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

THE MATTER OF

NZIGIYIMANA ZABRON

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION No. 051/2016

JUDGMENT

4 JUNE 2024

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
The Registrar
LE GREFFIER
ARUSHA TANZANIA
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

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

In accordance with Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") and Rule 9(2) of the Rules of 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:

Nzigiyimana ZABRON

Represented by:

Advocate William ERNEST
Lead Partner, Bill & Williams Advocates,
Arusha, Tanzania

Versus

UNITED REPUBLIC OF TANZANIA

Represented by:

i. Dr Boniface Nalija LUHENDE, Solicitor General, Office of the Solicitor General;
ii. Ms Sarah Duncan MWAIPOPO, Deputy Solicitor General, Office of the Solicitor General;
iii. Ms Nkasori SARAKIKYA, Assistant Director, Human Rights, Principal State Attorney, Attorney General's Chambers;

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

iv. Mr Baraka Luvanda, Ambassador, Head of Legal Unit, Ministry of Foreign Affairs and International Cooperation;
v. Ms Aidah KISUMO, Senior State Attorney, Attorney General's Chambers;
vi. Ms Blandina KASAGAMA, Legal Officer, Ministry of Foreign Affairs and East African Cooperation; and
vii. Mr Elisha Suku, Foreign Service Officer, Ministry of Foreign Affairs and East African Cooperation.

After deliberations,

Renders this Judgment:

I. THE PARTIES

1. Nzigiyimana Zabron (hereinafter referred to as "the Applicant") is a national of Burundi residing in Tanzania who at the time of filing this Application, was awaiting the execution of the death sentence at Butimba Central Prison, Mwanza (Tanzania) following his conviction for murder. In April 2020, his death sentence was commuted to life imprisonment following a presidential pardon. The Applicant alleges the violation of his rights in relation to proceedings before domestic courts notwithstanding the above-mentioned commutation.

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 (the Declaration) through which it accepted the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organisations with observer status before the African Commission on Human and Peoples' Rights (the Commission). 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 (1) year after its deposit.[2]

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the record that the Applicant killed one Mr Fadhili Seleman on 8 July 2004. He was charged in the High Court of Tanzania at Tabora with the offence of murder in Criminal Case No. 20 of 2008 and was convicted and sentenced to death by hanging on 25 June 2012.

4. He subsequently appealed his conviction and sentence to the Court of Appeal of Tanzania in Criminal Appeal No. 182 of 2013, which dismissed his appeal in its entirety on 25 September 2013.

5. In April 2020, the Applicant's death sentence was commuted to life imprisonment.

B. Alleged violations

6. The Applicant alleges the violation by the Respondent State of his following rights:

    i. The right to a fair trial under Article 7 of the Charter in particular the rights to defence and to be presumed innocent until proved guilty by a competent court or tribunal;
    ii. The right to dignity under Article 5 of the Charter by sentencing him to death by hanging;

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

iii. The right to life under Article 4 of the Charter by imposing a mandatory death sentence; and
iv. The right to consular assistance under Article 36 of the Vienna Convention on Consular Relations (VCCR).

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

7. The Applicant filed his Application on 1 September 2016 and this was served on the Respondent State on 16 November 2016. The Respondent State filed its Response on 17 May 2017.

8. On 16 May 2018 the Court granted the Cornell University Law School's request to provide free legal representation to the Applicant. The Cornell University Law School filed amended pleadings which were served on the Respondent State for response. Despite several extensions of time, the Respondent State did not respond to the amended pleadings.

9. On 21 July 2023, the Respondent State was granted one last extension of time of thirty (30) days to file the said response.

10. On 15 August and 21 August 2023 respectively, the Respondent State filed a request to be availed a copy of the file; and to be granted one further extension of time of fourteen (14) days to file its response to the amended pleadings.

11. On 22 August 2023, the Registry informed the Respondent State that it was granted the requested extension of time of fourteen (14) days subsequent to which the Court would proceed and give judgment. At the expiry of the allocated time, the Respondent State had not filed its response.

12. On 5 September 2023, pleadings were closed and the Parties were duly notified.

13. On 13 September 2023, the Registry received the Respondent State's response to the amended pleadings. On 27 October 2023, the Registry informed the Parties that, in the interest of justice, the Court had decided to reopen pleadings and to consider as duly filed the Respondent State's response which had been filed out of time. On 31 October 2023, the said response was also transmitted to the Applicant for reply within fourteen (14) days.

14. On 12 November 2023, the Registry received the Applicant's request to be granted an additional time of three (3) months to file his reply. On 16 November 2023, the Registry informed the Parties that the Court had decided to grant the Applicant an additional time of 45 days to file his reply to the Respondent State's response to the amended pleadings.

15. On 29 December 2023, the Registry received the Applicant's reply and transmitted same to the Respondent State for information on 4 January 2024.

16. On 26 January 2024, pleadings were closed and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

17. The Applicant prays that the Court grant the following orders and declarations:

    i. That the Respondent State has violated the Applicant's rights under Articles 4, 5, and 7 of the Charter and 36 of the VCCR;
    ii. That the Respondent State take appropriate measures to remedy the violations of the Applicant's rights under the Charter;
    iii. That the Respondent State release the Applicant from prison; and
    iv. That the Respondent State pay reparations to the Applicant in such amount as the Court deems fit.

18. The Respondent State prays the Court to find:

i. That the Court is not vested with jurisdiction to adjudicate over this Application;
ii. That the Application has not met the admissibility requirements stipulated under Rule 40(5) of the Rules;[3]
iii. That the Application has not met the admissibility requirements stipulated under Rule 40(6) of the Rules;[4]
iv. That the Application has not met the admissibility conditions under Article 56 (3), (4), (6) and (7) of the Charter;
v. That the Application be declared inadmissible;
vi. That the Application be dismissed in accordance to Rule 38 of the Rules;[5] and
vii. That the costs of this Application be borne by the Applicant.

19. The Respondent State further prays that the Court should make the following orders:

i. That it did not violate Article 2 of the Charter;
ii. That it did not violate Article 3(1) of the Charter;
iii. That it did not violate Article 3(2) of the Charter;
iv. That it did not violate the Applicant's rights under Articles 4,5 and 7 of the Charter and Article 36 of the VCCR;
v. That the Application be dismissed for lack of merit;
vi. That the Applicant's prayers be dismissed; and
vii. That the costs of this Application be borne by the Applicant.

V. JURISDICTION

20. The Court observes that Article 3 of the Protocol provides as follows:

[3] Rule 50(2)(e) of the Rules of Court, 25 September 2020.
[4] Rule 50(2)(f) of the Rules of Court, 25 September 2020.
[5] Rule 48 of the Rules of Court, 25 September 2020.

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.

21. The Court further observes that pursuant to Rule 49(1) of the Rules, it "shall preliminarily ascertain its jurisdiction … in accordance with the Charter, the Protocol and these Rules."[6]

22. On the basis of the above-cited provisions, the Court must, in every Application, preliminarily ascertain its jurisdiction and rule on objections thereto, if any.

23. The Court observes that the Respondent State raises an objection to material jurisdiction on the ground that it is being requested to sit as an appellate court from decisions of its Court of Appeal. The Court will thus, preliminarily, address the said objection before considering other aspects of its jurisdiction, if necessary.

A. Objection to material jurisdiction

24. The Respondent State submits that the jurisdiction of the Court is evoked through Article 3(1) of the Protocol and Rule 26 of the Rules,[7] Which he avers do not give the Court jurisdiction to sit as an appellate court after its Court of Appeal has decisively concluded on a matter.

25. It is the Respondent State's contention that by raising evidential issues previously resolved by domestic courts, the Applicant is asking this Court to exercise appellate jurisdiction on matters already concluded and finalised by its Court of Appeal, which is the highest domestic court. The Respondent

[6] Rule 39(1), Rules of Court, 2 June 2010.
[7] Rule 29, Rules of Court, 2020.

State avers that the Court does not have jurisdiction to re-analyse the evidence, quash the conviction, set aside sentences and order the Applicant's release.

26. The Applicant disputes the Respondent State's submissions and contends that the Court has jurisdiction pursuant to Article 3(1) of the Protocol and Rule 26(1)(a) of the Rules[8] since his Application involves alleged violations of human rights protected by the Charter. In his reply to the Respondent State's response to the amended pleadings, the Applicant further submits that his Application falls within the Court's jurisdiction given that he is merely alleging that the acts and omissions in the proceedings before domestic courts amount to a violation of human rights.

27. In his reply, the Applicant also contends that this Court has jurisdiction to quash his conviction, set aside his sentence and order his release from prison based on the Court's relevant jurisprudence and its broad discretion under Article 27(1) of the Protocol.

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28. The Court recalls that by virtue of Article 3(1) of the Protocol, it has jurisdiction to examine any application submitted to it provided that the rights of which a violation is alleged are protected by the Charter or any other human rights instrument ratified by the Respondent State.[9]

29. Regarding the contention that the Court would be exercising appellate jurisdiction, by examining certain claims which were already determined by the Respondent State's domestic courts, the Court reiterates its position that it does not exercise appellate jurisdiction with respect to the decisions

[8] Rule 29(1)(a), Rules of Court, 2020.
[9] *Matoke Mwita and Masero Mkami v. United Republic of Tanzania,* ACtHPR, Application No. 007/2016, Judgment of 13 June 2023 (judgment), § 24; *Marthine Christian Msuguri v. United Republic of Tanzania*, ACtHPR, Application No. 052/2016, Judgment of 1 December 2022 (merits and reparations), §§ 23-27 and *Kalebi Elisamehe v. Tanzania* (merits and reparations) (26 June 2020) 4 AfCLR 265, § 18.

of domestic courts.[10] However, the Court retains the power to examine the procedures of national courts in order to determine whether they are in conformity with the standards set out in the Charter or in any other human rights instrument ratified by the State concerned, which does not make it an appellate court.[11] This specific jurisdictional competence is grounded in the international commitments of the Respondent State.

30. In the present Application, the Court notes that the Applicant alleges the violation of rights guaranteed under Articles 4, 5 and 7 of the Charter and Article 36 of the VCCR,[12] instruments which it is empowered to interpret and apply pursuant to Article 3(1) of the Protocol. The Court thus dismisses the Respondent State's objection on this point.

31. In relation to the contention that it lacks jurisdiction to quash the convictions, set aside the sentences and order release from prison, the Court recalls that, pursuant to Article 27(1) of the Protocol, "[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." Clearly, therefore, the Court has jurisdiction to grant various types of reparation, including release from prison, should the facts of a case so dictate. The Respondent State's objection on this point is thus also dismissed.

32. In light of the above, the Court dismisses the Respondent State's objections to its material jurisdiction and holds that it has material jurisdiction to hear the present Application.

[10] *Ernest Francis Mtingwi v. Republic of Malawi* (jurisdiction) (15 March 2013) 1 AfCLR 190, § 14; § 26 and *Werema Wangoko Werema and Waisiri Wangoko Werema v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 520, § 29.
[11] *Cheusi v. Tanzania* (judgment), *supra*, § 32; *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 33 and *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 130.
[12] See *Niyonzima Augustine v. United Republic of Tanzania*, ACtHPR, Application No. 058/2016, Judgment of 13 June 2023, §§ 80-88.

B. Other aspects of jurisdiction

33. The Court notes that the Respondent State does not dispute its personal, temporal and territorial jurisdiction. Nonetheless, in line with Rule 49(1) of the Rules,[13] the Court must satisfy itself that all aspects of its jurisdiction are fulfilled before proceeding to consider the Application.

34. Having noted that there is nothing on the record to indicate otherwise, the Court concludes that it has:

    i. Personal jurisdiction, in so far as the Respondent State is a party to the Charter, the Protocol and has deposited the Declaration. In this vein, the Court reiterates its position that the withdrawal of the Declaration has no bearing on cases pending before it took effect. Given that the present Application was already pending before the withdrawal, the latter has no bearing thereon.[14]

    ii. Temporal jurisdiction given that the violations alleged in the present Application occurred after the Respondent State became a party to the Charter and the Protocol.

    iii. Territorial jurisdiction considering that the violations alleged in the Application occurred within the territory of the Respondent State.

