalists for Justice.⁶ Even so, they have also submitted other evidence to substantiate their allegations, including affidavits, a report from Amnesty International,⁷ and working documents of international bodies recognized by the Respondent State, including documents from Commissioners of the African Commission on Human and Peoples Rights’ particularly the Commissioner-Rapporteur for the United Republic of Tanzania.⁸
51. In these circumstances, the Court finds that the Application is not based exclusively on news disseminated by the mass media. The Court, therefore, dismisses the Respondent State’s objection in this regard.

ii. Objection based on failure to exhaust local remedies

52. The Respondent State contends that Article 56(5) of the Charter requires applicants to exhaust local remedies prior to seizing the Court. According to the Respondent State, allegations related to electoral malpractices are actionable before its national courts. Therefore, the Applicants should have filed electoral petitions or initiated criminal or civil cases for judicial review alleging the violations of their human rights before the national courts, which they failed to do.
53. The Respondent State further contends that the Applicants should have invoked Article 26(2) of its Constitution before national courts prior to seizing the Court. The Respondent State argues further that the Applicants could have challenged the decisions of the National Electoral Commission and

⁶ Journalists for Justice, ‘Right the wrongs: Spotlight on the 2020 General Election in Tanzania’ available: <https://jfjustice.net/wp-content/uploads/2022/06/RIGHT-THE-WRONGS-REPORT-4-2.pdf>.

⁷ Amnesty International, ‘Lawfare: Repression by Law ahead of Tanzania’s General Elections’ 2020.

⁸ Press Statement by the African Commission on Human and Peoples’ Rights on the deteriorating human rights situation in Tanzania by Commissioner Solomon Ayele Dersso, Chairperson of the African Commission and Commissioner Rapporteur for the United Republic of Tanzania and Commissioner Lawrence Mute, Special Rapporteur on Freedom of Expression and Access to Information, 22 November 2019, <https://achpr.au.int/en/news/pressreleases/2019-11-22/press-statement-african-commission-human-and-peoples-rights>

the Zanzibar Electoral Commission through a petition for judicial review before its High Court.

54. The Respondent State adduces three electoral petitions which were filed by candidates from opposition parties – *Chama cha Demokrasia na Maendeleo* (CHADEMA) and ACT Wazalendo party before the District Court of Tandahima, the Resident Magistrate’s Court at Musoma and the High Court of Zanzibar as further proof of existence of local remedies.
55. Consequently, the Respondent State submits that the Application should be declared inadmissible for failure by the Applicants to exhaust local remedies.
56. The Applicants aver that there is no remedy to exhaust as Articles 41(7) and 74(12) of the Constitution of Tanzania, as well as Article 119(13) of the Constitution of Zanzibar “preclude them from lodging any complaint within the Courts of the Respondent State.” The Applicants further argue that the local remedies are unavailable, ineffective or inadequate because the Respondent State has not complied with this Court’s judgment in the matter of *Jebra Kambole v. Tanzania*, and therefore the national courts do not have jurisdiction over violations related to presidential elections.
57. According to the Applicants, all the alleged violations are based on electoral malpractices which relate to the right to participate in one’s government through presidential elections. Therefore, local remedies are unavailable since the national courts do not have jurisdiction to decide issues related to presidential elections.
58. The Applicants also aver that they faced impediments in exhausting local remedies as there was a climate of fear during the elections period.

59. Article 56(5) of the Charter whose provisions are restated in Rule 50(2)(e) of the Rules, provides that any application filed before the Court must fulfil the requirement of exhaustion of local remedies, unless the same are unavailable, ineffective or insufficient, or where the domestic proceedings are unduly prolonged.⁹
60. The Court observes that the objective of the rule of exhaustion of local remedies is to provide States the opportunity to resolve cases of alleged human rights violations within their own legal systems before an international human rights body is called upon to determine the State's responsibility for the same according to the principle of subsidiarity.¹⁰
61. Furthermore, for local remedies to be considered exhausted, an applicant must have presented before domestic courts the claims that he raises before this Court.¹¹ The Court further recalls that exhaustion of local remedies is assessed at the time the application is filed before it and compliance with this requirement entails that applicants must await the outcome of pending domestic proceedings before seizing the Court.¹² The only exception to this rule is where proceedings in respect of the applicable remedy are unduly prolonged.¹³
62. In the instant case, the Applicants allege violations of Articles 1, 2, 3, 4, 5, 6, 7, 9, 11, 13 and 14 of the Charter. The Court will therefore determine whether they exhausted local remedies in relation to each of these allegations.

