

## **THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS HAS DELIVERED JUDGEMENTS ORDERING THE GOVERNMENT OF TANZANIA TO AMEND THE NATIONAL ELECTIONS ACT AND THE CRIMINAL PROCEDURE ACT**

Today on 13<sup>th</sup> June 2023 the African Court on Human and Peoples' Rights has delivered judgement on Application No. 011/2020 – ***Bob Chacha Wangwe and Legal and Human Rights Centre Versus the United Republic of Tanzania***. The case was challenging Sections 6(1), 7(1), 7(2) and 7(3) of the National Elections Act (NEA) which permits the District Executive Directors to act as the returning officers of the general elections in Tanzania.

The African Court has held that the National Elections Act violates Article 13(1) of the Charter in so far as Section 6(1) of the NEA does not prescribe qualification criteria for persons to be appointed as Director of Elections, violates also Article 13(1) of the Charter to the extent that sections 7(2) and 7(3) of the NEA do not contain any indication of the positions in the public service that public servants must occupy to be appointed as returning officers or even an indication as to the qualifications that they must possess before they can be appointed as returning officers and lastly the court has found that the Respondent State (Tanzania) has violated Article 1 of the African Charter.

Further, the African Court has delivered judgment on ***Application No. 039 of 2020 - Legal and Human Rights Centre (LHRC) and the Tanzania Human Rights Defenders Coalition (THRDC) versus the United Republic of Tanzania***. In the case, Applicants were challenging the provision of Section 148(5) of the Criminal Procedure Act. The complaint contains a list of non-bailable offences such as *murder, treason, terrorism, money laundering, etc.*

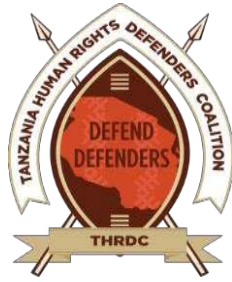
The African Court has ruled that Section 148(5) of the CPA violates Article 2 of the Charter by virtue of the operation of Sub-Sections 148(5)(b) and (e) of the CPA, the violation of Article 7(1) and 7(1)(b) of the Charter by virtue of the operation of Sub-section 148(5)(b) and (c) of

the CPA and violation of Article 1 by virtue of the operation of Sub-sections 148(5)(b), (c) and (e) of the CPA.

The complained provision is discriminatory, violates the right to be heard, the right to a fair hearing, the right to presumption of innocence and does not afford accused persons the enjoyment of fundamental rights and the right to equal protection under the laws of Tanzania as guaranteed under the African Charter on Human and Peoples' Rights, the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights. Notably, the case was filed after the Court of Appeal of Tanzania had declared that section 148(5) of the Criminal Procedure Act does not violate the Constitution of the United Republic of Tanzania, in the case of *Attorney General versus Dickson Sanga* Civil Appeal No 175 of 2020.

In all the cases, the government of Tanzania has been ordered by the court to submit within twelve (12) months from the date of notification of this judgment, a report on the status of implementation of the decision set forth herein and after that, every six (6) months until the Court considers that there has been full implementation thereof.

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**Issued by**  
**Tanzania Human Rights Defenders Coalition (THRDC)**  
**Legal and Human Rights Centre (LHRC)**  
**June 13, 2023**  
**Arusha, Tanzania**



**MAHAKAMA YA AFRIKA YA HAKI ZA BINADAMU NA WATU IMEIAMURU  
SERIKALI YA TANZANIA KUFANYA MAREKEBISHO YA SHERIA YA TAIFA YA  
UCHAGUZI NA SHERIA YA MWENENDO WA MAKOSA YA JINAI NCHINI  
TANZANIA**

Leo Tarehe 13 Juni 2023 Mahakama ya Afrika ya Haki za Binadamu na Watu imetoa uamuzi wa kesi Na 011/2020 – *Bob Chacha Wangwe na Kituo cha Sheria na Haki za Binadamu dhidi ya Jamhuri ya Muungano wa Tanzania*. Kesi hii ilikuwa inapinga kifungu cha 6(1), 7(1), 7(2) and 7(3) cha Sheria ya Taifa ya Uchaguzi ambavyo vinaruhusu wakurugenzi wa halmashauri kusimamia uchaguzi nchini Tanzania.

