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AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

THE MATTER OF

LADISLAUS CHALULA

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION No. 003/2018

JUDGMENT

5 FEBRUARY 2025

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

In accordance with Article 22 of the Protocol to the African Charter on Human and Peoples' Rights establishing the African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") and Rule 9(2) of the Rules of the Court (hereinafter referred to as "the Rules"),[1] Justice Imani D. Aboud, President of the Court and a national of Tanzania, did not hear the Application.

In the Matter of

Ladislaus CHALULA

Represented by:

Donald Omondi DEYA, Chief Executive Officer, Pan African Lawyers Union

Versus

UNITED REPUBLIC OF TANZANIA

Represented by:

i. Dr. Boniphace Nalija LUHENDE, 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, Assistant Director, Constitution, Human Rights and Election petitions; Office of the Solicitor General.

[1] Rule 8(2) of the Rules of 2 June 2010.

After deliberation,

Renders this judgment:

I. THE PARTIES

1. Mr. Ladislaus Chalula (hereinafter referred to as "the Applicant") is a national of Tanzania, who at the time of filing this Application, was incarcerated in Uyui Central Prison (Tabora) while awaiting execution after being convicted and sentenced to death for murder on 31 March 1991. He alleges the violation of his rights in the course of the proceedings before domestic courts.

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 the Protocol on 10 February 2006. It deposited, on 29 March 2010, the Declaration under Article 34(6) of the Protocol through which it accepted the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organisations (hereinafter referred to as "the Declaration"). On 21 November 2019, the Respondent State deposited, with the Chairperson of the African Union Commission, an instrument withdrawing its Declaration. The Court held that this withdrawal did not have any effect on pending cases as well as new cases filed before 22 November 2020, which is the day on which the withdrawal took effect, being a period one year after its deposit.[2]

[2] *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, § 38.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the record that, on 31 March 1991, the Applicant who was travelling with a friend on foot to Kanyega goldmines, murdered Mr. Selemani Abdulla Rai whom they met on the way by using a machete, in a bid to rob him of his possessions. The Applicant and his friend were subsequently arrested and charged with the murder of the said Selemani Abdullah Rai. However, the Applicant's friend was released two years later, after the prosecution filed a notice of *nolle prosequi* in his respect.

4. On 7 March 1995, the Applicant was convicted of murder and sentenced to death by the High Court of Tanzania sitting in Sumbawanga, Rukwa Region. The Applicant appealed the High Court's decision to the Mbeya Court of Appeal and on 10 June 1999, the latter Court rejected the appeal in its entirety and upheld the conviction for murder as well as the death sentence.

B. Alleged violations

5. The Applicant alleges violations of his rights by the Respondent State as follows:

    i. The right not to be discriminated against protected under Article 2 of the Charter;
    ii. The right to equal protection of the law protected under Article 3 of the Charter;
    iii. The right to life protected under Article 4 of the Charter; and
    iv. The right to a fair trial protected under Article 7(1)(c) of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

6. The Application was filed on 19 February 2018 and served on the Respondent State on 23 July 2018.

7. On 13 February 2019, the Court granted the Applicant legal aid given the fact that he was on death-row.

8. The Parties filed their pleadings on merits and reparations within the time prescribed by the Court.

9. Pleadings were closed on 29 October 2021 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

10. In the Application, the Applicant prays the Court to:

    i. Declare the Application admissible;
    ii. Set aside the conviction and death sentence imposed upon the Applicant and remove him from death row and release him from prison;
    iii. Order the Respondent State to pay him and his close relatives damages as reparation for the material and moral harm suffered;
    iv. Order any other measure that the Court deems appropriate in the circumstances.

11. The Respondent State prays the Court to grant the following orders with regard to the jurisdiction and admissibility of the Application:

    i. Declare that the Court lacks jurisdiction to adjudicate the Application;
    ii. Find that the Application does not meet the admissibility requirements stipulated under Rule 40(6) of the Rules[3];

[3] Rule 50(2)(f) of the Rules of Court of 25 September 2020.

iii. Declare the Application inadmissible; and
iv. Dismiss the Application.

12. On the merits and reparations, the Respondent State prays the Court for the following orders:

i. Find that the Respondent State did not violate the Applicant's rights provided under Article 2 of the Charter;
ii. Dismiss the Applicant's prayer for reparations;
iii. Order the Applicant to bear the costs of this Application.

V. JURISDICTION

13. Pursuant to Article 3 of the Protocol:

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 instruments ratified by the States concerned.
2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

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

15. Based on the above-mentioned provisions, the Court must, in each case, conduct a preliminary examination of its jurisdiction and rule on objections to jurisdiction, if any.

16. In the instant case, the Court notes that the Respondent State raises objections to its jurisdiction regarding two aspects thereof, namely, i) material jurisdiction and ii) temporal jurisdiction. The Court will rule on these objections before considering other aspects of its jurisdiction, if necessary.

A. Objection to material jurisdiction

17. The Respondent State submits that the Court has no material jurisdiction to adjudicate the matter as the Applicant is seeking his release from prison. It is the Respondent State's submission that the Court would be acting as an appellate court if it were to determine the Application. The Respondent State concludes that the Court lacks jurisdiction to hear the Application.

18. In support of its objection, the Respondent State recalls the decision of the Court in *Alex Thomas v. United Republic of Tanzania* at paragraph 157, where the Court held that: "an order for the Applicant's release from prison can be made only under very specific and/or, compelling circumstances. In the instant case, the Applicant has not set out specific or compelling circumstances that would warrant the Court to grant such an order".

