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

THE MATTER OF

JOSEPH JOHN

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION No. 005/2018

JUDGMENT

22 SEPTEMBER 2022

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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 (the Protocol) and Rule 9(2) of the Rules of Court (the Rules),[1] Justice lmani D. ABOUD, President of the Court and a national of Tanzania, did not hear the Application.

In the Matter of:

Mr Joseph JOHN
Represented by:

Mr Hannington AMOL, Chief Executive Officer, East Africa Law Society (EALS)

Versus

UNITED REPUBLIC OF TANZANIA
Represented by:

i. Mr Gabriel P. MALATA, Solicitor General, Office of Solicitor General
ii. Ms Pauline F. MDENDEMI, State Attorney, Office of the Solicitor General

after deliberation,

renders the following Judgment:

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

I. THE PARTIES

1. Mr Joseph John, (hereinafter, "the Applicant") is a national of the United Republic of Tanzania, who at the time of filing the Application, was incarcerated at Uyui Central Prison, Tabora Region, serving a sentence of thirty (30) years imprisonment following his conviction for the offence of rape of a seventeen- (17) year- old-girl. He alleges violation of his rights in relation to his trial, conviction, and sentencing.

2. The Respondent State, the United Republic of Tanzania, became a Party to the African Charter on Human and Peoples' Rights ("Charter") on 21 October 1986 and to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights ("The Protocol") on 10 February 2006. Furthermore, on 29 March 2010, the Respondent State deposited the Declaration as prescribed under Article 34(6) of the Protocol, by virtue of which it accepted the jurisdiction of the African Court on Human and Peoples' Rights (hereinafter, "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 the said Declaration. The Court has held that this withdrawal has no bearing on pending cases and new cases filed before the withdrawal came into effect, that is, one year after its deposit, which is on 22 November 2020.[2]

[2] *Andrew Ambrose Cheusi v. United Republic of Tanzania*, ACtHPR, Application No. 004/2015, Judgment of 26 June 2020 (merits and reparations), §§ 37-39.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the Application that, on 24 August 2010, the Applicant was convicted of rape contrary to Section 130(1), 130(2)(e) and 131(1) of the Penal Code and sentenced to thirty (30) years imprisonment by the District Court of Kahama.

4. On 10 August 2011, the Applicant filed Criminal Appeal No. 92 of 2011 at the High Court of Tabora appealing his conviction and sentence. On 14 August 2012, the High Court dismissed the appeal in its entirety and confirmed the sentence. On 22 August 2012, the Applicant consequently filed Criminal Appeal No. 267 of 2012 at the Court of Appeal sitting at Tabora. On 24 September 2013, the Court of Appeal dismissed the appeal in its entirety and confirmed the sentence.

B. Alleged violations

5. The Applicant alleges that he was wrongly tried by the District Court of Kahama because, being under sixteen (16) years of age, he was a juvenile and as such he should have been tried in a juvenile court and not in a district court. He states that his trial before the District Court was therefore, a violation of Article 7(1)(d) of the Charter.

6. The Applicant alleges that he was not represented by Counsel before the domestic courts, hence, this is a violation of Article 7(1)(c) of the Charter.

7. In the Reply, the Applicant alleges that the Respondent State violated his right under Article 7(1)(b) of the Charter. He states that, from the time of arrest to the conviction, he was never informed of his right to bail even though he was charged with a bailable offence.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

8. The Application was filed on 19 February 2018. The Applicant was requested by the Registry to file copies of the record of the proceedings against him before the District Court, the High Court and the Court of Appeal and he did so on 22 October 2018. The Application was served on the Respondent State on 25 October 2018.

9. On 1 February 2019, the Court granted the Applicant legal aid and designated East Africa Law Society to represent him under the Court's *pro bono* legal aid scheme.

10. On 21 March 2019, after an extension of time, the Respondent State filed the Response to the Application and this was served on the Applicant on 28 March 2019, for the Reply.

11. On 13 December 2019, after an extension of time, the Applicant filed the Reply to the Respondent's Response and the submissions on reparations. The Applicant also filed together with the submissions on reparations, an affidavit sworn on 9 October 2019, in support of his claim wherein he restated the said submissions on reparations.

12. On 28 January 2020, the Reply to the Response was served on the Respondent State for information. On the same date, the Applicant's submissions on reparations were also served on the Respondent State for the Response thereto**.** On 8 February 2021, the Respondent State filed the Response to the Applicant's submissions on reparations, and this was served on the Applicant for a Reply thereto. Despite several reminders, the Applicant failed to file a Reply.

13. Pleadings were closed on 20 June 2022 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

14. The Applicant makes his prayers as follows:

    i. That the Applicant humbly prays this Honourable Court to restore justice where it was overlooked and quash both conviction and sentence meted on me which violated section 2 of Minimum Sentence Act No. 1 of 1972 and order to (sic) my immediately release from the prison wall forthwith.
    ii. That, the Applicant herein on my own behalf, I wish to be granted reparation pursuant to Article 27(1) of the Protocol of the Court.
    iii. That, this Honourable Court be pleased to grant any other order or legal remedy that the Court may think fit and just to grant in the circumstance of my complaints.

15. In the Reply, the Applicant further prays the Court to:

    i. Find the Application admissible
    ii. Find that it has jurisdiction to hear the Application
    iii. Find that the Respondent State violated Article 7(1)(b), (c) and (d) of the Charter
    iv. Make an order to release the Applicant from prison
    v. Order the Respondent to pay the Applicant reparations
    vi. Issue any other order that the Court may deem fit and just to grant.

