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A reflection on the implementation and impact of the decision of the African Court in *Jebra Kambole, Bob Chacha Wangwe & LHRC* and *Tike Mwambipile & Another*: A case study of Tanzania

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Summary: *The implementation and impact of three African Court judgments against Tanzania* – Jebra Kambole v Tanzania, Bob Chacha Wangwe & LHRC v Tanzania *and* Tike Mwambipile & Equality Now v Tanzania – *reveal the full spectrum of compliance outcomes and the power of 'extra-compliance' effects in advancing human rights despite systemic challenges across regional human rights systems. The African Court in* Jebra Kambole *ordered the amendment of article 41(7) of the Constitution to allow judicial review of presidential elections. However, five years later, Tanzania has neither amended the provision nor submitted the required report, marking clear non-compliance with the Court's decision. Yet, the ruling became a rallying point for constitutional-reform campaigns and inspired three new election-related cases before the Court. The decision in* Bob Chacha Wangwe

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found the former electoral law lacking independence safeguards. The 2024 electoral reforms that directly responded to the order of the Court introduced statutory qualifications and impartiality requirements for election officials, achieving partial compliance, though partisan returning officers remain a lingering concern and a focus of continued advocacy. Tike Mwambipile *was declared inadmissible on res judicata grounds, yet the mere filing of the case – combined with parallel regional litigation – triggered swift policy reversal. Within months following the declaration of the judgments, Tanzania ended the decades-long ban on pregnant schoolgirls, issuing re-entry guidelines that directly benefited thousands of girls. These cases demonstrate that compliance enhances the Court's legitimacy. Nonetheless, significant human rights gains can still emerge through indirect channels such as intensified public debate, accelerated legislative and policy change, civil society mobilisation and normative influence on future litigation. Embracing these broader 'extra-compliance' effects provides a more realistic and hopeful measure of the African Court's contribution to domestic human rights protection than formal compliance rates alone.*

Key words: *African Court; human rights; compliance; implementation; Tanzania*

1 Introduction

The implementation of decisions rendered by international adjudication bodies has inherent potential to strengthen the protection of the rights affirmed in those decisions.[1] Its effectiveness, as observed by Engstrom, is indicated by the extent to which the work of international human rights institutions improves human rights conditions, reduces the repetition of abuses and provides meaningful redress to victims.[2] This benchmark guides the analysis of

1 R Murray & E Mottershaw 'Mechanisms for the implementation of decisions of the African Commission on Human and Peoples' Rights' (2014) 36 *Human Rights Quarterly* 350. The implementation of decisions is understood as the process of adopting concrete administrative, legislative, executive, judicial or other relevant measures by states to give effect to adverse rulings or decisions. See R Murray and others 'Monitoring implementation of the decisions and judgments of the African Commission and Court on Human and Peoples' Rights' (2017) 1 *African Human Rights Yearbook* 152.

2 P Engstrom 'Reconceptualising the impact of the Inter-American human rights system' (2017) 2 *Revista Direito e Práxis* 1255. Research led by Prof Murray, Prof Viljoen and collaborating universities advances seven key criteria for effective implementation of decisions of international judicial bodies. These are the status of decision in domestic law; consultation with victims and other stakeholders; financial issues; ministerial engagement and ownership at the highest level; coordination; visibility; and transparency and database tracking and implementation. See R Murray 'Implementation of decisions – The experience

the decisions in *Jebra Kambole v Tanzania*,[3] *Bob Chacha Wangwe and Legal and Human Rights Centre v Tanzania*[4] as well as *Tike Mwambipile and Equality Now v Tanzania*.[5] It seeks to evaluate the degree to which their implementation and broader impact have succeeded in enhancing the protection of rights within Tanzania by bringing about tangible improvements in national law, policy and practice.[6]

The analysis of these decisions goes beyond implementation and probes the outcome of the process, namely, compliance, which is a status achieved when the law and practice of a state align with the interpreted decision of an international adjudication body.[7] Compliance is categorised into non-compliance, partial compliance and full compliance.[8] The notion of compliance, however, must be distinguished from that of impact of a decision. The latter entails a broader perspective than the direct implementation of judgments in the meaning of compliance.[9] Hanell remarks that it extends to indirect effects flowing from either compliance or non-compliance with individual cases such as ideation shifts and the empowerment of domestic actors.[10]

It is an unfortunate reality that low rates of compliance and implementation of decisions dominate adjudication across regional

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of the IACHR, EHRC, ACRWC and the AfCHPR', presentation for a seminar on the Implementation of the Decisions of the African Commission on Human and Peoples' Rights, Zanzibar 4-6 September 2018 (copy on file with author).

3 Application 18/2018 (*Jebra Kambole*).

4 Application 42/2020 (*Tike Mwambipile*).

5 Application 11/2020 (*Bob Chacha Wangwe*).

6 The selection of these cases is based on two reasons. One, they relate to controversial provisions in Tanzanian legislations and regulations. *Jebra Kambole* and *Bob Chacha Wangwe* challenge the provisions of the Constitution of Tanzania regarding election processes. *Tike Mwambipile* contests an executive decree Regulation 4 of the Education Regulations (Expulsion and Exclusion of Pupils from Schools) of 2002. Two, they emanate from a political context linked to a finding on non-compliance of judgment analysis that informs the outcome of the implementation of their decisions. The finding indicated that 'the states that have relatively high levels of equality before the law, protection of individual liberties, social class equality with regard to enjoying civil liberties, access to justice and free and autonomous election management arrangements, are less susceptible to non-compliance'. See E Yıldırım and others 'Non-compliance of the European Court of Human Rights decisions: A machine learning analysis' (2023) 76 *International Review of Law and Economics* 113.