⁹ *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.

¹⁰ *Lohe Issa Konate v. Burkina Faso* (merits) (5 December 2014) 1 AfCLR 314, § 78; *Chacha v. Tanzania*, *ibid*; *Muwinda and Others v. Tanzania*, *ibid*.

¹¹ *Harouna Dicko and Others v. Burkina Faso*, ACtHPR, Application No. 037/2020, Ruling of 13 November 2024 (jurisdiction and admissibility), § 42.

¹² *Dicko and Others v. Burkina Faso*, *supra*, § 43.

¹³ *Ibid*.

a. On the exhaustion of local remedies with regard to the alleged violation of Article 1 and 7(1) of the Charter

63. In relation to the violation of Articles 1 and 7(1) of the Charter on the lack of remedies for challenging presidential elections, the Court recalls its judgment in *Jebra Kambole v. United Republic of Tanzania* that:¹⁴

...the Court takes judicial notice of the decision of the Respondent State's High Court in *Augustine Lyatonga Mrema v. Attorney General*¹⁵ in which it held that article 41(7) in unambiguous language has ousted the jurisdiction of courts to inquire into the election of the president once the Electoral Commission has declared the results. According to the High Court, if parliament had intended for courts to have the power to inquire into the election of a president, clear provision for the same would have been included in the Constitution.

64. Consequently, the Court finds that the alleged violation of Articles 1 and 7(1) of the Charter relates to presidential elections over which the national courts do not have jurisdiction, and therefore, the remedy in this regard is unavailable. Consequently, the Court finds that the Applicants have satisfied Rule 50(2)(e) of the Rules with regard to this allegation.

b. Exhaustion of local remedies with regard to the other allegations

65. With regard to the alleged violations of the right to non-discrimination, the right to life, freedom from torture, cruel and degrading punishment and treatment, the right to liberty, the right to have one's cause heard, the right to freedom of information and access to information, the right to protest and freedom of assembly, the right to participate freely in the government of one's country and the right to property, the Court notes that the Respondent State adduced evidence of the availability of local remedies. In this regard, the Respondent State submitted three electoral petitions relating to the 2020

¹⁴ *Jebra Kambole v. United Republic of Tanzania* (judgment) (15 July 2020) 4 AfCLR 460, § 40.

¹⁵ [1996] TLR 273 (HC).

elections filed by electoral candidates from opposition parties, without impediment.¹⁶

66. Conversely, the Applicants, without substantiation, also allege that there was a climate of fear during the period of the general elections and therefore they could not exhaust local remedies. The Court notes that the Applicants did not exhaust local remedies and simply made general statements relating to alleged violation of rights.
67. Consequently, the Court finds that local remedies were not exhausted in accordance with Rule 50(2)(e) of the Rules with respect to these claims.

iii. Objection based on previous settlement of the case

68. The Respondent State contends that the judgment in *Jebra Kambole v. Tanzania* has already settled the allegation regarding the ousting of the jurisdiction of national courts to consider challenges to presidential elections.
69. The Respondent State further contends that, rather than alleging a violation of Article 7(1) of the Charter, the Applicants should have invoked the compliance procedure under Rule 81(3) of the Rules of Court and requested a compliance hearing.
70. Citing *Bernard Mornah and others v. Benin*, the Applicants argue that for a case to be settled, three cumulative conditions must be fulfilled. The Applicants aver that the parties and claims must be the same, and there should be a decision on the merits. In this regard, the Applicants argue that the Parties in this case and the *Jebra Kambole* case are not the same. Furthermore, they aver that the claims are not the same. Consequently, the Applicants aver that the present case has not been settled.

¹⁶ Misc Civil Cause No. 069/2020, *Faki Haj Makame v. the Returning Officer and Attorney General*; Election Petition No. 002/2020, *Nyanguli Mtesigwa Philemon v. Attorney*; and Election Petition No. 001/2021, *Saidi Bakari Mzuri v. Attorney General*.