19. The Respondent State contends that in the present case, the Applicant did not demonstrate exceptional or compelling circumstances for the Court to issue an order for his release. The Respondent State therefore argues that such an order is outside the jurisdiction of this Court.

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20. The Applicant asserts that the Court has jurisdiction over an application as long as the subject matter of the application involves alleged violations of human rights protected by the Charter or any other international human rights instruments ratified by a Respondent State. He adds that the request for his release falls within the jurisdiction of the Court under the provisions of the Charter and the Protocol. According to the Applicant, although this Court is not a court of appeal for domestic courts' decisions, nothing prevents it from considering the extent to which proceedings before domestic courts comply with standards set out in the Charter and other international human rights instruments to which the Respondent State is a party. The Applicant further submits that the Court had previously issued an

order for release in the case of *Mgosi Mwita Makungu v. United Republic of Tanzania*.

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21. The Court recalls that, in accordance with Article 3(1) of the Protocol, it is competent to hear all cases brought before it, whenever they relate to allegations of violations of the rights under the Charter or any other human rights instrument to which the Respondent State is a party.[4]

22. The Court notes that the Respondent State's objection to its material jurisdiction is framed in two limbs: first, whether the Court has jurisdiction to re-examine matters decided by domestic courts, and second, the extent to which the Court has jurisdiction to quash and set aside the Applicant's conviction and sentence imposed in accordance with the applicable laws of the Respondent State.

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23. With regard to the first limb of the objection, the Court reiterates its established case-law that "although it is not an appellate body with respect to decisions of national courts,[5] this does not preclude it from examining proceedings of the said courts in order to determine whether they were conducted in accordance with the standards set out in the Charter or any other human rights instruments ratified by the State concerned."[6]

24. Therefore, in the present Application, the Court would not be sitting as an appellate court, if it were to examine the allegations made by the Applicant even though they relate to the assessment of evidentiary issues during the proceedings that led to the conviction of the Applicant. Consequently, this limb of the objection is dismissed.

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[4] *Umalo Mussa v. United Republic of Tanzania*, ACtHPR, Application No. 031/2016, Judgment on 13 June 2023, § 19.
[5] *Umalo Mussa v. Tanzania*, *supra*, § 21; *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania* (merits) (23 March 2018), 2 AfCLR 287, § 35.
[6] *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 33.

25. With regard to the second limb of the objection, the Court reiterates that pursuant to Article 3(1) of the Protocol, it is empowered to make appropriate orders on reparations, if it finds a violation of the rights guaranteed by the Charter or any instrument ratified by the Respondent State. Furthermore, the Court may make an order for restitution, where it finds that an applicant has demonstrated specific and compelling circumstances warranting such an order. Consequently, the Court observes that issuing an order to quash and set aside an applicant's conviction and sentence where the requirements are met is well within its jurisdiction. The second limb of the objection is thus equally dismissed.

26. In light of the above, the Court dismisses the Respondent State's objection and finds that it has material jurisdiction to consider the present Application.

B. Objection to temporal jurisdiction

27. The Respondent State objects to the temporal jurisdiction of the Court arguing that the alleged violations occurred prior to the ratification of the Protocol. It further submits that the alleged violations are not ongoing. He avers that the Applicant is serving a lawful sentence for the commission of an offence as provided by statute.

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28. The Applicant argues that he is incarcerated on death row and that therefore he is in a situation of extreme gravity with a strong likelihood of suffering irreparable harm. In this regard, he argues that the alleged violations are of a continuing nature and therefore the Court is vested with temporal jurisdiction to hear this case.

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29. The Court notes that, in accordance with the principle of non-retroactivity of law, it cannot examine allegations of human rights violations that occurred before the entry into force of the obligations arising from instruments to

which the Respondent State became a party unless the alleged violations are of a continuing nature.[7]

30. The Court notes that the alleged violations in the present Application resulted from the judgments of the High Court and the Court of Appeal of the Respondent State issued on 7 March 1995 and 10 June 1999 respectively, that is, after the Respondent State became a party to the Charter on 21 October 1986 and before becoming a party to the Protocol on 29 March 2010.

31. The Court also notes that the alleged violations continued after that date as the Applicant remains convicted on the basis of what he considers as an unfair process that led to his conviction of murder and sentence to death by the High Court of Tanzania sitting in Sumbawanga.[8]

32. Given the preceding, the Court dismisses the Respondent State's objection and finds that it has temporal jurisdiction to examine this Application.

C. Other aspects of jurisdiction

33. The Court observes that no objection has been raised with respect to its personal and territorial jurisdiction. Nonetheless, in line with Rule 49(1) of the Rules,[9] the Court must satisfy itself that all aspects of its jurisdiction have been met.

34. With regard to its personal jurisdiction, the Court recalls, as indicated in paragraph 2 of this Judgment, that the Respondent State is a party to the Protocol and deposited the Declaration. Subsequently, on 21 November 2019, it deposited with the Chairperson of the African Union Commission

[7] *Evodius Rutechura v. United Republic of Tanzania* (merits and reparations) (26 February 2021) 5 AfCLR 7, § 29(i).
[8] *Mtikila v. United Republic of Tanzania* (merits), *supra*, § 84; *Kennedy Ivan v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 48, § 29(ii); *Beneficiaries of Norbert Zongo and Others v. Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 197, §§ 71-77.
[9] Rule 39(1) of the Rules of 2 June 2010.

an instrument withdrawing its Declaration. The Court recalls its jurisprudence that the withdrawal of the Declaration does not apply retroactively and only takes effect 12 months after the notice of such withdrawal has been deposited, in this case, on 22 November 2020. This Application, having been filed before the Respondent State's withdrawal came into effect, is thus not affected by it. Consequently, the Court holds that it has personal jurisdiction to hear this Application.