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

[13] Rule 39(1) of Rules of Court, 2 June 2010.
[14] *Cheusi v. Tanzania* (judgment), *supra*, § 38. See also *Ingabire Victoire Umuhoza v. Republic of Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 562, § 67.

VI. ADMISSIBILITY

36. 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.”

37. 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.”

38. The Court notes that Rule 50(2) of the Rules, which in substance restates the content 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 though the latter requests anonymity;
> b. are compatible with the Constitutive Act of the African Union and 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.

39. The Court observes that the Respondent State raises objections to the admissibility of the Application on the ground of non-exhaustion of local remedies and on the basis that the Application was not filed within a reasonable time. The Court will consider these objections before examining other conditions of admissibility, if necessary.

A. Objection based on non-exhaustion of local remedies

40. The Respondent State contends that the Application does not meet the requirement of exhaustion of local remedies given that the Applicant failed to institute a constitutional petition in terms of Article 30(3) of its Constitution to address his grievance on the alleged violation of his rights during the hearing of his appeal in the Court of Appeal.

41. On his part, the Applicant submits that his Application is admissible as he has exhausted all legal remedies available to him. He also submits that exhaustion is typically satisfied by appealing the case to the highest national tribunal and in his case as the Court of Appeal is the final appeal court in the Respondent State, there is no higher court to hear this matter in the local jurisdiction. It is the Applicant's contention that the Respondent State's claim that he could have instituted a constitutional petition at the High Court under the Basic Rights and Duties Enforcement Act is manifestly incorrect as this Court has repeatedly held that applicants are only required to exhaust ordinary judicial remedies and that filing a constitutional petition is an extraordinary remedy which he was not required to exhaust prior to filing his Application.

42. In his reply, the Applicant reiterates these arguments and further submits that the Respondent State's argument that the alleged violation of the right to be heard could have been raised during the appeal proceedings is irrelevant because he was actually denied effective representation.

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43. The Court notes that pursuant to Rule 50(2)(e) of the Rules, any application filed before it must fulfil the requirement of exhaustion of local remedies unless local remedies are unavailable, ineffective, or the domestic procedure to pursue them is unduly prolonged.[15] This requirement seeks to ensure that States have the opportunity to address human rights violations occurring within their jurisdiction before an international body is called upon to intervene. As established in the Court's jurisprudence, the remedies to be exhausted must be those that are judicial and ordinary in nature.[16]

44. The Court observes that the Respondent State's arguments relate to the Applicant's failure to file a constitutional petition regarding the alleged violation of his rights before approaching this Court. In this regard, the Court reiterates its position that the constitutional petition procedure, as it applies in the Respondent State's judicial system, is not a remedy that an Applicant is required to exhaust.[17]

45. The Court notes that the Applicant's appeal was determined through a judgment rendered on 25 September 2013 by the Court of Appeal sitting at Tabora, which is the highest judicial authority of the Respondent State. Given that the constitutional petition is not a remedy that the Applicant ought to have used, the Court holds that all domestic remedies were exhausted. The Court, therefore, dismisses the Respondent State's objection on this point.

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

46. The Respondent State submits that the Applicant filed his Application after a period of three (3) years had elapsed following the dismissal of his appeal

[15] *Thomas v. Tanzania* (merits), *supra*, § 64 and *Werema Wangoko Werema and Wasiri Wangoko Werema v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 520, § 40.
[16] *Laurent Munyandilikirwa v. Republic of Rwanda*, ACtHPR, Application No. 023/2015, Ruling of 2 December 2021 (jurisdiction and admissibility), § 74 and *Wilfred Onyango Nganyi and 9 others v. United Republic of Tanzania* (reparations) (4 July 2019) 3 AfCLR 308, § 95.
[17] *Gozbert Henerico v. United Republic of Tanzania,* ACtHPR, Application No. 056/2016, Judgment of 10 January 2022 (merits and reparations), § 61; *Mgosi Mwita Makungu v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 550, § 46 and *Mohamed Abubakari v. United Republic of Tanzania* (merits) (3 June 2016) 1 AfCLR 599, §§ 66-70.

by the Court of Appeal. The Respondent State contends that such period of time is not reasonable, and the Applicant being in prison was and is not a bar to access the Court.

47. The Applicant on his part refutes the Respondent State's objection and cites, among others, the Court's decision in *Alex Thomas v. Tanzania* where it was held that a period of three (3) years and five (5) months before filing the application was reasonable. He submits that he is lay, indigent and incarcerated with limited access to information. The Applicant argues that, in the alternative, the Court should take into account the fact that he is still incarcerated and thus every day suffers the consequences of the Respondent State's ongoing violations of his human rights.

48. He submits that given this fact, the Court should rule that the true date marking the beginning of a reasonable period of time to submit his Application was not in fact 25 September 2013, but could be designated as any and every day while his incarceration continues. In his reply, the Applicant reiterates these arguments and asserts that his claims are not in respect of being barred from accessing the Court but rather that the circumstances necessitated him to be granted more time to prepare and file his Application.

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49. As the Court has previously held, "… 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."[18] Some of the factors that the Court has considered as relevant in assessing reasonableness include the fact that an applicant is incarcerated,[19] lay in law,[20] indigent;[21] and needed

[18] *Zongo and Others v. Burkina Faso* (merits), *supra,* § 92. See also *Thomas v. Tanzania* (merits), *supra*, § 73.
[19] *Diocles William v. United Republic of Tanzania* (merits) (21 September 2018) 2 AfCLR 426, § 52 and *Thomas v. Tanzania* (merits), *ibid*, § 74.
[20] *Christopher Jonas v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 101, § 54 and *Amir Ramadhani v. United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 344, § 83.
[21] *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania* (merits) (23 March 2018) 2 AfCLR 287, § 61 and *Amir Ramadhani v. United Republic of Tanzania* (merits), *ibid,* § 83.

for time to reflect on the advisability of seizing the Court.[22] The Court has also held that while exhausting extraordinary remedies, such as the review procedure may not be mandatory depending on circumstances of the case, the time spent in attempting to exercise these remedies should be considered in assessing reasonableness under Article 56(5) of the Charter.[23]

50. As the record shows, the Applicant exhausted local remedies on 25 September 2013 being the date of the Court of Appeal's judgment in his appeal. The Applicant subsequently filed his Application before this Court on 1 September 2016 being a period of two (2) years, eleven (11) months and seven (7) days from the date of the judgment. The Court should, therefore, assess whether this period is reasonable within the meaning of Article 56(6) of the Charter.

51. In the instant case, the Court notes that at the time of filing his Application, the Applicant was incarcerated, and on death row. It is also clear, from the record, that he was lay and self-represented when filing his Application. Further, the Applicant filed an application for review of the Court of Appeal's judgment on 15 December 2014, and was still waiting for the outcome when he filed his Application before this Court. As such he required some time to make a decision and prepare his Application to this Court.

52. The Court considers that the above stated circumstances constitute valid justification for the time it took the Applicant to file his Application.

53. Given the above findings, the Court dismisses the Respondent State's objection on this point and holds that the Applicant filed his Application within a reasonable time as construed under Article 56(6) of the Charter.

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[22] *Igola Iguna v. United Republic of Tanzania*, ACtHPR, Application No. 020/2017, Judgment of 1 December 2022 (merits and reparations), § 35 and *Zongo and Others v. Burkina Faso* (preliminary objections), *supra,* § 122.

[23] *Thobias Mang'ara Mango and Another v. United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 314, § 55, and *Msuguri v. Tanzania* (merits and reparations), *supra*, § 47.

C. Other conditions of admissibility

54. 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. Nevertheless, the Court must satisfy itself that these conditions have been met.

55. The record shows that the Applicant has been clearly identified by name, in fulfilment of Rule 50(2)(a) of the Rules.

56. The Court also notes that the claims that are made by the Applicant seek to protect his rights guaranteed under the Charter in conformity with one of the objectives of the Constitutive Act of the African Union (the Constitutive Act), as stated in Article 3(h) thereof, which is the promotion and protection of human and peoples' rights. Furthermore, the Application does not contain any claim or prayer that is incompatible with a provision of the Constitutive Act. Therefore, the Court considers that the Application is compatible with the Constitutive Act of the African Union and the Charter and holds that it meets the requirements of Rule 50(2)(b) of the Rules.

57. The language used in the Application is not disparaging or insulting to the Respondent State or its institutions or the African Union in fulfilment of Rule 50(2)(c) of the Rules.

58. The Application is not based exclusively on news disseminated through mass media as it is based on court documents from the municipal courts of the Respondent State in fulfilment of Rule 50(2)(d) of the Rules.

59. Further, the Application does not concern a case which has already been settled by the Parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act, the provisions of the Charter or of any legal instrument of the African Union in fulfilment of Rule 50(2)(g) of the Rules.

60. In view of the above, the Court concludes that the Application meets all the admissibility conditions under Article 56 of the Charter, restated in Rule 50(2) of the Rules, and therefore, declares it admissible.

VII. MERITS

61. The Applicant alleges the violation of the right to a fair trial, the right to life and the right to dignity protected under Articles 7, 4 and 5, respectively, of the Charter and his right to consular assistance under Article 36 of the VCCR. The Court will examine these allegations in turn.

A. Alleged violation of the right to a fair trial

62. The Applicant alleges a violation of his right to a fair trial protected under Article 7 of the Charter through the violation of the right to be tried within a reasonable time, the right to defence and the right to be presumed innocent until proved guilty by a competent court or tribunal.

i. Alleged violation of the right to be tried within a reasonable time

63. The Applicant alleges that being held in pre-trial detention for eight (8) years, that is from his arrest on 21 July 2004 to the commencement of his trial on 19 June 2012, is an unreasonably long period which is a violation of his right to a fair trial. The Applicant submits that such time was unreasonable because his case was not complex, and the delay was attributable to the Respondent State. In substantiating his allegations, the Applicant submits that the Respondent State's undue delay in bringing him before the domestic courts was prejudicial to him as it undermined his ability to challenge stale and contradictory witness testimony and impaired his ability to defend himself against the charges.

64. The Applicant also avers that the prosecution's evidence was based almost exclusively on the accounts of five (5) prosecution witnesses who were asked to recall and testify on matters that occurred eight (8) years before casting doubt on the plausibility of witness testimony.

65. The Respondent State disputes the Applicant's allegations and contends that he was tried within a reasonable time taking into consideration the seriousness of the offence, the circumstances surrounding the commission of the offence and the proceedings involved. It is the Respondent State's contention that murder charges are serious in nature and attract a death sentence upon conviction and, therefore, the dictates of justice demand presence of free-of-doubt evidence that imputes the commission of the criminal offence to the suspect. The Respondent State argues that this requirement necessitates the need to scrutinise the available evidence which requires time.

66. The Respondent State also submits that the delays complained of are justified by the fact that the Applicant's case was adjourned three times in order to hear key witnesses. It is the Respondent State's submission that it cannot be blamed for the failure of the said witnesses to attend the case. The Respondent State avers that counsel for the Applicant had no objection to the adjournment of the cases as the witnesses who were absent were most important in the determination of the case. The Respondent State also contends that the Applicant's case was handled on time since the trial lasted only four (4) days and judgment was given two (2) days thereafter.

67. In his reply, the Applicant submits that, contrary to the Respondent State's contention that it cannot be blamed for the multiple adjournments, the witnesses who failed to attend the trial were prosecution witnesses. It is the Applicant's contention that despite being granted two years to do so, the Respondent State could not locate its own witnesses and was allowed to proceed with its case supported by a statement of a key witness who did not attend the trial and could not be cross examined. The Applicant, finally, submits that his failure to object to the adjournments, as argued by the

Respondent State, is only symptomatic of the latter's failure to provide him with effective legal representation.

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

> Every individual shall have the right to have his cause heard. This comprises the right to be tried within a reasonable time ….