7 Murray and others (n 1) 152. See also R Liwanga 'From commitment to compliance: Enforceability of remedial orders of African human rights bodies' (2015) 41 *Brooklyn Journal of International Law* 132 who defines it as 'a scale to which the behavior of a state conforms to a legal standard'. Engstrom (n 2) 1255; Murray & Mottershaw (n 1) 350.

8 Liwanga (n 7) 133.

9 AY Hanell 'Understanding the impact of the Inter-American Court of Human Rights' 8, https://mrfonden.se/wp-content/uploads/2020/11/ydrefelt-hanell-understanding-the-impact-of-the-inter-american-court-of-human-rights.pdf (accessed 10 June 2024).

10 As above.

human rights systems.[11] This is evident not only in existing statistical reports but also in the three decisions examined in this article.[12] Nevertheless, evaluating the implementation and impact of these decisions is essential for understanding the Court's normative contribution to the restoration of recognition and respect of human rights in Tanzania given the severe contraction of civic and political space prevailing at the time of the filing of the cases.[13]

A sharp decline in human rights observance culminated in the Tanzania's withdrawal of the article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (African Court Protocol).[14] This barred individuals and non-governmental organisations (NGOs) from accessing the African Court on Human and Peoples' Rights (African Court). As such, the cases represent an urgent effort to salvage fundamental rights through litigation. They embody a resolute struggle to reclaim genuine democracy and restore meaningful access to justice at a time when both were under severe threat.

The discussion that follows is structured in two main parts. The first part provides a concise overview of each decision, subsequent implementation and observable domestic impact. The second advances overall perspectives linked to the analysis of the decisions, such as the African Court's potential role in peace building through judicial settlement of election-related disputes. It further explores the 'extra-compliance' effect that guides the Inter-American system to

11 See, eg, Liwanga (n 7) 136.

12 E Asaala 'Assessing the mechanisms and framework of implementation of decisions of the African Court on Human and Peoples' Rights fifteen years later' (2021) *De Jure Law Journal* 431.Asaala notes a 7% rate of full compliance excluding partial compliance of African Court on Human and Peoples' Rights (African Court) decisions. Liwanga (n 7) 133 shares a study of states compliance of the Inter-American Court of Human Rights (Inter-American Court) which denotes only a 6% full compliance. See also PC Marín 'Compliance of the judgments of the Inter-American Court of Human Rights' in a paper presented for the class Public Order and the World Community with Professor Michael Reisman on Fall 2019 1-37, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3647326 (accessed 29 August 2024). Yıldırım and others (n 6) 4 on a recent machine learning analysis of non-compliance of the European Court of Human Rights (European Court) decisions which indicated 971 non-executed decisions between 2012 and 2020.

13 See arguments of the applicants in Application 36/2020 *Legal and Human Rights Centre and Tanganyika Law Society* para 8 describing the political climate in Tanzania with arrests and harassment of opposition politicians and journalists, banning of live broadcast of parliamentary sessions, which has contributed to limiting citlzens' access to information, adoption of laws and policies that restrict media freedoms and free speech and the unlawful banning of political activity including political rallies and public political gatherings.

14 Adopted 10 June 1998, entered into force 25 January 2004, OAU Doc. ESC/LEG/250 (2004).

underscore the value of looking beyond conventional compliance metrics to capture the fuller transformative influence of adjudication.

2 Case overview

2.1 Decisions

2.1.1 Jebra Kambole v Tanzania

Jebra challenged article 41(7) of the Constitution of Tanzania which prohibits courts from inquiring into the election of a presidential candidate after the Electoral Commission has declared a winner.[15] He argued that this blanket provision violates his right to nondiscrimination, right to equal protection of the law and right to have his cause heard. This is in the dimension of the right to appeal to competent national organs against acts violating his fundamental rights pursuant to articles 2, 3(2) and 7(1)(a) of the African Charter on Human and Peoples' Rights (African Charter), respectively.[16] The applicant also alleged that Tanzania violated article 1 of the African Charter binding states to obligations enshrined therein, as well as article 13(6)(a) of the Constitution of Tanzania which provides for a fair hearing, right of appeal or other remedy against a domestic court decision.[17]

The applicant sought orders directing the respondent to set up constitutional and legislative measures to guarantee the rights provided for under articles 1, 2, 3(2) and 7(1) of the African Charter. Second, the applicant prayed that the Court makes an order that the respondent report to the Court within 12 months from the date of the judgment of the matter on its implementation and consequential orders. Third, reparation focused on the prayer for the Court to order any other remedy deemed fit.