35. With regards to its territorial jurisdiction, the Court notes that the violations alleged by the Applicant happened within the territory of the Respondent State, which is a party to the Protocol. In the circumstances, the Court finds that its territorial jurisdiction is established.

36. In light of all the above, the Court finds that it has jurisdiction to determine the present Application.

VI. ADMISSIBILITY

37. Pursuant to Article 6(2) of the Protocol, "The Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter".

38. In line with Rule 50(1) of the Rules, "the 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."

39. The Court notes that Rule 50(2) of the Rules, which in substance restates the provisions of Article 56 of the Charter, provides as follows:

> 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 seized 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.

40. The Court notes that the Respondent State raises objections to the admissibility of the Application in relation to (A) non-exhaustion of local remedies and (B) the Application having not been filed within a reasonable time. The Court will thus consider these objections before examining other conditions of admissibility, if necessary.

A. Objection based on non-exhaustion of local remedies

41. The Respondent State submits that the present Application does not fulfil the admissibility condition under Article 56(5) of the Charter, which requires that seizure of the Court shall be after exhaustion of local remedies, if any, unless such remedies have been unduly prolonged.

42. The Respondent State argues that even though the Applicant claims that he was not notified of the date of the hearings of his appeal, which led him to miss the hearings, he still had the opportunity to raise this allegation in

his application for review of the Court of Appeal's judgment in accordance with Rule 65(1) of the Court of Appeal Rules of 2009.

43. The Respondent State further stresses the requirement of exhaustion of local remedies by citing the jurisprudence of this Court in *Urban Mkandawire v. Malawi* and *Peter Joseph Chacha v. Tanzania*, as well in *Peter Joseph Chacha v. Tanzania* in which the Court dismissed the Applications for failure to the said requirement.

44. The Respondent State submits that the Applicant never attempted to exhaust local remedies prior to filing the present Application, and as such, did not provide the Respondent State with an opportunity to remedy the alleged violations. It therefore argues that it is inappropriate for the Applicant to raise these issues before this Court, as they could have addressed them in the national judicial system of the Respondent State.

45. It avers that such remedies are available to the Applicant and that there is no delay when using them. The Respondent State therefore prays the Court to dismiss the Application for non-exhaustion of local remedies.

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46. The Applicant on his part refutes the Respondent States argument and avers that local remedies were fully exhausted when the Court of Appeal, being the highest court of the Respondent State, dismissed his appeal. In support of his submission, the Applicant refers the Court's decision in *Nguza Viking v. Tanzania* where the Court held that, "[t]he domestic judicial authorities thus had ample opportunity to address these allegations even without the Applicants having raised them explicitly. It would therefore be unreasonable to require the Applicants to file a new application before the domestic courts to seek redress for these claims."[10]

[10] *Nguza Viking v. United Republic of Tanzania* (merits) (23 March 2018) 2 AfCLR 287, § 53.

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47. The Court notes that pursuant to Article 56(5) of the Charter, whose provisions are restated in Rule 50(2)(e) of the Rules, any application filed before it shall fulfil the requirement of exhaustion of local remedies, unless the same are unavailable, ineffective and insufficient or unless the domestic proceedings thereof are unduly prolonged. The rule of exhaustion of local remedies aims at providing states the opportunity to resolve cases of alleged human rights violations within their internal system before an international human rights body is called upon to determine the State's responsibility for same.[11]

48. Regarding the Respondent State's argument that the Applicant was required to file an application for review of the judgment of the Court of Appeal, the Court has consistently held that this remedy in the Respondent State's judicial system is an extraordinary remedy that the Applicant is not required to exhaust prior to seizing this Court.[12]

49. In the present case, the Court notes that the Applicant's appeal to the Court of Appeal, the highest judicial organ of the Respondent State, was decided upon when the said Court dismissed it in its judgment of 10 June 1999 and upheld the judgment of the High Court. The Respondent State thus had the opportunity to address the alleged violations raised by the Applicant which allegedly ensued from his trials and his appeal.

50. As regards the exhaustion of domestic remedies, the Court notes that the Applicant's case was decided by three courts, namely the District Court, the High Court sitting in Sumbawanga and the Court of Appeal sitting in Mbeya, in Case No. 6 of 1998. The Court of Appeal, which is the highest court in the Respondent state, dismissed the case.

[11] *African Commission on Human and Peoples' Rights v. Kenya* (merits), *supra*, §§ 93-94.
[12] *Christopher Jonas v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 101, § 44.

51. Consequently, the Court finds that local remedies were exhausted as envisaged under Article 56(5) of the Charter and Rule 50(2)(e) of the Rules and therefore, dismisses the Respondent State's objection in this regard.

B. Objection based on failure to file the Application within reasonable time

52. The Respondent State avers that the judgment of the Court of Appeal in Criminal Case No. 6 of 1998 was issued on 10 June 1999 and that the Applicant filed his Application before this Court on 19 February 2018. The Respondent State submits that it deposited the Declaration on 29 March 2010. Thus, according to the Respondent State, eight years elapsed between the Respondent State acceptance of the jurisdiction of the Court and the filing of this Applicant.