71. Article 56(7) of the Charter and Rule 50(2)(g) of the Rules stipulate that Applications will be considered by the Court if they: “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 the African Union or the provisions of the Charter.”
72. The Court recalls that the concept of “settlement” implies the convergence of three major conditions: (i) the identity of the parties; (ii) the identity of the applications or their supplementary, consecutive or alternative nature or whether the case flows from a request made in the initial case; and (iii) the existence of a first decision on the merits.¹⁷
73. The Court observes the Respondent State’s contention that the allegation on the ousting of the jurisdiction of national courts to consider challenges to presidential elections has already been settled by the Court in *Jebra Kambole v. Tanzania*.¹⁸ The Court must, therefore, determine whether its decision in the aforementioned case settles the alleged violation in the present Application.
74. On the “identity of the parties”, the Court notes that the Respondent State is the same in both the *Jebra Kambole* case and the present case. However, the Applicant in the *Jebra Kambole* case was an individual who was challenging the law in a public interest case. On the other hand, the Applicants in the instant case are members of a political party who claim to be directly affected by the lack of remedies to challenge presidential

¹⁷ See *Jean-Claude Roger Gombert v. Côte d’Ivoire* (jurisdiction and admissibility) (22 March 2018) 2 AfCLR 270, § 44; *Dexter Johnson v. Republic of Ghana* (jurisdiction and admissibility) (28 March 2019) 3 AfCLR 99, § 45; See *Suy Bi Gohore v. Côte d’Ivoire*, (15 July 2020) (merits and reparations) 4 AfCLR 406, § 104.

¹⁸ *Jebra Kambole v. United Republic of Tanzania* (merits and reparations) (15 July 2020) 4 AfCLR 460, § 37.

elections before national courts. The Court therefore finds that the requirement of identity of the parties has not been met.

75. In light of the foregoing, the Court finds that the allegation related to the ousting of the jurisdiction of national courts with respect to challenges to presidential elections has not been settled in accordance with the principles of the Charter, the Constitutive Act of the AU or the UN Charter. The Application therefore fulfils the requirement of Rule 50(2)(g) of the Rules.

B. Other conditions of admissibility

76. For the alleged violation related to the lack of remedies to challenge presidential elections, the Court must determine whether the other conditions of admissibility have been satisfied before examining its merits.

77. The Court notes that there is no dispute between the Parties regarding compliance with the conditions set out in Rule 50(2)(a), (b), (c), and (f) of the Rules. Even so, it must satisfy itself that these conditions have been met.

78. From the record, the Court notes that, the Applicants have been clearly identified by name, in compliance with Rule 50(2)(a) of the Rules.

79. The Court also notes that the Applicants' claim seeks to protect their rights guaranteed under the Charter. It further recalls 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. Consequently, the Court finds that the Application has met the requirement of Rule 50(2)(b) of the Rules.

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

81. With regard to whether the Application was submitted within a reasonable time in accordance with Rule 50(2)(f) of the Rules, the Court recalls that the reasonableness of the period for seizing the Court depends on the particular circumstances of each case and must be determined on a case-by-case basis.
82. In the instant case, the alleged violation relates to Article 41(7) of the Constitution of 1977. The Court must therefore determine the starting point from which the period for assessing reasonableness should be calculated. In this regard, the Court notes that the Respondent State deposited its Declaration on 29 March 2010 and therefore the Applicants could only seize the Court after that date. The Application was filed on 20 November 2020, that is, ten years, six months and 22 days after the Respondent State deposited its Declaration. The Court must therefore determine whether this period is reasonable within the meaning of Rule 50(2)(f) of the Rules.
83. The Court observes that the rationale for requiring that an application be filled within a reasonable time is to prevent the passage of time from creating impediments to adjudicating the matter, such as, death of witnesses, memory loss of witnesses or fundamental changes in evidence or circumstances.
84. The Court notes that “where an interference with the right relied on by an applicant emanates directly from legislation, the very maintenance in force of the impugned legislation may constitute a continuing interference with the right in question.”¹⁹ In such cases, the time-limit for seizing the Court does not begin to run until the situation complained of has come to an end.²⁰ The International Law Commission also buttressed the above position by stating that “in the case of a “continuing” wrongful act, however, this *dies* [a quo of the time limit] can be established only after the end of the time of commission of the wrongful act itself.”²¹

¹⁹ See ECHR: *Parrillo v. Italy* [GC] No. 46470/11, ECHR, 27 August 2015, § 109.

²⁰ *Ibid*, § 112.

²¹ Report of the International Law Commission on its 30th Session held from 8 May to 28 July, p. 91, n. 437.