16. The Respondent State prays the Court to order:

    a. That the African Court is not vested with jurisdiction to adjudicate the Application
    b. That the Application has not met the admissibility requirements provided by Article 56(6) of the Charter, Article 6(2) of the Protocol and Rule 40(6) of the Rules
    c. That the Application be declared inadmissible
    d. That the Application be dismissed
    e. That the Respondent has not violated the Applicant's rights under Article 7(1)(c) and Article 7(1)(d) of the Charter
    f. That the Respondent has not violated any of the Applicant's rights under

the African Charter on Human and Peoples' Rights.

V. JURISDICTION

17. 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.

18. Further, pursuant to Rule 49(1) of the Rules, "The Court shall conduct preliminary examination of its jurisdiction … in accordance with the Charter, Protocol and these Rules."

19. In view of the foregoing, the Court must conduct an assessment of its jurisdiction and dispose of objections thereto, if any.

20. In the present Application, the Court notes that the Respondent State has raised an objection to its material jurisdiction.

A. Objection to material jurisdiction

21. The Respondent State has argued that this Court will be sitting as a court of first instance and an appellate criminal court should it adjudicate over the two issues elaborated below.

22. First, with regard to the alleged violation of Article 7(1)(c) of the Charter, the Respondent State submitted that:

> The issue of being given counsel to defend was not raised in the trial court, the first appellate court and the Court of Appeal hence this court has no

> mandate to act neither as the court of first instance nor an appellate criminal court. Had the applicant had an issue with this matter, he could have informed the trial and appellate courts, which could have appropriately addressed the issue in accordance with Tanzanian criminal procedural laws. It additionally states that the Applicant was, further, given the right to counsel himself and his arguments were considered in the Court of Appeal.

23. Secondly, the Respondent State avers that the Court cannot adjudicate over Article 7(1)(d) of the Charter because:

> …the Applicant did not dispute his age even when the Memorandum of Facts was read over to him during trial. It is further stated that, the issue regarding the age of the Applicant was never brought before the two domestic appellant Courts; thus, it is a new issue before this Honourable Court. Since this is the new issue before this Honourable Court, then this Court has no jurisdiction to determine this matter because by doing so it will be tantamount to converting this Honourable Court into an appellate criminal court.

24. It is the Applicant's contention that the Court should dismiss the objection on material jurisdiction. The Applicant asserts that the Court's jurisprudence clarifies that it is not precluded from examining whether procedures before national courts comply with international human rights that are outlined in the Charter and other pertinent human rights instruments to which the Respondent State is a party.

25. Accordingly, the Applicant avers that he is not asking the Court to sit as a court of first instance or an appellate court; rather he is invoking the Court's jurisdiction to determine if his claims amount to violations under the Charter.

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26. The Court recalls that under 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.[3]

27. The Court also recalls that, in accordance with its established case-law on the application of Article 7 of the Protocol, it is competent to examine relevant proceedings before domestic courts to determine whether they comply with the standards set out in the Charter or any other instrument ratified by the State concerned.[4] Consequently, the objection that the Court would be sitting as a court of first instance is, dismissed**.**

28. The Court further recalls, its established jurisprudence, "that it is not an appellate body with respect to decisions of national courts."[5] However, "this does not preclude it from examining relevant proceedings in the national courts in order to determine whether they are in accordance with the standards set out in the Charter or any other human rights instruments ratified by the State concerned."[6] In this regard, therefore it would not be sitting as an appellate court, if it were to examine the allegations by the Applicant. This objection is therefore, also dismissed.

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

B. Other aspects of jurisdiction

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

[3] *Diocles William v. United Republic of Tanzania* (merits and reparations) (21 September 2018) 2 AfCLR 426, § 28; *Armand Guehi v. Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 33; *Kalebi Elisamehe v. United Republic of Tanzania*, ACtHPR, Application No. 028/2015, Judgment of 26 June 2020 (merits and reparations), § 18.
[4] *Ernest Francis Mtingwi v. Malawi* (jurisdiction) (15 March 2013)*,* 1 AfCLR 190, § 14; *Kennedy Ivan v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65, § 26; *Armand Guehi v. Tanzania* (merits and reparations), § 33; *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania* (merits) (23 March 2018) 2 AfCLR 287, § 35.
[5] *Ernest Francis Mtingwi v. Malawi* (jurisdiction), § 14.
[6] *Kennedy Ivan v. Tanzania* (merits), § 26*; Armand Guehi v. Tanzania* (merits and reparations), § 33; *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. Tanzania* (merits), § 35*.*

the Rules,[7] it must satisfy itself that all aspects of its jurisdiction are fulfilled before proceeding.

31. Regarding personal jurisdiction, the Court recalls, as indicated in paragraph 2 of this judgment that, on 21 November 2019, the Respondent State deposited the instrument of withdrawal of the Declaration under Article 34(6) of the Protocol. The Court has held that such withdrawal does not apply retroactively. Therefore, it has no bearing on matters pending before the Court prior to the deposit of the instrument withdrawing the Declaration or new cases filed before the withdrawal took effect, that is, one year after the notice of withdrawal was deposited; to be specific, 22 November 2020.[8]

32. Accordingly, this Application having been filed before the Respondent State deposited its notice of withdrawal of the Declaration, is not affected by the said withdrawal. Therefore, the Court concludes that it has personal jurisdiction over this Application.

33. The Court has temporal jurisdiction over this Application insofar as the alleged violations were committed after the Respondent State became a party to the Charter and the Protocol. Further, the alleged violations are continuing in nature because the Applicant is currently serving his sentence, which he considers unfair.[9]

34. The Court has territorial jurisdiction over this Application given that alleged violations occurred within the Respondent State's territory.

35. In light of all the above, this Court has jurisdiction to examine this Application.

[7] Rule 39(1) of Rules of Court, 2 June 2010.
[8] *Andrew Ambrose Cheusi v. Tanzania* (merits and reparations), §§ 35-39. See also, *Ingabire Victoire Umuhoza v. Republic of Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 562, § 67.
[9] *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabe des Droits de l'Homme et des Peuples v. Burkina Faso* (jurisdiction) (21 June 2013) 1 AfCLR 197, §§ 71-77.

