

# **African Court finds Tanzania in violation of the right of freedom of expression by requiring candidates for political office to join a political party**

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***Tanganyika Law Society et al v. The United Republic of Tanzania, (09/2011 and 11/2011)***

## **Summary**

In June 2013, the African Court on Human and Peoples' Rights was asked to consider whether Tanzania had violated its obligations under the African (Banjul) Charter on Human and Peoples' Rights (the Charter) and the International Covenant on Civil and Political Rights (the Covenant), by requiring any political candidate for presidential, parliamentary, or local government elections to be a member of, and sponsored by, a political party.

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The communication was submitted by the Tanganyika Law Society and the Legal and Human Rights Centre (the First Applicants), and a Tanzanian national (the Second Applicant) under the Protocol to the Charter.

## **Background**

In 1992, the Tanzanian National Assembly passed the Eighth Constitutional Amendment Act (the Eighth Act), which entered into force in the same year. The Eighth Act amended articles 39, 67 and 77 of the Tanzanian Constitution (the Constitution) to require that any candidate for presidential, parliamentary and local government elections be a member of, and sponsored by, a political party.

In 1993, the Second Applicant, Reverend Christopher Mtikila, filed a claim in the Tanzanian High Court challenging the Eighth Act amendments on the basis that they did not comply with the Constitution, and were therefore null and void. On 24 October 1994, the High Court delivered judgment in favour of the Second Applicant, declaring the amendments unconstitutional.

On 2 December 1994, the Tanzanian National Assembly passed the Eleventh Constitutional Amendment Act which prohibited independent candidates from contesting presidential, parliamentary and local government elections (the Eleventh Act). On 17 January 1995, the Eleventh Act came into effect.

In 2005, the Second Applicant lodged a further claim with the High Court, again challenging the amendments made by the Eighth and Eleventh Acts (together, the Acts), on the basis that they conflicted with the Constitution and were therefore null and void. On 5 May 2006, the High Court again delivered judgment in favour of the Second Applicant, holding that the amendments violated the democratic principles and the doctrine of basic structures enshrined in the Constitution.

In 2009, the Attorney General appealed the second High Court decision to the Tanzanian Court of Appeal. On 17 June 2010, the Court of Appeal reversed the High Court's judgment. The Court of Appeal ruled that the matter was a political one and therefore had to be resolved by Parliament. Afterwards, Parliament commenced a consultative process aimed at obtaining the views of Tanzanian citizens. This consultation remained ongoing

at the time of the African Court hearing.

On 2 and 10 June 2011 respectively, the First and Second Applicants (together, the Applicants) filed a communication with the Court under the Protocol to the Charter. The Applicants claimed that Tanzania had violated its citizens' rights of freedom of association, the right to participate in public and governmental affairs, and freedom from discrimination under articles 2, 10 and 13(1) of the Charter and articles 3 and 25 of the Covenant.

The Second Applicant also alleged that Tanzania had violated the rule of law by initiating a constitutional review process in relation to an issue that was pending before the Tanzanian courts.

### **The Committee's decision**

Regarding the admissibility of the Applicants' claims, the Court noted the primarily judicial nature of the remedies requiring exhaustion for the purposes of article 56(5) of the Charter. As such, the Court held that the Second Applicant had sufficiently exhausted the available judicial remedies. The Second Applicant was not required to have exhausted Tanzania's constitutional review process as it was a discretionary political process, dependant on the will of the majority and which could be abandoned at any time. The First Applicants were not required to exhaust local remedies as the outcome of these remedies was already known as a result of the decisions given in relation to the Second Applicant's claims. The Court therefore declared the Applicants' claims to be admissible under the Protocol.

On the merits, the Court stated that Tanzania could not rely on its internal law to justify infringements of the Charter or any other international law with which the Acts did not comply. It found a violation of the right to participate in public and governmental affairs, stressing that article 13(1) protected an individual's right to participate in the governance of their country either directly or through representatives. In this regard, the Court noted the Human Rights Committee's General Comment No. 25 which stated that no unreasonable limitations should be placed on the right to stand for election by requiring candidates to be members of political parties, either generally or in relation to specific parties. The Court also stressed that article 13(1) rights could be invoked by individuals and that there was no requirement of association with other individuals through political parties. In this regard, the Court found that the restrictions under the Acts did not fall within any of the permissible restrictions on individual rights under article 27(2) of the Charter. Such restrictions were also not proportionate to the alleged aim of national unity and solidarity.

The Court also found a violation of the right of freedom of association as the Acts compelled individuals to join or form an association before seeking elected positions, and the restrictions did not fall within any of the permissible restrictions under article 27(2) of the Charter. Further, the Court found a violation of the right to freedom from discrimination and the right to equality as the difference in treatment based on political opinion under the Acts was not justified.

In light of the above, the Committee found Tanzania to have breached articles 2, 3(2), 10 and 13(1) of the Charter in relation to both Applicants. The Court did not deem it necessary to consider the Applicants' claims under the Covenant given its findings under the Charter. It also did not find a breach in relation to the Second Applicant's claim regarding the rule of law as the claim did not allege the violation of a specific right.

The Court directed Tanzania to take constitutional, legislative and all other necessary measures to remedy the violations found by the Court within a reasonable period of time, and to inform the Court of the measures taken. The Court directed the Applicants to file their submissions on reparations within one month of the decision, in accordance with the Rules of the Court.

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