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

YASSIN RASHID MAIGE

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 018/2017

JUDGMENT

5 SEPTEMBER 2023

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

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

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

In the Matter of:

Yassin Rashid MAIGE
Self-represented

Versus

UNITED REPUBLIC OF TANZANIA
Represented by:

i. Dr Boniphace Nalija LUHENDE, Solicitor General, Office of the Solicitor General;
ii. Mr Nkasori SARAKIKYA, Principal State Attorney, Office of the Solicitor General; and
iii. Mrs Pauline MDENDEMI, State Attorney, Office of the Solicitor General.

after deliberation,

renders this Judgment:

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

I. THE PARTIES

1. Yassin Rashid Maige (hereinafter "the Applicant") is a national of Tanzania, who, at the time of filing the Application, was serving a thirty (30) year prison sentence at Uyui Central Prison, Tabora, having been convicted for the offence of armed robbery. He alleges the violation of his right to a fair trial 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, on 29 March 2010, the Respondent State deposited the Declaration prescribed under Article 34(6) of the Protocol (hereinafter referred to as "the Declaration"), through which it accepted the jurisdiction of the Court to receive applications from Individuals and Non-Governmental Organisations (hereinafter referred to as "NGOs"). On 21 November 2019, the Respondent State deposited, with 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 22 November 2020, which is the day on which the withdrawal took effect, being a period of one year after its deposit.[2]

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the record, that on 29 July 1999, gunshots were heard, following which the Applicant and six (6) others who are not parties to this Application, broke into a house, assaulted the occupant and ran off with stolen property. The victim and two of his neighbours commenced a pursuit

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

of the robbers and apprehended the Applicant nearby the house with some of the stolen property.

4. After the arrest, the Applicant was taken to the Village Executive Officer (VEO) together with the properties found in his possession. The Applicant was interrogated by the VEO and upon interrogation stated that there were six (6) other bandits and mentioned the other culprits to the VEO.

5. The Applicant and his accomplices were charged with the offence of armed robbery, contrary to Section 285 and 286 of the Respondent State's Penal Code. On 4 August 1999, the Applicant and his co-accused were arraigned before the District Court of Urambo at Urambo, in Criminal Case No. 151/1999. On 9 September 2003, the District Court acquitted five (5) accused persons but convicted the Applicant and one co-accused person and sentenced them to thirty (30) years in prison and twelve (12) strokes of the cane.

6. The latter two then filed an appeal before the High Court sitting at Tabora, being Criminal Appeal No. 37/2004, and on 26 June 2007 the Applicant's appeal was dismissed. The High Court, however, upheld the co-accused person's appeal and he was released from prison.

7. The Applicant filed a further appeal to the Court of Appeal of Tanzania sitting at Mwanza, being Criminal Appeal No. 461/2007. In its judgment of 19 April 2013, the Court of Appeal dismissed his appeal in its entirety.

8. On 11 May 2013, the Applicant filed an application for review of the Court of Appeal's decision, but at the time of filing the Application before this Court no final decision had yet been made by the Court of Appeal.

B. Alleged violations

9. The Applicant alleges that the Respondent State violated his right to have his cause heard under Article 7(1) of the Charter. Specifically, he alleges the following violations:

    i. That he was not tried within a reasonable time, contrary to article 7(1)(d) of the Charter, as he spent four (4) and a half years in prison before his trial case was concluded.
    ii. That he was not granted legal representation, contrary to Article 7(1)(c) of the Charter.
    iii. That the Court of Appeal of the Respondent State did not properly examine and evaluate the evidence in the appeal proceedings, contrary to his right to have his cause heard, protected under Article 7(1) of the Charter.
    iv. That the Court of Appeal of the Respondent State did not analyse the Applicant's twelve (12) different grounds of appeal during the appeal proceedings and instead boiled them down to one ground only, contrary to his right to have his cause heard, protected under Article 7(1) of the Charter and which was also in violation of Article 3(2) of the Charter.
    v. That the Applicant, in the absence of legal representation, was not informed about Section 194(4) and (5) of the Criminal Procedure Act concerning the defence of alibi, contrary to his right to defence, protected under Article 7(1)(c).

10. The Applicant further alleges that the conduct of the courts in the Respondent State violated his right to non-discrimination, protected by Article 2 of the Charter.

11. The Applicant also claims that the prison sentence of thirty (30) years meted on him was patently excessive and constituted an inhumane and degrading punishment in violation of Article 5 of the Charter.

12. The Applicant further alleges that the above-mentioned conduct of the Respondent State violated his rights protected in the Constitution of the Respondent State, notably, Article 13(6)(a) (right to a fair hearing), Article 13(6)(e) (prohibition of torture or inhuman or degrading punishment or treatment), Article 15(1)(2)(a)(b) (right to personal freedom) and Article 107(A)(2)(b) (not to delay dispensation of justice without reasonable ground).

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

13. The Application was filed on 13 June 2017. On 16 June 2017, the Registry requested the Applicant to provide copies of the judgments from the domestic proceedings which he subsequently provided and after which the Registry served the Application on the Respondent State.

14. On 1 October 2018, the Application was notified to all State Parties to the Protocol, the Chairperson of the African Union Commission, the Executive Council of the African Union and the African Commission on Human and Peoples' Rights.

15. The Parties filed their pleadings on merits and reparations within the time stipulated by the Court.

16. Pleadings were closed on 22 May 2023 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

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

    i. Restore justice where it was overlooked and quash both the conviction and sentence imposed upon him and set him at liberty.
    ii. Grant reparations pursuant to Article 27(1) of the Protocol.

iii. Grant any other order legal remedy it may deem fit and just to grant in the circumstances of his application.

18. In his submissions on reparations, the Applicant prays the Court to order as follows:

i. That the Court has jurisdiction to order reparations.
ii. That the Application be declared admissible.
iii. That the Respondent State violated the Applicant's rights.
iv. That the Respondent State pays him Twelve Million Tanzanian Shillings (TSH 12,000,000) as compensation for keeping the Applicant in restraint, after his arrest, for five days without any meal.
v. That the Respondent State pays him Thirty-Six Million Tanzanian Shillings (TSH 36,000,000) as compensation for the loss of his employment following the violation of his rights.
vi. That the Respondent State pays him Ten Million Tanzanian Shillings (TSH 10,000,000) as compensation for his case not being tried within a reasonable time.
vii. That the Respondent State compensates him for the pain of losing of his house following the Respondent State's violation of his rights and in particular the failure to provide him with legal representation.
viii. That the Respondent State compensates him for his children being chased from school after him being arrested by the Respondent State's agents, which led to an infringement of their right to education, protected by Article 11(2)(3) of the Respondent State's Constitution.