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. Rule 50(1) stipulates that, “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. Further, Rule 50(2), which restates, substantially Article 56 of the Charter, provides as follows:

> Applications filed before the Court shall comply with all of the following conditions:
>
> a. Indicate their authors even if the latter requests anonymity;
> b. Are compatible with the Constitutive Act of the African Union and with the Charter;
> c. Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union;
> d. Are not based exclusively on news disseminated through the mass media;
> e. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
> f. Are submitted within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seised 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 notes that the Respondent State has raised an objection to the admissibility of the Application, based on failure to file the Application within a reasonable time.

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

40. The Respondent State avers generally, that the Application is hopelessly time barred in contravention of Article 56(6) of the Charter, Article 6(2) of the Protocol and Rule 40(6) of the Rules of the Court.[10]

41. The Applicant contends that the objection is unfounded and asserts that the period between the judgment of the Court of Appeal and when the Application was filed is a reasonable time.

42. The Applicant states that, after the Court of Appeal delivered its judgment on 24 September 2013, he seized the Court on 8 December 2017, which means that, he took four (4) years and three (3) months after the said judgment to file the Application. The Applicant also claims that he is lay, indigent, and incarcerated such that the constant prison transfers, limited movement and limited access to information resulted in his cognisance of the Court only in 2017. He also claims that throughout the domestic judicial proceedings, he was not represented by Counsel and that, before seizing the Court he encountered challenges in securing the records of proceedings, which were crucial in drafting the Application.

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43. The issue for determination is whether the time taken by the Applicant before bringing his Application before the Court is reasonable within the meaning of Article 56(6) of the Charter as read together with Rule 50(2)(f) of the Rules.

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

44. Pursuant to Article 56(6) of the Charter, as restated in Rule 50(2)(f) of the Rules, for an application to be admissible, it must be "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". These provisions do not set a time limit within which it must be seized.

45. In the instant case, the Court notes that local remedies were exhausted on 24 September 2013 when the Court of Appeal sitting at Tabora rendered its judgment dismissing the Applicant's appeal. The present Application was filed on 19 February 2018. Therefore, the Applicant seized the Court four (4) years, four (4) months and twenty-six (26) days after he exhausted local remedies. The issue to be determined is whether this period is reasonable within the meaning of Article 56(6) of the Charter as read together with Rule 50(2)(f) of the Rules.

46. The Court recalls its jurisprudence that: "…the reasonableness of the timeframe for seizure depends on the specific circumstances of the case and should be determined on a case-by-case basis."[11] Some of the circumstances that the Court has taken into consideration include: imprisonment, being lay without the benefit of legal assistance,[12] indigence and lack of awareness of the existence of the Court,[13] Nevertheless, these circumstances must be proven.

47. Using the case-by-case approach**,** the Court has previously held that five (5) years, one (1) month and twelve (12) days,[14] five (5) years, one (1) month and thirteen (13) days,[15] four (4) years, nine (9) months and twenty-

[11] *The 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 *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 73.
[12] *Alex Thomas v. Tanzania* (merits), § 73; *Christopher Jonas v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 101, § 54; *Amir Ramadhani v. United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 344, § 83.
[13] *Amir Ramadhani v. Tanzania* (merits), § 50; *Christopher Jonas v. Tanzania* (merits), § 54.
[14] *Christopher Jonas v. Tanzania* (merits), § 55.
[15] *Amiri Ramadhani v. Tanzania* (merits), § 49.

three (23) days,[16] four (4) years, eight (8) months and thirty (30) days,[17] was a reasonable time taken to file applications. These applications were filed by lay, indigent and incarcerated applicants.

48. The Applicant in the instant case is in a comparable situation to the applicants in the foregoing cases. It is clear from the record that he was self-represented during the proceedings before the domestic courts, he is lay and incarcerated and, therefore, with limited access to information. The Applicant was also self-represented when filing the Application. Furthermore, and regarding indigence, it was only after the Applicant filed this Application that, this Court granted him legal aid and designated Counsel to represent him in these proceedings. In view of the foregoing circumstances, the Court therefore, concludes that the period of four (4) years, four (4) months and twenty-six (26) days is a reasonable period for seizing the Court within the meaning of Article 56(6) of the Charter and Rule 50(2)(f) of the Rules.

49. Therefore, the Court dismisses this objection to the admissibility of the Application.

B. Other conditions of admissibility

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

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

52. The Court also notes that the claims that were made by the Applicant seek to protect his rights guaranteed under the Charter. Furthermore, one of the

[16] *Andrew Ambrose Cheusi v. Tanzania* (merits and reparations), § 71.
[17] *Thobias Mangara Mango and Another v. United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 314, § 55.

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. Additionally, the Application does not contain any claim or prayer that is incompatible with a provision of the said 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 requirement of Rule 50(2)(b) of the Rules.

53. 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.

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

55. The condition set out in Rule 50(2)(e) of the Rules is that an application should be filed after exhaustion of local remedies. The rule on exhaustion of local remedies aims at providing States the opportunity to deal with human rights violations within their jurisdictions before an international human rights body is called upon to determine the State's responsibility for the same.[18] The Court has held that, in so far as the criminal proceedings against an applicant have been determined by the highest appellate court, the Respondent State will be deemed to have had the opportunity to redress the violations alleged by the Applicant that arose from those proceedings.[19]

56. 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 that Court rendered its judgment on 24 September 2013. Therefore, the Respondent State had the opportunity to address the

[18] *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (26 May 2017) 2 AfCLR 9, §§ 93-94.
[19] *Mohamed Abubakari v. United Republic of Tanzania* (merits) (3 June 2016) 1 AfCLR 599, § 76.

violations alleged by the Applicant arising from his trial and appeals. Consequently, the Application has complied with the requirement of exhaustion of local remedies under Rule 50(2)(e) of the Rules.

