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

NIYONZIMA AUGUSTINE

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 058/2016

JUDGMENT

13 JUNE 2023

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The Court composed of: Blaise TCHIKAYA, Vice-President; Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO, 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[1] (hereinafter referred to as "the Rules"), Justice Imani D. ABOUD, President of the Court and a national of Tanzania, did not hear the Application.

In the Matter of:

Niyonzima AUGUSTINE

Represented by*:*

Advocate Majura Muhammadou E. MAJURA

Versus

UNITED REPUBLIC OF TANZANIA,

Represented by*:*

i. Dr. Boniphace Nalija LUHENDE, Solicitor General;
ii. Ms. Sarah Duncan MWAIPOPO, Deputy Solicitor General;
iii. Ms. Nkasori SARAKIKYA, Assistant Director, Human Rights, Principal State Attorney, Attorney General's Chambers;
iv. Richard Kilanga, Senior State Attorney, Attorney General's Chambers; and
v. Ms Blandina KASAGAMA, Legal Officer, Ministry of Foreign Affairs, East Africa, Regional and International Cooperation.

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

after deliberation,

renders this Judgment:

I. THE PARTIES

1. Niyonzima Augustine, (hereinafter referred to as "the Applicant") is a national of Rwanda who, at the time of filing the instant Application, was serving a thirty (30)-year prison sentence at Butimba Central Prison, having been convicted of rape. He alleges the violation of his right to a fair trial in the proceedings before the domestic courts.

2. The Application is filed against the United Republic of Tanzania (hereinafter referred to as "the Respondent State"), which became a Party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 21 October 1986 and to the Protocol on 10 February 2006. Furthermore, the Respondent State, on 29 March 2010, deposited the Declaration prescribed under Article 34(6) of the Protocol (hereinafter referred to as "the Declaration"), by virtue of which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations. On 21 November 2019, the Respondent State deposited with the Chairperson of the African Union Commission an instrument withdrawing its Declaration. The Court has held that this withdrawal has no bearing on pending and new cases filed before the withdrawal came into effect, that is, on 22 November 2020.[2]

[2] *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, §§ 37-39.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the records that on 4 November 2010, around 6 pm at Kikurula Ranch in the Karagwe District of the Kagera Region, the Applicant was arrested, charged with statutory rape and arraigned at the District Court of Karagwe at Kayanga in Criminal Case No. 49 of 2010 and sentenced to twenty (20) years' imprisonment on 18 August 2011.

4. He subsequently appealed the decision before the High Court of Tanzania at Bukoba. On 12 October 2015, in Criminal Appeal No. 31 of 2015, the High Court upheld the decision of the District Court but quashed the previous sentence and substituted it with a thirty (30)year mandatory prison term.

5. The Applicant subsequently filed another appeal before the Court of Appeal of Tanzania sitting at Bukoba challenging the entire judgment. On 20 February 2016, the Court of Appeal upheld the decision of the High Court and subsequently dismissed the appeal in Criminal Appeal Case No. 483 of 2015.

B. Alleged violations

6. The Applicant alleges the violation by the Respondent State of his rights to a fair trial guaranteed under Article 7(1)(c) of the Charter and Article 13 of the Constitution. In this regard, he contends that:

    i. The Respondent State failed to afford him legal assistance during his trial;
    ii. The Respondent State failed to notify the Rwandese Ambassador to the United Republic of Tanzania of his arrest and incarceration;
    iii. The courts of the Respondent State failed to consider evidentiary issues concerning: the inconsistent testimonies of prosecution witnesses and

evidence adduced by the prosecution, reliance on circumstantial evidence adduced by the victim's family members and failure to prove the victim's age beyond reasonable doubt;

iv. The courts of the Respondent State failed to prove the case against him beyond reasonable doubt.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

7. The Application was filed before the Court on 28 November 2016 and served on the Respondent State.

8. At its 46th Ordinary Session,[3] the Court considered the Applicant's request for legal aid and granted him *pro bono* legal assistance from the Court's Legal Aid Scheme and the Parties were accordingly notified of the Court's decision on 2 May 2018.

9. The Parties filed their pleadings on the merits and reparations after several extensions of time granted by the Court.

10. Pleadings were closed on 16 November 2021 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

11. The Applicant prays the Court as follows with regard to jurisdiction, admissibility, merits and reparations:

i. Declare that the Court has jurisdiction to hear the matter;
ii. Declare this Application admissible;
iii. Grant him free legal representation;
iv. Find that his right to a fair trial was violated by the Respondent State;

[3] The 46th Ordinary Session of the Court was held from 4th to 22nd September 2017.

v. Make an order quashing the conviction and sentence of the domestic courts and set him free;
vi. Grant his request for monies as stated in paragraph VII of his submission on reparations;
vii. Apply the principle of proportionality when considering the award for compensation to be granted;
viii. Make an order to guarantee non-repetitions of these violations against the Applicant; and
ix. Grant any other reparations this Court may deem necessary.

12. The Respondent State prays the Court with regard to jurisdiction, admissibility and merits of the case, as follows:

i. Find that the Applicant did not invoke the jurisdiction of this Court and dismiss the Application;
ii. Find that the Applicant has not met the admissibility requirements stipulated under Rule 40(5) and 40(6) of the Rules of the Court, hence it should be declared inadmissible and dismissed by the Court;
iii. Find and rule that the Respondent State did not violate the Applicant's rights under Article 7(1)(c) of the Charter;
iv. Find and rule that the Respondent State did not violate Article 13(1) of the Constitution;
v. Find that the conviction decisions for the offence of rape, handed down by the domestic courts against the Applicant were lawful; and
vi. Order the Applicant to bear the costs of this Application.

13. The Respondent State did not make any prayers with regard to reparations.

V. JURISDICTION

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

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 instrument ratified by the States concerned.

2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

15. On the basis of Rule 49(1) of the Rules, the Court must, in every application, preliminarily, conduct an assessment of its jurisdiction and dispose of objections thereto, if any.[4]

16. In the present Application, the Court observes that the Respondent State raises an objection to its material jurisdiction. The Court will first consider the said objection (A) before examining other aspects of jurisdiction (B), if necessary.

A. Objection to material jurisdiction

17. First, the Respondent State avers that this Court is not vested with the power to review or evaluate evidentiary matters adduced during the Applicant's trial before the domestic Courts. Rather, it contends that evidentiary matters should be dealt with by the domestic courts as provided by the Magistrates Courts' Act, CAP 11 R.E 2002. The fact that it has ratified the Charter, and the Protocol, as well as deposited the Declaration accepting the Court's competence does not confer jurisdiction on the court to examine alleged evidentiary discrepancies during the trial in domestic proceedings. Furthermore, every individual who is aggrieved by the decision of the Court of Appeal of Tanzania should not automatically challenge the decision before the Court.