69. In *Wilfred Onyango Nganyi and Others v. United Republic of Tanzania,* this Court held that the right to be tried within a reasonable time is an important aspect of fair trial.[24] The Court further held that the right to a fair trial also includes the principle that judicial proceedings should be finalised within a reasonable time.[25]

70. What the Court is called to determine in the instant Application is whether the pre-trial detention period of seven (7) years, ten (10) months, and twenty-nine (29) days, which is the time that elapsed between the Applicant's arrest on 21 July 2004 and the commencement of his trial on 19 June 2012 is reasonable.

71. In determining the right to be tried within a reasonable time, the Court has adopted a case-by-case approach whereby it considered, among others, factors such as the complexity of the case, the conduct of the Parties, and that of the judicial authorities who must exercise due diligence especially where the applicant faces severe penalties.[26]

[24] *Nganyi and Others v. Tanzania* (merits), supra, § 127; and *Benedicto Daniel Mallya v. United Republic of Tanzania* (merits and reparations) (26 September 2019) 3 AfCLR 482, § 48.
[25] *Cheusi v. Tanzania* (judgment), supra, § 117.
[26] *Msuguri v. Tanzania* (merits and reparations), *supra*, § 83; *Cheusi v. Tanzania* (judgment), *supra*, § 117; *Amini Juma v. United Republic of Tanzania*, ACtHPR, Application No. 024/2016, Judgment of 30 September 2021 (judgment), § 104 and *Guehi v. Tanzania* (merits and reparations), *supra,* §§ 122-124.

72. Firstly, regarding the nature and complexity of the case, the Court has in its previous judgments adopted a case-by-case approach to assessing whether a matter is complex. The Court among other factors considered the number of witnesses who testified, availability of evidence, the scope of investigations, and whether specialised evidence such as DNA samples were required.[27]

73. The Court notes that in the present Application, the Respondent State's investigation into the alleged crime took nearly four (4) years to complete. Meanwhile, the case involved an allegation of murder and no complex or advanced evidence was adduced. Furthermore, the Respondent State only presented oral testimony and five (5) prosecution exhibits which were all available within months of the arrest. As such, there is no basis for the case to be considered as a complex one to merit such a period of time for investigation and the delay being complained of can, therefore, not be attributed to the nature and complexity of the case.

74. Secondly, regarding the conduct of the Parties, the Court observes that when the Applicant was arrested, he submitted to the authorities and there is no suggestion that he delayed the proceedings. There is no indication from the record that the Applicant acted in any manner or made any request that contributed to the delay.

75. Thirdly, regarding exercise of due diligence by the authorities of the Respondent State, the Court notes that, pursuant to Section 32(1) of the CPA of the Respondent State, an accused must be brought before a court within 24 hours after he is taken into custody or as soon as practicable especially when the offence is punishable with death.[28] Further, Section

[27] *Cheusi v. Tanzania*, *ibid.*, § 117; *Guehi*, *ibid.*, § 112; *Nganyi and Others v. Tanzania* (merits), § 115.
[28] Section 32(1) – Where any person has been taken into custody without a warrant for an offence other than an offence punishable with death, the officer in charge of the police station to which he is brought may, in any case, and shall if it does not appear practicable to bring him before an appropriate court within twenty four hours after he was so taken into custody, inquire into the case and, unless the offence appears to that officer to be of a serious nature, release the person on his executing a bond with or without sureties, for a reasonable amount to appear before a court at a time and place to be named in the bond; but where he is retained in custody, he shall be brought before a court as soon as practicable.

244, as read together with section 245 of the CPA, provides that committal proceedings should be held as soon as practicable pursuant to Section 32.[29] Finally, Section 248(1) of the CPA provides that proceedings may be adjourned, from time to time by warrant, and the accused person be remanded for a reasonable time, not exceeding fifteen (15) days at any one time.[30]

76. This Court also notes that the Respondent State's High Court is empowered, pursuant to Sections 260(1),[31] and 284(1)[32] of the CPA, to postpone the trial of any accused person to the subsequent session where there is sufficient cause for the delay, including the absence of witnesses. However, the same provisions stipulate that the delay should be "reasonable".

Section 32(2) – Where any person has been taken into custody without a warrant for an offence punishable with death, he shall be brought before a court as soon as practicable.
Section 32(3) – Where any person is arrested under a warrant of arrest, he shall be brought before a court as soon as practicable.

[29] Section 244 – Whenever any charge has been brought against any person of an offence not triable by a subordinate court or as to which the court is advised by the Director of Public Prosecutions in writing or otherwise that it is not suitable to be disposed of upon summary trial, committal proceedings shall be held according to the provisions hereinafter contained by a subordinate court of competent jurisdiction.
Section 245(1) – After a person is arrested or upon the completion of investigations and the arrest of any person in respect of the commission of an offence triable by the High Court, the person arrested shall be brought within the period prescribed under section 32 of this Act before a subordinate court of competent jurisdiction within whose local limits the arrest was made, together with the charge upon which it is proposed to prosecute him, for him to be dealt with according to law, subject to this Act.

[30] Section 248(1) – Where for any reasonable cause, to be recorded in the proceedings, the court considers it necessary or advisable to adjourn the proceedings it may, from time to time by warrant, remand the accused person for a reasonable time, not exceeding fifteen days at any one time, to a prison or any other place of security.
Section 248(2) – Where the remand is for not more than three days, the court may, by word of mouth, order the officer or person in whose custody the accused person is, or any other fit officer or person, to continue to keep the accused person in his custody and to bring him up at the time appointed for the commencement or continuance of the inquiry.

[31] Section 260(1) It shall be lawful for the High Court upon the application of the prosecutor or the accused person, if the court considers that there is sufficient cause for the delay, to postpone the trial of any accused person to the next session of the court held in the district or at some other convenient place, or to a subsequent session.

[32] 284(1) Where, from the absence of witnesses or any other reasonable cause to be recorded in the proceedings, the court considers it necessary or advisable to postpone the commencement of or to adjourn any trial, the court may from time to time postpone or adjourn the trial on such terms as it thinks fit for such time as it considers reasonable and may, by warrant, remand the accused person to a prison or other place of security.

77. In the instant Application, the Court observes that following his arrest on 21 July 2004, the Applicant was charged on the same day with the offence of murder. However, the Applicant was committed to the High Court for trial only on 21 October 2009 and there is no indication from the Respondent State's submission to justify the period of about five (5) year and three (3) months that elapsed from the time of the arrest. Subsequent to the committal proceedings, the matter was adjourned to the next session to be fixed by the District Registrar on a date to be notified and the Applicant was remanded in custody. When the matter was brought for hearing on 28 June 2010, it was adjourned again due to the non-appearance of two prosecution witnesses who were considered as key to the case. The trial eventually commenced on 19 June 2012, which is seven (7) years, ten (10) months, and twenty-nine (29) days after the Applicant was arrested.

78. In assessing reasonableness of the length of the Applicant's pretrial detention, the Court also notes that, as the record shows, all of the evidence submitted at the original proceedings appears to have been obtained in 2004, in the immediate aftermath of the Applicant's arrest with the exception of the post-mortem report which was signed in 2005.

79. The Court is cognisant of the Respondent State's averment that the delay in investigating the case was necessitated by the need to produce key witnesses and the Applicant did not oppose the adjournments. However, the Court is of the considered view that while it might have been necessary to produce the witnesses, the delay in doing so and the overall length of the pretrial detention did not abide by due diligence as required in such instances. Notably, the period of more than five (5) years that elapsed between the Applicant's arrest and his committal to the High Court for trial cannot be said to be reasonable in the circumstances and the fact that the Applicant did not object to the adjournments is not a valid justification for the delays. As a matter of facts, despite a two-year stay to do so, the Respondent State failed to locate all of its own proposed witnesses.

80. The Court does not ignore the Respondent State's submission that justice was served on time because the trial was completed within four (4) days and judgment was rendered two (2) days thereafter. This notwithstanding, the Applicant's claims are rather in respect of the length of processes that took place prior to the commencement of the trial and completion thereof.

81. Having regard to the above considerations, the Court holds that the conduct of the Respondent State's authorities does not portray due diligence as required under Article 7(1)(d) of the Charter.

82. The Court thus finds that the Respondent State has violated the Applicant's right to be tried within a reasonable time as guaranteed by Article 7(1)(d) of the Charter owing to the inordinate length of his pre-trial detention.

ii. Alleged violation of the right to defence

83. The Applicant alleges that his right to defence has been violated due to the failure of the Respondent State to provide him with effective legal representation and by failing to provide him with an interpreter both during arrest and trial.

84. The Court will consider each of these two allegations in turn.

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85. The Court notes that Article 7(1)(c) of the Charter provides that:

> Every individual shall have the right to have his cause heard. This comprises the right to defence, including the right to be defended by counsel of his choice.

a. On the failure to provide effective legal representation

86. The Applicant alleges that he was unable to properly communicate with his lawyer as he never met him outside of trial and as a result could not direct him to collect critical evidence in his case. The Applicant alleges that his lawyer did not arrange for an interpreter or translator, or advocate on his behalf to ensure he was given the opportunity to speak in his own defence. He submits that his lawyer failed to call any defence witnesses despite there being at least three (3) witnesses who could testify to his purchase of the bike found in his possession which the Respondent State alleged belonged to the deceased.

87. The Applicant also alleges that his lawyer failed to safeguard his right to be tried without undue delay and did not object to the long stay of proceedings in his trial in 2010, which lasted more than two (2) years. He also submits that his lawyer failed to object to evidence adduced against him by the Respondent State. He concludes that the representation provided by his different lawyers was ineffective and inconsistent and fell far short of the standard of being competent, capacitated and committed, violating his right to a fair trial.

88. The Respondent State avers that the Applicant was given legal representation and his appeal was entertained without any constraint before the Court of Appeal of the Respondent State. It is the Respondent State's contention that the Applicant's allegation that his defence was critically undermined for failure of the defence counsel to call defence witnesses is baseless since he was given an opportunity and a right to call other defence witnesses which he did not exercise.

89. The Respondent State further argues that there is nothing **from** the record showing that the Applicant raised any objection before the domestic courts relating to how his Counsel carried out their duties to the detriment of the Applicant's right to defence. The Respondent State contends that assuming

that the counsel for the Applicant was indeed ineffective, the latter had a chance of recusing them before the trial judge which he did not do.

90. In his Reply, the Applicant avers that his claim is not being denied counsel of his choice as the Respondent State contends but rather that he did not have practical or effective defence at all.

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91. The Court recalls that, as it has held in *Marthine Christian Msuguri v. United Republic of Tanzania,* the right to defence as provided for in Article 7(1)(c) of the Charter should be understood to mean that legal counsel should be effective even if provided by the State.[33] The Court has also held that for representation to qualify as effective, it should be one that provides counsel with sufficient time and means to prepare an adequate defence at all stages right from the arrest of the individual, without any interference.[34] As the Court has held, it is the Respondent State's duty to provide adequate representation to an accused and intervene only when the representation is not adequate.[35] The question to be determined is whether counsel provided by the Respondent State, in the Applicant's case was effective.

92. The Court notes that the Applicant alleges that his counsel did not call any defence witnesses despite there being witnesses who could aid his defence. The Court also notes that there is nothing on the record to demonstrate that the Respondent State impeded the counsel who it designated to represent the Applicant, to access him and consult him on the preparation of his defence. The Court also notes that there is nothing on the record to demonstrate that the Applicant informed the domestic courts of the alleged shortcomings in the counsel's conduct in relation to

[33] *Msuguri v. Tanzania* (merits and reparations), *supra*, § 91 and *Juma v. Tanzania* (judgment)*, supra,* § 84.
[34] *Ghati Mwita v. United Republic of Tanzania* ACtHPR, Application No. 012/2019, Judgment of 1 December 2022 (judgment), §§ 122-123; *Henerico v. Tanzania* (merits and reparations), *supra,* § 109 and *African Commission on Human and Peoples' Rights v. The Republic of Libya* (merits) (3 June 2016) 1 AfCLR 153, § 93.
[35] *Henerico v. Tanzania* (merits and reparations), *ibid,* § 106.

his defence. The Court finds that the Applicant was free to raise, with the High Court and Court of Appeal, his discontent about the manner in which he was represented. Therefore, these allegations are not sufficiently substantiated, and, are accordingly dismissed.