On merits, the Court held that article 41(7) of the Tanzanian Constitution violated article 2 of the African Charter as it creates an

15 *Jebra Kambole* (n 3) para 3.
16 Adopted 27 June 1981, entered into force 21 October 1986. *Jebra Kambole* (n 3) para 4. The African Charter provides for freedom from non-discrimination under art 2, right to equal protection of the law under art 3(2) and the right to appeal to competent organs against rights violation under art 7(1)(a).
17 *Jebra Kambole* (n 3) paras 5 & 6. Art 1 of the African Charter imposes state obligation to the prescribed rights, duties and freedoms enshrined under it and incorporates a duty by states to adopt legislative or other measures to give effect to them.

unjustified differentiation by allowing judicial scrutiny of electoral disputes for all candidates except presidential candidates.[18] Alongside this, the Court also found the contested Tanzanian constitutional provision in violation of the applicant's rights under article 7(1)(a) of the African Charter as it ousts the jurisdiction of local courts to consider grievances arising after the official declaration of presidential results.[19] This decision was reinforced by the failure of Tanzania to file submissions justifying a limitation of the right to have one's cause heard pursuant to article 27(2) of the African Charter.[20]

Furthermore, the Court found the respondent state in violation of article 1 of the African Charter.[21] However, it did not find Tanzania in violation of article 3(2) of the African Charter, holding that the principle of equal protection of the law does not necessarily require identical treatment in every situation, and that the applicant enjoyed the same rights as other citizens.[22]

Consequently, the Court ordered Tanzania to take all necessary constitutional and legislative measures, within a reasonable time, to ensure that article 41(7) of its Constitution is amended and aligned with the provisions of the African Charter so as to eliminate, among others, any violation of articles 2 and 7(1) of the African Charter.[23] The respondent was ordered to report to the Court within 12 months of the judgment on measures it has taken to implement the decision.[24] Recalling article 27(1) of the African Court Protocol, the Court deemed it proper to make an order *suo motu* for publication of the judgment of the matter for one year, within three months from the date of notification on the website of the judiciary and the Ministry of Constitutional and Legal Affairs.[25]

2.1.2 Bob Chacha Wangwe and Legal and Human Rights Centre v Tanzania

The applicants in this matter challenged several provisions of the National Elections Act (NEA) of Tanzania concerning the independence and impartiality of the Electoral Commission.[26] They specifically contested the Commission's power to appoint returning

18 *Jebra Kambole* (n 3) paras 82 & 83.
19 *Jebra Kambole* (n 3) para 104.
20 *Jebra Kambole* (n 3) para 102.
21 *Jebra Kambole* (n 3) para 108.
22 *Jebra Kambole* (n 3) para 89.
23 *Jebra Kambole* (n 3) para 118.
24 *Jebra Kambole* (n 3) para 119.
25 *Jebra Kambole* (n 3) para 123.
26 *Bob Chacha Wangwe* (n 5) paras 7 & 10; sec 4(1), 7(2) & 7(3) NEA.

officers exclusively from the public service; the President's authority to appoint the director of elections from among civil servants; and the practice of allowing presidentially appointed district executive directors (DEDs) – who are often members of the ruling party Chama Cha Mapinduzi – to serve as returning officers.[27] The applicants argued that these arrangements effectively permitted partisan officials to conduct elections, in breach of article 74(14) of the Constitution of Tanzania,[28] the right to participate in government and the right to equality before the law contrary.[29] They also alleged a violation of their right to non-discrimination, although they did not specifically plead any violation of article 2 of the African Charter. The applicants sought a declaration of violation of the rights cited and an order requiring Tanzania to enact constitutional and legislative reforms to guarantee electoral independence, with a report-back within 12 months.

On merits, the Court held that aspects of sections 6(1), 7(2) and 7(3) of the NEA violated article 13(1) of the African Charter by failing to guarantee the right of the applicant to participate in the government.[30] This was attributed to the lack of specific position or required qualifications in the public service that public servants must occupy or possess to be appointed a retuning officer. Accordingly, the Court ordered the respondent to take all necessary constitutional and legislative measures, within a reasonable time and without any undue delay, to amend these provisions and align them with the provisions of the African Charter in order to eliminate the violations.[31] In recognition of the critical nature of the management of electoral processes as a matter of public concern raised by the established violation, the Court applied its discretion to order on its own motion (*suo motu*) the publication of the judgment.[32] It further directed the respondent report on the implementation measures within one year from the date of notification of the judgment.[33]

27 *Bob Chacha Wangwe* (n 5) paras 8 & 9; secs 6(1) & 7(1) NEA.
28 Art 74(14) of the Constitution of Tanzania bars election officials from belonging to any political party.
29 Art 13(1) of the African Charter; arts 21(1) & (2) of the Universal Declaration of Human Rights, adopted 10 December 1948, GA Resolution 217A (III), UN Doc A/810 (1948) 71, as well as arts 26 and 25(a) and (b) of the International Covenant on Civil and Political Rights adopted 16 December 1966, entered into force 23 March 1976, UN Doc A/6316 (1966).
30 *Bob Chacha Wangwe* (n 5) paras 108 & 113.
31 *Bob Chacha Wangwe* (n 5) para 138.
32 *Bob Chacha Wangwe* (n 5) para 143.
33 *Bob Chacha Wangwe* (n 5) para 144.

2.1.3 Tike Mwambipile and Equality Now v Tanzania

The case challenged the respondent's policy enactments and declarations of permanently expelling pregnant and parenting girls from public primary and secondary schools and barring their re-admission after childbirth.[34] The applicants contended that the exclusionary policy violated Tanzania's obligations under articles 1 (state obligations under the Charter), 2 (non-discrimination), 17(1) (protection of the family and vulnerable groups) and 18(3) (protection of the rights of the woman and the child) of the African Charter.[35] They also alleged violations of provisions of other international human rights instruments ratified by the respondent state.[36]