19. In its Response, with regard to jurisdiction and admissibility of the Application, the Respondent State prays the Court to order the following measures:

i. That, the Court is not vested with jurisdiction to adjudicate this Application.
ii. That, the Application had not met the admissibility requirements provided by Rule 40(5) of the Rules of Court.[3]
iii. That, the Application has not met the admissibility requirements provided by Rule 40(6) of the Rules of Court.[4]
iv. That, the Application be declared inadmissible.
v. That, the Application be dismissed.

20. With regard to the merits of the Application, the Respondent State prays the Court to order the following measures:

i. That, the Respondent State has not violated the Applicant's rights provided under Article 2 of the Charter.
ii. That, the Respondent State has not violated the Applicant's rights provided under Article 7(1)(c) of the Charter.
iii. That, the Application be dismissed for lack of merit.
iv. That, the Applicant not be awarded reparations.
v. That, the Applicant's prayers be dismissed in their totality.
vi. That, the cost of this Application be borne by the Applicant.

21. In Response to the Applicant's submissions on reparations, the Respondent State prays for declarations and orders of the Court as follows:

i. To dismiss the [Applicant's] prayers in their entirety.
ii. A Declaration that there are no extra-ordinary and compelling reasons to order the release of the Applicant from custody.
iii. A Declaration that the Respondent State has not violated Article 7(1)(d) of the African Charter or Article 10 of the Protocol and that the Applicant was treated with respect and dignity by the Respondent State.
iv. An Order to dismiss the Application for Reparations.
v. Any other Order this Court might deem right and just to grant under the prevailing circumstances.

[3] Corresponding to Rule 50(2)(e) of the Rules of 25 September 2020.
[4] Corresponding to Rule 50(2)(f) of the Rules of 25 September 2020.

V. JURISDICTION

22. 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.

23. The Court further observes that pursuant to Rule 49(1) of the Rules, it "shall conduct a preliminary examination of its jurisdiction […] in accordance with the Charter, the Protocol and these Rules."[5]

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

25. In the present Application, the Court notes that the Respondent State raises two objections to its jurisdiction. Firstly, it argues that the Court does not have material jurisdiction and, secondly, that the Court lacks temporal jurisdiction. The Court will examine these objections before considering other aspects of jurisdiction if necessary.

A. Objection to material jurisdiction

26. The Respondent State asserts that the Court does not have jurisdiction to grant the relief of releasing the Applicant. Noting Article 27(1) of the Protocol and in reference to the Court's Jurisprudence in *Alex Thomas v. Tanzania*, the Respondent State submits that the prayer sought by the Applicant to be released from custody is beyond the mandate of the Court since the Applicant has not provided specific or compelling circumstances to warrant

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

the Court to grant an order for his release. The Respondent State, therefore, prays that the Application should be dismissed.

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27. The Applicant did not make any submissions on this point.

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28. 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.[6]

29. The Court notes that the Respondent State's objection concerns the claim that it does not have jurisdiction to grant an order for release.

30. The Court recalls Article 27(1) of the Protocol which provides 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." Therefore, the Court has jurisdiction to grant different types of reparations, including release from prison, provided that the alleged violation has been established.[7]

31. For this reason, the Court dismisses the objection raised by the Respondent State in this regard and holds that it has material jurisdiction.

B. Objection to temporal jurisdiction

32. The Respondent State also contests the temporal jurisdiction of the Court on the ground that the alleged violations raised by the Applicant are not

[6] *Kalebi Elisamehe v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 265, § 18.
[7] *Rajabu Yusuph v. United Republic of Tanzania*, ACtHPR, Application No. 036/2017 Ruling of 24 March 2022 (admissibility), § 27.

ongoing. The Respondent State argues that the Applicant is serving a lawful sentence for the commission of an offence as provided by statute.

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33. The Applicant did not make any submissions on this point.

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34. In respect of its temporal jurisdiction, the Court notes that the violations alleged by the Applicant arose after the Respondent State became a Party to the Charter and the Protocol. Furthermore, the Court observes that the Applicant remains convicted on the basis of what he considers an unfair process. Therefore, it holds that the alleged violations can be considered to be continuing in nature.[8]

35. For these reasons, the Court finds that it has temporal jurisdiction to examine this Application and consequently dismisses the Respondent State's objection on this point.

C. Other aspects of jurisdiction

36. The Court observes that no objection has been raised with respect to its personal and territorial jurisdiction. Nonetheless, in line with Rule 49(1) of the Rules, it must satisfy itself that all aspects of its jurisdiction are fulfilled before proceeding.

37. In relation to its personal jurisdiction, the Court recalls, as stated in paragraph 2 of this judgment that, on 21 November 2019, the Respondent State deposited with the Chairperson of the African Union Commission, an instrument withdrawing its Declaration made under Article 34(6) of the

[8] *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* (preliminary objections) (21 June 2013) 1 AfCLR 197, §§ 71-77.

Protocol. The Court further recalls that it has held that the withdrawal of a Declaration does not have any retroactive effect and it also has no bearing on matters pending prior to the filing of the instrument withdrawing the Declaration, or new cases filed before the withdrawal takes effect.[9] Since any such withdrawal of the Declaration takes effect twelve (12) months after the notice of withdrawal is deposited, the effective date for the Respondent State's withdrawal was 22 November 2020.[10] This Application having been filed before the Respondent State deposited its notice of withdrawal is thus not affected by it. The Court therefore finds that it has personal jurisdiction to examine the present Application.

38. As for 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 it has territorial jurisdiction.

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

VI. ADMISSIBILITY

40. 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".

41. In line with Rule 50(1) of the Rules,[11] "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."

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

[9] *Cheusi v. Tanzania* (judgment), *supra*, §§ 35-39.
[10] *Ingabire Victoire Umuhoza v. United Republic of Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 562, § 67.
[11] Rule 40 of the Rules of Court, 2 June 2010.

Applications filed before the Court shall comply with all of the following conditions:

a) Indicate their authors even if the latter request anonymity;
b) Are compatible with the Constitutive Act of the African Union and with the Charter;
c) Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union;
d) Are not based exclusively on news disseminated through the mass media;
e) Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
f) Are submitted within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter; and
g) Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of African Union or the provisions of the Charter.

A. Objections to the admissibility of the Application

43. The Respondent State raises two objections to the admissibility of the Application. The first objection relates to the requirement of exhaustion of local remedies and the second relates to whether the Application was filed within a reasonable time. The Court will now consider these objections before examining other conditions of admissibility if necessary.

i. Objection based on non-exhaustion of local remedies

44. The Respondent State argues that the Applicant is raising, before this Court, an allegation which he never raised before Court of Appeal of Tanzania. The Respondent State submits that the Applicant is raising the

grievance that he was denied legal aid for the first time in his Application before this Court.