Mahakama ya Afrika imetoa uamuzi kwamba Kifungu cha 6(1), 7(1) na 7(3) vya Sheria ya Taifa ya Uchaguzi vinakiuka Ibara ya 13(1) ya Mkataba wa Afrika ambao unatoa haki ya kila mtu kushiriki katika uongozi wa nchi kwa kuchaguliwa au kupitia wawakilishi kwa mujibu wa Sheria. Vifungu hivyo havijataja sifa au vigezo vya mtu kuteuliwa kuwa msimamizi wa uchaguzi na mwisho Mahakama imesema kwamba Tanzania imekiuka Ibara ya 1 ya Mkataba wa Afrika ambao unatoa haki ya kila mtu kufurahia haki za msingi za binadamu.

Shauri jingine lililotolewa uamuzi leo ni Na *039/2020 - Kituo cha Sheria na Haki za Binadamu (LHRC) na Mtandao wa Watetezi wa Haki za Binadamu Tanzania (THRDC) dhidi ya Jamhuri ya Muungano wa Tanzania*. Kesi hii ilikuwa inapinga kifungu cha 148(5) cha Sheria ya Mwenendo wa Makosa ya Jinai. Kifungu hicho kina orodha ya makosa ambayo hayana dhamana kama vile; *mauaji, uhaini, ugaidi, utakatishaji fedha, n.k.*

Mahakama imetoa uamuzi kwamba kifungu cha 148(5) cha Sheria ya Mwenendo wa Makosa ya Jinai kinakiuka Ibara ya 2 ya Mkataba wa Afrika ambayo inatoa haki kwa kila mtu

kufuruahia uhuru na haki ambazo zipo kwenye Mkataba wa Afrika bila ubaguzi wa aina yoyote ile. Pia kifungu cha 148(5) kinakiuka Ibara ya 7(1) na 7(1)(b) ya Mkataba wa Afrika unaotoa haki ya mtu kusikilizwa na kudhaniwa kuwa hana kosa mpaka pale ambapo atathibitika kuwa alitenda kosa. Mwisho Mahakama imetoa uamuzi kwamba kifungu cha 148(5) kinakiuka Ibara ya 1 ya Mkataba wa Afrika ambayo inatoa wajibu kwa kila nchi mwanachama wa Mkataba kuhakikisha kwamba anatambua haki, wajibu na uhuru uliopo kwenye mkataba na kutunga Sheria kuhakikisha kwamba haki hizo zinatekelezwa.

Kesi hii ilifunguliwa baada ya Mahakama ya Rufani nchini Tanzania kutoa maamuzi kwamba kifungu hicho hakikiuki Katiba ya Jamhuri ya Muungano wa Tanzania kwenye rufaa namba *175 ya mwaka 2020 katika shauri la Mwanasheria Mkuu wa Serikali dhidi ya Dickson Sanga.*

Katika kesi zote hizi 2, Mahakama imeiamuru Serikali ya Tanzania kufanya marekebisho ya vifungu vilivyotajwa na kutoa taarifa ya utekelezaji kwenye Mahakama hiyo ndani ya miezi 12 tangu siku ya kutolewa hukumu hizo na kila baada ya miezi sita (6) hadi pale ambapo Mahakama itajiridhisha kuwa Serikali imetekeleza hukumu hizo kikamilifu.

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**Imetolewa na**

**Mtandao wa Watetezi wa Haki za Binadamu Tanzania (THRDC)**

**Kituo cha Sheria na Haki za Binadamu (LHRC)**

**Juni 13, 2023**

**Arusha, Tanzania**