53. The Respondent State submits that while it cannot be controverted that the Court did not specify what constitutes reasonable time for the filing of applications, a review of its jurisprudence reveals that the Court opted to deal with the reasonableness of time on a case-by-case basis as exemplified in *Norbert Zongo and Others v. Burkina Faso* and *Mohamed Aboubakari v. Tanzania*.

54. Accordingly, the Respondent State prays the Court to find that the period of eight years does not fall within the parameters of reasonable time. It is the Respondent State's contention that since the conditions of admissibility are cumulative the Court should declare the Application inadmissible.

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55. The Applicant disputes the Respondent State's submissions and contends that his Application was filed within a reasonable time. He avers that the Court's position has been to deal with the matter on a case-by-case basis. According to the Applicant, the main factors to be considered in this regard are the fact that the applicant is incarcerated with limited movement, is illiterate, has limited access to information, is lay in matters of law and

indigent, does not have legal assistance during domestic proceedings and was not aware of the existence of this Court.

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56. The Court reiterates that neither the Charter nor the Rules specify the exact time within which Applications must be filed, after exhaustion of local remedies. Article 56(6) of the Charter and Rule 50(2)(f) of the Rules merely provide that Applications must be filed "… within 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 seized with the matter". These provisions thus set out two processes for assessing reasonableness of time within the meaning of Article 56(6) of the Charter.

57. In the instant case, the Court notes that the Applicant exhausted local remedies when the Court of Appeal dismissed his appeal on 10 June 1999. However, given that this date precedes that of the deposit of the Declaration on 29 March 2010, the Court will assess reasonableness of time based on the second process provided for under Article 56(6) of the Charter, that is the commencement of the time-limit within which it ought to have been seized with the matter. Going by this standard, the date of deposit of the Declaration will be considered in assessing reasonableness of time to file the present Application.

58. The Court notes that between the deposit of the Declaration on 29 March 2010 and the filing of the Application, on 19 February 2018, a period of time of seven years, ten months and 21 days elapsed.

59. The Court notes, however, that the period between 2007 and 2013 marks the years of the Court's inception. As the Court has previously held, during the said period, members of the public, let alone persons in the situation of the Applicant in the present case, could not be presumed to have been sufficiently aware of the Court's existence so as to file their applications soon after exhaustion of local remedies. Therefore, the period to be taken

into account in assessing the reasonableness of the time frame for filing the Applications is the period commencing from 2013, the date on which the public would have known about the existence of the Court, to 2018, the year in which the Application was filed, which period is four years.[13]

60. The Court recalls its jurisprudence that "… the reasonableness of the timeframe for seizure depends on the specific circumstances of the case and should be determined on a case-by-case basis." In assessing reasonableness, this Court has previously considered, *inter alia*, the fact that an applicant is incarcerated, on death row, limited mobility and access to information, lay in law, had not received legal assistance, and had no knowledge of the existence of the Court.[14]

61. In the present case, the Court notes that the Applicant was incarcerated and on death row since his sentencing in 1999, resulting in limited movement and access to information and, therefore, according to the jurisprudence of the Court, the perceived delay of filing the Application before the Court was justified.

62. Given these findings, the Court holds that the Applicant filed the present Application within a reasonable time as construed under Article 56(6) of the Charter whose provisions are restated in Rule 52(2)(f) of the Rules and thus dismisses the Respondent State's objection on this point.

C. Other conditions of admissibility

63. The Court notes that there is no contention regarding compliance with the conditions set out in Rule 50(2)(a), (b), (c), (d) and (g) of the Rules. Even so, it must satisfy itself that these conditions are met.

[13] *Igola Iguna v. United Republic of Tanzania*, ACtHPR, Application No. 020/2017, Judgment of 1 December 2022 (merits and reparations), § 39.
[14] *Chrizostom Benyoma v. United Republic of Tanzania* (merits and reparations) (30 September 2021) 5 AfCLR 360, § 60; *Amini Juma v. United Republic of Tanzania* (merits and reparations) (30 September 2021) 5 AfCLR 431, § 60.

64. From the records on file, the Court notes that the Applicant has clearly been identified by name, in fulfilment of Rule 50(2)(a) of the Rules.

65. The Court notes that the claims made by the Applicant seeks to protect his rights guaranteed under the Charter. It further notes 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. Furthermore, nothing on file indicates that the Application is incompatible with the Constitutive Act of the African Union. It follows that the Application fulfils the requirement set out in Rule 50(2)(b) of the Rules.

66. The Court, on the other hand, notes that the Application does not contain disparaging or insulting language towards the Respondent State, its institutions or the African Union, making it in conformity with the requirements of rule 50(2)(c) of the Rules.

67. The Court also notes that the Application is not based exclusively on news broadcast through mass media, but on judicial documents issued by the judicial authorities of the Respondent State. Accordingly, the Application is in conformity with rule 50(2)(d) of the Rules.

68. The Court further notes that the Application does not raise any matter that has already been settled in compliance with the principles of the Charter of the United Nations or the Constitutive Charter of the African Union, within the meaning of rule 50(2)(g) of the Rules.

69. Accordingly, the Court finds that the Application fulfils all the admissibility requirements of Article 56 of the Charter, as restated in Rule 50(2) of the Rules, and therefore declares the Application, admissible.