45. The Respondent State contends that the Applicant could have applied for legal aid during the trial, or during his appeals before the High Court and before the Court of Appeals. It also contends that that the Applicant had the legal remedy of raising the allegations as grounds of appeal before the High Court and the Court of Appeal, if he was truly aggrieved, but failed to do so.

46. The Respondent State further asserts that since the Applicant is claiming that not being granted legal aid deprived him of the right to be heard, he could have filed for an Application to review the Court of Appeal's decision under Rule 66(1)(b) of the Court of Appeal Rules, 2009. This Rule provides for a review on the basis of a party being "wrongly deprived of an opportunity to be heard", which the Respondent State considers to be a component of the right to a fair hearing.

47. It is the Respondent State's submission that since the Applicant did not pursue these remedies that were available to him and that there was no delay in accessing them, this Application has not met the admissibility requirement under Rule 40(5) of the Rules[12] and should therefore be dismissed.

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48. The Applicant did not make any submissions on this point.

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49. 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. The rule of exhaustion of local remedies aims at providing States the opportunity to

[12] Corresponding to Rule 50(2)(e) of the Rules of 25 September 2020.

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.[13]

50. The Court recalls its position where it 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 to have arisen from those proceedings.[14]

51. 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 19 April 2013. Therefore, the Respondent State had the opportunity to address the violations alleged by the Applicant arising from the Applicant's trial and appeals.[15]

52. Regarding the Respondent State's contention that the Applicant ought to have filed an application for review of the Court of Appeal's judgment, the Court has previously held that such an application for review is an extraordinary remedy which applicants are not required to exhaust.[16] The Court, therefore, finds that the Applicant is deemed to have exhausted local remedies since the Court of Appeal of Tanzania, the highest judicial organ in the Respondent State, had upheld his conviction and sentence, following proceedings which allegedly violated his rights.

53. In light of the foregoing, the Court dismisses the Respondent State's objection based on the non-exhaustion of local remedies.

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[13] *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (26 May 2017) 2 AfCLR 9, §§ 93-94.
[14] *Rajabu Yusuph v. United Republic of Tanzania*, ACtHPR, Application No. 036/2017 Ruling of 24 March 2022 (admissibility), § 51.
[15] *Ibid*, § 52.
[16] *Abubakari v. Tanzania* (merits), *supra*, § 78.

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

54. The Respondent State claims that since the Application was not filed within a reasonable time after the local remedies were exhausted, the Court should find that the Application has failed to comply with the provisions of Rule 40(6) of the Rules.[17]

55. The Respondent State recalls that the judgment of the Court of Appeal was delivered on 19 April 2013, that the instrument sanctioning access to the Court in accordance with Article 34(6) and Article 5(3) of the Protocol was deposited on 29 March 2010 and that this Application was filed on 13 June 2017. The Respondent State notes that a period of three (3) years elapsed from when the judgment was delivered to when the Applicant filed his Application before this Court.

56. The Respondent State submits that a period of three (3) years does not fall within the parameters of reasonable time, therefore, this Application has not met the admissibility requirement provided by Rule 40(6) of the Rules.[18] Accordingly, the Respondent State argues that the Application should be rendered inadmissible.

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57. In his Reply, the Applicant submits that, on 11 May 2013, he had filed an application for review of the Court of Appeal's decision, but at the time of filing the Application before this Court, no final decision had yet been made by the Court of Appeal and that no information was forthcoming concerning this appeal. It was for that reason that he decided to seek another legal remedy by bringing his Application before this Court.

58. The Applicant contends that the ongoing review process of the Court of Appeal decision explains the delay in seizing this Court.

[17] Corresponding to Rule 50(2)(f) of the Rules of 25 September 2020.
[18] Corresponding to Rule 50(2)(f) of the Rules of 25 September 2020.

59. In view of the reason stated above, the Applicant submits that he filed his Application within a reasonable time after exhaustion of local remedies.

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60. Pursuant to Article 56(6) of the Charter, as restated in Rule 50(2)(f) of the Rules, in order 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".

61. In the present case, the Court notes that between the date that the Court of Appeal dismissed the Applicant's appeal on 19 April 2013 and when the Applicant filed the Application on 13 June 2017, a period of four (4) years, one (1) month and twenty-five (25) days elapsed.

62. The Court further notes that Article 56(6) of the Charter, as restated in Rule 50(2)(f) of the Rules, does not set a fixed time limit within which it must be seized. However, the Court has held that "the reasonableness of the time limit for referral depends on the particular circumstances of each case and must be determined on a case-by-case basis".[19]

63. In this regard, the Court has considered as relevant factors, the fact that an applicant is incarcerated,[20] their indigence, the time taken to utilise the procedures of the application for review at the Court of Appeal, or the time taken to access the documents on file,[21] the need for time to reflect on the advisability of seizing the Court and determine the complaints to be submitted.[22]

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[19] *Beneficiaries of late Norbert Zongo and Others v. Burkina Faso* (merits) (28 March 2014) 1 AfCLR 219, § 92; *Kijiji Isiaga v. United Republic of Tanzania* (merits) (21 March 2018) 2 AfCLR 218, § 56; *Alex Thomas v. Tanzania* (merits), § 73.
[20] *Diocles William v. United Republic of Tanzania* (merits) (21 September 2018) 2 AfCLR 426, § 52; *Alex Thomas v. Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 74.
[21] *Nguza Viking and Johnson Nguza v. United Republic of Tanzania* (merits) (23 March 2018) 2 AfCLR 287, § 61.
[22] *Zongo and Others v. Burkina Faso* (preliminary objections), *supra*, § 122.

64. Importantly, the Court has confirmed that it is not enough for applicants to simply plead that they were incarcerated, are lay or indigent, for example, to justify their failure to file an Application within a reasonable period of time.[23] As the Court has previously pointed out, even for lay, incarcerated or indigent litigants there is a duty to demonstrate how their personal situation prevented them from filing their Applications in a more timely manner.

65. From the record, the Court notes that the Applicant claims that he is a lay person and that he was self-represented in proceedings before domestic courts as well as in the proceedings before it.

66. The Court further recalls that while an applicant, within the Respondent State's legal system, is not obliged, for purposes of determining exhaustion of domestic remedies, to file a petition for review of the Court of Appeal's decision, where one opts to avail himself of this remedy, the Court takes the time expended in pursuing this remedy into account in determining whether or not an Application was filed within a reasonable time.

67. In the present Application, the Court takes into consideration that the Applicant filed an application for review of the Court of Appeal's decision, but that at the time of filing this Application, no final decision had yet been made by the Court of Appeal. The Court considers, in these circumstances, that the pending review process may have contributed to the delay in deciding to file an Application before this Court.