57. 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 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.

58. Therefore, the Court concludes that the Application meets all the admissibility conditions under Article 56 of the Charter as read together with Rule 50(2) of the Rules, hence, declares the Application admissible.

VII. MERITS

59. The Applicant alleges that the Respondent State has violated his (a) right to bail, (b) right to free legal assistance, (c) right to be tried within a reasonable time, and (d) right to be tried before a juvenile court, as guaranteed under Article 7(1)(b), (c) and (d) of the Charter, respectively.

A. Alleged violation of the right to bail

60. The Applicant claims that the Respondent State violated his right under Article 7(1)(b) of the Charter when he was not informed of his right to bail yet the offence of rape was bailable.

61. The Respondent State claims that it became aware of the allegation after the Applicant filed the submissions on reparations and that this was an afterthought by the Applicant since it was raised in the submissions on reparations rather than in the main application. The Respondent State accordingly requests the Court not to entertain this claim.

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62. The Court notes that, the fact that this allegation was raised in the Applicant's submissions on reparations rather than in the main application would not prevent it from considering the merits thereof. In such instances, what is important is for the Respondent State to have an opportunity to respond to the additional submissions. In the instant case, the record shows that the Respondent State was provided the opportunity to respond to the Applicant's submissions on reparations before pleadings were closed. The Court also notes that the Respondent State did not specifically respond to this allegation, rather it focussed on the issue whether a claim on merits can be introduced in submissions on reparations.

63. The Court further notes that the applicable provision of the Respondent State's law when the Applicant was arrested was Section 148(5) of the Criminal Procedure Act (CPA).[20] This provision contained a list of non-bailable offences and the offence of rape is not included thereunder, therefore, one charged with the offence of rape could in principle, be released on bail.

64. In this regard, the Court finds it pertinent that, the presumptive right to bail relates to Article 6 of the Charter which provides that:

> Every individual shall have the right to liberty and to the security of [their] person. No one may be deprived of [their] freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

65. The Court notes that the right to bail is an inbuilt element of the right to liberty in relation to arrested persons. The right to liberty demands that individuals accused of criminal offences should be released on bail if there are no reasons to keep them in custody pending trial.[21] Pertinently, Article

[20] The Criminal Procedure Act, 1985.

[21] According to Principle 4 (i) of the Luanda Guidelines adopted by the African Commission on Human and Peoples' Rights, arrested persons shall be afforded "the right to apply for release on bail or bond pending investigation or questioning by an investigating authority and/or appearance in court." In addition, Principle 7(a) provides that, "All persons detained in police custody shall have a presumptive right to police bail or bond."

9(3) of the International Covenant on Civil and Political Rights (the ICCPR),[22] provides that:

> It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgments.

66. The question for determination is thus whether the Applicant in the instant case, the right to be informed of the right to bail in connection with his right under Article 6 of the Charter or any other provision thereof.

67. The Court observes that neither Article 6 nor any other provision of the Charter or of other international human rights instruments, expressly provide for an arrested person's right to be informed of the right to bail. Article 9(2) of the ICCPR only provides that, "at the time of arrest, arrested persons are entitled to be informed of the reasons for their arrest and to be promptly notified of the charges levied against them". In this vein, the United Nations Human Rights Committee has pointed out that the right to be informed of the reasons of arrest or criminal charges is important to an arrested person particularly to "request a prompt decision on the lawfulness of his or her detention by a competent authority".[23]

68. Article 14(3)(d) of the ICCPR also prescribes that accused persons have the right to be informed of the right to legal assistance. These provisions seek to enable arrested or accused persons to take the necessary steps to secure their release, including by exercising their right to bail or facilitating their right to legal representation for purposes of their defence.

69. Despite not being explicitly recognised in existing international human rights instruments, the Court is of the considered view that the right to bail should be construed broadly to include the right to be informed of the right

[22] The Respondent State became a State Party to ICCPR on 11 June 1976.
[23] Communication No. 248/1987, *G. Campbell v. Jamaica* (Views adopted on 30 March 1992), § 6.3.

to apply for bail. This is particularly important in circumstances where arrested persons are not represented by Counsel, have not been informed of their right to be represented by Counsel or have not been provided with the assistance of Counsel,[24] who would help them exercise their right to seek bail.

70. In the present Application, the Court notes that the record shows that the Applicant was self-represented when he was first arrested, when he was arraigned in Court and subsequently, throughout the domestic proceedings. This clearly deprived the Applicant of the opportunity to benefit from the advice of Counsel regarding the exercise of his pre-trial rights including seeking bail. In this circumstance, the provision of information on his right to bail was necessary and justified.

71. The Court notes in this regard, that there is no evidence on record showing that the Applicant was at any time, informed of his right to bail. Nor has the Respondent State disputed the Applicant's assertion that he was not informed of his right to bail. It is thus clear that, due to the Respondent State's failure to inform the Applicant of his right to bail, the Applicant was not able to exercise this right.

72. The Court concludes that in the circumstances of this case, the Respondent State's omission to inform the Applicant of his right to bail constitutes a violation of the Applicant's rights under Article 6 of the Charter.

B. Alleged violation of the right to free legal assistance

73. The Applicant alleges that he was not represented by Counsel in the proceedings against him before the domestic courts, hence, the Respondent State violated Article 7(1)(c) of the Charter.

[24] *Chrizostom Benyoma v United Republic of Tanzania*, ACtHPR, Application No 001/2016, Judgment of 30 September 2021 (merits and reparations) § 98.

74. The Applicant argues that the domestic courts should have taken cognisance of the Applicant's serious charge and his inability to hire legal counsel to assist him during the domestic proceedings. Citing the Court's jurisprudence in *Diocles William v. Tanzania*, the Applicant submits that it is unnecessary and unreasonable for the Respondent State to demand that the Applicant should have either raised the pertinent issue at the domestic courts or instituted new proceedings before the domestic courts regarding the lack of representation by Counsel.