18. Second, the Respondent State further submits that the Applicant appealed the decision of the District Court to the High Court and finally to the Court of Appeal, which considered the records of the District Court and dismissed his appeal. As such, it asserts that this Court cannot be moved to sit again

[4] Rule 39(1) of the Rules of Court, 2 June 2010.

as both a trial and appellate Court for issues which are within the jurisdiction of the domestic courts. It is the Respondent State's contention that doing so would require the Court to deal with the municipal criminal laws of the Respondent State rather than addressing itself to the provisions of the Charter, the human rights instruments envisaged under Article 3(1) of the Protocol and Rule 26 of the Rules.

19. Citing the Court's jurisprudence in the Matter of *Ernest Francis Mtingwi v. Malawi*, the Respondent State submits that this Court does not have any appellate jurisdiction to receive and consider appeals in respect of cases already decided by domestic, regional or similar Courts.

20. Regarding the allegations of violations of Article 13(1) of the Constitution, the Respondent State submits that this Court is not vested with jurisdiction to determine its actions or omissions as the proper court vested with such jurisdiction is the High Court of Tanzania as provided for under Article 30(3) of the Constitution and Section 4 and Section 9(1) of the Basic Rights and Duties Enforcement Act. The Respondent State concludes by praying the Court to dismiss the application for lack of jurisdiction.

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21. The Applicant disputes the Respondent State arguments that the Court lacks jurisdiction to hear his Application. He asserts that the Court has jurisdiction to consider an application whenever violations of fundamental rights as provided for in the Respondent State's Constitution, the Charter and other international human rights instruments to which it is a State Party are alleged. The Applicant also recalls that the Respondent State has ratified the Protocol and deposited the Declaration required under Article 34(6) thereof.

22. The Applicant further avers that the provisions referred to by the Respondent State, that is, Article 30(3) of the Tanzanian Constitution and Section 4 of the Basic Rights and Duties Enforcement Act all relate to the

option of addressing the matters to the High Court for redress. He avers that he has already pursued this avenue right up to the Court of Appeal.

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23. The Court recalls that under Article 3(1) of the Protocol, it has jurisdiction to examine "all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned".[5]

24. In this regard, the Court recalls its established case-law that although it is not an appellate body with respect to decisions of national courts,[6] this does not preclude it from examining proceedings of the said courts in order to determine whether they were conducted in accordance with the standards set out in the Charter or any other human rights instruments ratified by the State concerned."[7] As such, in the present Application, the Court would not be sitting as an appellate court, if it were to examine the allegations made by the Applicant simply because they relate to the assessment of evidentiary issues. Consequently, the Respondent State's objection in this regard is dismissed**.**

25. As a consequence of the foregoing, the Court finds that it has material jurisdiction to consider the present Application.

B. Other aspects of jurisdiction

26. The Court notes that the Respondent State does not contest its personal, temporal and territorial jurisdiction. Nonetheless, in line with Rule 49(1) of

[5] See, for instance, *Kalebi Elisamehe v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 265, § 18; *Gozbert Henrico v. United Republic of Tanzania*, ACtHPR, Application No. 056/2016, Judgment of 10 January 2022 (merits and reparations), §§ 38-40.
[6] *Ernest Francis Mtingwi v. Republic of Malawi* (jurisdiction) (15 March 2013) 1 AfCLR 190, § 14.
[7] *Mtingwi v. Malawi*, *ibid*; *Kennedy Ivan v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 48, § 26; *Armand Guehi v. Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 33; *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania* (merits) (23 March 2018) 2 AfCLR 287, § 35.

the Rules,[8] it must satisfy itself that all aspects of its jurisdiction are fulfilled before proceeding with the determination of the Application.

27. In relation to its personal jurisdiction, the Court recalls as indicated in paragraph 2 of this judgment, that the Respondent State is a party to the Protocol and has deposited the Declaration under Article 34(6) of the Protocol with the Chairperson of the African Union Commission. Subsequently, on 21 November 2019, it deposited an instrument withdrawing its Declaration.

28. The Court recalls its jurisprudence that the withdrawal of the Declaration does not apply retroactively and only takes effect twelve (12) months after the notice of such withdrawal has been deposited, in this case, on 22 November 2020.[9] This Application having been filed before the said date is thus not affected by it. Consequently, the Court holds that it has personal jurisdiction.

29. Regarding temporal jurisdiction, the Court observes that the alleged violations took place after the ratification of the Charter, the Protocol and the depositing of the Declaration by the Respondent State.

30. As regards its territorial jurisdiction, the Court notes that the violations alleged by the Applicant happened within the territory of the Respondent State. In the circumstances, the Court holds that its territorial jurisdiction is established.

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

[8] Rule 39(1) of Rules of Court, 2 June 2010.
[9] *Cheusi v. Tanzania*, *supra*, §§ 35- 39.

VI. ADMISSIBILITY

32. 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."

33. 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."[10]

34. 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) Disclose the identity of the Applicant notwithstanding the latter's request for anonymity;
> b) Comply with the Constitutive Act of the Union and the Charter;
> c) Not contain any disparaging or insulting language;
> d) Not based exclusively on news disseminated through the mass media;
> e) Be filed after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
> f) Be filed 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;
> g) Not raise any matter or issues previously settled by the parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union.

[10] Rule 40 of the Rules of Court, 2 June 2010.

35. The Respondent State raises objections to the admissibility of the Application, based on non-exhaustion of local remedies and failure to file the application within a reasonable time. The Court will therefore consider the said objections (A) before examining other admissibility requirements (B), if necessary.

A. Objection based on failure to exhaust local remedies

36. The Respondent State contends that the Applicant has not met the admissibility requirements provided under Rule 50(2)(e) of the Rules, as he did not exhaust all local remedies prior to filling this Application before this Court.

37. The Respondent State avers in this respect that the trial court, the District Court of Karagwe, rendered its decision on the 19 August 2011. Aggrieved by this decision, the Applicant appealed at both the High Court in Criminal Appeal No.31 of 2015 and at the Court of Appeal in Criminal Appeal Case No. 483 of 2015, on which the two Courts rendered their decisions on 12 October 2015 and 20 February 2016, respectively. The Respondent State further avers that the High Court not only upheld the decision of the District Court, but also substituted the 20-year sentence with the mandatory sentence of 30 years imprisonment. The Court of Appeal subsequently upheld the decision of the High Court, thereby dismissing the Applicant's appeal.