VII. MERITS

70. The Applicant alleges that the Respondent State violated his following rights:

    i. The right not to be discriminated against protected under Article 2 of the Charter;
    ii. The right to 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 fair trial, protected under Article 7(1)(c) of the Charter.

A. Alleged violation of the right to non-discrimination

71. The Applicant alleges that the Respondent State violated his right to non-discrimination protected under Article 2 of the Charter.

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72. The Respondent State contends that the Applicant had the opportunity to defend his case and present his evidence. According to the Respondent State, the Applicant does not demonstrate that he was discriminated against but only makes general allegations that were not substantiated which as the Court held are not sufficient and need to be proven as in *Alex Thomas v. Tanzania*.

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73. Article 2 of the Charter provides:

> Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

74. The Court notes that the burden of proving the alleged human rights violation lies with the Applicant.

75. In the present case, the Court notes that the Applicant has neither substantiated the allegation herein, nor has he demonstrated how he was discriminated against, in violation of his right under Article 2 of the Charter.[15]

76. In any case, the Court observes that there is nothing on the record to show that the domestic courts discriminated against the Applicant in proceedings involving him.

77. In such circumstances, the Court has no basis to find a violation and therefore finds that the Respondent State has not violated the Applicant's right to non-discrimination guaranteed under Article 2 of the Charter.

B. Alleged violation of the right to equality before the law and equal protection of the law

78. The Applicant alleges that his rights to equality before the law and equal protection of the law guaranteed under Article 3 of the Charter, were violated by the Respondent State during his trial by domestic courts.

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79. The Respondent State on its part avers that the Applicant bears the burden of proof in relation to the alleged violation of human right, which he has failed to discharge.

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[15] *Sijaona Chacha Machera v. United Republic of Tanzania*, ACtHPR, Application No. 035/2017, Judgment on 22 September 2022, § 82. *Yassin Rashid Maige v. United Republic of Tanzania* (merits and reparations), ACtHPR, Application No. 018/2017, Judgment on 5 September 2023, § 124.

80. Pursuant to Article 3 of the Charter,

> 1. Every individual shall be equal before the law.
> 2. Every individual shall be entitled to equal protection of the law.

81. The Court recalls the legal principle that he who alleges must prove.[16] The Court observes that in the present case, the Applicant alleges, without substantiation of his allegation, that the Respondent State violated his rights to equality before the law and to equal protection of the law guaranteed in Article 3(1) and (2) of the Charter.

82. Notwithstanding this, the Court notes that there is nothing on the record to show that the domestic courts breached the Applicant's right to be protected by the law nor his right to equality before the law.

83. In such circumstances, the Court finds that the Respondent State has not violated the rights to equality before the law and to equal protection of the law guaranteed in Article 3 of the Charter.

C. Alleged violation of the right to life

84. The Court observes that the Applicant alleges violation of his right to life, protected by Article 4 of the Charter without substantiating the allegation. However, the Court notes that the Applicant's requests relate to the death penalty, the vacation of the sentence and removal from death row. As such, the requests relate indirectly to the right to life, protected by Article 4 of the Charter.

85. The Court further notes that a mandatory death sentence was meted out on the Applicant in accordance with a law that denies the judicial officer's discretion on sentencing. The Court recalls its well-established

[16] *Sadick Marwa Kisase v. United Republic of Tanzania* (merits and reparations) (2 December 2021) 5 AfCLR 728, § 73; *Kennedy Owino Onyachi and Charles John Mwanini Njoka v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65, §§ 142-146; *Nguza Viking and Johnson Nguza v. United Republic of Tanzania* (merits) (23 March 2018) 2 AfCLR 287, §§ 66-74.

jurisprudence that the mandatory nature of the death penalty constitutes a violation of the right to life, as guaranteed under Article 4 of the Charter.[17]

86. Consequently, the Court holds that the Respondent State violated the Applicant's right to life as provided under Article 4 of the Charter given the mandatory nature of the death penalty.

D. Violation of the right to dignity

87. The Court notes that the Applicant does not allege this violation nor does he raise the issue of execution of the death sentence by hanging.

88. However, the Court notes that the Applicant was sentenced to death by hanging. In this regard, the Court recalls its established jurisprudence that hanging as a method of executing the death penalty constitutes a violation of the right to inherent dignity as guaranteed under Article 5 of the Charter.[18]

89. Accordingly, the Court holds that the Respondent State violated the Applicant's right to inherent dignity protected under Article 5 of the Charter through the method of executing the death penalty, that is, by hanging.

E. Alleged violation of the right to a fair trial

90. The Applicant alleges that the Respondent State violated his right to a fair trial guaranteed under Article 7(1) of the Charter without however substantiating the allegation.

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91. The Respondent State avers that there is no evidence to prove this allegation. It is the Respondent State's contention that the Applicant and his

[17] *Ally Rajabu and others v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AFCLR 539, §§ 104-114; *Juma v. Tanzania*, *ibid*, §§ 120 to 131 and *Gozbert Henerico v. United Republic of Tanzania*, AfCHPR, Application No. 056/2016, Judgment on 10 January 2022 (merits and reparations), § 160.

[18] *Rajabu and Others v. Tanzania*, *ibid*, §§ 119 and 120; *Henrico v. Tanzania*, *ibid*, §§ 169 and 170 and *Juma v. Tanzania*, §§ 135 and 136.

counsel were provided with the evidence on which the national courts based their judgments. The Respondent further elaborates that there is no law preventing the national courts from relying on the testimony of a witness who was a co-accused of the Applicant. According to the Respondent State the national courts had found that the co-accused was not an accomplice to the murder of Mr Rai and therefore settled this matter which was raised before the Court of appeal.