93. Regarding the Applicant's allegation that he was unable to properly communicate with his lawyer as he never met him outside of trial and as a result could not direct him to collect critical evidence in his case, the Court notes that the Applicant does not adduce evidence that authorities of the Respondent State denied counsel the time and facilities to communicate with him. The Court notes that these are matters between him and his counsel which should not, in these circumstances, be imputed on the Respondent State and as such dismisses these allegations.

94. The Court notes that the Applicant alleges that his lawyers did not arrange for an interpreter or translator, or advocate on his behalf to ensure he was given the opportunity to speak in his own defence. However, the Court notes that the Applicant has not shown that the judicial authorities of the Respondent State restrained counsel in any manner in seeking interpretation during the proceedings. Further, the Court also notes that the Applicant did not inform the domestic courts of counsel's alleged shortcomings in this regard. The Court also notes that the Applicant did not point to any part of the proceedings where he expressly objected and demanded the presence of an interpreter. In light of the above, the Court dismisses this allegation.

95. With respect to the Applicant's allegation that his lawyer failed to safeguard his right to be tried without undue delay, the Court considers that this issue should have been addressed between the Applicant and his counsel. The Court notes that there is nothing on the record to show that the judicial authorities of the Respondent State precluded counsel from bringing this matter to the attention of the domestic courts. The Court reiterates its position that the Applicant was free to inform the domestic courts of his

discontent regarding representation by counsel. In view of these considerations, the Court dismisses this allegation.

96. Lastly, regarding the Applicant's allegation that his lawyer failed to object to evidence adduced against him by the Respondent State, the Court observes that the allegation relates to the counsel not raising or objecting to certain evidentiary issues in relation to his defence. The Court notes that there is nothing on record to demonstrate that the Respondent State impeded the counsel from accessing the Applicant in order to consult and prepare for his defence. The Court holds that it was not up to the domestic courts to conduct the Applicant's defence hence these matters should not be imputed on the Respondent State. The Court holds that the State should intervene only where counsel's manifest failure to provide effective representation is brought to its attention. In view of the above, the Court dismisses this allegation.

97. In light of the foregoing, the Court holds that the Respondent State discharged its obligation to provide the Applicant with effective free legal assistance. The Court, therefore, finds that the Respondent State has not violated Article 7(1)(c) of the Charter regarding the right to defence.

b. On the failure to provide an interpreter during arrest and trial

98. The Applicant alleges that the Respondent State violated his right to defence by failing to provide him with an interpreter both during arrest and trial. It is the contention of the Applicant that despite the fact that the police could not speak Kirundi, his native tongue, they purported to communicate with him by speaking a similar language, which is Kiha. He avers that no interpreter was provided to assist him in the preparation or review of his purported statement of answers to the police during interrogation and that the statement was written in Kiswahili, a language that he did not speak or understand. As a consequence of these failings, the Applicant avers, he discovered subsequently that the statement he had purported to give the police did not reflect the evidence he had given. He also submits that he

did not fully understand the accusations levied at him until he was informed by a fellow prisoner when he was detained in 2004.

99. The Applicant further submits that while the Respondent State avers that there was an interpreter in court, the interpreter was translating English into Kiswahili and vice versa, both being languages that he could not understand at the time of the original proceedings. He also alleges that he was not afforded the resources to enable him to effectively understand pre-trial proceedings, defend himself during trial, and have his cause heard.

100. The Respondent State disputes this allegation as baseless and void of merit, adding that there was an interpreter in court throughout the hearing of the case as it is reflected in the court proceedings. The Respondent State submits that the right to prepare adequate defence is always granted expeditiously by its judicial authorities without any bias taking into consideration also the language constraints of the accused persons.

101. In his reply, the Applicant submits that he discovered the contents of the statement he gave to the police and the misrepresented information therein only when he was in prison.

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102. The Court observes that while Article 7(1)(c) of the Charter does not explicitly provide for the right to be assisted by an interpreter, the said right is expressly guaranteed in Article 14(3)(a) and (f) of the International Covenant on Civil and Political Rights (ICCPR) which provides that "… everyone shall be entitled to … (a) be promptly informed and in detail in a language which he understands of the nature and cause of the charge against him; and (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in court".[36]

[36] Ratified by the Respondent State on 11 June 1976.

103. This Court has held in *Armand Guehi v. United Republic of Tanzania* that every accused person has the right to an interpreter which is an aspect of fair trial under Article 7(1)(c) of the Charter read jointly with Article 14(3)(a) of the ICCPR.[37] The Court has also held that in cases where the accused cannot understand or speak the language that is being used in court, he or she is entitled to an interpreter. Further, if the accused person is represented by counsel, the need for interpretation should be communicated to the court.[38]

104. The same purpose is inherent in the Criminal Procedure Act of the Respondent State. Section 211(1) of the said Act provides that "whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open court in a language understood by him."

105. It follows that the right to an interpreter, as it arises from these provisions, is not necessarily for an accused person to be provided interpretation in his own language but rather in any language that he understands. There lies the rationale of this Court's conclusion in *Guehi v. Tanzania* that the purpose of ensuring that the accused person understands the language used by the trial court is to be aware of the charges brought against him and participate in the proceedings without necessarily having a full mastery of the language used.[39]

106. In the instant case, it emerges from the record that, as at the time of his arrest in 2004, the Applicant had been residing in Tanzania for ten (10) years after he arrived from Burundi as a refugee. The record also shows that upon his arrest, the Applicant was taken into police custody where he gave his statement, which he asserts was prepared by the police officer in

[37] *Guehi v. Tanzania* (merits and reparations), *supra,* § 73.
[38] *Henerico v. Tanzania* (merits and reparations), *supra,* § 128 and *Yahaya Zumo Makame v. United Republic of Tanzania* ACtHPR, Application No. 023/2016, Judgment of 25 June 2021 (merits and reparations), § 93.
[39] *Guehi v. Tanzania*, supra, §§ 73-79. See also, *Husain v. Italy*, ECHR, Application 18913/03, Judgment of 24 February 2005.

Kiswahili.[40] Further, interpretation was provided from English into Kiswahili and vice versa during the trial court proceedings, including at the committal stage when the information was read over and explained to him, and he pleaded not guilty.[41] Additionally, during the trial, the Applicant gave evidence in his defence and only pointed to the fact that the statement was not read over to him and that maybe the police wrote the name Phonex instead of Avon regarding the model of the bicycle after hearing the evidence of the relatives of the deceased.[42]

107. The Applicant's participation in the proceedings as thus recounted was manifestly in a language he understood since he did not raise any objection to the proceedings being interpreted into Kiswahili.[43] Notably, the Applicant was represented by counsel who had the required understanding of the proceedings that enabled him to object on behalf of his client as stated earlier in this judgment.

108. It is also apparent, from the record, that there is nothing to show that the Applicant made any request for interpretation into Kirundi instead of Kiswahili and that the courts refused to grant it. Besides, the Applicant does not point to any part of the proceedings where he expressly objected and demanded such interpretation. This Court is of the considered view that by not objecting, the Applicant understood the processes and agreed to the manner in which they were being conducted. Against these facts, the reasonable conclusion is that the Applicant had the requisite understanding to make decisions on whether and how he should participate in the proceedings and possibly object to any part thereof.

109. In light of the above, the Court finds that the lack of provision of an interpreter in his native language, Kirundi during the concerned proceedings did not affect the Applicant's ability to defend himself.

[40] *The Republic v. Dominick S/O Damian*, Criminal Sessions Case No. 61 of 2008, *supra*, page 47.
[41] *Ibid*, pages 2, 10, 13, 38-39, 64 and 94.
[42] *Ibid,* pages 47-48.
[43] *Ibid,* pages 45-51.

110. The Court consequently dismisses the allegation of violation of Article 7(1)(c) of the Charter, read jointly with Article 14(3)(a) and (f) of the ICCPR, on the right to defence with regard to the right to be assisted by an interpreter.

iii. Alleged violation of the right to be presumed innocent

111. The Applicant alleges that his conviction and sentence violate his inalienable right to a fair trial under the Charter as he was sentenced to death without adequate proof of his guilt. He submits that the only piece of evidence linking him to the crime was the statement of the wife of the deceased where she claimed that his cuts were injuries he sustained in an altercation with the deceased. He further submits that no record was kept of his wounds and that multiple prosecution witnesses did not appear in court.

112. The Applicant avers that to overcome the manifest lack of evidence linking him to the alleged murder of the deceased, the judge invoked the doctrine of recent possession against him due to his possession at the time of his arrival at the police station of a bike purportedly resembling the one previously possessed by the deceased. He submits that this was done notwithstanding his clear explanation that he had bought the bike months before the incident. It is the Applicant's submission that both the High Court and his attorney failed in their obligations to safeguard his right to a fair trial.

113. In his reply, the Applicant also submits that his prosecution was based entirely on circumstantial evidence, namely on the written testimony of the deceased's wife who was never examined at trial while further evidence in his favour was not considered. He further avers that reliance on the doctrine of recent possession was entirely inappropriate given that there was no effort to obtain further evidence to corroborate his explanation as to why he was found in possession of the stolen property.

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114. Regarding the Applicant's allegations, the Respondent State avers that the Applicant's conviction was upheld based on the doctrine of recent possession as illustrated by the Court of Appeal's judgment. The Court of Appeal, the Respondent State argues, sustained the conviction upon finding that the trial court properly applied the doctrine. It is the Respondent State's submission that in the case at hand, as the Court of Appeal judgment reveals, it was the Applicant who led the police to where the stolen items were located and their owner PW1 correctly identified them while in the possession of the Applicant. The Respondent State concludes that given that domestic courts conclusively determined evidential matters properly, having proved the case against the Applicant beyond reasonable doubt, the Applicant's allegations lack merit and should be dismissed.

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115. Pursuant to Article 7(1)(c) of the Charter, every individual has the right to have his cause heard and the right to be presumed innocent until proven guilty by a competent court or tribunal.