38. The Respondent State contends that the alleged violations of Article 7(1)(c) of the Charter and Article 13 of its Constitution are completely new claims which were never raised at the municipal level. Furthermore, if the Applicant felt that his right to legal representation was being curtailed by the District Court, he should have raised his concern before the same Court, which could have referred the matter to the High Court for determination under Section 9 of the Basic Rights and Duties Enforcement Act.

39. The Respondent State further contends that the Applicant's failure to institute a Constitutional Petition at the High Court of Tanzania is clear evidence that the Applicant has not afforded it the opportunity to address the allegations within the framework of its domestic legal system. Citing the jurisprudence of the African Commission on Human and Peoples' Rights (hereinafter referred to as "the Commission") in Communication No. 263/02 - *Kenya Section of the International Commission of Jurists, Law Society, Kituo cha Sheria v. Kenya* and Communication No. 333/206 – *Sahringon and Others v. Tanzania*, the Respondent State further avers that it is an established principle in international law that a State should be given the opportunity to redress an alleged wrongful act within the framework of its own domestic legal system before it is dealt with at the international level. The Respondent State concludes that, in the alternative, if the Court finds that the Applicant exhausted local remedies, this should not be interpreted by the Applicant to mean that he has to submit a case before the Court without a real cause of action.

40. The Respondent State accordingly argues that, since he did not pursue these remedies, he cannot and should not be deemed to have exhausted local remedies with respect to the alleged violations.

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41. The Applicant avers that after his conviction by the trial court, he appealed the decision of the court before the High Court and Court of Appeal without success. He argues that the Respondent State's challenge to the Court's jurisdiction is illogical and not supported by legal prudence.

42. The Applicant specifically disputes the Respondent's State's contention that it is only the High Court of the Respondent State that has jurisdiction to entertain alleged violations arising from the derogation of Article 13(1) of the Constitution of the Respondent State of 1977 and Section 4 of the Basic Rights and Duties Enforcement Act and not the Court. He insists that he is innocent and should be set free.

43. The Applicant asserts that the domestic courts ought to have tried his case by applying all applicable laws and rules. He argues that by not doing so, the Respondent State failed to dispense justice.

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44. The Court notes that pursuant to Article 56(5) of the Charter, whose provisions are restated in Rule 50(2)(e) of the Rules, any application filed before it shall fulfil the requirement of exhaustion of local remedies, unless the same are unavailable, ineffective and insufficient or the domestic proceedings are unduly prolonged.[11]

45. In the instant case, the Court notes that the Applicant's appeal before the Court of Appeal, the highest judicial organ of the Respondent State, was determined when it rendered its judgment on 20 February 2016.

46. The Court reiterates its jurisprudence, where it held that:

> […] where an alleged human rights violation occurs in the course of the domestic judicial proceedings, domestic courts are thereby afforded an opportunity to pronounce themselves on possible human rights breaches. This is because the alleged human rights violations form part of the bundle of rights and guarantees that were related to or were the basis of the proceedings before domestic courts. In such a situation it would, therefore, be unreasonable to require the Applicants to lodge a new application before the domestic courts to seek relief for such claims.[12]

[11] *Peter Joseph Chacha v. United Republic of Tanzania* (admissibility) (28 March 2014) 1 AfCLR 398, §§ 142-144; *Almas Mohamed Muwinda & Others v. United Republic of Tanzania*, ACtHPR, Application No. 030/2017, Judgment of 24 March 2022 (merits and reparations), § 43.

[12] *Jibu Amir alias Mussa and Another v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 629, § 37; *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, §§ 60-65, *Kennedy Owino Onyachi and Another v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65, § 54; *Ernest Karatta, Walafried Millinga, Ahmed Kabunga and 1744 Others v. United Republic of Tanzania*, ACtHPR, Application No. 002/2017, Judgment of 30 September 2021 (merits and reparations), § 57.

47. The Court observes that in the instant Application, the Applicant's allegations form part of the "bundle of rights and guarantees" relating to the right to a fair trial that led to his appeal, thus there was no need for him to go back to the High Court.[13] Furthermore, this Court observes that the Respondent State had the opportunity to address the possible human rights breaches before the domestic courts but did not.

48. Regarding the filing of a constitutional petition before the Respondent State's High Court, as provided for under Article 13 of the Respondent State's Constitution, the Court has already held that this remedy, in the Tanzanian judicial system, is an extraordinary remedy that the Applicant is not required to exhaust prior to seizing this Court.[14]

49. Consequently, the Court holds that the Applicant exhausted local remedies as envisaged under Article 56(5) of the Charter and Rule 50(2)(e) of the Rules and therefore, it dismisses the Respondent State's objection.

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

50. The Respondent State claims that since the Application was not filed within a reasonable time, this Court should dismiss this Application for failure to comply with the provisions of Rule 40(6) of the Rules. It asserts that the judgment of the Court of Appeal was rendered on 20 February 2016 but the Applicant filled his Application before this Court eight (8) months later, on 18 October 2016.

51. The Respondent State argues that the Court has not provided for a specific definition of a reasonable time, however, other regional mechanisms such as the European Court of Human Rights and African Commission on Human

[13] *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 60.
[14] *Thomas v. Tanzania*, *ibid*, §§ 60-62; *Mohamed Abubakari v. United Republic of Tanzania* (merits) (3 June 2016) 1 AfCLR 599, §§ 66-70; *Christopher Jonas v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 101, § 44.

and Peoples' Rights have specified a period of six (6) months as reasonable time to file applications. In this regard, the Respondent State cites the case of *Michael Majuru v. Zimbabwe*.

52. The Respondent State avers that given the Applicant's delay of eight (8) months in seizing the Court, without justification, his Application should be dismissed.

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53. On his part, the Applicant avers that reasonable time is not defined under the Rules of the Court. He, therefore, asserts that reasonable time should be construed holistically as the amount of time that is fairly necessary, convenient and acceptable to do whatever is required to be done, when circumstances permit. On this basis, he surmises that his Application was filed within reasonable time and should be accepted by the Court.

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54. The Court notes that neither the Charter nor the Rules specify the time frame within which Applications must be filed, after exhaustion of local remedies. Article 56(6) of the Charter and Rule 50(2)(f) of the Rules simply provide that Applications must be filed "… within reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter".