68. In light of the above, the Court finds that the time of four (4) years, one (1) month and twenty-five (25) days is not unreasonable within the meaning of Article 56(6) of the Charter and Rule 50(2)(f) of the Rules.

[23] *Layford Makene v. United Republic of Tanzania*¸ ACtHPR, Application No. 028/2017 Ruling of 2 December 2021 (admissibility), § 48.

69. The Court, therefore, holds that this Application was filed within a reasonable time within the meaning of Article 56(6) of the Charter and thus dismisses the Respondent State's objection on this point.

B. Other conditions of admissibility

70. The Court observes that no objection has been raised with respect to the other admissibility requirements. Nonetheless, in line with Rule 50(1) of the Rules, it must satisfy itself that the Application is admissible before proceeding.

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

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

73. 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.

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

75. 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, in compliance with Rule 50(2)(g).

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

VII. MERITS

77. The Court notes that the Applicant alleges that the manner in which the Respondent State's domestic courts determined his case was in error of both the law and facts and as a result, his rights as guaranteed in Articles 2, 3, 5 and 7(1) of the Charter were violated.

78. The Court considers, however, that although the Applicant alleges violations of various rights under the Charter, at the core of his Application is the alleged violation of the right to have his cause heard, protected under Article 7(1) of the Charter. The Court will, therefore, first, consider (A) the alleged violation of Article 7(1) of the Charter, before addressing the other human rights that were allegedly violated, namely (B) the right to non-discrimination, protected under Article 2 of the Charter, and (C) the right not to be subjected to inhumane and degrading punishment, guaranteed in Article 5 of the Charter.

79. The Court further notes that the Applicant alleges the violation of Article 13(6)(a), Article 13(6)(e), Article 15(1)(2)(a)(b) and Article 107(A)(2)(b) of the Constitution of the Respondent State. Nonetheless, the Court has previously held that in determining whether the State has complied with the Charter or any other human rights instrument it has ratified, it does not apply the domestic law in making this assessment.[24] The Court will, therefore, not

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

apply the provisions of the Respondent State's Constitution cited by the Applicant.[25]

A. Alleged violation of the right to have one's cause heard

80. The Court observes, from the record, that the Applicant raises five (5) grievances against the domestic courts whose actions or omissions he claims violated his right to be heard as protected under Article 7(1) of the Charter. These grievances are:

    i. That he was not tried within a reasonable time, contrary to Article 7(1)(d) of the Charter, as he spent four and a half years in prison before his trial case was finished.

    ii. That he was not granted legal representation, contrary to Article 7(1)(c) of the Charter.

    iii. That the Court of Appeal of the Respondent State did not properly examine and evaluate the evidence in the appeal proceedings, contrary to his right to have his cause heard, protected under Article 7(1) of the Charter.

    iv. That the Court of Appeal of the Respondent State did not analyse the Applicant's twelve (12) different grounds of appeal during the appeal proceedings and instead boiled them down to one ground only, contrary to his right to have his cause heard, protected under Article 7(1) of the Charter and which was also in violation of Article 3(2) of the Charter.

    v. That the Applicant, in the absence of legal representation, was not informed about Section 194(4) and (5) of the Criminal Procedure Act concerning the defence of alibi, contrary to his right to defence, protected under Article 7(1)(c).

81. The Court will proceed to examine these five (5) grievances in light of Article 7(1) of the Charter.

[25] *Sijaona Chacha Machera v. United Republic of Tanzania,* ACtHPR, Application No. 035/2017 Judgment of 22 September 2022 (Merits), § 42.

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

82. The Applicant alleges that he remained in prison for four (4) and a half years before he was convicted and sentenced by the trial court of the Respondent State and that this violates his right to be tried within a reasonable time, protected in Article 7(1)(d).

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83. The Respondent submits that the Applicant was tried within a period of five years which is a reasonable time given the nature of the offence and the circumstances in which it took place. In referring to the charge sheet, the Respondent State points out that the Applicant and five (5) other co-accused persons were charged on 7 October 1999. On 12 February 2002, the prosecution commenced its case where five witnesses testified on different dates, subsequent to which the prosecution closed its case on 9 May 2003. The defence case commenced on 30 June 2003, when the Applicant gave his testimony. The trial court delivered its judgment on 9 September 2003.

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84. Article 7(1)(d) provides that "[e]very individual shall have the right to have his cause heard. This comprises […] the right to be tried within a reasonable time".

85. The Court recalls its decision in *Wilfred Onyango Nganyi 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."[26]

[26] *Wilfred Onyango Nganyi and Others v. United Republic of Tanzania* (merits) (2016) 1 AfCLR 507, § 135.

86. As the Court has previously established various factors are considered in assessing whether a case was disposed of within a reasonable time within the meaning of Article 7(1)(d) of the Charter. These factors include the complexity of the case, the behaviour of the parties, and the behaviour of the national judicial authorities.[27]

87. In the present case, the Court notes that the Applicant only contests the time it took to finalise his trial proceedings while he remained in detention, and not his appeal proceedings. The Court recalls that the Applicant was arrested on 29 July 1999 and was arraigned before the District Court on 4 August 1999. While the preliminary hearing was conducted on 2 May 2000, the actual trial by the District Court commenced on 12 February 2002, ending with the Court finding the Applicant guilty and being sentenced on 9 September 2003. In total, the trial proceedings, starting from the Applicant's arrest leading to the Applicant's conviction and sentencing by the District Court, took four (4) years, one (1) month and eleven (11) days.

88. The Court will thus take into account this timeline in determining whether or not the time taken to conclude the Applicant's trial was reasonable.

89. With respect to the complexity of the case, the Court notes the nature and seriousness of the offence, the circumstances in which it took place, the fact that the Applicant was charged together with various other accused and that the witnesses testified on different dates.

90. As to the behaviour of the parties and the national judicial authorities, the Court notes that no argument has been made concerning the level of responsibility of the Applicant in hampering or expediting the proceedings, or that the domestic authorities deliberately delayed the proceedings or unduly failed to expedite the proceedings.

[27] See *Armand Guehi v. Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, §§ 122-124; *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 104 and *Nganyi and Others v. Tanzania* (merits), *supra*, § 155.

91. In these circumstances, the Court considers that the period to finalise the Applicant's trial cannot be found to be unreasonable and, therefore, holds that the Respondent State did not violate Article 7(1)(d) of the Charter.

ii. Alleged violation of the right to legal representation

92. The Applicant claims that he was prejudiced because he was not was not provided with legal representation in the proceedings before the courts of the Respondent State in violation of Article 7(1)(c) of the Charter.