116. The Court recalls its position in *Kijiji Isiaga v. United Republic of Tanzania* where it held that domestic courts enjoy a wide margin of appreciation in evaluating the probative value of a particular evidence. As an international human rights court, the Court cannot take up this role from the domestic courts and investigate the details and particularities of evidence used in domestic proceedings.[44]

117. Having noted that, the Court also recalls its position that while it does not have the power to evaluate matters of evidence that were settled in national courts, it is nevertheless vested with jurisdiction to determine whether the

[44] *Kijiji Isiaga v. United Republic of Tanzania* (merits) (21 March 2018) 2 AfCLR 218, § 65 and *Wanjara & 4 ors v. United Republic of Tanzania* (judgment) (25 September 2020) 4 AfCLR 673, § 78.

assessment of the evidence in the national courts complied with relevant provisions of international human rights instruments.[45]

118. The Court notes that upholding the right to a fair trial "requires that the imposition of a sentence in a criminal offence, and in particular, a heavy prison sentence, should be based on strong and credible evidence".[46] As this Court has also held in *Diocles William v. United Republic of Tanzania,* the principle that a criminal conviction should be "established with certitude" is a crucial principle in cases where the death penalty is imposed.[47]

119. On the Applicant's allegation that the only piece of evidence linking him to the crime was the deceased's wife statement where she claimed that his cuts were injuries he sustained in an altercation with the deceased, the Court notes from the record before it that the prosecution relied on five (5) witnesses to prove its case. The conviction was based on circumstantial evidence and the doctrine of recent possession, and the domestic courts held that the evidence was enough and substantial to make the conviction stand. According to the judgments of both the High Court and the Court of Appeal, PW1 first gave the description of the bicycle in issue on 10 July 2004 and four (4) days later he gave the same description for the second time and subsequently gave the same description for the third time when he appeared at the trial court. This, as the domestic courts found, was sufficient evidence to prove that the bicycle which was the subject matter in the case was the property of the deceased.[48]

120. The domestic courts also relied on the evidence of PW2 who told the trial court that the description of the bicycle in issue was given to them by PW1 before the bicycle was recovered and that when he enquired from the

[45] *Kennedy Ivan v. United Republic of Tanzania* (merits) (28 March 2019) 3 AfCLR 48, § 61; *Elisamehe v. Tanzania* (judgment), *supra*, § 66 and *Jonas v. Tanzania* (merits), *supra,* § 69.
[46] *Abubakari v. Tanzania* (merits), *supra,* § 174; *Juma v. Tanzania* (judgment), *supra,* § 70 and *Isiaga v. Tanzania* (merits), *supra,* § 67.
[47] *Wiliam v. Tanzania* (merits), *supra*, § 72.
[48] *The Republic v. Nzigiyimana S/O Zabron*, Criminal Sessions Case No. 20 of 2008, Judgment of the High Court of Tanzania at Tabora, 25 June 2012, pages 81-82 and *Nzigiyimana S/O Zabron v. The Republic,* Criminal Appeal No. 182 of 2013, Judgment of the Court of Appeal of Tanzania at Tabora, 25 September 2013, pages 11-12.

accused person how he got the bicycle in issue he failed to explain and he did not know what type it was.[49] Moreover, according to both the High Court and the Court of Appeal, further important evidence came from PW3 who witnessed the transaction in which the deceased had purchased the bicycle model Avon with serial No. 0538 and identified the sale agreement which was adduced in court as evidence.[50]

121. With regards to the Applicant's allegation that the doctrine of recent possession was improperly invoked, this Court notes that the domestic courts confirmed that all the elements supporting the said doctrine were proven namely that the property was found with the accused person, the property was positively identified as belonging to the victim, that the property had been recently stolen from the victim and that the property related to the one on the charge sheet.[51] As highlighted earlier in the present Judgment, both the High Court and Court of Appeal satisfied themselves that the evidence of PW1 and PW3 proved that the bicycle in issue belonged to the deceased and had recently been stolen, and that evidence of PW2 proved that the bicycle in question was found with the accused person.

122. This Court also notes that the domestic courts took cognisance of the fact that in relying on the doctrine of recent possession, the burden of proof lies on the prosecution who are required to prove their case beyond reasonable doubt. The same courts satisfied themselves that the Applicant failed to raise reasonable doubt that the bicycle was ever his hence finding that the doctrine of recent possession was properly invoked.[52] This Court consequently finds that the manner in which the domestic courts evaluated

[49] *The Republic v. Nzigiyimana S/O Zabron*, Criminal Sessions Case No. 20 of 2008, *ibid,* pages 80-83 and *Nzigiyimana S/O Zabron v. The Republic,* Criminal Appeal No. 182 of 2013, *ibid*, pages 13-14.
[50] *The Republic v. Nzigiyimana S/O Zabron*, Criminal Sessions Case No. 20 of 2008, *ibid,* page 91 and *Nzigiyimana S/O Zabron v. The Republic,* Criminal Appeal No. 182 of 2013, *ibid*, pages 12-13.
[51] *Ladislaus Onesmo v. United Republic of Tanzania,* ACtHPR, Application No. 047/2016, Judgment of 30 September 2022 (merits and reparations), § 63.
[52] *The Republic v. Nzigiyimana S/O Zabron*, Criminal Sessions Case No. 20 of 2008, *ibid,* pages 91-93 and *Nzigiyimana S/O Zabron v. The Republic,* Criminal Appeal No. 182 of 2013, *ibid*, pages 22-23.

the evidence does not reveal any manifest error or a miscarriage of justice to the Applicant.

123. In light of the above, the Court, therefore, dismisses the Applicant's allegations that his right to be presumed innocent until proven guilty by a competent court or tribunal was violated and finds that the Respondent State has not violated Article 7(1)(b) of the Charter.

B. Alleged violation of the right to life

124. The Applicant makes various claims regarding the alleged violation of the right to a fair trial in the course of the proceedings leading to his sentencing rendered the mandatory imposition of the death penalty a violation of the right to life.

125. The Applicant avers that the Respondent State violated his right to life under Article 4 of the Charter by imposing the mandatory death penalty without giving due consideration to the personal circumstances of the offender and the particular offence, including its specific aggravating or attenuating elements. It is the Applicant's contention that the Respondent State imposed the death penalty based solely on its mandatory nature in municipal law while such sentence was not warranted or compatible with his right to life due to his good character and lack of any prior criminal history. The Applicant further submits that the Respondent State also failed to prove that it imposed the death sentence because the offence was most serious in nature and his case was the rarest of the rare cases. It is the Applicant's contention that the commutation of his sentence shows that his sentencing did not meet the threshold of seriousness required.

126. Additionally, the Applicant avers that the fact that the Respondent State has now commuted his sentence does not absolve it of this failure in the first instance, which led to his incarceration on death row for eight (8) years.

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127. The Respondent State submits that the imposition of the death penalty as punishment for murder is in accordance with its Penal Code and other regional and international human rights instruments. The Respondent State argues that under Article 6(2) of the ICCPR, the death penalty may be imposed for the most serious crimes and that under Section 196 of its Penal Code, crimes that attract death penalty are of a serious nature. It is the contention of the Respondent State that the offence committed by the Applicant was of a serious nature and attracted the imposition of the death penalty.

128. The Respondent State further argues that while the Applicant was on death row, the sentence was commuted to life imprisonment by the President which rectified the alleged violation by the imposition of the alternative sentence. The Respondent State submits that the request by the Applicant for a lesser sentence is unfounded in national law since the offence of murder only attracts the death penalty or life imprisonment.

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129. Article 4 of the Charter provides that:

> Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

130. The Court notes that the Applicant has raised three grounds relating to the alleged violation of the right to life due to the mandatory imposition of the death penalty, that is, the nature of the offence and circumstances of the offender, the lawfulness of the sentence and compliance with guarantees of due process during the trial. The Court considers that these grounds boil down to whether the mandatory imposition of the death penalty constitutes an arbitrary deprivation of the right to life under Article 4 of the Charter.

131. On the arbitrary deprivation of the right to life as protected under Article 4 of the Charter, the Court recalls its consistent position as exemplified in *Ally Rajabu and Others v. United Republic of Tanzania*. In the said judgment, the Court held that the mandatory imposition of the death sentence is arbitrary and therefore violates the right to life where i) it is not provided by law; ii) it is not meted by a competent court; and iii) it does not result from proceedings that align with a fair trial, namely because it deprives the judicial officer from the discretion to consider circumstances peculiar to the offence and the offender.[53]

132. The Court notes that the Applicant in the present Application does not challenge the power of the domestic courts to impose the death sentence. His allegations revolve around the issues of legality of the mandatory death sentence, and whether its imposition was in abidance with fair trial, namely whether the judicial officer had the leeway to consider circumstances peculiar to the case. The Court will consider these two issues in turn.

133. Regarding the condition of legality, the Court notes that the death sentence is provided for in Section 197 of the Penal Code of the Respondent State. The requirement that the penalty should be provided by law is thus met. The Court considers that, while he seems to also challenge the legality of the mandatory imposition of the death penalty in light of international law, submissions made by the Applicant in this respect rather revolve around the seriousness of the offence, and specific circumstances of the offender. As such, the challenge is not on the legality of the mandatory imposition of the death sentence but rather on the requirement of fairness in imposing the said sentence, which will be examined subsequently.

134. With regards to abidance by fair trial, the Applicant's argument is two-fold, namely whether the mandatory imposition was cognisant of the nature of the offence and if it took into account the circumstances of the offender.

[53] *Ally Rajabu and Others v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 539, §§ 99-100.

135. On the nature of the offence, the Court notes the Applicant's averment that the Respondent State did not prove how the offence in his case was of such a seriousness and gravity that warranted the mandatory imposition of the death penalty. The Applicant suggests that the requirement of "seriousness" is not met since the death sentence was subsequently commuted into life imprisonment.

136. The Court takes note of Article 6(2) of the ICCPR, which provides that "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force a the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide …".

137. In the case of *Ghati Mwita v. United Republic of Tanzania*, this Court held that the death penalty should exceptionally "be reserved only for the most heinous of offences committed in seriously aggravating circumstances".[54]

138. The Court further takes note of international human rights case-law on the seriousness and gravity of an offence that warrants the imposition of the mandatory death penalty. For example, the Inter-American Court of Human Rights (IACHR) has held that intentional and illicit deprivation of another's life can and must be recognized and addressed under various factors that correspond with the wide range of seriousness of the surrounding facts, taking into account the different facets that can come into play such as a special relationship between the offender and the victim, motives for the behaviour, the circumstances under which the crime is committed and the means employed by the offender. The IACHR held that the approach allows for a graduated assessment of the seriousness of the offence, so that it will bear an appropriate relation to the graduated levels of gravity of the applicable punishment.[55]

[54] *Mwita v. Tanzania* (judgment), *supra,* § 66.
[55] *Boyce et al. v. Barbados*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of 20 November 2007. Series C No. 169, paras. 46-63 and *Hilaire, Constantine, and Benjamin et al. v.*

139. In *S v. Makwanyane*, the South African Constitutional Court summarised the position as follows: "[T]he death sentence should only be imposed in the most exceptional cases, where there is no reasonable prospect of reformation and the objects of punishment would not be properly achieved by any other sentence".[56] Further, in *Mitcham and Others v. Director of Public Prosecution*, the Eastern Caribbean Court of Appeal held that "the burden of proof at the sentencing hearing lies on the prosecution and the standard of proof shall be beyond reasonable doubt."[57]

140. The Court notes that in the instant Application, the mandatory imposition of the death penalty deprived the trial court of the discretion to consider whether the Applicant's case fell within the classification of the rarest cases for which a death penalty can lawfully be imposed. This is because, as applied under the laws of the Respondent State, the death sentence is automatic for murder and does not allow the judicial officer to consider specifics of the offence. Given the above, the Court holds that the Respondent State violated the Applicant's right to life by failing to allow the judicial officer to take into account the nature of the offence.

141. As far as the situation of the offender is concerned, this Court recalls that, as it held in the above cited *Rajabu* judgment, the mandatory imposition of the death penalty, as provided for in Section 197 of the Penal Code of the Respondent State, falls short of the requirements of due process as it takes away the discretionary power of a judicial officer to impose a sentence on the basis of the individual circumstances of a convicted person.[58] In *Marthine Christian Msuguri v. United Republic of Tanzania*, the Court examined whether the Applicant had suffered post traumatic disorder prior to the commission of the offence and whether he suffered from insanity at the time of commission.[59] The Court recalls that, as established in its

Trinidad and Tobago, Merits, Reparations, and Costs, Judgment of June 21, 2002. Series C No. 94, para. 106.

[56] *S v. Makwanyane,* Case No. CCT/3/94, Judgement of 6 June 1995, para 46.

[57] *Mitcham & Ors v. DPP*, Crim. App. Nos 10-12 of 2002, Eastern Caribbean Court of Appeal, para 2.

[58] *Rajabu and Others v. Tanzania* (merits and reparations), *supra,* § 110.

[59] *Msuguri v. Tanzania* (judgment), *supra,* §§ 66-72.

jurisprudence, a system of mandatory capital punishment deprives the complainant of the most fundamental right, the right to life, without considering whether this exceptional form of punishment is appropriate in the circumstances of his or her cause.[60]

142. The Court also takes cognisance of international jurisprudence with regards to the consideration of the circumstances of the offender in imposing the mandatory death penalty. In *Dial and Others v. Trinidad and Tobago*, the IACHR held that when certain laws make it mandatory to impose a death sentence automatically, this does not permit the trial courts to consider the particular circumstances of the accused including their criminal record.[61] The High Court of Malawi in *Kafantayeni and Others v. Attorney General* stated that, in a capital case, the right to a fair trial requires that offenders be permitted to present evidence of mitigation relevant to the individual circumstances either of the offence or of the offender.[62]

143. In the instant Application, the Court notes that the Applicant contends that the Respondent State imposed the death penalty without considering his circumstances with regard to good character and lack of any prior criminal history. The Court is of the view that as a general principle, and by natural justice and fairness, imposition of sentences, let alone such serious and grave sentence as the death penalty, should always involve the possibility for mitigation. The Court considers that the elements of good character and lack of any prior criminal history invoked by the Applicant in the present Application falls within the category of circumstances that apply in mitigating sentences. Therefore, by not taking them into consideration, the proceedings leading to the mandatory imposition of the death sentence in the present case did not abide by the requirement of fairness.