85. Furthermore, the Court recalls its jurisprudence that “the essence of continuing violations is that they renew themselves every day as long as the State fails to take steps to remedy them.”²² Consequently, the violations alleged to arise from Article 41(7) of the Respondent State’s Constitution automatically renew themselves for as long as they are not remedied.²³
86. The Court notes therefore that even though it took the Applicants ten years, six months and 22 days to file the Application, the alleged violation is continuing, in that the provision barring national courts from determining petitions challenging presidential elections remains in force in the Constitution of the Respondent State. Accordingly, the time-limit does not apply as the Applicants could have seized the Court at any time while the alleged violation persisted. The Court therefore finds that the Application, insofar as the allegation on the right to challenge presidential elections is concerned, complies with Rule 50(2)(f) of the Rules.
87. The Court therefore finds that all the admissibility conditions have been met and holds that the Application is admissible with regard to the alleged violation of the right to seize the national courts to challenge presidential elections.

VII. MERITS

88. The Court recalls that the only alleged violation that is admissible concerns the lack of remedies in the Respondent State for the Applicants to challenge presidential elections. The Court will therefore examine the alleged violations of Articles 1 and 7(1) of the Charter in this regard.

²² *Kambole v. Tanzania* (merits and reparations), *supra* § 52; See also: ECHR: *Parrillo v. Italy* [GC] No. 46470/11, ECHR, 27 August 2015, §§ 109-112 and ECOWAS Court of Justice: *FAJ and others v. The Gambia*, Suit No. ECW/CCJ/APP/36/15, Judgment No. ECW/CCJ/JUD/04/18, 13 February 2018.

²³ *Kambole v. Tanzania* (merits and reparations) *Supra*, § 52.

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

89. The Applicants aver that the Respondent State failed to comply with the Court's judgments in *Reverend Christopher Mtikila v. Tanzania* and *Jebra Kambole v. Tanzania*, and therefore conducted the 2020 elections under laws that violate the rights guaranteed under the Charter. According to the Applicants, they were therefore deprived of remedies to challenge the results of presidential elections. Consequently, the Applicants argue that their right to be heard under Article 7(1) of the Charter, as well as the obligation of the Respondent State under Article 1 of the Charter to give effect to the rights guaranteed therein, were violated.
90. The Respondent State contends that it has not "failed, neglected or refused to implement the judgments of the Court". It argues that it was given a two-year period within which to implement the Court's order, which had not yet elapsed at the time the Application was filed.
91. The Respondent State further argues that the allegation regarding article 41(7) of its Constitution, which excludes the jurisdiction of national courts to adjudicate challenges to the declared winner of presidential elections, has already been settled by the Court. Furthermore, it contends that the Applicants should instead have requested a compliance hearing under Rule 81 of the Rules, as was done in *African Commission on Human and Peoples Rights v. Kenya*.

92. Article 7(1) of the Charter provides as follows: "[e]very individual shall have the right to have his cause heard."
93. The right to have one's cause heard, as enshrined in Article 7(1) of the Charter, encompasses a wide range of due process guarantees, including the right to be given an opportunity to express one's views on matters and procedures affecting one's rights, the right to bring a petition before

competent judicial or quasi-judicial authorities alleging violations of such rights, and the right to appeal to higher judicial authorities where grievances have not been properly addressed by the lower courts.²⁴

94. The Court recalls that Article 7(1) of the Charter allows every person who considers that his/her rights have been violated to bring the matter before a competent national court. In the realization of this right, the position or status of the victim or of the alleged perpetrator is irrelevant. Every complainant is entitled to an effective remedy before a competent and impartial judicial body. It is therefore the duty of all State Parties to the Charter to ensure that their judicial organs are accessible to all and that every litigant is accorded ample opportunity to present his/her claim.²⁵
95. The Court notes that the Applicants are essentially challenging Article 41(7) of the Respondent State's Constitution, which provides: "When a candidate is declared by the Electoral Commission to have been duly elected in accordance with this Article, then no court of law shall have any jurisdiction to inquire into the election of that candidate."
96. The Court recalls its judgment in *Jebra Kambole v. United Republic of Tanzania*, where it held:²⁶

In the context of the present Application, the Court notes that electoral disputes, even those related to the election of a president, implicate rights guaranteed in the Charter. Considering that decisions of the Electoral Commission in relation to the election of a president may have an effect on the rights to be enjoyed by citizens of the Respondent State, the Court finds it anomalous that citizens have not been provided with an avenue for invoking judicial scrutiny of decisions of the Electoral Commission. It is the lack of opportunity given to individuals to have recourse to judicial scrutiny of the declaration by the Electoral

²⁴ *Kambole v. Tanzania, supra*, § 96.