55. The Court recalls its jurisprudence that: "… the reasonableness of the time frame for seizure depends on the specific circumstances of the case …".[15] As the Court has held, the onus is on Applicants to demonstrate reasonableness.[16]

[15] *Beneficiaries of the late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo and Blaise IIboudo v. Republic of Burkina Faso* (merits) (24 June 2014) 1 AfCLR 219, § 92. See also *Thomas v. Tanzania* (merits), *supra*, § 73.
[16] *Layford Makene v. United Republic of Tanzania,* ACtHPR, Application No. 028/2017, Ruling of 2 December 2021 (admissibility), § 48; *Yusuph v. Tanzania*, *supra*, § 65.

56. This notwithstanding, the Court has considered that the time frame for filing an application before it is manifestly reasonable in instances where the said time is relatively short. In such cases, the prerequisite to justify reasonableness does not apply.[17]

57. In the instant Application, the Court observes that the judgment of the Court of Appeal in *Criminal Appeal No.* 483 of 2015 was rendered on 20 February 2016, while the Applicant filed his Application before this Court on 28 November 2016, that is, nine (9) months and eight (8) days later.

58. The Court is of the view that the period it took the Applicant to seize it , that is, nine (9) months and eight (8) days is manifestly reasonable within the meaning of Article 56(6) of the Charter. It, therefore, dismisses the objection to admissibility based on failure to file the Application before the Court within reasonable time.

C. Other admissibility requirements

59. The Court notes that there is no contention regarding compliance with the requirements set out in Rule 50(2)(a), (b), (c), (d) and (g) of the Rules. Nonetheless, it must satisfy itself that these requirements have been met.

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

61. The Court notes that the claims made by the Applicant seek to protect his rights guaranteed under the Charter. It further notes that one of the objectives of the Constitutive Act of the African Union as stated in Article 3(h) thereof is the promotion and protection of human and peoples' rights. Furthermore, nothing on file indicates that the Application is incompatible with the Constitutive Act of the African Union. Therefore, the Court holds that the requirement of Rule 50(2)(b) of the Rules is met.

[17] *Sébastien Germain Ajavon v. Republic of Benin*, ACtHPR, Application No. 065/2019, Judgment of 29 March 2021 (merits and reparations), §§ 86, 87.

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

63. The Application is not based exclusively on news disseminated through mass media as it is founded on legal documents in fulfilment with Rule 50(2)(d) of the Rules.

64. Furthermore, 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 of the African Union, the provisions of the Charter or of any legal instrument of the African Union in fulfilment of Rule 50(2)(g) of the Rules.

65. The Court, therefore, finds that all the admissibility requirements have been met and that this Application is admissible.

VII. MERITS

66. The Applicant alleges the violation by the Respondent State of his rights to a fair trial guaranteed under Article 7(1)(c) of the Charter and Article 13 of the Constitution, when:

i. It failed to provide him with legal assistance throughout the proceedings before domestic courts;
ii. It failed to notify the Rwandese Ambassador of his arrest and incarceration;
iii. It failed to consider issues of evidence concerning: the inconsistent testimonies of the prosecution witnesses and evidence adduced by the prosecution; reliance on circumstantial evidence adduced by the victim's family members; and failure to prove the victims age beyond reasonable doubt; and
iv. It failed to prove the case against him beyond reasonable doubt.

67. The Court has previously held in its jurisprudence that in determining whether the State has violated or failed to comply with the Charter or any other human rights instruments it has ratified, it does not apply domestic law in making this assessment.[18] This Court will therefore not consider the alleged violation of Article 13(1) of the Constitution, but will instead consider the alleged violation of Article 7(1)(c) of the Charter.

i. Alleged violation of the right to be provided free legal assistance

68. The Applicant submits that throughout his trial, he was not provided with legal representation and despite being a foreigner. He avers that as a result of this, his rights were violated throughout the trial.

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69. The Respondent State submits that the laws of Tanzania do not provide for mandatory or automatic legal representation for rape cases. Any accused person in need of legal representation has to apply to be provided legal aid and each case is assessed on a case-by-case basis. Moreover, the proceedings before domestic courts do not indicate that the Applicant was in need of legal aid.

70. The Respondent State asserts that legal aid is available at the Court of Appeal and is provided for under Part II Rule 31 of Tanzania Court of Appeal Rules, 2009. Thus, it claims that the Applicant's allegations are false, since the Government has always regarded all its people as equal before the law, and provided them with entitlements without discrimination, promoted and protected their right to equality before the law.

[18] *Abubakari v. Tanzania* (merits), *supra*, § 28; *Onyachi and Another v. Tanzania* (merits), *supra*, § 39 and *Machera v. Tanzania*, *supra*, § 42

71. In conclusion, the Respondent State asserts that it is committed to the protection of human rights as provided for under the Charter. To this end, it has undertaken and adopted legislative measures, including the enactment of the Legal Aid (Criminal proceedings) Act Cap 21 of the Laws providing for free legal aid in criminal proceedings involving indigents, which was enacted at the time the criminal case was filed against the Applicant.

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72. According to Article 7(1)(c) of the Charter, the right to have one's cause heard includes "the right to defence, including the right to be defended by counsel of [their] choice."

73. The Court has interpreted Article 7(1)(c) of the Charter in light of Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR),[19] and determined that the right to defence includes the right to be provided with free legal assistance.[20]

74. The Court has also previously determined that where accused persons are charged with serious offences which carry heavy sentences and they are indigent, free legal assistance should be provided as of right, whether or not the accused persons request for it.[21] The Court has also held that, the obligation to provide free legal assistance to indigent persons facing serious charges which carry a heavy penalty is for both the trial and appellate stages.[22]

75. The Court observes that the Applicant, who is a foreigner, faced a serious charge of rape which carries a heavy penalty of thirty-year (30) minimum prison sentence. The record of proceedings indicates that the Applicant was

[19] The Respondent State became a State Party to the ICCPR on 11 June 1976.
[20] *Thomas v. Tanzania* (merits), *supra*, § 114; *Kijiji Isiaga v. United Republic of Tanzania* (merits) (21 March 2018) 2 AfCLR 218, § 72; *Onyachi and Another v. Tanzania* (merits), *supra*, § 104.
[21] *Thomas v. Tanzania*, *ibid*, § 123*; Isiaga v. Tanzania*, *ibid*, § 78; *Onyachi and Another v. Tanzania*, *ibid*, §§ 104 and 106.
[22] *Thomas v. Tanzania*, *ibid*, § 124; *Wilfred Onyango Nganyi and 9 Others v. United Republic of Tanzania* (merits) (18 March 2016) 1 AfCLR 507, § 183.

not informed of the right to be provided with free legal assistance if he was unable to pay for legal representation. This Court further observes that the Respondent State did not refute the Applicant's allegation that he is indigent.