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[60] *Rajabu and Others v. Tanzania* (merits and reparations), *ibid,* § 109 and *Juma v. Tanzania* (judgment)*, supra,* §§ 124-125.
[61] *Dial et al. v. Trinidad and Tobago,* Judgment of November 21, 2022 (merits and reparations) paragraph 48.
[62] *Kafantayeni and others v. Attorney General*, Constitutional Case No.12 of 2005 (unreported). See also, *Attorney General v. Susan Kigula and 417 Others*, Constitutional Appeal No. 03 of 2006 (Supreme Court of Uganda), §§ 63-64; *Mutiso v. Republic*, Crim. App. No. 17 of 2008 at 8, 24, 35 (July 30, 2010) (Kenya Ct. App.).

144. The Court is cognisant of the Respondent State's averment that the alleged violation has been rectified by the President who had regard to the right to life by commuting the Applicant's death sentence to life imprisonment. However, the presidential pardon that led to the commutation in 2020 does not absolve the Respondent State of its responsibility for the commission of the violation – that is the mandatory imposition of the death sentence – as at when it occurred in 2012. Further, the Applicant had actually been on death row for about eight (8) years before the commutation occurred, and the violation has had effects.

145. In view of the above, the Court holds that the mandatory imposition of the death penalty, as provided for in Section 197 of the Respondent State's Penal Code, and as automatically applied by the High Court in the case of the Applicant, is arbitrary as it does not meet the requirement of fairness set out in Article 4 of the Charter. This is because such imposition of the sentence does not allow the judicial officer to take into account the circumstances of the offender or the offence which is a violation of the right to life.

146. The Court, therefore, finds that the Respondent State has violated the Applicant's right to life under Article 4 of the Charter by failing to allow the judicial officer to take into account the nature of the offence and the circumstances of the offender in the imposition of the death penalty, notwithstanding the subsequent commutation of the death sentence.

C. Alleged violation of the right to dignity

147. The Applicant alleges a violation of his right to dignity under Article 5 of the Charter through the imposition of the death penalty which amounts to cruel and inhuman treatment. Additionally, the Applicant alleges a violation of his dignity on the basis of the death row phenomenon and deplorable prison conditions.

148. The Court notes that Article 5 of the Charter provides that:

> Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

i. On the prohibition against cruel, inhuman and degrading treatment

149. The Applicant alleges that the Respondent State violated his right to dignity through the imposition of the death penalty by hanging in violation of Article 5 of the Charter. It is the Applicant's contention that such breach is constituted notwithstanding the commutation of the death penalty to life imprisonment.

150. The Respondent State on its part avers that imposition of the death sentence for murder is in accordance its laws and, regional and international human rights instruments. According to the Respondent State, the death sentence is imposed for "most serious crimes" as provided under Section 196 of the Penal Code and Article 6(2) of the ICCPR.

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151. With regard to the prohibition of cruel and inhuman treatment under Article 5 of the Charter, this Court stated in *Ally Rajabu and Others v. United Republic of Tanzania,* that many methods used to carry out the death penalty have the potential of amounting to torture, as well as cruel, inhuman and degrading treatment given the suffering inherent thereto. This Court specifically held that hanging a person is one of such methods that is inherently degrading.[63] The Court also recalls its position in *Amini Juma v. United Republic of Tanzania* where it held that implementing the death

[63] *Rajabu and Others v. Tanzania* (merits and reparations), *supra,* §§ 118-119.

penalty by hanging encroaches upon the dignity of a person in respect of the prohibition of torture and cruel, inhuman and degrading treatment.[64]

152. The Court reiterates its position that in accordance with the very rationale for prohibiting methods of execution that amount to torture or cruel, inhuman and degrading treatment, the prescription should be that methods of execution must exclude suffering or involve the least suffering possible in cases where the death penalty is permissible.[65] Having found that the mandatory imposition of the death sentence violates the right to life due to its arbitrary nature, the Court holds that, as the method of implementation of that sentence, hanging inevitably encroaches upon the right to dignity and not to be subjected to cruel, inhuman or degrading punishment and treatment.[66] The Court considers that these findings apply to the present Application.

ii. On the Applicant's detention on death row

153. The Applicant submits that his incarceration on death row has exposed him to the death row phenomenon which is a term used to describe the anxiety, dread, fear, and psychological anguish that may accompany long-term incarceration on death row constituting cruel, inhuman or degrading treatment or punishment. He alleges that during his time on the death row he has been subjected to the psychological torment of living with a constant fear of impending death.

154. The Applicant also submits that he was held on death row for eight (8) years in Butimba Prison, a period well in excess of the amount of time considered to be cruel, inhuman or degrading. He avers that the existence of a *de facto* moratorium on death penalty did not mitigate the risk of death row. He further submits that although he is no longer on death row, he is entitled to

[64] *Juma v. Tanzania* (judgment)*, supra,* § 136.
[65] *Rajabu and Others v. Tanzania* (merits and reparations), *supra,* § 118.
[66] *Ibid,* §§ 119-120.

a remedy for the continuing psychological effects arising from his extended incarceration at the hands of the Respondent State.

155. The Respondent State does not specifically respond to the alleged violation of the right to dignity owing to detention on death row.

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156. Regarding whether detention on death row violates the right to dignity, this Court has previously held, in the above cited *Msuguri* judgment, that detention on death row has the inherent potential to cause an adverse impact on an individual's psychological state due to the fact that the person involved may be executed at any time.[67] In the *Rajabu* judgment referred to earlier, the Court similarly held that during their time on death row, the Applicants lived a life of uncertainty in the awareness that they could be executed at any time and that such waiting not only prolonged but also aggravated their anxiety.[68]

157. In the instant case, the Court notes that the mandatory death penalty was imposed on the Applicant in 2012 subsequent to which he was held for eight (8) years on death row in Butimba Prison prior to the commutation of his death sentence to life imprisonment in 2020. The Court further notes that international jurisprudence has established that a delay of more than three (3) years between the confirmation of a prisoner's death sentence on appeal and execution constitutes cruel, inhuman or degrading treatment or punishment.[69] The Court also takes note of its jurisprudence in the *Rajabu* case where it held that eight (8) years on death row constituted cruel, inhuman or degrading treatment or punishment.[70] Finally, as the Court concluded earlier in this judgment, the mandatory imposition of the death

[67] *Msuguri v. Tanzania* (merits and reparations), *supra*, § 112 and *Mwita v. Tanzania* (judgment), *supra,* § 87.
[68] *Rajabu and Others v. Tanzania* (merits and reparations), *supra,* § 148.
[69] *Attorney-General v. Susan Kigula & 17 Others* (Constitutional Appeal 3 of 2006) UGSC 6 (21 January 2009) (Supreme Court of Uganda) and *Catholic Commissioner for Justice and Peace in Zimbabwe v. Attorney General of Zimbabwe and Others*, Zimbabwe: Supreme Court, 24 June 1993.
[70] *Rajabu and Others v. Tanzania* (merits and reparations), *supra,* § 148.

penalty does not meet the requirement set out under the Charter and the Applicant therefore ought not to be on death row in the first place.

158. In light of the foregoing, the Court holds that the period of eight (8) years, in the instant case, whereby the Applicant had to endure the conditions on death row and the anguish and tension of living with the ever-present fear of being executed amounts to cruel, inhuman or degrading treatment or punishment.

iii. On deplorable prison conditions of the Applicant

159. The Applicant alleges that as a death row prisoner for eight (8) years, he was incarcerated under deplorable prison conditions that included isolation, cramped environments, harassment and arbitrary or severe rules. The Applicant submits that during his incarceration, he has suffered from long-term health problems mainly stomach problems and he did not receive any treatment for these issues. He avers that he suffers from headaches and ulcers as a result of the conditions of his detention. He avers that the nature of the incarceration on death row constitutes cruel, inhuman or degrading treatment in violation of Article 5 of the Charter.

160. The Respondent State avers that the Applicant's claims are unsubstantiated and that the prisons in Tanzania are in a very good condition to receive prisoners for the whole time when they are serving their sentence.

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161. In respect of deplorable conditions of prison, this Court has held in the matter of *Leon Mugesera v. Republic of Rwanda* that Article 5 of the Charter "can be interpreted as extending to the broadest possible protection against abuse, whether physical or mental".[71] The Court also held that the cruelty or inhumanity of the treatment must be assessed on a case-by-case basis

[71] *Leon Mugesera v. Republic of Rwanda* (judgment) (27 November 2020) 4 AfCLR 834, § 80.

and must involve a certain degree of physical or mental suffering on the part of the person, which depends on the duration of the treatment, the physical or psychological effects of the treatment and state of health of the person.[72]

162. The Court further recalls its position in the above cited *Mugesera* judgment that States have an obligation to provide prisoners with "necessary conditions of a dignified life, including food, water, adequate ventilation, an environment free from disease, and the provision of adequate healthcare."[73]

163. In the instant case, the Court notes that the main issue arising is that of burden of proof which in principle, as earlier recalled, lies on the Applicant who makes the allegation.[74] The Court further notes that as per its consistent case-law, it has resorted to a relatively flexible approach to dealing with evidentiary issues based mainly on the rule that once the Applicant makes a *prima facie* allegation, the burden shifts to the Respondent State to disprove the same.[75] As a general evidentiary principle, the burden then shifts back to the Applicant only where the Respondent State has adduced sufficient controverting evidence.

164. The Court takes note of the Applicant's allegations of deprivation of food, poor sleeping conditions, detention in solitary confinement and lack of adequate medical care. The witness statement provided by the Applicant expounds on the conditions to include overcrowding, inadequate food, poor sanitation, and insufficient medical care; three inmates sleep together in one room on mattresses on the ground; lack of mosquito nets; lack

[72] *Ibid*, § 81.
[73] *Ibid,* § 103.
[74] *Makungu Misalaba v. United Republic of Tanzania*, ACtHPR, Application No. 033/2016, Judgment of 7 November 2023 (merits and reparations), § 172; *George Maili Kemboge v. United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 369, § 51.
[75] *Leon Mugesera v. Republic of Rwanda* (judgment) (27 November 2020) 4 AfCLR 834, § 33; *Kennedy Owino Onyachi and Charles John Mwanini Njoka v. United Republic of Tanzani*a (merits) (28 September 2017) 2 AfCLR 65, § 142.

occupation by any work or exercise to keep his brain and body active and healthy; headaches and ulcers as a result of the conditions of detention.

165. In the present Application, the Applicant makes a *prima facie* allegation of being subjected to deplorable prison conditions, which he also supported with a witness statement made under oath. The Respondent State on its part rejects the claim as unsubstantiated without however adducing any evidence to the contrary. In the circumstances, burden of proof does not shift back to the Applicant given that the witness statement carries a probative value.