92. The Court notes that the Applicant's unsubstantiated allegations relate to his rights protected by Article 7(1) of the Charter.

93. Article 7(1) of the Charter provides that:

> i. Every individual shall have the right to have his cause heard…"

94. The Court recalls its jurisprudence that:

> …domestic courts enjoy a wide margin of appreciation in evaluating the probative value of a particular evidence, and as an international court, this court cannot take up this role from the domestic courts and investigate the details and particularities of evidence used in domestic proceedings.[19]

95. In the instant case, the Court observes from the record, that, the national courts examined the Applicant's allegation that prosecution witness no. 1 framed the Applicant for the crime in order to absolve himself of any guilt and found no evidence to support that claim. On the contrary, the domestic courts found that the testimony of the co-accused was credible and it proved that the Applicant had committed the crime.

96. The Court, therefore, considers that the manner in which the national courts evaluated the evidence does not disclose any manifest error requiring its intervention.

[19] *Kijiji Isiaga v. United Republic of Tanzania* (merits) (21 March 2018) 2 AfCLR 218, § 65.

97. Consequently, the Court dismisses this allegation and finds that the Respondent State did not violate the Applicant's right to have his cause heard.

VIII. REPARATIONS

98. The Applicant prays the Court to

    i. Set aside the conviction and death sentence imposed upon the Applicant and remove him from death row and release him from prison; and
    ii. Order any other measure that the Court deems appropriate in the circumstances.

99. The Respondent State on its part submits that

    i. Dismiss the Applicant's prayer for reparations.

***

100. Court notes that Article 27(1) of the Protocol stipulates that "[i]f the Court finds that there has been violation of a human or peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation."

101. The Court has found that the Respondent State violated the Applicant's right to life under Article 4 of the Charter. The Court also found on its own motion that the Applicant's right to dignity was violated under Article 5 of the Charter. These findings mean that the Respondent State is liable and that the Applicant is entitled to reparations.

A. Pecuniary reparations

i. Material prejudice

102. The Applicant maintains that he was engaged in agricultural and commercial activities in addition to having other sources of income, all of which were undermined by his conviction and his imprisonment.

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103. The Respondent State submits that the Applicant's request for reparations be dismissed.

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104. The Court recalls that in order to be awarded reparations for material damage, the Applicant must demonstrate the existence of a causal link between the violation established and the damage suffered.[20] The Applicant must also justify the amounts claimed[21] and provide acceptable evidence of the expenses incurred, such as receipts for payments made.[22]

105. The Court observes that in the present case, the Applicant does not specify the quantum of pecuniary reparations sought as just compensation and neither does he establish a causal link between the violations found and the harm suffered. In the circumstances, the Court finds no grounds for awarding pecuniary reparation for the material harm suffered.

[20] See *Guehi v. Tanzania, supra,* § 181; *Norbert Zongo and Others v Burkina Faso* (reparations) (5 June 2015) 1 AfCLR 265, § 62 and *Henerico v. Tanzania* (merits and reparations), *supra,* § 180.
[21] *Zongo and Others v. Burkina Faso, ibid,* § 81; *Reverend Christopher R. Mtikila v. United Republic of Tanzania* (reparations) (13 June 2014) 1 AfCLR 72, § 40.
[22] *Christopher Jonas v. United Republic of Tanzania* (reparations) (25 September 2020) 4 AfCLR 545, § 20 and *Guehi v. Tanzania, supra,* § 18.

ii. Moral prejudice

a. Moral prejudice suffered by the Applicant

106. The Applicant affirms that he experienced mental suffering and that his trial was stressful.

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107. The Respondent State submits that the Applicant's request for reparations be dismissed.

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108. The Court reiterates its jurisprudence that moral prejudice is presumed in the event of a violation of human rights. The assessment of the amount of reparation relating thereto should be made on the basis of equity, taking into account the particular circumstances of each case[23] In this regard, the Court has consistently awarded a lump sum.[24]

109. The Court emphasises that it has found that the Respondent State violated the Applicant's right to life and the right to dignity. It considers that the Applicant has suffered non-pecuniary harm and is therefore entitled to reparation for that harm.

110. The Court also notes that the Applicant's imprisonment disrupted his life plan. However, as it has not established that his conviction was unlawful, the Court cannot award him reparations for the harm suffered as a result of the imprisonment itself.

[23] *Zongo and Others v. Burkina Faso* (reparations), *supra,* § 55; *Ingabire Victoire Umuhoza v. Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 59 and *Jonas v. Tanzania, ibid.*, § 23.
[24] *Lucien Ikili Rashidi v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 13*,* § 119; *Minani Evarist v. United Republic of Tanzania* (merits) (21 September 2018) 2 AfCLR 402*,* §§ 84-85 and *Guehi v. Tanzania* (merits and reparations), *supra,* § 177.

111. In view of the foregoing, and in line with its established jurisprudence, the Court awards the Applicant the sum of Three Hundred Thousand Tanzanian shillings (TZ300,000) as reparation for moral prejudice suffered.

b. Moral prejudice suffered by the Applicant's family members

112. The Applicant submits that his close relatives suffered moral prejudice as a result of his imprisonment, given that he was responsible for them.