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93. The Respondent State disputes this allegation and argues that free legal representation in the Respondent State is mandatory only for specific offences, including treason, manslaughter and murder. For all other offences, legal aid is upon application by an incumbent. The Respondent State submits that the Applicant never applied for legal aid and claims that if the Applicant required legal representation, he should have applied for such from the State or from Non-Governmental Organizations which provide legal assistance to an incumbent who requires legal assistance.

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94. 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."

95. 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),[28] and determined that the right to defence includes the right to be provided with free legal assistance.[29]

[28] The Respondent State became a State Party to the ICCPR on 11 June 1976.
[29] *Thomas v. Tanzania* (merits), *supra*, § 114; *Kijiji Isiaga v. Tanzania* (merits) (21 March 2018) 2 AfCLR 218, § 72; *Onyachi and Another v. Tanzania* (merits), *supra*, § 104.

96. 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.[30]

97. The Court observes that although he faced a serious charge of armed robbery which may carry a life-sentence, with or without corporal punishment, 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.

98. 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.[31]

99. 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.

100. 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.

iii. Allegation that evidence was not properly examined and evaluated

101. The Applicant claims that the Court of Appeal of the Respondent State did not properly examine and evaluate the evidence of the prosecution witnesses, contrary to his right to have his cause heard, protected under Article 7(1) of the Charter.

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[30] *Thomas v. Tanzania* (merits), *supra*, § 123; *Isiaga v. Tanzania* (merits), *supra*, § 78; *Onyachi and Another v. Tanzania* (merits), *supra*, §§ 104 and 106.
[31] *Thomas v. Tanzania*, *ibid*, § 124; *Nganyi and 9 Others v. Tanzania* (merits), *supra*, §183.

102. The Respondent State disputes the allegation by the Applicant and claims that the Court of Appeal carefully evaluated and examined all the grounds of appeal and evidence on record. The Respondent State asserts that the Court of Appeal rightfully found that the Applicant had not raised any good ground upon which it could fault the findings of facts of the prior courts, and that the identification evidence given by PW1 and PW2 sufficiently and without doubt links the Applicant to be one of the armed robbers who raided the residence of PW1.

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103. The Court has previously held that:

> … domestic courts enjoy a wide margin of appreciation in evaluating the probative value of a particular evidence. As an international human rights court, the Court cannot take up this role from the domestic courts and investigate the details and particularities of evidence used in domestic proceedings.[32]

104. The above notwithstanding, the Court can, in evaluating the manner in which domestic proceedings were conducted, intervene to assess whether domestic proceedings, including the assessment of the evidence, was done in consonance with international human rights standards.

105. The record before this Court shows that the Court of Appeal exhaustively considered the evidence presented in the Applicant's case. The Court further considers that the Applicant failed to demonstrate and prove that the manner in which the Court of Appeal evaluated evidence revealed manifest errors requiring this Court's intervention.

106. The Court, therefore, dismisses the Applicant's allegation and finds that the Respondent State has not violated his right to be heard, protected under Article 7(1) of the Charter.

[32] *Isiaga v. Tanzania* (merits), *supra*, § 65.

iv. Allegation that the grounds of appeal were not properly analysed

107. The Applicant faults the Court of Appeal of the Respondent State for failing to analyse his twelve (12) different grounds of appeal during the appeal proceedings. He claims that the Court of Appeal's approach in boiling these twelve (12) grounds down to only one (1) ground violated his right to have his cause heard, protected under Article 7(1) of the Charter, and that it also violated Article 3(2) of the Charter.

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108. The Respondent State disputes the allegation of the Applicant that he was denied his right to fair hearing because of combining the grounds of appeal. The Respondent State submits that combining the grounds of appeal when considering a judgment or consolidating proceedings on matters involving common questions of facts or law is not a new practice in the Respondent State or in other jurisdictions.

109. The Respondent State further states that the Court of Appeal took care to properly analyse all grounds of appeal raised by the Applicant in relation to all the particular issues and facts of the case.

110. It is for these reasons, that the Respondent State submits that the allegation lacks merit and should be dismissed.

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111. From the record, the Court notes that the Court of Appeal of the Respondent State considered the twelve (12) grounds of appeal, but concluded that they essentially boiled down to one ground, namely "that the case for the prosecution against the appellant was not proved beyond reasonable doubt". The Court of Appeal then proceeded to exhaustively consider whether on the basis of the evidence on record the two courts below were justified in finding beyond reasonable doubt that the offence of armed

robbery was committed during the night of 29 July 1999 and that the offence was committed by the Applicant.

112. The Court considers that the Applicant did not provide any proof that the manner in which the Court of Appeal conducted the appeal proceedings and, in particular, by boiling the twelve grounds of appeal down to one general ground, led to any serious miscarriage of justice or led to a violation of the Applicant's right to be heard.

113. The Court, therefore, considers this allegation baseless and finds that the Respondent State has not violated the Applicant's right to be heard, protected under Article 7(1) of the Charter, nor the Applicant's right to equal protection of the law, protected under Article 3(2) of the Charter.

v. Allegation relating to the defence of alibi

114. The Applicant alleges that the Court of Appeal failed to consider that he had no legal representation and that he was not informed about Section 194(4) and (5) of the Criminal Procedure Act concerning the defence of alibi, contrary to his right to defence, protected under Article 7(1)(c).

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115. The Respondent State challenges the allegation of the Applicant. It submits that it was the obligation of the Applicant to be aware of the said legal provision and to abide by it. The Respondent State further states that the provision does not oblige or direct the Court to furnish the Applicant with the knowledge of a certain law applicable in the Respondent State.

116. The Respondent State further maintains that the decision of the Court of Appeal not to consider the defence of alibi could not have resulted into any unfair decision, because the evidence on record linking the Applicant to the alleged armed robbery is vast.

117. The Respondent State, therefore, submits that the allegation lacks merit and should duly be dismissed.

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118. The Court takes note of the Applicant's allegation that the Court of Appeal did not consider that the Applicant was not informed about Section 194(4) and (5) of the Criminal Procedure Act concerning the defence of alibi.

119. The Court notes from the record that the Applicant in his ground of appeal to the Court of Appeal does not argue the fact that he was not informed about the provisions of the law. Instead, the Court notes that the Applicant in his grounds of appeal to the Court of Appeal claimed that the two lower courts erred in law and in fact by rejecting his defence of alibi.

120. The Court notes from the record that the Court of Appeal considered this ground and found that there was "nothing suggesting or pointing to a misdirection or non-direction attributable to both Courts below when they accorded no weight to the appellant's alibi."

121. For this reason, the Court finds that the Court of Appeal cannot be faulted for not having considered the Applicant's defence of alibi. Therefore, the Court finds that the Respondent State has not violated the Applicant's right to defence, provided under Article 7(1)(c) of the Charter.

