

Interpretation

Application of other ratified human rights instruments

In determining whether the restriction created by the amendments to the Constitution of the United Republic of Tanzania (articles 39, 67 and 77) and the Local Authorities (Elections) Act (section 39) were an unreasonable restriction of the rights of Tanzanians to stand for elections as independent candidates, the Court considered the provisions of the African Charter, the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. The Court came to the conclusion that the only limitation to the rights guaranteed under the African Charter were those stipulated in article 27(2) of the Charter and that such limitation must necessarily take the form of a law of general application which must be proportionate to the legitimate aim pursued (*Tanganyika Law Society, The Legal and Human Rights Centre v The United Republic of Tanzania*, application 009/2011; *Reverend Christopher R. Mtikila v The United Republic of Tanzania*, application 011/2011, judgment, 14 June 2013, para 107.1). The Court therefore held that the amendments pursued by the Respondent in preventing independent candidates from contesting for public officers in Tanzania was neither within the permissible limits of article 27(2) of the Charter nor proportionate to the legitimate aim of promoting solidarity and national unity (*Mtikila*, para 107.2).

However, in a separate opinion of Judge Ougergouz, the Court stated that in determining whether an instrument such as the Treaty of the East African Community qualifies as ‘any other human rights instrument ratified by the States concerned’, regard ought to be paid to whether: (a) the instrument is an international treaty; (b) it relates to human rights, and (c) it has been ratified by the state concerned (*Mtikila (Separate Opinion of Judge Ougergouz)*, para 14).

The Court also relied on paragraph 17 of the the United Nation’s Human Rights Committee’s General Comment No. 25 on the right to participate in public affairs, voting rights and the right of equal access to public service as ‘an authoritative statement of interpretation of Article 25 of the ICCPR’ (*Mtikila*, para 105).