75. The Respondent State contends that the right to legal representation is not an absolute right both in international law and Tanzanian law, which signifies that the right is progressively subjected to the availability of financial resources to enable the State to provide an accused person with free legal representation. Further the right to legal representation is subjected to two conditions namely, that the Applicant must request for legal representation of his choice and there should be available funds to support the Applicant's prayer for legal aid once granted.

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76. 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."

77. 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),[25] and determined that the right to defence includes the right to be provided with free legal assistance.[26]

[25] The Respondent State became a State Party to the ICCPR on 11 June 1976.
[26] *Alex Thomas v. Tanzania*, (merits), § 114; *Kijiji Isiaga v. Tanzania* (merits) (21 March 2018) 2 AfCLR 218, § 72; *Kennedy Owino Onyachi and Another v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65, § 104.

78. The Court has also 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.[27]

79. The Court observes that although he faced a serious charge of rape which carried a thirty-year minimum prison sentence, a heavy penalty, nothing on the record shows that, the Applicant was informed of the right to legal assistance or that should he be unable to pay for such assistance, it would be provided to him free of charge. The Court further notes that, the Respondent State did not refute the Applicant's indigence.

80. The Court has also previously 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.[28]

81. The interest of justice ought to have been triggered and the Applicant provided legal assistance free of charge throughout the trial and appellate stages of the proceedings.

82. In view of this, the Respondent State's claim that the Applicant ought to have requested for free legal representation and that this would be availed depending on available resources, is unjustified.

83. 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.

[27] *Alex Thomas v. Tanzania* (merits), § 123; *Kijiji Isiaga v. Tanzania* (merits), § 78; *Kennedy Owino Onyachi and Another v. Tanzania* (merits), §§ 104 and 106.
[28] *Alex Thomas v. Tanzania* (merits), § 124; *Wilfred Onyango Nganyi 9 Others v. United Republic of Tanzania* (merits) (18 March 2016) 1 AfCLR 507, §183.

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

84. The Applicant claims that the Respondent State violated his right to be tried within a reasonable time by an impartial court under Article 7(1)(d) of the Charter.

85. The Applicant asserts that after he was arrested, he remained in police custody for more than twenty-four (24) hours contrary to Section 32 of the Criminal Procedure Act.

86. The Applicant further claims that he was arrested on 26 June 2009 and arraigned in court on 29 June 2009 and that there were numerous occasions where the trial court called for unjustifiable adjournments contrary to Article 7(1)(d) of the Charter. He contends that, although the trial court adjourned the hearing severally due to non-availability of the prosecution's witnesses, the trial court did so without specifying this as the reason for the adjournments.

87. The Respondent State submits that the Applicant was prosecuted within one (1) year, which is a reasonable time, given the nature of the offence and the circumstances of the case. Furthermore, the Respondent State claims that during the hearing, each party had an opportunity for cross-examination.

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88. Article 7(1)(d) of the Charter stipulates that the right to have one's cause heard comprises "the right to be tried within a reasonable time by an impartial court or tribunal."

89. The Court refers to its decision in *Wilfred Onyango and 9 others v. Tanzania*, where it held that "…there is no standard period that is considered reasonable for a court to dispose of a matter. In determining

whether time is reasonable or not, each case must be treated on its own merits".[29]

90. The Court considers the length of domestic proceedings and assesses the Applicant's conduct and the due diligence of the Respondent State in finalising the proceedings.[30] The Court has emphasised that "there rests a special duty upon authorities of domestic courts to ensure that all those who play a role in the proceedings do their utmost to avoid any unnecessary delay."[31]

91. The Court notes that the Applicant was arrested on 26 June 2009, a Friday and arraigned in Court on Monday, 29 June 2009. The Court notes that the Respondent State's law required that an arrested person charged with an offence other than one punishable by death should be arraigned in court either "twenty four hours after he was so taken into custody" or "as soon as practicable".[32] The Court finds that in view of the Applicant having been arrested on a Friday and charged with the serious offence of rape, his arraignment in Court on the Monday immediately following his arrest, was in compliance with this legal provision.

92. With regard to the conclusion of the trial proceedings, the Applicant was arraigned before the District Court on 29 June 2009, That court rendered its judgment and sentence on 24 August 2010. The trial therefore took one (1) year, one (1) month and twenty-six (26) days. Furthermore, the High Court took one (1) year and four (4) days to determine his first appeal and the

[29] *Wilfred Onyango Nganyi & 9 others v. Tanzania* (merits), §135.
[30] Ibid, §§ 134 & 136.
[31] Ibid, § 153.
[32] Section 32(1) of the Criminal Procedure Act, 1985 which was the applicable provision at the time, states that:
When 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.

Court of Appeal took one (1) year, one (1) month and two (2) days to determine his second appeal.

93. The Court further finds that although the trial was adjourned severally due to non-availability of some prosecution witnesses, on the whole, in view of the nature of the offence, the period of one (1) year, one (1) month and twenty-six (26) days that the trial court took to finalise the trial is reasonable. The Court finds similarly, that, the time taken by the High Court, that is one (1) year and four (4) days to determine the first appeal and by the Court of Appeal, that is one (1) year, one (1) month and two (2) days to determine his second appeal is reasonable.

94. The Court, therefore, finds that the Respondent State did not violate the Applicant's rights in relation to Article 7(1)(d) of the Charter.

D. Alleged violation of the right to be tried before a juvenile court

95. The Applicant states that he was tried by the District Court of Kahama instead of a juvenile court as he alleges to have been under sixteen (16) years old in 2009.

96. The Respondent State submits that the Applicant was properly tried by the District Court because the records of proceedings at the Court of Appeal reveal that at the time the Applicant was charged, he was twenty (20) years old.