166. The Court also takes judicial notice that, as per the 2022 Performance Audit Report released by the National Audit Office of the Respondent State, the state of prison conditions reveals issues such as inadequate food, overcrowding, poor sanitation and insufficient medical care; dilapidated bedding facilities.[76] In its report submitted for the 2016 Universal Periodic Review of the Respondent State, the Office of the United Nations High Commissioner for Human Rights highlighted the fact that "conditions in prisons and detention centres were of serious concern".[77] Similarly, in its 2021 submissions for the country's third universal periodic review, the Commission for Human Rights and Good Governance of the Respondent State, which is the national human rights institution of the Respondent State, raised concerns about overcrowding and food ratio.[78]

167. The Court observes that the Respondent State does not rebut the Applicant's claim by providing details on its prison conditions or provide evidence to the effect that the said conditions are in line with international standards. Given the above described state of detention, the balance of

[76] National Audit Office (United Republic of Tanzania), *Performance Audit Report on Administration and Provision of Remands and Prisons Infrastructure* (March 2022).
[77] United Nations Human Rights Council, 'Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 United Republic of Tanzania' (7 March 2016).
[78] Commission for Human Rights and Good Governance, 'Submission for Tanzania Third Cycle Universal Periodic Review' (August 2021) 1-2.

probabilities leans towards the Applicant's having suffered deplorable detention conditions. In view of the above, the Court holds that the Applicant suffered deplorable detention conditions, which encroached upon his right to dignity.

168. In the totality of the circumstances, the Court finds that the Respondent State has violated the Applicant's right to dignity and not to be subjected to cruel, inhuman or degrading punishment and treatment guaranteed under Article 5 of the Charter regarding the imposition of the death sentence by hanging, detention on death row notwithstanding the commutation of his sentence and deplorable conditions of detention.

D. Alleged violation of the right to consular assistance

169. The Applicant alleges that the Respondent State breached international law and failed to respect fair trial guarantees by not informing him of his right to consular assistance from the Burundian Embassy. He submits that the Respondent State acceded to the VCCR in 1977 hence was obligated under Article 36 of the said instrument to notify him of his rights to consular assistance at the time of his arrest and anytime thereafter.

170. The Applicant avers that in addition to being a minimum guarantee of fair trial in cases involving foreign nationals, the right to consular assistance is a human right in and of itself that has been violated in the present case. He avers that he had already suffered serious prejudice at the hands of the Respondent State as a result of his status as a refugee and living in challenging conditions in the Kanembwa Camp in Tanzania. According to the Applicant, this hardship was compounded by the failure by the Respondent State to provide consular assistance which precluded the possibility of a fair trial and amounted to a violation of his human rights.

171. The Respondent State argues that the right to consular assistance under Article 36(1)(b) of the VCCR is granted subject to request by an accused person. The Respondent State submits that during the domestic

proceedings, the Applicant did not raise any concern to request communication with the sending State.

172. The Respondent State avers that there was no violation of the VCCR since the law does not provide a mandatory requirement for the government of Tanzania to inform the Applicant's State but the same would have been done if the Applicant had made such a request. According to the Respondent State, establishing such contact without the Applicant's request would have been against the principle of non-refoulement.

173. In his Reply, the Applicant submits that Section 25 of the 1998 Refugee Act invoked by the Respondent State cannot restrict the right to consular assistance provided under Article 36 of the VCCR. It is the Applicant's contention that Article 36 of the VCCR imposes unfettered obligation on State to inform foreign detained individuals without delay of their right to notify the sending State of their arrest. He finally avers that, contrary to the Respondent State submission, facilitating contact between a refugee and the consulate of his state of origin is not equivalent to expulsion that would be against the principle of non-refoulement.

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174. This Court has previously held that the rights accruing from the provision of Article 36(1) of the VCCR are also protected under Article 7(1)(c) of the Charter.[79] As the Court stated in *Niyonzima Augustine v. United Republic of Tanzania* "consular services are critical to the respect for the right to a fair trial of foreign detained nationals. Article 36(1) of the VCCR, explicitly requires State Parties to facilitate consular services to foreign nationals detained within their jurisdiction".[80]

[79] *Guehi v. Tanzania* (merits and reparations), *supra,* §§ 95-96.
[80] *Augustine v. Tanzania* (judgment), *supra,* § 81.

175. The Court notes that while Article 7 of the Charter does not make an explicit provision of the right to consular assistance, the VCCR to which the Respondent State is a party does.[81] Article 36(1) of the VCCR provides for the consular rights of the detained persons and duties and obligations of the State hence the determination of this allegation will be made in light of Article 36(1) of the VCCR.

176. The Court notes that in terms of Article 36(1) of the VCCR, consular assistance is facilitated in two ways, namely, when the receiving State informs the Applicant of this right or when the Applicant makes a request for consular services. In the instant case, the Court will determine the Applicant's claim based on these considerations.

177. On the issue of request for consular assistance by the Applicant, the Court notes from the record before it that there is nothing to show that the Applicant made any request for consular assistance which was denied by the Respondent State. However, the Court holds that failure to request consular assistance by the Applicant does not absolve the Respondent State from its duty of informing him of his right as prescribed by Article 36(1) of the VCCR.

178. On the issue as to whether the Respondent State informed the Applicant of his right to consular assistance, the Court notes that within the meaning of Article 36(1) of the VCCR, the detainee must be informed of his/her rights to consular assistance at the time of his arrest or before he makes any statement or confession and also before the commencement of the trial process.

179. The Court notes that in the instant case, the record of the proceedings does not reveal that the Applicant was notified of his right to consular assistance. Further, the Court notes that the record of the proceedings shows that the domestic judicial authorities mentioned the Applicant's nationality as a

[81] Ratified by the Respondent State on 18 May 1977.

Burundian which means that the Respondent State was aware that the detainee was a foreign national charged with an offence that carried a heavy sentence. The Court is cognisant of the Respondent State's averment that the lack of communication with the receiving State was meant to safeguard the principle of non-refoulement since the Applicant was a refugee. However, the Court considers that, as earlier expounded in this judgment, communication to the receiving State as contemplated under Article 36 of the VCCR is not contrary to the principle of non-refoulement by which a refugee should not be expelled to his country of origin or any other country where he may be at risk of jeopardy. As such, the Respondent State's averment in this respect does not stand.

180. In light of the above, the Court holds that the Respondent State failed to notify the Applicant of his right to consular assistance despite knowing that he was a foreign detainee. As such, the Applicant was deprived of the opportunity to seek consular assistance to facilitate his defence.

181. Consequently, the Court holds that the Respondent State violated the Applicant's right to consular assistance by failing to inform him of his rights, thereby violating Article 7(1)(c) of the Charter as read with Article 36(1) of the VCCR.

VIII. REPARATIONS

182. The Applicant prays the Court to grant the following measures:

i. Release him from prison;
ii. Hold a resentencing hearing in the alternative; and
iii. Pay reparations in such amount as the Court deems fit. He submits that he has suffered severe hardships as a result of the breach of his rights under the Charter and subsequent fourteen (14) years of imprisonment, including eight (8) years on death row which has severely impacted his family life.

183. In respect of the Applicant's submission on reparations, the Respondent State avers that there is no violation of the Applicant's rights warranting reparations. The Respondent State avers that the Applicant is duty bound to prove the alleged reparations before the same is granted by the Court.

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184. The Court recalls Article 27(1) of the Protocol which provides that:

> If the Court finds that there has been violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation including the payment of the fair compensation or reparation.

185. The Court considers that, as it has consistently held, for reparations to be granted, the Respondent State should first be internationally responsible of the wrongful act and causation should be established between the wrongful act and the alleged prejudice.[82] Furthermore, and where granted, reparation should cover the full damage suffered. It is also clear that it is always the Applicant that bears the onus of justifying the claims made.[83]

A. Pecuniary reparations

i. Material prejudice

186. The Court recalls that for it to grant reparations for material prejudice, there must be a causal link between the violation established by the Court and the prejudice caused and there should be a specification of the nature of

[82] *XYZ v. Republic of Benin* (judgment) (27 November 2020) 4 AfCLR 49, § 158 and *Sébastien Germain Ajavon v. Republic of Benin* (reparations) (28 November 2019) 3 AfCLR 196, § 17.
[83] *Juma v. Tanzania* (merits and reparations), *supra,* § 141; *Norbert Zongo and Others v. Burkina Faso* (reparations) (5 June 2015) 1 AfCLR 258, §§ 20-31; and *Reverend Christopher R. Mtikila v. United Republic of Tanzania* (reparations) (13 June 2014) 1 AfCLR 72, §§ 27-29.

the prejudice and proof thereof.[84] Further, this Court has held that an Applicant bears the burden of providing evidence to support his/her claims for material prejudice.[85]

187. In the instant case, the Applicant simply prayed the Court to pay reparations in such amount as the Court deems fit. He has not indicated the nature of the material prejudice that he has suffered and how this is linked with the violation of his rights under Articles 4, 5 and 7 of the Charter and Article 36(1) of the VCCR. In any event, the Applicant has not supported his prayers with proof of the loss incurred.

188. In the circumstances, the Court, therefore, does not grant reparation for material prejudice to the Applicant.

ii. Moral prejudice

189. While the Applicant does not specifically refer to moral prejudice, he prays for the Court to order the Respondent State to pay reparations in such amount as the Court deems fit for the severe hardships that he has suffered as a result of the breach of his rights under the Charter. The Applicant also submits that he has suffered severe hardships as a result of the fourteen (14) years of imprisonment, including eight (8) years on death row which severely impacted his family life.

190. The Court recalls that, moral prejudice is that which results from the suffering, anguish and changes in the living conditions for the victim and his family.[86] In the present case, the Court has earlier found that the length of the Applicant's pretrial detention was not reasonable and he was placed on the death row following proceedings that did not abide by fairness. These

[84] *Nguza Viking (Babu Seya) and Another v. United Republic of Tanzania* (reparations) (8 May 2020) 4 AfCLR 3, §15 *and Kijiji Isiaga v. Republic of Tanzania*, AfCtHPR, Application No. 011/2015, Judgment of 25 June 2021 (reparations), § 20.
[85] *Msuguri v. Tanzania* (merits and reparations), *supra*, § 122; *Elisamehe v. Tanzania* (merits and reparations), *supra,* § 97 and *Guehi v. Tanzania* (merits and reparations), *supra*, § 15.
[86] *Mtikila v. Tanzania* (reparations), *supra,* § 34; *Cheusi v. Tanzania* (judgment), *supra,* § 150 and *Viking and Another v. Tanzania* (reparations), *supra,* § 38.

violations, compounded by overall inhuman and degrading circumstances, inherently involve moral prejudice. The Court further observes that in the instant Application, while the death sentence was subsequently commuted to life imprisonment, the Applicant has inevitably suffered prejudice from the established violations caused by the very imposition of the mandatory death sentence and time spent on death row.

191. In light of the foregoing, the Court holds that the Applicant is entitled to moral damages as there is a presumption that he has suffered some form of moral prejudice as a result of the above-mentioned violations. The Court has held that the assessment of quantum in cases of moral prejudice must be done in fairness and taking into account the circumstances of the case.[87] The practice of the Court, in such instances, is to award lump sums for moral loss.[88]

192. The Court has also previously held that a judgment finding violation of rights protected in the Charter forms part of reparations.[89] In the instant case, the Court found a violation of Articles 4, 5, and 7(1) of the Charter, and took judicial notice that the Applicant had already been removed from the death row following the presidential pardon through which his death sentence was commuted to life imprisonment. The Court thus considers that, in the particular circumstances of this Application, its findings of violation constitute substantial reparation as they significantly address the main breach alleged by the Applicant.

193. Having said that, the Court considers that, as fairness requires, an assessment of moral prejudice should take into account the period of eight

[87] *Juma v. Tanzania* (judgment), *supra,* § 144; *Viking and Another v. Tanzania* (reparations), *supra,* § 41 and *Umuhoza v. Rwanda* (reparations), *supra,* § 59.
[88] *Zongo and Others v. Burkina Faso* (reparations), *supra*, §§ 61-62 and *Guehi v. Tanzania* (merits and reparations), *supra,* § 177.
[89] *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, § 173; *Armand Guéhi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 194; *Reverend Christopher Mtikila v. United Republic of Tanzania* (reparations) (13 June 2014) 1 AfCLR 72, § 45.

(8) years that the Applicant spent on death row prior to the commutation of his sentence.

194. In light of these considerations, and based on its discretion, the Court awards the Applicant moral damages in the sum of Tanzanian Shillings Three Hundred Thousand (TZS 300,000).