The applicants submitted 12 prayers including a declaration of violation and orders directing Tanzania to adopt strategies, programmes and nationwide sensitisation campaigns on addressing teenage pregnancies.[37] However, the Court declared the application inadmissible, upholding one of Tanzania's preliminary objections,[38] based on three cumulative criteria developed in its jurisprudence[39] relating to the identity of the parties, the identity of the application and the existence of a first decision on merit. It concluded that the matter raised issues that had already been settled in *Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of Tanzanian girls) v the United Republic of Tanzania*.[40] Consequently, the matter was dismissed on grounds of article 56(7) of the African Charter and Rule 50(2)(g) of the Rules of Court.[41]

34 *Tike Mwambipile* (n 4) para 3.
35 *Tike Mwambipile* (n 4) paras 4(i)(a) & 4(ii)(a).
36 The African Charter on the Rights and Welfare of the Child; the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; the African Youth Charter; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; the International Covenant on Economic and Cultural Rights; the United Nations Educational, Scientific and Cultural Organisation (UNESCO) Convention against Discrimination in Education; and the Universal Declaration of Human Rights. See *Tike Mwambipile* (n 4) paras 4(i)(b)-(j) and 4(ii)(b)-(d).
37 *Tike Mwambipile* (n 4) para 19.
38 *Tike Mwambipile* (n 4) para 35.
39 *Gombert Jean-Claude Roger v Republic of Côte d'Ivoire* (Jurisdiction and Admissibility) (2018) 2 *AfCLR* 270 paraz 45 and *Dexter Eddie Johnson v Republic of Ghana* (Jurisdiction and Admissibility) (28 March 2019) 3 *AfCLR* 99 para 55; *Tike Mwambipile* (n 4) para 47.
40 Communication 12/Com/001/2019 (*LHRC*).
41 *Tike Mwambipile* (n 4) para 61. See also para 46 on the rationale behind the rule in art 56(7) of the African Charter 'to prevent states from being asked to account more than once in respect of the same allegations of human rights'. Art 56(7) of the African Charter is the Charter's equivalent of the principle of *res judicata* that bars admissibility of a matter that has been settled by same states involved according to, among others, the provisions of the African Charter. This principle is also reiterated under Rule 50(2)(g) of the Rules of Court.

2.2 Implementation

2.2.1 Jebra Kambole v Tanzania

Tanzania failed to implement the previously noted remedial orders issued in the decision of the Court in this case five years after its declaration. This is confirmed by the 2023 Activity Report of the African Court,[42] which states that 'Tanzania has not filed any progress report on implementation and its time limit to file elapsed on 31 January 2021'. This reflects non-compliance with the directive to report to the Court within 12 months of the judgment on measures taken to implement the decision. Additionally, article 41(7) of the Tanzanian Constitution has not been amended to align it with articles 2 and 7(1) of the African Charter, and Tanzania persistently bans petitioning presidential election results before domestic courts.[43]

A reflection of this evident instance of non-compliance with the decision of the Court can be better articulated when placed against the relevant political background and institutional context. In his analysis of the intersection between non-compliance of the decisions of the Court and problematic timing of adjudication, Adjoholoun classifies the decision among those cases which the Court failed to weigh the suitability of its remedies in light of Tanzania's specific political context.[44] He notes that the timing of the decision was problematic as the Court delivered the judgment in 2020, a year in which elections were scheduled.[45]

A different perspective reflecting the source of the challenge in the implementation of the decision is advanced by Magoti who provides background to the constitution-making process in Tanzania.[46] He acknowledges that the Court orders necessitates constitutional review and notes the indication provided by Tanzania in its progress reports to the Court that it could repeal the presidential results petition ban through its constitutional review process.[47] However, after the collapse of the 2012-2014 constitutional review process –

42 AU Executive Council, 44th ordinary session, 15 January-15 February 2024, Addis Ababa, Ethiopia, EX.CL/1492(XLIV).
43 See also TE Magoti 'The implementation by Tanzania of orders of the African Court on Human and Peoples' Rights requiring constitutional and legislative reform' LLM dissertation, University of Pretoria, 2024.
44 SH Adjoholoun 'A crisis of design and judicial practice? Curbing state disengagement from the African Court on Human and Peoples' Rights' (2020) 20 African *Human Rights Law Journal* 22.
45 Adjoholoun (n 44) 24.
46 Magoti (n 43) 18.
47 Magoti (n 43) 16.

whose draft Constitution was never put to a referendum and whose entire mechanism was subsequently abandoned – the pathway to any constitutional reform has been blocked. The political deadlock has therefore become one of the primary obstacles preventing Tanzania from implementing the Court's decision.

Overall, while both perspectives carry weight and are well-reasoned, arguably, they ultimately leave room for skepticism as the broader context is overwhelmingly dominated by political will on the part of Tanzania rather than mere technical or procedural hurdles.

2.2.2 Bob Chacha Wangwe and Legal and Human Rights Centre v Tanzania

Recent developments, following the *Bob Chacha Wangwe* decision, have seen the enactment of two significant laws, in early 2024, designed to overhaul the Tanzanian electoral framework. The Presidential, Parliamentary and Councillors Elections Act 2024 (PPCEA) replacing the NEA and sets up conditions for the regulation of the election of the President, members of parliament and councillors and the Independent Election Commission Act 2024 (IECA). The latter oversees the operations of the Independent Election Commission and stipulates the structure, functions and criteria for the appointment of members of the Commission as well as the director of elections. These laws introduce several targeted reforms that reflect the intention of curing violations identified in the decision of the Court.