113. The Respondent State submits that the request should be dismissed.

114. The Court notes that the Applicant does not prove a family or marriage relationship with the alleged indirect victims. The Court therefore dismisses the request for reparation for non-pecuniary damage suffered by the indirect victims.

B. Non-pecuniary reparations

115. The Applicant prays the Court to vacate the death sentence imposed on him and remove him from death row. He also prays the Court to order the Respondent State to release him.

i. Vacation of the death penalty and removal from death row

116. The Applicant prays the Court to vacate the death sentence imposed on him.

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117. The Respondent State submits that the Applicant's request for reparations be dismissed.

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118. With regard to the request to vacate the death sentence imposed on the Applicant, the Court recalls that it has held that measures seeking

annulment of the death penalty can only be ordered if the circumstances so require. Those circumstances must be assessed on a case-by-case basis, taking due account principally of the proportionality between the measure sought and the gravity of the violation found.

119. In the present case, the Court has found that the Respondent State violated the right to life protected by Article 4 of the Charter. The Court therefore orders the Respondent State to annul the death sentence imposed on the Applicant and remove him from death row pending the sentencing hearing that it has previously ordered.

ii. Release

120. The Applicant prays the Court to order his release.

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121. The Respondent State submits that the Applicant's request for reparations be dismissed.

***

122. As regards the request for release, the Court recalls its jurisprudence in *Gozbert Henerico v. United Republic of Tanzania* that:

> The Court can order release only if an Applicant sufficiently demonstrates or if the Court by itself establishes from its findings that the Applicant's arrest or conviction is based entirely on arbitrary considerations and that his continued detention would occasion a miscarriage of justice.[25]

[25] *Henerico v. Tanzania* (merits and reparations), *supra*, § 202; *Mgosi Mwita Makungu v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 550, § 84; *Minani Evarist v. United Republic of Tanzania* (merits and reparations) (21 September 2018) 2 AfCLR 402 and *Juma v. Tanzania* (merits and reparations), *supra*, § 165. See also *Dominick Damian v. United Republic of Tanzania*, ACtHPR, Application No 048/2016 (4 June 2024) (merits and reparations), §§ 163-166.

123. The Court notes that the violations found in the present case have no bearing on the Applicant's guilt and conviction and that his conviction affected only the mandatory nature of the sentence imposed. The decision of the domestic courts on the commission of the crime is not in any way called into question in the proceedings before this Court. Furthermore, it follows from the measure ordered above in relation to the holding of a new sentencing hearing that the Applicant remains in detention pending that hearing. The Court therefore dismisses the request for release made in the present case.

124. The Court recalls that it has considered in its jurisprudence the possibility of holding a new sentencing hearing in cases where the mandatory death penalty is imposed. The Court considers that it is appropriate to order a similar measure in the present case.

iii. Holding a new hearing

125. The Applicant did not submit on this point.

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126. The foregoing notwithstanding, the Court considers that it is in the interest of justice to order a new hearing in order to give effect to the consequential measure to repeal the domestic mandatory death penalty provision. The Court reiterates its previous position that the violations committed in the Applicant’s case has no bearing on his guilt and conviction, and that the conviction is affected only as regards the mandatory nature of the sentence imposed on him. The Court therefore considers it appropriate to order reparations in this respect.

127. The Court therefore orders the Respondent State to take all necessary measures to hold a sentencing hearing for the Applicant in a procedure that does not provide for the mandatory death penalty and upholds discretionary power of the judge**.**

iv. Publication of the judgment

128. The Parties did not submit on this point.

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129. However, the Court considers that, in line with its settled jurisprudence and having regard to the particular circumstances of the present case, the publication of the present Judgment is warranted. Under the current legislation of the Respondent State, threats to life inherent in the mandatory nature of the death penalty persist. The Court notes that there is no indication that the necessary steps have been taken to amend the law and align it with the Respondent State's international obligations. The Court therefore considers it appropriate to order the publication of this judgment within three months of the date of notification.

v. Implementation and reporting

130. The Parties did not submit on this point.

***

131. The grounds for Court's decision to order the publication of this Judgment, notwithstanding the absence of an express request from the Parties, also apply as regards implementation and the submission of reports. With regard specifically to implementation, the Court notes that in its earlier judgments ordering the repeal of the provision on the mandatory death penalty, it ordered the Respondent State to implement the decisions within one year

of notification of the judgment.[26] In subsequent judgments, the Court granted the Respondent State six months to implement the same decision.[27]

132. The Court observes in the present case that the violation of the right to life as a result of the provision on the application of the mandatory death penalty transcends the Applicant's case and is of a systemic nature. The same is true of the violation caused by the method of enforcing the sentence, namely hanging.

133. In light of the foregoing, the Court orders the Respondent State to submit to it periodic reports on the implementation of the present Judgment, in accordance with Article 30 of the Protocol. These reports must describe in detail the measures taken by the Respondent State with a view to repealing the impugned provision of its Criminal Code.

134. The Court observes that the Respondent State has not provided any information on the implementation of the Court's judgments in previous cases ordering the repeal of the mandatory death penalty and that the time-limits set by the Court have since expired. In the light of the foregoing, the Court considers that the measures ordered are justified, being measures of individual protection and a general reminder of the obligation and urgent need for the Respondent State to abolish the mandatory death penalty and to provide alternatives to it. The Court therefore holds that the Respondent State is required to submit to it, within six months of the date of notification of the present Judgment, reports on the measures taken to implement the measures ordered therein.