76. This Court is of the view that in interest of justice, free legal aid ought to have been provided considering that the Applicant is a foreigner, is indigent and also because of the gravity of the penalty attached to the offence. Additionally, the Court has already determined that there is no need for the accused to request for legal aid and that the Respondent State is under an obligation to provide for free legal representation regardless of whether the accused has made a request or not. Furthermore, in the past, this Court has also refuted the Respondent State's defence that free legal representation is availed depending on available resources as unjustifiable.[23]

77. The Court therefore finds that, by failing to provide the Applicant with free legal representation during the domestic proceedings, the Respondent State violated Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR.

ii. Allegation relating to the Respondent State's failure to notify the Rwandese Embassy of the Applicant's arrest and incarceration

78. The Applicant avers that he is a Rwandese national whose rights were violated when the Respondent State failed to inform the Rwandese embassy about his arrest and incarceration, thus denying him consular services and legal assistance to which he was entitled. As a result of this, he claims that he "suffered a mistrial, consequentially leading to a miscarriage of justice".

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[23] *Minani Evarist v. United Republic of Tanzania* (merits) (21 September 2018) 2 AfCLR 402, § 70.

79. The Respondent State did not specifically respond to this allegation but maintained generally that the Applicant's rights under the Charter and the Constitution were fully observed and protected.

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80. This Court has previously dealt with the right to consular assistance and held that the rights accruing from the provisions of Article 36(1) of the Vienna Convention on Consular Relations (VCCR),[24] are protected under the Charter.[25] The Court observes that while the Charter and the ICCPR do not explicitly provide for consular matters, the VCCR to which the Respondent State is a party does. Article 36(1) of the VCCR[26] provides for the consular rights of the detained persons and duties and obligations of the State.

81. The Court observes that 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. Accordingly, the Court will examine the alleged failure by the Respondent State to afford the Applicant consular services in light of this Article.

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[24] Adopted on 24 April 1963; entered into force on 19 March 1967.

[25] *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, §§ 95 and 96.

[26] 1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action …

82. The Court notes that Article 36 of the VCCR imposes dual obligations to the receiving State and also provides the detainee with individual rights. The first obligation is the duty to inform the Applicant of his right to consular services and the second is to facilitate the provision of consular services at the request of the Applicant. The second duty is contingent on the request from the detainee, after the latter has been informed of their right to consular services. Therefore, in determining the Applicant's claim that the Respondent State failed to facilitate his access to consular services from his country of origin, this Court will consider a two-stage process as envisaged under Article 36(1) of the VCCR. First, that the detainee can request for consular assistance and second, the State of residence is under an obligation to inform the detainee of his right to consular services.

83. On the first issue regarding a detainee's request for consular services, the Court is cognizant of the fact that prompt consular assistance may be decisive in the outcome of criminal proceedings, to the extent that it guarantees the foreign detainee the protection of his country of nationality, particularly with regard to: accessing consular officials; obtaining advise on his constitutional and legal rights in his own language in a manner comprehensible to him and receiving proper legal counsel to enable him understand the legal consequences of the crime of which he is accused.

84. In the instant case, the record of proceedings and the other pleadings on file are silent on whether or not the Applicant requested to be provided consular services as a foreign national. Nevertheless, this Court observes that the Applicant could only have requested for the provision of consular services after being informed by the Respondent State about his entitlement to receive consular services as a foreign national.

85. On the second issue as to whether the Respondent State discharged its obligation to inform the Applicant, who is a foreign national, of his right to consular services, the Court is of the considered view that it is imperative that the minimum guarantees of criminal justice be applied and interpreted in accordance with the VCCR in order to guarantee due process. These

guarantees enable the detainee to communicate with and seek assistance from the consular authorities of the State of which they are nationals. The detainee must therefore be informed from the onset of his/her rights under Article 36(1) of the VCCR at the time of his arrest or before he makes any statement or confession and also before the commencement of the trial process.

86. In the present Application, the record of proceedings of the trial indicates that the Applicant was not informed of his right to consular services. The police charge sheet form and the record of proceedings at the pre-liminary hearing of the case before the District Court, illustrate that the Applicant's nationality was sought and recorded, which means that the Respondent State was aware that the detainee was a foreign national charged with an offence that carried a heavy sentence. Given this knowledge, the Respondent State should have immediately informed the Applicant of his right to consular services.

87. The Court's position is also buttressed by the position of other international courts, which have held that identification of the accused, including their nationality, is essential for the administration of penal processes. Furthermore, that the State that has the accused in its custody has to immediately notify the accused of their consular rights.[27] In the *LaGrand* Case (*Germany v. United States of America*), the International Court of Justice (ICJ) held that the host State violated Article 36 1(a) and paragraph 1(c), which dealt respectively with mutual rights of communication, not informing the detainees of their right to consular services, access by consular officers and the right of consular officers to visit their nationals in prison and to arrange for their legal representation.[28] Similarly, in the *Jadhav* Case (*India v. Pakistan*), the ICJ concluded that Pakistan had breached its obligation under Article 36 of the VCCR, by failing to inform India, without

[27] Inter-American Court of Human Rights: *Advisory Opinion Oc-16/99 Of October 1, 1999, Requested by The United Mexican States*, paras 94 and paras 106 and 140 (1-7).
[28] *LaGrand* (*Germany v. United States of America*), Judgement, I.C.J Reports 2001, p. 466.

delay, of the detainee's arrest, and by not informing him of his consular rights as provided for under Article 36, paragraph 1(b), of the Convention.[29]

88. Accordingly, the Court holds that by failing to inform the Applicant of his right to consular services, the Respondent State denied him the opportunity to seek for consular assistance to facilitate his defence, thereby violating Article 7(1)(c) of the Charter as read together with Article 36(1) of the VCCR.

iii. Allegation relating to the failure to consider evidence

89. The Applicant alleges that the Respondent State did not consider issues of evidence concerning: the inconsistent testimonies of the prosecution witnesses and evidence adduced by the prosecution but simply relied on circumstantial evidence adduced by the victim's family members.

90. The Applicant further alleges that the evidence adduced by PW1, is devoid of merit because, the medical examination report (PF3) as reflected in exhibit P1 is dated 3 November 2010 and yet the alleged rape took place on 4 November 2010. He avers that the evidence adduced and corroborated by the family members at the domestic courts, was circumstantial. The Applicant avers that the medical examination report was expunged from the record at the request of the prosecution, however the courts should have considered the evidence of PW5 (Doctor) that seemed to indicate that there was no rape.