The IECA addresses the issue raised in the decision of the Court regarding the absence of a criterion for the appointment of the director of elections under the NEA undermining article 13(1) of the African Charter. As previously noted, the Court held that the right to participate in the government of one's country (article 13(1) of the African Charter) is not violated by the mere reason that the director of elections is appointed by the President (section 6(1) of the NEA). It is rather violated by the failure of the respondent to prescribe the qualifications of persons who can be appointed as director of elections.[48] As such, under the IECA the President retains the power to appoint the director of elections. However, the law requires the appointment to be made upon the Commission's recommendations[49] and prescribes clear qualifications. These qualifications include one being a national of Tanzania by birth, a trustworthy and a person with

48 *Bob Chacha Wangwe* (n 5) paras 79 & 84.
49 Sec 17(1) Independent Election Commission Act 2024.

integrity, a holder of a university degree from a legally recognised higher education university and a senior officer in public service. [50]

Similarly, the PPCEA directly responds to the Court's finding that the previous blanket authorisation to appoint any public servant without qualifications or rank criteria under sections 7(2) and 7(3) of the NEA violate the African Charter.[51] The Court noted that the provisions granted the Electoral Commission a leeway of appointing returning officers to an unjustified width of the latitude and the danger of such latitude is the appointment of returning officers that are not fit for duty.[52] The PPCEA limits the appointment of returning officers to individuals who have never been convicted of an offence carrying more than six months' imprisonment and who have never held leadership positions in a political party.[53]

Additionally, the PPCEA tackles the applicant's allegations that some active ruling party Chama Cha Mapinduzi members serve as returning officers.[54] In its decision, the Court refrained from interfering with the issue noting that it was constrained by a clear finding on an evidential matter by the Tanzanian Court of Appeal and in ordinary terms it does not engage in exhaustive factual analyses that are best conducted by domestic courts. Nonetheless, section 6(7) of the PPCEA[55] goes beyond section 7(5) of the NEA by requiring all returning officers to swear an oath of secrecy and to formally declare that they are not active members of a political party or that they have withdrawn such membership prior embarking on the functions of that office.

In general terms, taken together, these amendments remedy the specific shortcomings highlighted by the Court in its decision. While some executive influence over appointments remains, the legislative framework now includes objective criteria, safeguards

50 Sec 17(2) Independent Election Commission Act 2024. It reads in Swahili: '(2) *Mkurugenzi wa Uchaguzi atakua na sifa zifuatazo*; (a) *awe ni raia wa kuzaliwa wa Jamhuri ya Muungano kwa mujibu wa Sheria ya Uraia Tanzania*; (b) *awe ni mtu mwaminifu na mwadilifu*; (c) *awe na shahada ya chuo cha elimu ya juu kinachotambuliwa kwa mujibu wa sharia na*; (d) *awe afisa mwandamizi katika utumishi wa umma*.'

51 *Bob Chacha Wangwe* (n 5) para 113.

52 *Bob Chacha Wangwe* (n 5) para 108.

53 Secs 6(3)(a) and (b) which reads in Swahili: *Hajawahi kutiwa hatiani katika shauri la nidhamu au kosa lolote la jinai na kuadhibiwa kwa kifungo kinachozidi miezi sita; na* (a) *Hajawahi kuwa kiongozi wa chama cha siasa.* The extent to which these qualifications are satisfactory or sufficiently align the provision of the PPCEA to the provisions of the African Charter is open for debate.

54 *Jebra Kambole* (n 3) para 111.

55 It reads in Swahili: '*Kila msimamizi wa uchaguzi na msimamizi msaidizi wa uchaguzi, kabla ya kuanza kutekeleza majukumu ya ofisi hiyo, ataapa kiapo cha kutunza siri na kutoa tamko la kujitoa au kutokua mwanachama wa chama cha siasa, mbele ya Hakimu kwa kutumia fomu itakayoainishwa*.'

against partisan official and clearer eligibility rules. Accordingly, it can be weighed that Tanzania has achieved partial compliance with the decision in the case.

2.2.3 Tike Mwambipile and Equality Now v Tanzania

Since, as previously noted, the Court declared the application inadmissible, there was no follow-up implementation or reporting obligations imposed on Tanzania. Nonetheless, the essence of this decision remains as it will be underscored in the reflection of the impact of the decision below. The mere filing and public attention surrounding the case had a significant catalytic effect despite the absence of a judgment on the merits and the subsequent absence of a formal decision to execute.

2.3 Impact

2.3.1 Jebra Kambole v Tanzania

The key impact of the Court's decision in this case stems paradoxically from the failure to implement it. The state's non-compliance with the decision has had a powerful mobilising effect directly triggering three new election-related matters before the Court (all represented by the same counsel as in *Jebra*).[56]

The first is *Legal and Human Rights Centre and Tanganyika Law Society v Tanzania*,[57] which sought a finding of contempt for Tanzania's failure to comply with the Court's earlier 2011 ruling on the ban of independent candidates from vying for elections. The second is *Legal and Human Rights Centre and Liberatus Mwang'ombe v Tanzania,*[58] which challenges article 5(2)(c) of the Constitution of Tanzania empowering Parliament to enact legislation imposing restrictive conditions to the right to vote of convicts and individuals charged with or convicted of specified criminal offences. They challenged the provisions of the NEA which disqualifies from registration to vote convicts on death row and those serving over six-month prison sentences. The applicants sought a court order directing the respondent to set up constitutional and legislative measures to guarantee the rights provided for under articles 1, 2,

56 This information was obtained during consultations with Jebra Kambole over telephone communication on 18 May 2024.
57 Application 36/2020 Ruling (Provisional Measures).
58 Application 41/2020.