B. Alleged violation of the right to non-discrimination

122. The Applicant further alleges that the conduct of the courts in the Respondent State violated his right to non-discrimination, protected by Article 2 of the Charter.

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123. The Respondent State did not submit on this point.

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124. The Court notes that the Applicant has not made specific submissions nor provided evidence that he was discriminated against, in violation of Article 2 of the Charter.[33]

125. In these circumstances, the Court finds that there is no basis to find a violation and therefore holds that the Respondent State did not violate the Applicant's right to non-discrimination protected under Article 2 of the Charter.

C. Alleged violation of the right not to be subjected to inhumane and degrading punishment

126. The Applicant also claims that the prison sentence of thirty (30) years meted on him was patently excessive and constituted an inhumane and degrading punishment in violation of Article 5 of the Charter.

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127. The Respondent State disputes this allegation and submits that when sentencing a convict for a criminal offence it is the mandatory requirement that the Court must provide a sentence by relying on the provisions of the Penal Code and that of the Minimum Sentence Act.

128. In the matter at hand, the Respondent State maintains that the Court at the District Level and at the two levels of appeal had fairly considered all the requirements of the law and all the mitigation factors. It is for this reason that the Respondent State claims that this allegation lacks merit and that the allegation should be dismissed.

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[33] *Sijaona Chacha Machera v. United Republic of Tanzania,* ACtHPR, Application No. 035/2017 Judgment of 22 September 2022 (merits), § 82.

129. Article 5 of the Charter provides that:

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

130. The Court notes that the domestic courts were guided by Section 286 of the Penal Code, which read at the time of sentencing as follows:

> Any person who commits robbery is liable to imprisonment for twenty years and if the offender is armed with any dangerous or offensive weapon or instrument, or is in company with any other person or if, at or immediately before or immediately after the time of robbery, he wounds, beats, strikes or uses personal violence to any person, he is liable to imprisonment for life, with or without corporal punishment.

131. The Court further notes that the District Court imposed a sentence of thirty (30) years in prison and twelve (12) strokes of the cane.

132. As to the sentence of thirty (30) years prison, the Court notes that the domestic courts imposed a prison sentence that is not in contradiction with the legal provisions concerning the punishment for the offence for which the Applicant was convicted, that is Section 286 of the Penal Code. The Court further notes that the District Court took into consideration the mitigating factors raised by the Applicant.

133. In these circumstances, the Court finds that there is no basis to find a violation and, therefore, holds that the Respondent State did not violate the Applicant's right not to be subjected to inhumane and degrading punishment protected under Article 5 of the Charter, by imposing a thirty (30) year prison sentence.

134. As to the sentence of twelve (12) strokes of the cane, the Court observes that the Charter does not provide a definition of torture, cruel, inhuman and degrading treatment or punishment. The Court recalls, however, that in *Alex Thomas v United Republic of Tanzania*[34] it endorsed the Commission's adoption of the definition of torture as set out in Article 1 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which is as follows:

> 1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
>
> 2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application."

135. The Court further notes, that that the prohibition of torture, cruel, inhuman and degrading treatment or punishment is to be interpreted as widely as possible to encompass the widest possible array of physical and mental abuses and must include "actions which cause serious physical or psychological suffering (or) humiliate the individual or force him or her to act against his or her will or conscience".[35] The Court observes that it is the severity of the mental or physical pain which is inflicted on a person that makes conduct to amount to cruel, inhuman and degrading treatment or punishment.[36]

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[34] *Alex Thomas v. Tanzania*, §§ 145-146.
[35] See *Spilg and Mack & Ditshwanelo (on behalf of Lehlohonolo Bernard Kobedi) v. Botswana*, Communication 277/2003, (2011) ACHPR 2011.
[36] *Alex Thomas v Tanzania* § 145.

136. Specifically in relation to corporal punishment, The United Nations Special Rapporteur on Torture has stated that Article 31 of the United Nations Standard Minimum Rules for the Treatment of Prisoners reflects the international prohibition of cruel, inhuman or degrading treatment, and that "corporal punishment is inconsistent with the prohibition against torture, and cruel, inhuman or degrading treatment or punishment enshrined, inter alia, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture, Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment."[37] Similarly, the United Nations Human Rights Committee has concluded that the prohibition of torture and cruel, inhuman or degrading treatment or punishment contained in Article 7 of the International Covenant on Civil and Political Rights should be extended to corporal punishment, "including excessive chastisement ordered as punishment for a crime, or as an educative or disciplinary measure".[38]

137. The Human Rights Committee has reached similar conclusions in its decisions on individual complaints. For example, in *Osbourne v. Jamaica*, the Committee found that by carrying out a sentence of whipping with a tamarind switch, the State party had breached its obligations under the International Covenant on Civil and Political Rights.[39] In that determination, the Human Rights Committee stated that: "[i]rrespective of the nature of the crime that is to be punished, however brutal it may be, it is the firm opinion of the Committee that corporal punishment constitutes cruel, inhuman and degrading treatment or punishment contrary to Article 7 of the Covenant."

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[37] "Questions of the Human Rights of all Persons subjected to any form of detention or imprisonment, in particular: torture and other Cruel, Inhuman or Degrading Treatment or Punishment". Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights res. 1995/37 B, 10 January 1997, E/CN.4/1997/7.

[38] UNHRC, General Comment 20, Article 7 (44th sess., 1992), Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 14 (1994), § 5; and UNHRC, General Comment 21, Article 10 (44th sess., 1992), Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 14 (1994), § 3

[39] *Osbourne v. Jamaica*, Communication No. 759/1997, Report of the Human Rights Committee, April 13, 2000, CCPR/C/68/D/759/1997, § 9.1.

138. In the case of *Tyrer v. United Kingdom*, the European Court of Human Rights addressed the incompatibility of corporal punishment with the right to humane treatment under Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The European Court held that: "[t]he very nature of judicial corporal punishment is that it involves one human being inflicting physical violence on another human being. Furthermore, it is institutionalised violence, that is in the present case violence permitted by the law, ordered by the judicial authorities of the State and carried out by the police authorities of the State […] Thus, although the applicant did not suffer any severe or long-lasting physical effects, his punishment - whereby he was treated as an object in the power of the authorities - constituted an assault on precisely that which it is one of the main purposes of Article 3 to protect, namely a person's dignity and physical integrity."[40]

139. The Court also observes that in *Doebbler v Sudan*, a communication involving a complaint that the sentencing of eight students in Sudan to between twenty-five (25) and forty (40) lashes violated Article 5 of the Charter, the Commission held that "there is no right for individuals, and particularly the government of a country to apply physical violence to individuals for offences. Such a right would be tantamount to sanctioning State sponsored torture under the Charter and contrary to the very nature of this human rights treaty."[41]

140. Recalling its jurisprudence, the Court reiterates that three main factors are relevant in determining whether the right to dignity, as guaranteed under Article 5 has been violated.[42] First is to note that Article 5 has no limitation provisions. This entails that the prohibition of cruel, inhuman and degrading treatment or punishment is absolute. Second, the prohibition in Article 5 must be extended to provide the widest possible protection against abuse be it physical or mental. Lastly, personal suffering and indignity can take

[40] ECtHR, *Tyrer v. United Kingdom*, (5856/72), Judgment of April 25, 1978, Series A No. 26, § 33.
[41] Communication No. 236/2000 § 42.
[42] *Lucien Ikili Rashidi v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 13, § 88.

various forms and assessment must always depend on the circumstances of each case.