²⁵ *Ibid*, § 97.

²⁶ *Ibid*, § 103.

Commission of the winner of a presidential election that this Court finds to be against the values underlying the Charter.

97. The Court observes that it has already determined in the present Judgment that the issues raised in this Application were not settled by the Kambole case. Furthermore, the Court notes that the tow-year implementation period ordered in the Kambole case has no relation with this present case. Lastly, the Court notes that the Applicants were not parties to the Kambole case and therefore would not have had standing to request a compliance hearing.
98. Consequently, the Court finds that Article 41(7) of the Respondent State's Constitution ousts the jurisdiction of national courts to hear cases related to presidential elections, thereby violating Article 7(1) of the Charter.

B. Alleged violation of the obligation under Article 1 of the Charter

99. The Applicants further allege that the lack of remedies to challenge presidential elections violate Article 1 of the Charter.

*

100. The Respondent State argues that it has established mechanisms through which all election-related claims may be resolved. In this regard, it submits that its district courts and high courts have jurisdiction over electoral petitions.

101. Article 1 of the Charter provides as follows:

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

102. The Court observes that examining an alleged violation of Article 1 of the Charter requires an assessment not only of whether the Respondent State has adopted measures giving effect to the Charter, but also whether those measures are effectively implemented in order to achieve the intended object and purpose of the Charter.²⁷ In the present case, the Court finds that the Respondent State has failed to establish laws or judicial procedures through which the results of a presidential election may be challenged.

103. In these circumstances, the Court finds that the Respondent State has violated Article 1 of the Charter.

VIII. REPARATIONS

104. In relation to reparations, the Applicants pray the Court to order:

- v. That the Respondent adopt constitutional, legislative, administrative and other measures to remedy the violations of the rights of the Applicants;
- vi. That reparations to be determined in the reparations phase of this Application be granted to the Applicants.

*

105. The Respondent State did not address the issue of reparations, but simply requested that the Application be dismissed.

106. Article 27(1) of the Protocol provides that “[i]f the Court finds that there has been a violation of a human or peoples’ rights, it shall make appropriate

²⁷ *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (2018) 2 AfCLR 477, § 149-150 and *Ally Rajabu and others v. United Republic of Tanzania* (28 November 2019) (merits and reparations) 3 AfCLR 539, § 124.

orders to remedy the violation, including the payment of fair compensation or reparation.”

107. The Court also recalls that the purpose of reparations is *restitutio in integrum*, that is, they “... must, as far as possible, erase all the consequences of the wrongful act and restore the state which would presumably have existed if that act had not been committed.”²⁸

108. Measures that a State may take to remedy a violation of human rights include restitution, compensation and rehabilitation of the victim, as well as measures to ensure non-repetition of the violations taking into account the circumstances of each case.²⁹

109. In the instant case, the Court has established that the Respondent State violated the Applicants’ rights under Articles 1 and 7(1) of the Charter. It is in relation to this finding that the Court will consider the Applicants’ prayers for reparation.

A. Adoption of constitutional and legislative measures

110. The Court observes that, in appropriate cases, it has ordered Respondent States to amend their legislation in order to bring it in conformity with the Charter.³⁰ The Court also notes that it has found that Article 41(7) of the Respondent State’s Constitution violates Articles 1 and 7 of the Charter.

111. The Court further recalls that the Respondent State has not provided any information on the implementation of its decision in *Jebra Kambole v. Tanzania*, in which it was ordered to establish remedies for challenging the

²⁸ *Majid Goa Vedastus v. United Republic of Tanzania* (merits and reparations) (26 September 2019) 3 AfCLR 498 § 82; *Wilfred Onyango Nganyi and 9 Others v. United Republic of Tanzania* (reparations) (26 September 2019) 3 AfCLR 308, § 16; *Ingabire Victoire Umuhoza v. Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 19.

²⁹ *Umuhoza v. Rwanda*, *supra*, § 20.