B. Non-pecuniary reparations

195. The Applicant prays the Court to order the Respondent to release him from prison or in the alternative grant him a retrial.

196. The Court notes that, although none of the Parties make such prayers, its findings in the present Judgment in respect of the mandatory death sentence and "hanging" as a method of execution thereof require a determination as to the measures that may be needed to address these issues. This is done prior to considering the Applicant's prayers in respect of non-pecuniary reparations.

i. Amendment of the law to ensure respect for life and dignity

197. The Court recalls its position in previous judgments dealing with the mandatory imposition of the death penalty where it has ordered the Respondent State to undertake all necessary measures to remove from its Penal Code the provision for the mandatory imposition of the death sentence.[90] The Court notes that to date it has issued several identical orders for the removal of the mandatory death penalty which were delivered in 2019, 2021, 2022, and 2023; yet, as at the date of the present judgment, the Court does not have any information to the effect that the Respondent State has implemented the said orders.

[90] *Mwita v. Tanzania* (judgment), *supra,* § 166; *Msuguri v. Tanzania* (merits and reparations), *ibid*, § 128; *Henerico v. Tanzania* (merits and reparations), *supra,* § 207 and *Juma v. Tanzania* (judgment), *supra,* § 170.

198. The Court notes that in the present judgment it has found that the mandatory imposition of the death penalty violates the right to life guaranteed under Article 4 of the Charter and therefore holds that the said sentence ought to be removed from the books of the Respondent State.

199. Similarly, in its previous judgments,[91] this Court has held that a finding of violation of the right to dignity owing to the use of hanging as a method of execution of the death penalty warranted an order that the said method be removed from the books of the Respondent State. In light of its finding in this Judgment, the Court orders the Respondent State to take all necessary measures to remove "hanging" from its laws as the method of execution of the death sentence, within six (6) months of the notification of the present Judgment.

ii. Release

200. The Court notes that the Applicant prays for the Court to order the Respondent State to release him from prison.

201. The Court recalls its position in *Gozbert Henerico v. United Republic of Tanzania* where it held that:

> The Court can only order a release 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.[92]

[91] *Deogratius Nicholaus Jeshi v. United Republic of Tanzania*, ACtHPR, Application No. 017/2016, Judgment of 13 February 2024 (merits and reparations), §§ 111, 112, 118; *Romward William v. United Republic of Tanzania*, ACtHPR, Application No. 030/2016, Judgment of 13 February 2024 (merits and reparations), § 94.

[92] *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, § 82 and *Juma v. Tanzania* (judgment)*, supra,* § 165.

202. The Court notes its findings in the present Application that the provision for the mandatory imposition of the death sentence in the Respondent State's legal framework violates the right to life protected in Article 4 of the charter. However, the Court notes that the violations did not impact on the Applicant's guilt and conviction, the sentencing is affected only to the extent of the mandatory nature of the penalty. The Court holds that the commission of the offence as adjudicated by domestic courts has remained unaffected in the proceedings before this Court.

203. Given the foregoing, the Court holds that an order for release of the Applicant is not warranted. Consequently, the prayer is dismissed.

iii. Rehearing

204. The Applicant prays the Court to order a resentencing hearing in the alternative to being released from prison. He submits that notwithstanding the presidential commutation, the imposition of the death sentence was the result of "an extrajudicial proceeding" that failed to consider a range of alternative sentences. He submits that he is still entitled as a matter of right under the Charter to an adversarial resentencing hearing before an impartial judge, where the defence can present mitigating evidence and where the judge would have the discretion to impose a range of possible sentences, including a term of years.

205. The Court wishes to first clarify that the failure of the Respondent State to consider alternative sentences does not necessarily render the related proceedings extrajudicial as the Applicant avers. In the instant case, the proceedings that led to the sentencing of the Applicant were judicial in the sense that they were conducted by competent courts in application of relevant laws of the Respondent State.

206. Turning to the actual prayer being considered, this Court recalls that while it does not assume appellate jurisdiction over domestic courts, it has the power to make any order as appropriate where it finds that national

proceedings were not conducted in line with international standards.[93] The Court notes that as it has previously held, the mandatory imposition of the death penalty encroaches on judicial discretion in respect of sentencing, therefore it requires a rehearing on sentence as an adequate remedy.[94]

207. The Court considers that, while the Respondent State has commuted the death sentence to life imprisonment, the Applicant's right to alternative sentencing under judicial discretion remains violated pursuant to the provisions of Article 4 of the Charter. This is because the commutation derived from an executive order. As such, a rehearing on sentencing remains necessary to uphold the judicial discretion provided under the Charter. The prayer for rehearing in respect of the Applicant is, therefore, granted.

iv. Publication of the Judgment

208. Though the Applicant did not make any request for publication of this judgment, pursuant to Article 27 of the Protocol and its inherent powers, the Court will consider this measure. In its previous judgments, the Court has *suo motu* ordered the publication of its judgments after taking into account the circumstances of the cases.[95]

209. The Court observes that, in the present Application, the violation of the right to life by the provision on the mandatory imposition of the death penalty goes beyond the individual case of the Applicant. The Court notes that threats to life associated with the mandatory imposition of the death penalty remain alive in the Respondent State, with no sign as to whether measures are being taken for the law to be amended. In view of the above, the Court orders the Respondent State to publish this Judgment.

[93] *Rajabu and Others v. Tanzania* (merits and reparations), *supra,* § 155.
[94] *Ibid,* § 158 and *Msuguri v. Tanzania* (merits and reparations), *supra,* § 131.
[95] *Mwita v. Tanzania* (judgment), *ibid,* §§ 175-176; *Rajabu and Others v. Tanzania* (merits and reparations), *supra,* § 165 and *Henerico v. Tanzania* (merits and reparations), *supra,* §§ 208-210.

v. Implementation and reporting

210. The Parties did not make specific prayers in respect of implementation and reporting.

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211. The justification provided earlier in respect of the Court's decision to order publication of the judgment, notwithstanding the absence of express prayers by the Parties, is equally applicable in respect of implementation and reporting. Specifically in relation to implementation, the Court notes that in its previous judgments issuing the order to repeal the provision on the mandatory death penalty, the Respondent State was directed to implement the decisions within one (1) year of issuance of the same.[96]

212. The Court observes that, in the present case, the violation of the right to life by the provision on the mandatory imposition of the death penalty goes beyond the individual case of the Applicants and is systemic in nature. The same applies to the violation in respect of execution by hanging. The Court further notes that its finding in this Judgment bears on a supreme right in the Charter, that is, the right to life.

213. In view of this, therefore, the Court deems it necessary to order the Respondent State to periodically report on the implementation of this judgment in accordance with Article 30 of the Protocol. The report should detail the steps taken by the Respondent State to remove the impugned provision from its Penal Code.

214. The Court notes that the Respondent State has not provided any information on the implementation of its judgments in any of the earlier cases where it was ordered to repeal the mandatory death penalty and the deadlines that the Court set have since lapsed. In view of this fact, the Court

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

still considers that the orders are warranted both as an individual protective measure, and a general restatement of the obligation and urgency behoving on the Respondent State to scrap the mandatory death penalty and provide alternatives thereto. The Court holds, therefore, that the Respondent State is under an obligation to report on the steps taken to implement this judgment within six (6) months from the date of notification of this judgment.

IX. COSTS

215. In the present Application, the Applicant did not make any submissions as regards costs.

216. The Respondent prays that the Applicant should bear the costs of the Application.

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217. The Court notes that Rule 32(2) of its Rules provides that “unless otherwise decided by the Court, each party shall bear its own costs, if any.”

218. Noting that there is no reason to justify a departure from the above provision in the instant case, the Court decides that each Party shall bear its own costs.

X. OPERATIVE PART

219. For these reasons:

THE COURT,

Unanimously

On jurisdiction

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

On admissibility

iii. *Dismisses* the objections to the admissibility of the Application;
iv. *Declares* that the Application is admissible.

On merits

By a majority of nine (9) Judges for and one (1) Judge against, Justice Chafika BENSAOULA having filed a Declaration:

v. *Holds* that the Respondent State did not violate the Applicant's right to defence protected under Article 7(1)(c) of the Charter, read jointly with Article 14(3)(a) and (f) of the ICCPR, with regard to the provision of an interpreter;

Unanimously,

vi. *Holds* the Respondent State did not violate the Applicant's right to defence protected under Article 7(1)(c) of the Charter with regard to the provision of effective legal representation;
vii. *Holds* that the Respondent did not violate the Applicant's right to a fair trial, protected under Article 7(1)(b) of the Charter with regard to the right to be presumed innocent until proved guilty by a competent court or tribunal;
viii. *Holds* that the Respondent State violated the Applicant's right to consular assistance protected under Article 7(1)(c) of the Charter as read together with Article 36(1) of the VCCR, by failing to facilitate the provision of consular services;

ix. *Holds* that the Respondent State violated the Applicant's right to a fair trial, protected under Article 7(1)(d) of the Charter with regard to the right to be tried within a reasonable time;

By a majority of eight (8) Judges for and two Judges (2) against, Justices Blaise TCHIKAYA and Dumisa B. NTSEBEZA dissenting

x. *Holds* that the Respondent State has violated the Applicant's right to life, protected under Article 4 of the Charter in relation to the mandatory imposition of the death penalty by failing to allow judicial officers discretion to take into account the nature of the offence and the circumstances of the offender;

xi. *Holds* that the Respondent State has violated the Applicant's right to dignity and not to be subjected to cruel, inhuman or degrading punishment and treatment protected under Article 5 of the Charter in relation to the imposition of the death penalty by hanging.

Unanimously,

xii. *Holds* that the Respondent State has violated the Applicant's right to dignity and not to be subjected to inhuman and degrading treatment protected under Article 5 of the Charter in relation to detention on death row, and deplorable conditions.

On reparations

Pecuniary reparations

xiii. *Does not grant* reparations for material prejudice;

xiv. *Grants* Tanzanian Shillings Three Hundred Thousand (TZS 300,000) to the Applicant for moral damage;

xv. *Orders* the Respondent State to pay the amount indicated under subparagraphs (xiv) free from taxes within six (6) months, effective from the notification of this judgment, failing which it will

pay interest on arrears calculated on the basis of the applicable rate of the Bank of Tanzania throughout the period of delayed payment and until the accrued amount is fully paid.

Non-pecuniary reparations

xvi. *Does not grant* the Applicant's prayer for release*;*

xvii. *Orders* the Respondent State to take all necessary measures, within one (1) year of the notification of this Judgment, for the rehearing of the case on the sentencing of the Applicant through a procedure that does not allow the mandatory imposition of the death sentence and upholds the discretion of the judicial officer;

xviii. *Orders* the Respondent State to take all necessary measures, within six (6) months from the notification of this Judgment to remove the mandatory imposition of the death penalty from its laws;

xix. *Orders* the Respondent State to take all necessary measures, within six (6) months from the notification of this Judgment to remove "hanging" from its laws as a method of execution of the death penalty;

xx. *Orders* the Respondent State to publish this judgment, within a period of three (3) months from the date of notification, on the websites of the Judiciary, and the Ministry for Constitutional and Legal Affairs, and ensure that the text of the judgment is accessible for at least one (1) year after the date of publication.

On implementation and reporting

xxi. *Orders* the Respondent State to submit to it, within six (6) months from the date of notification of this judgment, a report on the status of implementation of the decision set forth herein and thereafter, every six (6) months until the Court considers that there has been full implementation thereof.

On costs

xxii. *Orders* each Party to bear its own costs.

Signed:

Modibo SACKO, Vice-President;

Ben KIOKO, Judge;

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;

and Robert ENO, Registrar.

In accordance with Article 28(7) of the Protocol and Rule 70(3) of the Rules, the Declarations of Justice Chafika BENSAOULA, Justice Blaise TCHIKAYA and Justice Dumisa B. NTSEBEZA are appended to this Judgment.

Done at Arusha, this Fourth Day of June in the Year Two Thousand and Twenty-Four in English and French, the English text being authoritative.