91. The Applicant also avers that the age of the victim was not supported by any documentary evidence such as a birth certificate and yet this was a crucial matter that was overlooked by the courts since they did not consider the demeanour of the victim, before and after the rape. He asserts that the sexual intercourse was consensual and there was no rape as alleged by the victim's family. He further asserts that the victim succumbed to family pressure to categorise the sexual intercourse as rape.

[29] *Jadhav (India v. Pakistan),* Judgement, I.C.J Reports 2019, p. 418.

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92. Regarding the age of the victim, the Respondent State avers that the trial courts assessed and determined the age. Furthermore, the issue of the victim's age was never raised by the Applicant during cross examination. It submits that according to paragraph 2 of the Judgment of the Court of Appeal, the said court held that; "The ground relating to the age of the victim need not detain us. It is clear from the charge sheet that the appellant was charged with statutory rape and the victim was 16 years old."

93. The Respondent State avers that the corroborative evidence of PW1, PW2, PW3 and PW4, as reported in the record of proceedings, clearly reveals that the victim never consented. The Respondent State surmises that, according to its Penal Code Cap 16 of the Laws, the issue of consent is immaterial when it comes to proving the offence of statutory rape.

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94. Article 7(1) of the Charter stipulates that:

> 1) Every individual shall have the right to have his cause heard. This comprises:
> a) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
> b) The right to be presumed innocent until proved guilty by a competent court or tribunal;
> c) The right to defence, including the right to be defended by counsel of his choice;
> d) The right to be tried within a reasonable time by an impartial court or tribunal.

95. The Court recalls its jurisprudence that “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”.[30]

96. The Court also observes that when visual identification is used as a source of evidence to convict a person, all circumstances of possible mistakes should be ruled out and the identity of the suspect should be established with certainty. This is also the recognised principle in the Tanzanian jurisprudence. ln addition, the evidence of visual identification must demonstrate a coherent and consistent account of the crime scene. The Court has also previously stated that it is not an appellate court and ‘as a matter of principle, it is up to national courts to decide on the probative value of a particular piece of evidence.[31] As such, the Court cannot assume this role of the domestic courts and investigate the details and particulars of evidence used in domestic proceedings to establish the criminal culpability of individuals.[32]

97. Regarding the Applicants’ claim that there were some inconsistencies in the testimonies of prosecution witnesses, this Court observes that the Court of Appeal considered the second ground of appeal raised by the Applicant, which was that the trial Magistrate erred in law and in fact when he relied on the P3 form (medical examination form) and the statement of PW5, who is a clinical officer who examined the Applicant and completed the P3 Form on 3 November 2012, while the alleged offence for which he was charged occurred on 4 November 2012.[33] The Court further observes that in his oral submissions the prosecutor joined hands with the appellant (Applicant) and admitted that the medical report, P3 Form was wrongly admitted by the trial magistrate and requested the Court to expunge it as part of the evidence. The prosecutor nevertheless observed that there was insurmountable

[30] *Isiaga v. Tanzania* (merits), *supra*, § 67.
[31] *Isiaga v. Tanzania*, *ibid*, § *65* and *Werema Wangoko Werema and Another v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 520, § 60.
[32] *Ibid*.
[33] Court of Appeal Judgment dated 21/09 & 12/10/15, page 3 and 5.

corroborative evidence to establish that the Applicant committed the offence of rape, taking into account the testimonies provided by witnesses.

98. This Court observes that the Court of Appeal, in reviewing this ground of appeal, considered the evidence on record, the statement of the victim and the testimony of the clinical officer who examined the victim and testified that he found that the victim had bruises on her neck caused by a blunt object. It therefore held that the trial Magistrate was justified in finding that the offence of rape was established since there was penetration supported by corroborative evidence and accordingly upheld the decision of the High Court, thereby dismissing the Applicant's ground of appeal.

99. This Court further observes that although the trial court erred was procedurally inconsistent in admitting the P3 Form, this was not considered by the High Court and Court of appeal when evaluating the evidence. The procedure therefore did not disclose any manifest error resulting in a miscarriage of justice requiring the Court's intervention.

100. Consequently, the Court holds that the Respondent State did not violate the Applicant's right to fair trial as enshrined in Article 7(1)(c) of the Charter and consequently dismisses the allegation.

iv. Allegation that the case was not proven beyond reasonable doubt

101. The Applicant alleges that the Respondent State has not been able to prove the case beyond reasonable doubt, resulting in a mistrial and a miscarriage of justice.

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102. The Respondent State avers that the standard of proof in criminal cases is one beyond reasonable doubt. The burden lies on the prosecution to prove its case beyond reasonable doubt, which it did at the Trial Court, and that is why the decision of the Trial court was upheld by both the High Court and the Court of Appeal of Tanzania.

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103. The Court observes from the records on file that the prosecution relied on the corroborated testimonies of the witnesses and the victim, since the medical record was expunged from the proceedings.

104. In this regard the Court observes that the Applicant has not demonstrated how the prosecution failed to prove its case beyond reasonable doubt.

105. The Court recalls its jurisprudence in the matter of *Mohamed Abubakari v. United Republic of Tanzania*, where it held that a fair trial requires that where a person faces a heavy prison sentence, the finding that he or she is guilty and the conviction must be based on strong and credible evidence.[34] In the instant case, the Court notes that the Trial Court, the High Court and the Court of Appeal determined that there was sufficient evidence to prove beyond reasonable doubt that the Applicant committed the crime with which he was charged and this was collaborated by the testimonies of prosecution witnesses.

106. Consequently, the Court holds that the Respondent State did not violate the Applicant's right to fair trial as enshrined in Article 7 of the Charter and thus dismisses the allegation.

VIII. REPARATIONS

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

[34] *Abubakari v. Tanzania* (merits), *supra*, §§ 191-192.

108. The Court recalls its jurisprudence that for reparations to be granted, the Respondent State should first be internationally responsible for the wrongful act. Second, causation should be established between the wrongful act and the alleged prejudice suffered. Furthermore, and where it is granted, reparation should cover the full prejudice suffered. Finally, the Applicant bears the onus to justify the claims made.[35]

109. The Court also recalls that reparation "… must, as far as possible, erase all the consequences of the wrongful act and restore the state which would presumably have existed if that act had not been committed."[36]

110. Measures that a State must take to remedy a violation of human rights includes notably, restitution, compensation and rehabilitation of the victim, satisfaction and measures to ensure non-repetition of the violations taking into account the circumstances of each case.