³⁰ *Kambole v. Tanzania*, *supra*, § 118; *Legal and Human Rights Centre and Tanzania Human Rights Defenders Coalition v. United Republic of Tanzania*, ACtHPR, Application No. 039/2020, Judgment of 13 June 2023 (merits and reparations), § 178; *Bob Chacha Wangwe v. United Republic of Tanzania*, ACtHPR, Application No. 011/2020, Judgment of 13 June 2023 (merits and reparations), § 138.

results of presidential elections. The Court notes that the deadline for implementing the Kambole decision elapsed on 14 June 2022. In view of this circumstance, the Court considers that an order requiring the establishment of remedies for challenging the results of presidential elections remains warranted and that urgency behooves the Respondent State to amend its Constitution accordingly.

112. The Court therefore orders the Respondent State to take all necessary constitutional and legislative measures, within one year, to amend Article 41(7) of its Constitution and align it with the provisions of the Charter.

B. Other measures of reparations

113. The Court notes that the Applicants did not specifically request other measures of reparation, but pray the Court to order “reparations, in terms to be determined at the reparations phase of this Application.”

114. Pursuant to Article 27(1) of the Protocol, the Court may “make appropriate orders to remedy” violations. In these circumstances, the Court reaffirms that it may, by way of reparations, order the publication of its decisions *suo motu* where the circumstances of the case so require.³¹

115. In the present case, the Court notes that the violations that it has established affect a significant section of the population in the Respondent State, as they concern the possibility of challenging the results of presidential elections before national courts, a right protected under Article 7(1) of the Charter.

116. In these circumstances, the Court deems it proper to make an order, *suo motu*, for the publication of this Judgment. The Court therefore orders the

³¹ *Legal and Human Rights Centre v. Tanzania*, *ibid*, § 182; *Wangwe v. Tanzania*, *ibid*, § 143, *Centre for Human Rights and Others v. Tanzania*, *supra*, § 417.

Respondent State to publish this Judgment in English and Kiswahili, within a period of six months from the date of notification, on the websites of the Judiciary and the Ministry for Constitutional and Legal Affairs, and to ensure that the text of the Judgment remains accessible for at least one year after the date of publication.

IX. COSTS

117. Both Parties pray the Court to order the other to bear the costs.

118. The Court observes that Rule 32(2) of the Rules provides that “[u]nless otherwise decided by the Court, each Party shall bear its own costs, if any.”

119. In the instant case, the Court notes that it does not charge fees for any of its procedures. Furthermore, neither Party has provided evidence to support of its request for costs. In these circumstances, this Court rules that each Party shall bear its own costs.

X. OPERATIVE PART

120. For these reasons:

THE COURT

Unanimously:

On jurisdiction

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

On admissibility

- iii. *Dismisses* the objection to the admissibility of the Application in relation to Articles 56(4), 56(5) and 56(7) of the Charter;
- iv. *Upholds* the objection to the admissibility of the Application in relation to the non-exhaustion of local remedies on the alleged violations of Articles 2, 4, 5, 6, 7(1), 9(1), 11, 13, and 14 of Charter; and
- v. *Declares* that the Application is admissible with respect to the alleged violations of Article 1 and 7(1) of the Charter concerning the lack of remedies to challenge the presidential elections.

On merits

- vi. *Holds* that article 41(7) of the Respondent State's Constitution, violates Article 1 and 7(1) of the Charter insofar as it bars courts from inquiring into the election of a presidential candidate who has been declared elected by the Electoral Commission.

On reparations

- vii. *Orders* the Respondent State to take all necessary constitutional and legislative measures, within one year to ensure that Article 41(7) of its Constitution is amended and aligned with the provisions of the Charter; and
- viii. *Orders* the Respondent State to publish this Judgment in English and Kiswahili within a period of six months from the date of notification, on the websites of the Judiciary and the Ministry for Constitutional and Legal Affairs, and to ensure that the text of the Judgment remains accessible for at least one year after the date of publication.

On implementation and reporting

- ix. *Orders* the Respondent State to submit to it, within six months from the date of notification of this Judgment, a report on the status of implementation of the decision set forth herein, and thereafter every six months until the Court considers that there has been full implementation thereof.

On costs

- x. *Orders* that each Party shall bear its own costs.

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.



In accordance with Article 28(7) of the Protocol and Rule 70(2) of the Rules, the Joint Separate Opinion of Justice Blaise TCHIKAYA and Justice Stella I. ANUKAM is appended to this Judgment.

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.