3 and 13(1) of the African Charter and other international human rights instruments.[59]

The third is *Legal and Human Rights Centre v Tanzania,*[60] which challenged the mode of appointment, security of tenure and overall independence of the judiciary in the respondent state, rendering the judiciary vulnerable to undue interference by other actors, including, most notably, the President of the respondent state. The applicant argues that articles 109(1), 109(8), 110A, 112, 118 and 120A of the Constitution of the respondent are in violation of articles 1, 3 and 26 of the African Charter, article 11 of the Universal Declaration of Human Rights (Universal Declaration), article 14 of the International Covenant on Civil and Political Rights (ICCPR) and the United Nations (UN) Independence of the Judiciary Principles. These cases were filed in urgent circumstances during the one-year grace period before Tanzania's withdrawal of its declaration under article 34(6) of the African Court Protocol took full effect.[61]

Beyond the courtroom, the decision of the Court in *Jebra Kambole* is frequently cited in academic commentary on the work of the Court[62] and, most importantly, it has become a cornerstone of advocacy fuelling the ongoing national campaign for comprehensive constitutional reform. The continued existence of article 41(7) of the Constitution of Tanzania serves as a rallying point for demands to make presidential election results fully justiciable.

2.3.2 Bob Chacha Wangwe and Legal and Human Rights Centre v Tanzania

The broader impact of the decision of this case is most vividly reflected in the intense public and political reaction it sparked across the country. It triggered a wave of nationwide sensitisation, debate and advocacy throughout the legislative reform process initiated by the state aiming at correcting violations identified in the NEA.

The official call for input from the general public circulated when the draft Bills were tabled in Parliament generated heated discourses

59 See n 37.
60 Application 44/2020.
61 The Court made this procedural addition relating to withdrawal in *Ingabire Victoire Umuhoza v Republic of Rwanda* (Jurisdiction) (2016) 1 *AfCLR* 562 paras 67-68. See also TM Makunya 'Decisions of the African Court on Human and Peoples' Rights during 2020: Trends and lessons' (2021) 21 *African Human Rights Law Journal* 1232; MG Nyarko & AO Jegede 'Human rights developments in the African Union during 2016' (2017) 17 *African Human Rights Law Journal* 309.
62 Such as in Makunya's article on the voting patterns of the members of the Court in their deliberations of decisions of cases; see Makunya (n 61) 1240.

on issues of electoral integrity, gender equality and the urgent need for constitutional overhaul.[63] The momentum persisted after the enactment of the new electoral laws in March 2024 culminating in a two-day National Stakeholders Conference convened by the Tanzania Centre for Democracy to foster common understanding of the reforms ahead of the then upcoming elections.[64]

Alongside the wave of discourses, criticism of both the decision and its partial implementation grew significantly, fuelled by arguments by applicants and civil society actors pointing at the failure of the legislative changes to address the core obstacles to free, fair and credible elections. The main source of the grievance is the continued use of politically appointed officials, most notably ruling-party-affiliated DEDs, as returning officers during elections.[65]

2.3.3 Tike Mwambipile and Equality Now v Tanzania

The impact of the decision lies not in the judgment – since the application was declared inadmissible – but in the act of filing it as it added a decisive pressure on Tanzania to lift the ban on admission of pregnant and parenting girls from public primary and secondary schools after childbirth. In November 2021, a year after the application was lodged before the Court, high-level public officials, including the President, began publicly signalling its intention to reverse the

63 'Stakeholders recommend for Electoral Commission to have its staff instead of depending on council directors' *The Chanzo,* https://thechanzo.com/2024/01/04/wide-ranging-stakeholders-recommend-for-electoral-commission-to-have-its-staff-instead-of-depending-on-council-directors/ (accessed 11 June 2024); Twaweza, https://twaweza.org/tanzanias-election-rules-a-chance-to-level-the-playing-field/ (accessed 11 June 2024). The author notes: 'The … [African] Court has also said that … district executive directors are not sufficiently independent to be fairly given the role of election officials. This review is a perfect opportunity to make sure that the election laws incorporate these important court rulings.' *MwanahalisiTV Mjadala wa sharia za uchaguzi kujadiliwa muda huu, makamu wa kwanza wa Rais Zanzibar aufungua*, https://www.youtube.com/watch?app=desktop&v=OEk8O4yBkKI (accessed 11 June 2024); Mwanzo TV Plus *Mapendekezo ya mabadiliko ya sharia janjajanja ya CCM*, https://www.youtube.com/watch?v=17lMeB0qwgE (accessed 11 June 2024); Women Fund Tanzania Trust '*Mtandao wa wanawake watoa tamko kuhusu miswada ya uchaguzi*', https://wftrust.or.tz/blogs/mtandao-wa-wanawake-watoa-tamko-kuhusu-miswada-ya-uchaguzi/ (accessed 11 June 2024); Mwananchi, https://www.mwananchi.co.tz/mw/habari/kitaifa/-zitto-asema-kusainiwa-sheria-za-uchaguzi-ni-ushindi-dalili-njema-4577978 (accessed 11 June 2024); Legal and Human Rights Centre, https://x.com/humanrightstz/status/1775417497207931299 (accessed 11 June 2024).