111. The Court reiterates that with regard to material prejudice, the general rule is that there must be existence of a causal link between the alleged violation and the prejudice caused and the burden of proof is on the Applicant who has to provide evidence to justify his prayers. Exceptions to this rule include moral prejudice, which need not be proven, since presumptions are made in favour of the Applicant and the burden of proof shifts to the Respondent State.

112. In the instant case, the Court has already established that the Respondent State violated the Applicant's rights to fair trial guaranteed under Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR, with regard to its failure to provide the Applicant with free legal assistance and Article 7(1)(c) of the Charter as read together with Article 36(1) of the VCCR with regard to its failure to facilitate the provision of consular services.

[35] *Amini Juma v. United Republic of Tanzania*, ACtHPR, Application No. 024/2016, Judgment of 20 September 2021 (merits and reparations), § 141; *Guehi v. Tanzania*, *supra*, § 15; *Norbert Zongo and Others v. Burkina Faso* (reparations) (5 June 2015) 1 AfCLR 258, §§ 20-31.
[36] *Ingabire Victoire Umuhoza v. Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 20.

113. It is against this finding that the Court will consider the Applicant's prayer for reparations.

A. Pecuniary reparations

114. The Applicant seeks pecuniary reparations for material prejudice due to loss of income and moral prejudice due to the violations established.

i. Material prejudice

115. The Applicant avers that he was a businessman and provider for his parents and relatives but he lost his business as a result of his unlawful detention. He avers that the economic situation in the United Republic of Tanzania has since changed and as such, when he is released, he would have to learn how to survive in a world that is significantly different.

116. The Applicant avers that in calculating the amount of pecuniary and non-pecuniary damages, this Court should apply the principle of equity and take into account the severity of the violation, especially the impact it has had on his direct and indirect dependants, and the period for which he has been imprisoned. He prays the Court to make an order for reparation that would, at least, attempt to alleviate his suffering and that of his family.

117. The Applicant submits that in the *Zongo case,* this Court held that in the absence of documentary evidence supporting a financial monetary claim brought about as a direct violation of the Charter, then it would be appropriate to consider the matter in terms of equity by awarding the Applicant in *pro rata* amount of United States Dollar Three Hundred and Fifty-Five Thousand Four Hundred ($355,400). The Applicant further submits that this Court in the *Zongo Case* held that transport costs could be claimed under reparations. Finally, the Applicant prays this Court to grant printing and photocopying costs in the amount of United States Dollar Seven Hundred ($700) and trips to and from Butimba Prison to Rwanda amounting to United States Dollar Two Thousand ($2,000).

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118. The Respondent State did not make a submission on this claim

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119. The Court recalls that in order for a claim for material prejudice to be granted, the Applicant must show a causal link between the violation found and the loss suffered, as well as demonstrate the loss suffered with evidence.[37]

120. In the instant case, the Court notes that the Applicant has not established any linkages between the violations found and the material prejudice which he claims to have suffered.

121. The Court, consequently, dismisses the Applicant's claims for reparations for material prejudice.

ii. Material prejudice suffered by indirect victims

122. The Applicant submits that the recognition that "dependents" and next of kin are entitled to reparations subject to certain conditions is based on the notion that the violation committed against the direct victim resulted in some form of harm to others.

123. The Applicant submits that the Inter-American Court considers that the immediate next of kin of direct victims of gross human rights violations do not need to adduce evidence to show that they have suffered harm. In such cases, this Court presumes harm of the immediate next of kin in light of the "grave impact on the mental and emotional well-being of the next of kin of the victims. Hence, the Applicant request this Court to grant reparations to the dependents and next of kin as indirect victim.

[37] *Juma v. Tanzania*, *ibid*, § 147.

124. The Applicant submits that an amount of United States Dollar One Hundred and Thirty Thousand ($130,000) is sufficient for his mother who suffered as an indirect victim.

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125. The Respondent State did not make any submissions on this claim.

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126. The Court notes that the Applicant has failed to adduce documentary proof to show filiation such as birth certificates for his mother or any equivalent proof, nor has he provided evidence of the material prejudice claimed, such as receipts.

127. The Court thus dismisses the prayer of the Applicant herein.

iii. Moral prejudice

128. The Applicant submits that this Court, in *Reverend Christopher Mtikila v. Tanzania*, defined moral damages as damages that do not occasion economic loss but rather which cover suffering and afflictions caused to the victim emotional distress of the family members and nonmaterial changes in the living conditions of the victim and his family.

129. The Applicant further avers that, in *Maria del Carmen v. Uruguay*, the Inter-American Court of Human Rights has held that no evidence is required to prove the grave impact on the mental and emotional well-being of the direct victim, because in the event of gross violations of human rights, emotional injury is inevitable.

130. The Applicant submits that he suffered tremendous stress from unsuccessful appeals both at the High Court and Court of Appeal of the Respondent State which did not consider all evidence and irregularities. It is the Applicant's contention that the suffering experienced encompasses

the physical and emotional pain and trauma endured by the Applicant throughout the duration of the trial and imprisonment. He asserts that he has been in prison for almost nine (9) years and has suffered from many sleepless nights worrying over whether he will ever be released.

131. The Applicant also submits that he has lost his social status and standing in the community due to his unlawful detention. He claims that his health has deteriorated significantly as a result of him being imprisoned under unfavourable prison conditions. The Applicant further submits that the ailments he suffers from include, but are not limited to, malaria and skin diseases.

132. Citing *Loayza Tamayo v. Peru,* the Applicant submits that a disruption in one's life plan has also been ruled to entitle one to reparations, which is the in the present case as a result of his arrest, trial and subsequent imprisonment. He argues that he has failed to achieve his plans and goals as his life was disrupted by the unlawful detention.

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133. The Respondent State did not make a submission on this claim

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134. The Court recalls its established jurisprudence where it has held that moral prejudice is presumed in cases of human rights violations, and the quantum of damages in this respect is assessed based on equity, taking into consideration the circumstances of the case.[38] The Court has thus adopted the practice of granting a lump sum in such instances.[39]

[38] *Zongo and Others v. Burkina Faso* (reparations), *supra*, § 55; *Ingabire Victoire Umuhoza v. Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 59; *Christopher Jonas v. United Republic of Tanzania*, Application No. 011/2015, Judgment of 25 September 2020 (reparations), § 23.
[39] *Lucien Ikili Rashidi v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 13, § 119; *Evarist v. Tanzania* (merits), *supra*, §§ 84-85; *Guehi v. Tanzania* (merits and reparations), *supra*, § 177; *Jonas v. Tanzania*, *ibid*, § 24.