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97. The Court notes that on 29 June 2009, the Applicant was charged with the offence of rape committed on various dates between "early June and 26 June 2009". The Court further notes that the age of majority in the Respondent State when the Applicant committed the offence and as at 29 June 2009 when he was arraigned before the District Court, was eighteen

(18) years.[33] This is also the age of majority under Article 2 of the African Charter on the Rights and Welfare of the Child, which provides that: "…a child means every human being below the age of 18 years".[34]

98. The Court notes that the record shows that at the time of the commission of the offence and his arrest, the Applicant was twenty (20) years old. Furthermore, the Applicant never contested his age during the trial nor raised it as a ground of appeal before both the High Court and the Court of Appeal. He raised a ground of appeal relating only to the age of the victim of the offence, that her age at the time of the commission of the offence had not been conclusively determined or proven by the Prosecution.

99. Since the Applicant had reached the age of majority at the time of the commission of the offence, of his arrest and subsequent arraignment before the District Court of Kahama, the claim that he ought to have been tried before a juvenile court is unfounded and is therefore dismissed.

VIII. REPARATIONS

100. 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."

[33] The Age of Majority Act Cap. 431 of the Laws sets the age of majority at eighteen years; Furthermore, with regard to criminal responsibility, Section 15 of the Penal Code (which was applicable at the material time with regard to the Applicant) provides that:
(1) A person under the age of ten years is not criminally responsible for any act or omission.
(2)A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission, he had capacity to know that he ought not to do the act or make the omission.
(3)A male person under the age of twelve years is presumed to be incapable of having sexual intercourse.
(4)Any person under the age of twelve years who commits an act or omission which is unlawful shall be dealt with under the Law of the Child Act.
[34] The Respondent State became a Party to this Charter on 9 May 2003.

101. As it has consistently held, the Court considers 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. Furthermore, and where it is granted, reparation should cover the full damage suffered.

102. The Court reiterates that the onus is on the Applicant to provide evidence to justify his prayers, particularly for material damages.[35] With regard to moral damages, the Court has held that the requirement of proof is not strict[36] since it is presumed that there is prejudice caused when violations are established.[37]

103. The Court also restates that the measures that a State could take to remedy a violation of human rights can include restitution, compensation and rehabilitation of the victim, as well as measures to ensure non-repetition of the violations, taking into account the circumstances of each case.[38]

104. In the instant case, the Court has established that the Respondent State violated the Applicant's right under Article 6 of the Charter by failing to inform him of his right to bail. The Court has also established that the Respondent State violated the Applicant's right to defence under Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR by failing to provide him with free legal assistance during his trial and appeals in the domestic courts.

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[35] *Kennedy Gihana and others v. Rwanda* (merits and reparations) (28 November 2019) 3 AfCLR 655, § 139; See also *Reverend Christopher R. Mtikila v. Tanzania* (reparations), § 40; *Lohé Issa Konaté v. Burkina Faso* (reparations), § 15(d); and *Kalebi Elisamehe v. Tanzania* (merits and reparations), § 97.

[36] *Norbert Zongo and Others v. Burkina Faso* (reparations), § 55. See also *Kalebi Elisamehe v. Tanzania* (merits and reparations), § 97.

[37] *Ally Rajabu and Others v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 539, § 136; *Armand Guehi v. Tanzania* (merits and reparations), § 55; *Lucien Ikili Rashidi v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 13, § 119; *Norbert Zongo and Others v. Burkina Faso* (reparations), § 55; and *Kalebi Elisamehe v. Tanzania* (merits and reparations), § 97.

[38] *Ingabire Victoire Umuhoza v. Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 20. See also *Kalebi Elisamehe v. Tanzania,* ACtHPR, Application 028/2015, Judgment of 26 June 2020 (merits and reparations), § 96.

105. The Court notes that the Applicant's claims for pecuniary reparations are made in United States Dollars. In its earlier decisions, the Court has held that, as a general principle, damages should be awarded, where possible, in the currency in which loss was incurred.[39] In the present case, the Court will apply this standard and monetary reparations, if any, will be assessed in Tanzanian Shillings.

106. It is against these findings that the Court will consider the Applicant's prayers for reparation.

A. Pecuniary reparations

107. The Applicant seeks pecuniary reparations for material prejudice due to loss of income, disruption of his life plan and expenses incurred by his family related to his trial and while in prison. He also seeks reparations for moral prejudice due to the violations established.

i. Material prejudice

108. The Applicant claims that his imprisonment led to loss of income and disruption of his life plan. The Applicant claims that he was earning at least Five Hundred Thousand Tanzanian Shillings per month (TZS 500,000) from construction activities like building houses, and personally managing farming activities like growing maize, groundnuts, tomatoes, onions and rice at Kahama. Further, the Applicant claims that "his businesses have collapsed as there is no one capable of running those businesses." Furthermore, all his future plans were disrupted because he lost everything that he had acquired. Consequently, the Applicant prays for payment of material damages in the amount of United States Dollars Fifteen Thousand Dollars (USD 15,000) for loss of income.

[39] See *Lucien Ikili Rashidi v. Tanzania* (merits and reparations), § 120; *Ingabire Victoire Umuhoza v. Republic of Rwanda* (reparations), § 45.

109. The Applicant also claims that his imprisonment has financially affected his family because he was the sole provider for the family. The prison conditions impacted his health, therefore, his family had to send funds for medication. Further, his family had to cater for the expenses during the trial to attend the court hearings.

110. The Respondent State submits that the Applicant's claims are unsubstantiated as the Applicant did not tender evidence proving that he was involved in construction and farming activities and managed a business, hence earning TZS 500,000 per month.

111. Citing the decision in *Lucien Ikili v. Tanzania*, the Respondent State argues further that, the Applicant failed to provide any evidence to support his monetary claims and as such, his claim for material prejudice lacks merit.