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[26] *Crospery Gabriel and another v. United Republic of Tanzania*, AtCHPR, Application No. 050/2016, Judgment of 13 February 2024 (merits and reparations), §§ 142 to 146; *Rajabu v. Tanzania* (merits and reparations), supra, § 171 and *Henerico v. Tanzania* (merits and reparations), supra, § 203.

[27] *Damian v. Tanzania*, supra, § 177(xx); *Nzigiyimana Zabron v. United Republic of Tanzania*, Application No. 51/2016, Judgment of 4 June 2024 (merits and reparations), § 219 (xxi); *Crospery Gabriel and another v. United Republic of Tanzania*, ACtHPR, Application No. 050/2016, Judgment of 13 February 2024 (merits and reparations), § 157 (xviii); *Romward William v. United Republic of Tanzania*, Application No. 030/2016, Judgment of 13 February 2024 (merits and reparations), §98(xiii); *Deogratius Nichlaus Jeshi v. United Republic of Tanzania*, ACtHPR, Application No. 017/2016, Judgment of 13 February 2024 (merits and reparations), §124 (xv).

IX. COSTS

135. The Applicant prays the Court to order the Respondent State to bear costs.

*

136. The Respondent State prays the Court to order the Applicant to bear the costs.

***

137. The Court notes that under Rule 32(2) of the Rules, "unless otherwise decided by the Court, each party shall bear its own costs, if any".[28]

138. The Court notes that proceedings before it are not costly. Furthermore, although each Party requests that costs be borne by the other, they do not provide proof that they incurred any costs.

139. In the circumstances, the Court considers that there is no reason to depart from the provision of Rule 32(2) of the Rules. Accordingly, it decides that each Party shall bear its own costs.

X. OPERATIVE PART

140. For these reasons:

THE COURT,

Unanimously,

[28] Rule 30(2) of the Rules of 2 June 2010.

On jurisdiction

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

On admissibility

iii. *Dismisses* the objections to admissibility based on non-exhaustion of local remedies and failure to file the Application within a reasonable time;
iv. *Declares* the Application admissible;

On merits

v. *Holds* that the Respondent State did not violate the Applicant's right to non-discrimination guaranteed under Article 2 of the Charter;
vi. *Holds* that the Respondent State did not violate the Applicant's right to equality before the law and equal protection by the law guaranteed under Article 3 of the Charter;
vii. *Holds* that the Respondent State did not violate the Applicant's right to a fair trial, protected by Article 7(1)(c)) of the Charter.

By a majority of Eight (8) for, and Two (2) against,

viii. *Holds* that the Respondent State violated the Applicant's right to life protected under Article 4 of the Charter by reason of the mandatory imposition of the death penalty on him;
ix. *Holds* that the Respondent State violated the Applicant's right to inherent dignity protected under Article 5 of the Charter in relation to the method of execution of the death penalty, that is, by hanging.

On reparations

Pecuniary reparations

x. *Dismisses* the prayers for reparations for material prejudice;
xi. *Dismisses* the prayers for reparation for moral prejudice suffered by indirect victims*;*
xii. *Orders* the Respondent State to pay the Applicant an amount of Three Hundred Thousand Tanzanian Shillings **(**TZS 300.000) as reparation for moral prejudice suffered;
xiii. *Orders* the Respondent State to pay the amount indicated in point (xii) tax-free within six months of service of this Judgment. If it fails to do so, it shall be liable to pay default interest calculated on the basis of the applicable rate of the Central Bank of Tanzania throughout the period of delay in payment and until full payment of the sums due.

Non-pecuniary reparations

xiv. *Dismisses* the Applicant's prayer for release;
xv. *Orders* the Respondent State to vacate the death penalty imposed on Applicant and remove him from death row;
xvi. *Orders* the Respondent State to take all necessary measures within one year of the notification of this Judgment, in order to retry the case involving the Applicant, in a procedure which does not provide for the mandatory application of the death penalty and which upholds the judge's discretionary power;
xvii. *Orders* the Respondent State to take all necessary measures, within six months of the notification of this Judgment, to expunge from its criminal code the imposition of mandatory death penalty;
xviii. *Orders* the Respondent State to take all necessary measures, within six months of the notification of this Judgment, to expunge from its criminal hanging as method of enforcing the death penalty.

On publication of the judgment

xix. *Orders* the Respondent State to, within a period of six months from the date of notification, publish this judgment on the websites of the Judiciary, and the Ministry for Constitutional and Judicial Affairs, and to ensure that the text of the judgment is accessible for at least one year after the date of publication.

On implementation and reporting

xx. *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 measures ordered herein and, thereafter, every six (6) months until the Court considers that all the measures have been fully implemented.

On costs

xxi. *Orders* that each Party bears its own costs.

Signed:

Modibo SACKO, Vice-President;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Blaise TCHIKAYA, Judge;

Stella I. ANUKAM, Judge;

Dumisa B. NTSEBEZA, Judge;

Dennis D. ADJEI, Judge;

Duncan GASWAGA, Judge;

and Robert ENO, Registrar.

In accordance with Article 28(7) of the Protocol and Rule 70(2) and (3) of the Rules of Court, the separate opinion of Judge Rafaâ BEN ACHOUR and the declarations of Judge Blaise TCHIKAYA and Judge Dumisa B. NTSEBEZA are attached to this judgment.

Done at Arusha, this Fifth Day of February in the Year Two Thousand and Twenty-Five in English and French, the English version being authoritative.