141. In the present Application, the Court recalls that the District Court imposed a sentence of thirty (30) years in prison and twelve (12) strokes of the cane. It is also notable that when the Applicant further appealed to the High Court and to the Court of Appeal, the findings of the District Court were upheld in their entirety. The Court also notes, however, that although the Applicant was sentenced to be caned twelve (12) times, the record does not indicate if the sentence was actually carried out.

142. The Court takes judicial notice of the fact that the Respondent State's Constitution in Article 13(6)(e) proscribes torture, inhuman or degrading treatment or punishment. This notwithstanding, the Court also, without being exhaustive, notes the following provisions in the Respondent State's laws: the Corporal Punishment Act, which is an Act meant to "regulate the infliction of corporal punishment"; sections 25 and 28 of the Penal Code which, generally, recognises corporal punishment as a legitimate form of punishment in sections 131 and 131A of the Penal Code which recognise corporal punishment as a lawful form of sentence for the offence of rape; and sections 167 and 170 of the Criminal Procedure Act, which also include corporal punishment among the permissible punishments that a court can mete out.

143. The Court finds that the existence of statutes authorising corporal punishment contravenes the Charter. Specifically in relation to the Applicant, the Court holds that the existence of law authorising corporal punishment creates a likelihood that the punishment could be executed which would operate to enhance his mental anguish and thus further undermine his dignity. In the circumstances, the Court upholds the Applicant's claim and holds that his sentence to be caned twelve (12) times violated his right to dignity as provided under Article 5 of the Charter.

VIII. REPARATIONS

144. 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."

145. As per the Court's jurisprudence, for reparations to be granted, the Respondent State should first be responsible for the wrongful act. Second, causation should be established between the wrongful act and the alleged prejudice. Furthermore, where granted, reparations should cover the full damage suffered.

146. The Court reiterates that the onus is on the Applicant to provide evidence in support of his/her allegation.[43] With regard to moral damages, the Court has consistently held that it is presumed and that the requirement of proof is not strict.[44]

147. The Court also restates that the measures that a State can take to remedy a violation of human rights includes restitution, compensation and rehabilitation of the victim, as well as measures to ensure non-repetition of the violations, considering the circumstances of each case.[45]

148. As this Court has earlier found, the Respondent State violated the Applicant's right to legal representation and his right to dignity, guaranteed 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 and Article 5 of the

[43] *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) (13 June 2014) 1 AfCLR 72, § 40; *Lohé Issa Konaté v. Burkina Faso* (reparations) (3 June 2016) 1 AfCLR 346, § 15(d); and *Elisamehe v. Tanzania* (judgment), *supra*, § 97.

[44] *Rajabu and Others v. Tanzania* (merits and reparations), *supra*, § 136; *Armand Guehi v. Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 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.

[45] *Ingabire Victoire Umuhoza v. Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 20. See also, *Elisamehe v. Tanzania* (judgment), *supra*, § 96.

Charter. The Court, therefore, finds that the Respondent State's responsibility has been established. The prayers for reparations will, therefore, be examined against these findings.

A. Pecuniary reparations

149. The Applicant claims pecuniary reparations for both the material and moral prejudice, which he alleges is a result of the violations suffered due to the Respondent State's conduct.

i. Material prejudice

150. With respect to material prejudice, the Applicant prays the Court to order the Respondent State to pay the Applicant Thirty-Six Million Tanzanian Shillings (TSH 36,000,000) as compensation for the loss of his employment as assistant security officer following the violation of his rights. The Applicant claims that his monthly salary was One Hundred and Fifty Thousand Tanzanian Shillings (TSH 150,000), which enabled him to pay for the school fees of his children. He considers that since he has been a victim for twenty (20) years, his compensation should be calculated based on his monthly salary multiplied with twenty (20) years or two hundred and forty (240) months.

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151. The Respondent State submits that this claim has no basis. The Respondent State contends that the Applicant has not attached anything to support the claim that was employed and was paid a monthly salary of One Hundred and Fifty Thousand Tanzanian Shillings (TSH 150,000). Furthermore, the Respondent State asserts that the Applicant has failed to provide proof of relationship between him and the alleged children. The Respondent State, therefore, humbly submits that the Applicant has failed to substantiate his claim and hence is not entitled to any reparations or compensation.

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152. 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.[46]

153. The Court notes that the Applicant has not established the link between the violation established of his rights and his alleged loss of income. Rather, the Applicant's claims are directly linked to his conviction and incarceration, which this Court did not find unlawful.

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

ii. Moral prejudice

155. With respect to moral prejudice, the Applicant prays the Court to order the Respondent State to:

i. Pay the Applicant Twelve Million Tanzanian Shillings (TSH 12,000,000) as compensation for keeping the Applicant in restraint, after his arrest, for five days without any meal.
ii. Pay the Applicant Ten Million Tanzanian Shillings (TSH 10,000,000) as compensation for his case not being tried within a reasonable time.
iii. Compensate the Applicant for his children being chased from school after him being arrested by the Respondent State's agents, which led to an infringement of their right to education, protected by Article 11(2)(3) of the Respondent State's Constitution.
iv. Compensate the Applicant for the pain of losing of his house following the Respondent State's violation of his rights and in particular the failure to provide him with legal representation.

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[46] *Kijiji Isiaga v. United Republic of Tanzania*, ACtHPR, Application No. 032/2015, Judgment of 25 June 2021 (reparations), § 20.

156. The Respondent State submits that the Applicant was treated with respect and dignity while in custody. The Respondent State further submits that the Applicant's contention that after his arrest he was kept in restraint for five days without any meal, is a new allegation. The Respondent State argues that the Applicant never raised it anywhere not even in his Application on merits before this Court. Further, the Respondent State submits that if the Applicant would have raised it in its courts, necessary procedures would have been taken to remedy the situation. The Respondent State, therefore, submits that the Applicant cannot raise this new allegation and prays this Court not to entertain this claim and dismiss the same.