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112. The Court notes that for reparations for material prejudice to be granted, 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 the prejudice and proof thereof.[40]

113. The Court notes that the Applicant has not established the link between the violation(s) established and his alleged loss of income and the loss incurred by his family in providing for his medication while in prison and catering for expenses to attend his court hearings. Rather, the Applicant's claims are directly linked to his conviction, sentencing and incarceration, which this Court did not find unlawful.[41]

114. Furthermore, the Court notes that on 13 December 2019, the Applicant filed an affidavit that he swore on 9 October 2019, being a mere restatement of

[40] *Kijiji Isiaga v. Tanzania* (reparations), § 20.
[41] *Armand Guehi v. Tanzania* (merits and reparations), § 18; *Christopher Jonas v. United Republic of Tanzania*, ACtHPR, Application No. 011/2015. Judgment of 25 September 2020 (reparations), § 20.

his submissions on reparations. The Court finds that the affidavit does not suffice to establish his claim.

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

ii. Moral prejudice

116. The Applicant seeks reparations for moral prejudice he suffered and for that allegedly suffered by indirect victims, due to the violations established.

a. Moral prejudice suffered by the Applicant

117. The Applicant claims that the ten (10) years he has spent in prison have caused trauma and complete disruption of his private life. Further, his conviction caused embarrassment and lowered his social standing in his family and the community owing to his association with a grave offence. Furthermore, the Applicant alleges that his health deteriorated significantly over the years he has served his prison term. In addition, his incarceration separated him from his family, in particular, he lost direct contact with his relatives when he was transferred to Gereza Mollo at Sumbawanga.

118. Consequently, the Applicant prays the Court to grant him Thirty Thousand Dollars (USD 30,000) in moral damages for the range of mental and physical health conditions he has suffered while serving ten (10) years in prison.

119. The Respondent State submits that there is no proof demonstrating that the Applicant suffered from mental anguish, hence, the claims of emotional harm are unjustifiable. Further, the Respondent State argues that for the Applicant to prove that he suffered emotional harm, a medical certificate ought to have been tendered as evidence.

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120. The Court recalls its established case-law 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, considering the circumstances of the case.[42] The Court has thus adopted the practice of granting a lump sum in such instances.[43]

121. 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 have been violated. The Applicant is entitled to moral damages because there is a presumption that the Applicant has suffered some form of moral prejudice due to the said violations.[44]

122. 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 did not relate to the outcome of the proceedings. The Court further notes, that there were no extenuating circumstances in this case.[45]

123. Therefore, in view of these circumstances and exercising its discretion in equity, the Court awards the Applicant the amount of Six Hundred Thousand Tanzanian Shillings (TZS 600,000) for moral prejudice he suffered in relation to the violations established.

[42] *Norbert Zongo and Others v. Burkina Faso* (reparations), § 55; *Ingabire Victoire Umuhoza v. Rwanda* (reparations), § 59; *Christopher Jonas v. Tanzania* (reparations), § 23.
[43] *Lucien Ikili Rashidi v. Tanzania* (merits and reparations), § 119; *Minani Evarist v. United Republic of Tanzania* (merits) (21 September 2018) 2 AfCLR 402, §§ 84-85; *Armand Guehi v. Tanzania* (merits and reparations), § 177; *Christopher Jonas v. Tanzania* (reparations), § 24.
[44] *Andrew Ambrose Cheusi v. Tanzania* (merits and reparations), §151.
[45] *Minani Evarist v. Tanzania* (merits and reparations), § 90; *Anaclet Paulo v. United Republic of Tanzania* (merits and reparations) (21 September 2018) 2 AfCLR 446, § 111; *Christopher Jonas v. Tanzania* (reparations), § 25.

b. Moral prejudice suffered by the alleged indirect victims

124. The Applicant prays the Court to consider the following as indirect victims who have also suffered moral prejudice due to the violations against him: his parents, John Luzwiro and Moshi Masanja, and siblings, Hamis John, Perpeture John, Charles John, Faustine John, Leonard John and Innocent John).

125. The Applicant alleges that his imprisonment has been emotionally draining and induced social stigma on the indirect victims. Further, the imprisonment and the trials disrupted their day-to-day lives. They had to travel on numerous occasions to attend the hearings and to visit him at Uyui Central Prison. In addition, the Applicant claims that since he was the family's sole provider at the time of arrest, the indirect victims suffered tremendous stress as they lacked a stable income. Consequently, the Applicant prays for Five Thousand United States Dollars (USD 5,000) for each indirect victim.

126. The Respondent State refutes the Applicant's claim for moral damages for the indirect victims as the allegations and computation of figures have not been backed by evidence. The Respondent State argues that the Applicant failed to substantiate the relationship between him and the alleged indirect victims. In this regard, the Respondent State cites *Lucien Ikili v. United Republic of Tanzania*, which held that indirect victims must prove their relation to the Applicant to be entitled to damages. Therefore, the Respondent State submits that the Applicant failed to tender birth certificates as evidence of such relationship "or any other document showing level of dependency or previous record of dependency of the alleged indirect victims to the Applicant."

127. The Respondent State also argues that the Applicant has not proven the causal link between lack of representation and suffering endured by the indirect victims, hence, the indirect victims are not entitled to any reparations.

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128. The Court notes that with regard to indirect victims, as a general rule, moral prejudice is presumed with respect to spouses, parents and children and reparation is granted only when there is evidence of spousal relations, or filiation with an applicant. For other categories of indirect victims, proof of filiation and moral prejudice suffered is required.[46]

129. The Applicant did not tender any evidence proving filiation with the alleged indirect victims.

130. Consequently, the Court dismisses this prayer for reparations for the alleged indirect victims.

B. Non-pecuniary reparations

131. The Applicant prays the Court to set aside his conviction and sentence and restore his liberty, taking into account the time he has served in jail. Release from prison, the Applicant claims, is the second-best measure in the circumstances since the Court cannot restore him to his position before incarceration. Further, citing *Alex Thomas v. Tanzania*, the Applicant argues that the most appropriate form of remedy for violation of fair trial guarantees includes release from prison.