135. The Court has established that the Applicant's rights under Article 6 of the Charter and under Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR were violated. The Applicant is entitled to moral damages because there is a presumption that the Applicant suffered some form of moral prejudice due to the said violations.[40]

136. The Court notes that the violations established relate to the guarantees of a fair trial that should have been observed during the domestic proceedings involving the Applicant. The record shows that the Applicant's conviction was based on the fact that he had raped a minor and therefore the violations established relate to the outcome of the proceedings.

137. The Court further notes that the disruption of life plan is related to the Applicant's incarceration and conviction, for which the Court has already established violations. In the light of these circumstances, and whilst exercising its discretion in equity, the Court awards the Applicant the amount of Tanzanian Shillings Three Hundred Thousand (TZS 300,000) for the moral prejudice he suffered as a result of the inter-related violations established.[41]

B. Non-pecuniary reparations

i. Release from Prison

138. The Applicant prays the Court to quash his conviction and sentence and order his releases from prison. Citing the case of *Cohre v. Sudan,* the Applicant avers that the Respondent State should take all necessary and urgent measures to ensure protection of victims of human rights violations including taking measures to ensure that victims of human rights abuses are given effective remedies, including restitution and compensation. The Applicant further submits that he cannot be returned to the state he was

[40] *Cheusi v. Tanzania*, *supra*, § 151.
[41] *John v. Tanzania*, *ibid*, § 123.

before his incarceration but, as a starting point, his liberty can be restored as the second-best measure given the circumstances.

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139. The Respondent State submits that this Court is not vested with jurisdiction to order the Applicant's release from prison.

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140. The Court recalls its previous jurisprudence that an order can only be made in specific and compelling circumstances such as "if an Applicant sufficiently demonstrates or the Court by itself establishes from its findings that the Applicant's arrest or conviction is based entirely on arbitrary considerations and his continued imprisonment would occasion a miscarriage of justice."[42]

141. In the present case, without minimizing the gravity of the violations established, the Court finds that the violations did not manifestly affect the processes which led to the conviction and sentencing of the Applicant to the extent that he would have been in a different position had the said violations not occurred. Furthermore, the Applicant did not sufficiently demonstrate, nor did the Court establish, that his conviction and sentencing were based on arbitrary considerations and that his continued incarceration is unlawful.[43]

142. In light of the facts and circumstances, this prayer is therefore dismissed.

[42] *Evarist v. Tanzania*, *ibid*, § 82. See also *Jibu Amir (Mussa) and Another v. Tanzania* (merits and reparations), *supra*, § 96; *Mgosi Mwita Makungu v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 550, § 84.
[43] See *Evarist v. Tanzania, supra,* §. 82.

ii. Non-repetition

143. The Applicant prays the Court to order the Respondent State to guarantee non-repetition of the violations against him.

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144. The Respondent State on its part prays the Court to declare that the Applicant was lawfully detained, following a fair trial and due process of the law.

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145. The Court observes that the Applicant seeks reparations for guarantees of non-repetition of the violations in relation to his individual case. This Court has previously observed that such measures are usually aimed not at remedying individual harm but rather to address the underlying causes of the violation, since the objective is to eradicate structural and systemic human rights violations.[44] However, this Court has also held that guarantees of non-repetition can also be relevant, especially in individual cases, where there is evidence that the violation will not cease or is likely to occur again. Such cases include when the Respondent State has challenged, or failed to comply with earlier findings and orders of the Court.[45]

146. In the instant case, the Court found that the Applicant's rights were violated only with respect to the Respondent States failure to provide him with free legal assistance and to facilitate his rights to consular services, for which the remedy has been granted. These violations are not systemic or structural in nature within the circumstances of this case. Furthermore, there is no evidence that the violations have been or are likely to be repeated.

[44] African Commission on Human and Peoples' Rights, General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), § 10 (2017). See also Case of the *"Street Children" (Villagran-Morales et al.) v. Guatemala*, Inter-American Court of Human Rights, Judgment on Reparations and Costs (May 26,2001).
[45] See *Mtikila v. Tanzania* (reparations), *supra,* § 43.

The Court is therefore of the of the view that, in the circumstances, the order sought is not warranted. The request is consequently denied.

IX. COSTS

147. The Applicant did not make any prayers with regards to the costs.

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148. The Respondent State prays the Court to order the Applicant to pay the costs of this Application.

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149. The Court notes that Rule 32(2) of its Rules of the Court provides that "unless otherwise decided by the Court, each party shall bear its own costs.

150. The Court finds no reason to depart from this provision in the instant matter. Consequently, it rules that each party shall bear its own costs.

X. OPERATIVE PART

151. For these reasons:

THE COURT,

Unanimously

On jurisdiction

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

On admissibility

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

On merits

vi. *Finds* that the Respondent State did not violate the right to a fair trial protected under Article 7 of the Charter with regard to consideration of evidentiary matters adduced before the domestic courts and on failure to prove the case against the Applicant beyond a reasonable doubt.
vii. *Finds* that the Respondent State violated the Applicant's right to defence protected under Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR, by not providing the Applicant with free legal assistance.
viii. *Finds* that the Respondent State violated the right to defence 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.

On reparations:

Pecuniary reparations

ix. *Grants* the Applicant's prayer for reparations for the moral prejudice as a result of the violations found and awards him the sum of Tanzanian Shilling Three Hundred Thousand (TZS 300,000);
x. *Orders* the Respondent State to pay the sum awarded under (ix) above, free from tax, as fair compensation within six (6) months from the date of notification of this Judgment, failing which it will be

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

Non-pecuniary reparations

xi. *Dismisses* the Applicant's prayer for guarantee of non-repetition of the alleged violation against the Respondent State;

xii. *Orders* the Respondent State to take all appropriate measures within a reasonable time frame to remedy all the violations established.

On implementation and reporting

xiii. *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 orders set forth herein and, thereafter, every six (6) months until the Court considers that there has been full implementation thereof.

On costs

xiv. *Dismisses* the Applicant's prayer for reimbursement of stationery, costs and other expenses incurred in the proceedings before this Court;

xv. *Orders* that each party to bear its own costs.

Signed:

Blaise TCHIKAYA, Vice President;

Ben KIOKO, Judge;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Stella I. ANUKAM, Judge;

Dumisa B. NTSEBEZA, Judge;

Modibo SACKO, Judge;

Dennis D. ADJEI, Judge;

and Robert ENO, Registrar

Done at Arusha, this Thirteenth Day of March, in the Year Two Thousand and Twenty-Three in English and French, the English text being authoritative.