157. The Respondent State further submits that the Applicant was tried within a reasonable time and that therefore the claim for compensation is baseless.

158. With regard to the moral prejudice claimed concerning the children of the Applicant being chased from school, the Respondent State already submitted that the Applicant failed to provide relationship between him and his alleged children and that, therefore, the Applicant failed to substantiate his claim and hence is not entitled to any reparations or compensation.

159. Concerning the alleged loss of the Applicant's house, the Respondent State submits that there is no causal link established between the alleged violation and the alleged prejudice. The Respondent State asserts that the fact that the Applicant had no legal representation did not occasion any miscarriage of justice. The Applicant was given an opportunity to defend himself. The Respondent State further states that even if the Applicant would have been given counsel to defend him, it could have never changed the outcome to the case, that is, the trial court would find him guilty. The Respondent State further submits that the Applicant failed to substantiate thee claim that his house was sold and that he did not attach any document to prove his ownership of the alleged house and that the same had been sold. The Respondent State therefore maintains that no reparations should be paid.

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160. 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.[47]

161. The Court has established that the Applicant's rights under Article 5 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.[48]

162. Therefore, in view of these circumstances and exercising its discretion in equity, the Court awards the Applicant the amount of Three Hundred Thousand Tanzanian Shillings (TZS 300,000) for moral prejudice he suffered in relation to the violations established.

B. Non-pecuniary reparations

i. Restoration of liberty

163. The Applicant prays the Court to restore justice where it was overlooked and quash both the conviction and sentence imposed upon him and set him at liberty.

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164. The Respondent State opposes the Applicant's prayer to be released from prison. The Respondent State, referring to this Court's jurisprudence in *Alex Thomas v. Tanzania,* submits that the order for the release of an Applicant can only be made under special and compelling circumstances.

[47] *Zongo and Others v. Burkina Faso* (reparations), *supra*, § 55; *Umuhoza v. Rwanda* (reparations), *supra*, § 59; *Jonas v. Tanzania* (reparations), *supra*, § 23.
[48] *Cheusi v. Tanzania* (merits and reparations), *supra*, § 151.

165. The Respondent State claims that in the circumstances of this Application no very specific or compelling circumstances have been substantiated. The Respondent State further states that it was proven in its domestic courts that the Applicant committed an offence, hence he is not entitled to restoration of his liberty, restitution or any form of reparations before this Court.

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166. Regarding the request to be set free, the Court recalls that it can only make such order in very compelling circumstances.[49]

167. The Court considers that the nature of the violation in the instant case do not reveal any circumstance that the Applicant's arrest or conviction was based on arbitrary considerations and that his continued imprisonment would occasion a miscarriage of justice.[50] The Applicant has also failed to elaborate on any specific and compelling circumstances to justify the order for his release.

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

ii. Guarantees of non-repetition

169. The Applicant further requests the Court to grant any other order legal remedy it may deem fit and just to grant in the circumstances of his application.

170. The Respondent State prays the Court for any other order this Court might deem right and just to grant under the prevailing circumstances.

171. The Respondent State further submits that there are ongoing developments with the adoption of the Legal Aid Act in 2017 which has broadened the scope of legal aid in the Respondent State.

[49] *Thomas v. Tanzania* (merits), *supra*, § 157.
[50] *William v. Tanzania* (merits), *supra*, § 101.

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172. With respect to the violation of Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR, concerning the Applicant's right to legal representation, the Court takes note of the Respondent State's action to adopt and implement the Legal Aid Act of 2017 to broadened the scope of legal aid in the Respondent State and commends the Respondent State for it.

173. With respect to the violation of Article 5 of the Charter and in light of the Court's findings in relation to the provisions for corporal punishment in the Respondent State's laws, the Court orders the Respondent State to remove corporal punishment from the Respondent State's laws, including but not limited to the Penal Code, Criminal Procedure Code and Corporal Punishment Act, in order to make them compliant with the prohibition of torture, cruel, inhuman or degrading treatment or punishment in Article 5 of the Charter.

IX. COSTS

174. The Applicant did not make any submissions on costs.

175. The Respondent State prayed that costs be borne by the Applicant.

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176. The Court notes that Rule 32(2)[51] of the Rules of Court provides that: "unless otherwise decided by the Court, each party shall bear its own costs, if any".

[51] Rule 30(2) of the Rules of Court, 2 June 2010.

177. The Court notes that in the instant case, there is no reason to depart from this principle. Accordingly, the Court decides that each party shall bear its own costs.

X. OPERATIVE PART

178. For these reasons:

THE COURT,

Unanimously,

On jurisdiction

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

On admissibility

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

On merits

v. *Finds* that the Respondent State has not violated the Applicant's right to be heard under Article 7(1) of the Charter;
vi. *Finds* that the Respondent State has not violated the Applicant's right to equal protection of the law under Article 3(2) of the Charter;
vii. *Finds* that the Respondent State has not violated the Applicant's right to non-discrimination under by Article 2 of the Charter;
viii. *Finds* that the Respondent State has not violated the Applicant's right not to be subjected to inhumane and degrading punishment

under Article 5 of the Charter, in relation to the thirty (30) year prison sentence;

ix. *Finds* that the Respondent State has violated the Applicant's right to dignity under Article 5 of the Charter, in relation to the sentence of corporal punishment;

x. *Finds* that the Respondent State has violated the Applicant's right to legal representation 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.

By a majority of Nine (9) for, and One (1) against, Justice Rafaâ BEN ACHOUR Dissenting,

xi. *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.

Unanimously,

On reparations

Pecuniary reparations

xii. *Dismisses* the Applicant's prayer for damages for material prejudice.

xiii. *Grants* the Applicant's prayer for reparations for the moral prejudice as a result of the violations found and awards him the sum of Three Hundred Thousand Tanzanian Shillings (TZS 300,000).

xiv. *Orders* the Respondent State to pay the amount set out under (xiii) 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.

Non-pecuniary reparations

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

xvi. *Orders* the Respondent State to remove corporal punishment from its laws, including but not limited to the Penal Code, Criminal Procedure Code and Corporal Punishment Act, in order to make them compliant with the prohibition of torture, cruel, inhuman or degrading treatment or punishment in Article 5 of the Charter.

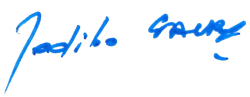
On implementation and reporting

xvii. *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

xviii. *Orders* that each Party shall bear its own costs.

Signed:

Modibo SACKO, Vice President; 

Ben KIOKO, Judge; 

Rafaâ BEN ACHOUR, Judge; 

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Blaise TCHIKAYA, Judge;

Stella I. ANUKAM, Judge;

Dumisa B. NTSEBEZA, Judge;

Dennis D. ADJEI, Judge;

and Robert ENO, Registrar.

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

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