132. The Respondent State submits that restitution only applies where other forms of damages such as compensation are either irrelevant or insufficient. Further, the Respondent State avers that the Applicant has not proven that he suffered harm or damages due to the alleged violations.

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[46] *Norbert Zongo and others v. Burkina Faso* (reparations), § 54; and *Lucien Ikili Rashidi v. Tanzania* (merits and reparations), § 135; *Léon Mugesera v. Rwanda* ACtHPR, Application No. 012/2017, Judgment of 27 November 2020 (merits and reparations), § 148.

133. Regarding the prayer to set aside his conviction and sentence, the Court notes that it has not determined whether the conviction and sentence of the Applicant was warranted or not[47]. The Court is rather concerned with whether the procedures in the national courts comply with the provisions of human rights instruments ratified by the Respondent State.

134. With regard to the Applicant's prayer to be released from prison, the Court has established that it would make such an order, "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."[48]

135. In the instant case, the Court recalls that it has found that the Respondent State violated the Applicant's right to liberty and a fair trial by failing to inform him of right to bail and provide him with free legal assistance. The Court considers that the nature of the violation(s) in the instant case do not reveal any circumstance that the Applicant's imprisonment a miscarriage of justice or an arbitrary decision. The Applicant has also failed to elaborate on specific and compelling circumstances to justify the order for his release.[49]

136. In view of the foregoing, this prayer is dismissed.

IX. COSTS

137. Rule 32(2) of the Rules of Court stipulate that, "Unless otherwise decided by the Court, each party shall bear its own costs, if any".[50]

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[47] *Stephen John Rutakikirwa v. United Republic of Tanzania*, ACtHPR, Application No. 013/2016. Judgment of 24 March 2022 (merits and reparations), § 88.
[48] *Minani Evarist v. Tanzania* (merits and reparations), § 82; See also *Jibu Amir (Mussa) and another v. Tanzania* (merits and reparations), § 96; *Mgosi Mwita Makungu v. United Republic of Tanzania*, (merits) (7 December 2018) 2 AfCLR 550, § 84.
[49] *Jibu Amir (Mussa) and another v. Tanzania* (merits and reparations), § 97; *Kalebi Elisamehe v. Tanzania* (merits and reparations), § 112; and *Minani Evarist v. Tanzania* (merits and reparations), § 82.
[50] Rule 30(2) of the Rules of Court, 2 June 2010.

138. The Applicant prays the Court to grant him compensation for "transport and stationary costs: postage, printing and photocopying to the tune of Five Hundred Dollars (USD 500)."

139. The Respondent State submits that this claim for compensation is unfounded, thus, the Court should dismiss it.

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140. The Court reiterates its jurisprudence that reparations may include legal costs and other costs incurred in the international proceedings.[51] Further, it is up to the Applicant to provide justifications for the sums claimed.

141. The Court considers that transport costs incurred for travel within Tanzania, and stationary costs fall under the "categories of expenses that will be supported in the Legal Aid Policy of the Court."[52] Since East Africa Law Society represented the Applicant on a *pro bono* basis, the sums claimed are unjustified and hence, the prayer is dismissed.

142. Consequently, the Court holds that each Party shall bear their own costs.

X. OPERATIVE PART

143. For these reasons:

THE COURT

Unanimously,

[51] *Reverend Christopher R. Mtikila v. Tanzania* (reparations), § 39; *Armand Guehi v. Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 188.
[52] *Mohamed Abubakari v. United Republic of Tanzania* (reparations) (4 July 2019) 3 AfCLR 334, § 90.

On Jurisdiction

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

On Admissibility

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

On Merits

v. *Finds* that the Respondent State has not violated the Applicant's right to be tried within a reasonable time under Article 7(1)(d) of the Charter.
vi. *Dismisses* the allegation that the Applicant should have been tried before the juvenile court.
vii. *Finds* that the Respondent has violated the Applicant's right under Article 6 of the Charter by failing to inform him of his right to bail.
viii. *Finds* that the Respondent State has violated the Applicant's right to defence under Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the International Covenant on Civil and Political Rights, for failure to provide the Applicant free legal assistance.

On Pecuniary Reparations

ix. *Dismisses* the Applicant's prayer for damages for material prejudice that he and the alleged indirect victims allegedly suffered;

By a majority of Nine (9) for, and One (1) against, Justice Chafika BENSAOULA dissenting,

x. *Dismisses* the Applicant's prayer for damages for moral prejudice suffered by the alleged indirect victims.

Unanimously,

xi. *Grants* the Applicant's prayer for reparations for the moral prejudice as a result of the violations found and awards him the sum of Six Hundred Thousand Tanzanian Shillings (TZS 600,000).

xii. *Orders* the Respondent State to pay the amount set out under (xi) above, tax free, as fair compensation, within six (6) months from the date of notification of judgment, failure of which, it will be required to pay interest on arrears calculated on the basis of the applicable rate of the Bank of Tanzania throughout the period of delayed payment until the accrued amount is fully paid.

On Non-pecuniary Reparations

xiii. *Dismisses* the Applicant's prayer for setting aside of his conviction and sentence and his release from prison.

On Implementation and Reporting

xiv. *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

xv. *Dismisses* the Applicant's prayer for reimbursement of legal fees, costs and other expenses incurred in the proceedings before this Court.

xvi. *Orders* that each Party shall 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.

In accordance with Article 28(7) of the Protocol and Rule 70(1) of the Rules, the Dissenting Opinion of Justice Chafika BENSAOULA is appended to this Judgment.

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