64 Tanzania Centre for Democracy 'National stakeholders conference spurs key electoral reforms in Tanzania'.

65 Consultation done by email with Bob Chacha Wangwe on 12 May 2024. Some lawyers and activists have started signalling their intention of filing cases before domestic courts to challenge the newly adopted legislations.

policy.[66] This was followed by a publication of the Education Circular 2[67] by the Tanzanian Ministry of Education, Science and Technology clarifying introducing a re-entry policy on school drop-out students explicitly covering pregnancy by detailed 2022 Guidelines that operationalised the circular. [68]

Notably, the filing of this case amplified the already-voiced concerns from domestic civil society advocacy[69] and parallel litigation before regional human rights adjudication bodies such as the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) and the East African Court of Justice. Although the matter was filed in November 2020, 17 months after the *LHRC* case that was lodged in June 2019, both cases ran in parallel until 2022. The decision on *LHRC* was delivered between March and April 2022, while that of *Tike Mwambipile* was delivered in December 2022. By implication, the filing of the case created sustained multi-forum pressure that culminated in the policy reversal.

Additionally, the case had a positive impact in the execution of the litigation strategy of the applicants which, on the one hand, tested the ability of Tanzania to comply with the decision on pregnant school girls even while resisting other judgments.[70] On the other hand, as premised by De Silva and Plagis, the applicant's strategy deliberately sought to spotlight the violation and sustain a continent-wide

66 MK Amiri 'Re-entry of adolescent mothers into secondary education in a context of social exclusion: The case of Igunga, Tanzania' Master of Arts in Development Study research paper, Erasmus University, 2022 1, https://thesis.eur.nl/pub/65375/Mwashamba-Kapipi-Amiri-Re-entry-of-Adolescent-Mothers-into-Secondary-Education-in-a-context-of-Social-Exclusion.-The-Case-of-Igunga-Tanzania.pdf accessed 04 June 2024; S Davis 'Tanzania ends ban of pregnant girls in schools' *The Progress Network*, https://theprogressnetwork.org/tanzania-ends-pregnant-student-ban/ (accessed 9 June 2024); D Ndalu 'Tanzania's Samia Suluhu allows teen mothers back in class' *The East African*, https://www.theeastafrican.co.ke/tea/news/east-africa/samia-allows-student-mothers-back-in-class-3630190 (accessed 9 June 2024); A McCool 'Tanzania to lift ban on teenage mothers returning to school' *The Guardian*, https://www.theguardian.com/global-development/2021/nov/26/tanzania-to-lift-ban-on-teenage-mothers-returning-to-school (accessed June 2024).

67 https://www.moe.go.tz/sw/nyaraka/waraka-wa-elimu-na-2-wa-mwaka-2021-kuhusu-kuingia-tena-shule-kwa-wanafunzi-wa-shule-za (accessed 9 June 2024).

68 Msichana Initiative 'Implication of re-entry policy in Tanzania', https://msichana.or.tz/implication-of-re-entry-policy-in-tanzania/ (accessed 8 June 2024); J Boxer Harvard Law Petrie-Flom Centre 'Two years on: The reversal of Tanzania's Education Policies for adolescent mothers', https://blog.petrieflom.law.harvard.edu/2023/11/20/two-years-on-the-reversal-of-tanzanias-education-policies-for-adolescent-mothers/ (accessed 9 June 2024).

69 A Odhiambo 'Tanzania must lift cruel ban on teen mothers returning to school' *Human Rights Watch*, https://www.hrw.org/news/2017/07/03/tanzania-must-lift-cruel-ban-teen-mothers-returning-school (accessed 5 June 2024).

70 N de Silva & MA Plagis 'NGOs, international courts and state backlash against human rights accountability: Evidence from NGO mobilisation against Tanzania at the African Court on Human and Peoples' Rights' (2023) 57 *Law and Social Review* 52.

advocacy momentum regardless of the formal outcome.[71] Ultimately, the applicants publicly welcomed the policy shift as a commendable step despite its being prone to the influence of political pragmatism that legal obligations purely geared at protecting the girls' rights. In light of this development, the applicants could apply the outcome of the litigation strategy as a reference point in refining their future advocacy strategies.[72]

Overall, the case generated lasting ripple effects. It attracted sustained international attention and would shape subsequent strategies on women's rights, particularly pertaining to litigation in the African Court.[73] The case stirred fresh academic research into the implementation of the re-entry policy across Tanzania.[74]

3 Concluding reflection points

3.1 Judicial resolution of election-related rights violations

The analysis of the *Jebra Kambole* and *Bob Chacha Wangwe* cases illustrates what Kakai terms the 'judicialisation of electoral contests' at the African Court.[75] Amid the proliferation of election-related political crises across Africa, judicial adjudication has emerged as a potential component of the electoral dispute resolution architecture on the continent. As previously remarked in the introduction and case overview, the two matters together with the three follow-up applications lodged by Jebra emanate from systemic rights violations embedded in the Constitution of Tanzania and the normative electoral framework. Collectively, they showcase the African Court's increasingly prominent 'rule-evaluation' function that manifests in

71 As above.

72 Judy Gitau, regional coordinator for Africa at Equality Now and Tike Mwambipile, executive director of the Tanzania Lawyers Association, as quoted by A McCool. 'We are excited with this announcement for now, so let us celebrate. Then after we have recovered from the excitement, we have to see how best to do more advocacy', said Tike. 'The statement indicates goodwill and is a move in the right direction. However, it does not address the root of the problem, nor does it protect girls from discriminatory laws or the whims of political actors' said Judy.

73 See presentation by Mary Kimemia during a 'Training on the rights of women and engagement with the African Court on Human and Peoples' Rights' organised by the Coalition for an Effective African Court on Human and Peoples' Rights 28-30 November 2022, https://africancourtcoalition.org/african-court-coalition-presentations-on-the-rights-of-women-and-engagement-with-the-african-court-on-human-and-peoples-rights/ (accessed 9 June 2024).

74 Amiri (n 66); E Kassanga & C Lekule 'Effectiveness of non-governmental organisations' activities in basic education in supporting school dropped out girls in Shinyanga region, Tanzania' (2023) 3 *EAJES* 14-25.

75 GW Kakai 'The role of continental and regional courts in peace-building through the judicial resolution of election-related disputes' (2020) 4 *African Human Rights Yearbook* 349.

its systemic review of violation of human rights standards stemming from domestic electoral laws and practices.[76]

3.2 Impact of the submission over merit

Conventionally, the transformative power of the decisions of international adjudication bodies is expected to flow from decisions rendered on the merit of the cases. Yet, *Tike Mwambipile* powerfully demonstrates the contrary, that even when an application is dismissed for not meeting admissibility requirements and never reaches the merit stage, the mere act of filing can generate substantial impact. Their strategy of litigating the matter before the African Court translated into a renewed and decisive pressure on Tanzania that amplified human rights activism and directly contributed to the policy reversal that ended the ban on admission of pregnant schoolgirls from public school after childbirth. This outcome validates the applicant's strategic choice to litigate as the filing of the case itself triggered the very law and policy reforms the litigation sought even though the matter was not decided on its merits. This proves that strategic recourse to the jurisdiction of the African Court can yield concrete human rights gains even in the absence of a favourable (or any) ruling on merits.

3.3 Rethinking compliance – The extra-compliance effect

In the effort to strengthen the perceived effectiveness of international human rights adjudication for rights promotion and protection through the compliance of their decisions, scholars increasingly look beyond traditional compliance theory and explore alternative indicators of impact.[77] They recognise that, while compliance remains essential, it is often insufficient,[78] especially when it fails to resolve underlying violations, as seen in *Bob Chacha Wangwe*, where the 2024 reforms retained politically appointed DEDs as returning officers.[79] Strikingly, major human rights advances can occur in the complete absence of compliance or even of a judgment on merits, as illustrated in *Tike Mwambipile*. These realities underscore the need to explore and harness the extra-compliance effect of the decisions.

Drawing on the Inter-American experience, Engstrom advances three dimensions that shift the focus from the traditional rule

76 Kakai (n 75) 352.
77 Hanell (n 9) 7.
78 Engstrom (n 2) 1254.
79 Hanell (n 9) 7.

compliance models to broader transformative approaches geared at amplifying the potential of the impact of its adjudication. The first relates to the normative and institutional development of the human rights system itself focusing on its role in advancing, interpreting and enforcing human rights standards.[80] He provides an account of the Inter-American system's progressive expansion of its policies on reparations from mere monetary awards to far-reaching structural remedies such as legislative reform, criminal prosecution of perpetrators and public apologies.

This trajectory can inspire the normative and institutional development in the African human rights system for transformative enforcement of human rights standards. It can motivate innovation beyond the African Court's current standard orders and context-specific high remedies with heightened impact.[81] It also has the potential of encouraging bolder orders in contempt-affiliated cases that explicitly demand systemic state reform and mobilise public opinion. [82] Additionally, the institutional development dimension is potential for greater collaboration particularly in the context of the African Court and African Commission. As suggested by Murray, the two AU organs would need to collaborate and discuss how to send cases to each other in a way that reinforces and strengthens each body, their decisions and their implementation. This, in other words, is an avenue for further exploring the complementarity arrangement of the two institutions to achieve the implementation and impact of the Court's decisions at the domestic level.

The second dimension is the increased insertion into domestic policy, legislative and judicial debates across the region.[83] Engstrom expresses the view that shaping human rights implementation necessitates human rights scholarship discourses among various state institutions and officials.[84] This aligns with the routine of the African Court that thrives to involve state institutions and actors in processes of implementation.

The third dimension relates to the empowerment of domestic and transnational human rights advocacy networks to fuel change

80 Engstrom (n 2) 1257.
81 One of the current standard orders of the Court is directing Tanzania to publish judgments on the websites of the respondents' ministries and judiciary – normally widely ignored and of limited reach in low internet-access countries.
82 This shift may apply in one of the additional cases filed by Jebra whose prayer to the Court is to declare that the respondent has disobeyed the decisions of the Court to demand for state reforms. See also Engstrom (n 2) 1258.
83 Engstrom (n 2) 1258.
84 As above.

in their domestic political and legal systems.[85] Engstrom alludes to the increasing judicialised processes of compliance in the Inter-American human rights system whereby the domestic judiciaries play more prominent roles as arenas of human rights compliance.[86] He suggests studies of domestic judicial actors and institutions that act as 'compliance constituencies'.[87]

All in all, the three dimensions offer an innovative roadmap that cultivates a broader normative ripple effect rather than measuring the success solely by whether a state ticks every remedial box. The discussed Tanzania cases prove that the extra-compliance effect is not only possible, but often the most powerful legacy of international adjudication.

85 As above.
86 According to Engstrom, '[a] unique aspect of the Inter-American Court's relationship to domestic judiciaries is the doctrine of conventionality control, which says that all state actors must review laws under the American Convention, and not apply laws found to be in violation of it'. See Engstrom (n 2) 1266.
87 Engstrom (n 2) 1259.