

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

THE MATTER OF

MASUDI SAID SELEMANI

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 042/2019

JUDGMENT

5 JUNE 2026



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The Court composed of: Blaise TCHIKAYA, President; Chafika BENSAOULA, Vice President; Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO, Dennis D. ADJEI, Duncan GASWAGA – Judges; and Grace W. KAKAI, Deputy 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"), Justice Imani D. ABOUD, member of the Court, and a national of Tanzania, did not hear the Application.

In the matter of:

Masudi Said SELEMANI

Represented by:

Advocate AbdulRazaq Gobir, A. S. Gobir and Associates

Versus

UNITED REPUBLIC OF TANZANIA

Represented by:

- i. Dr. Ally POSSI, Solicitor General, Office of the Solicitor General;
- ii. Ms Alice MTULO, Deputy Solicitor General, Office of the Solicitor General;
- iii. Ms Sarah Duncan MWAIPOPO, Deputy Solicitor General, Office of the Solicitor General; and
- iv. Mr Hangi M. CHANG'A, Assistant Director, Constitution, Human Rights and Election petitions; Office of the Solicitor General.

After deliberation,

Renders this Judgment:

I. THE PARTIES

1. Mr. Masudi Said Selemani (hereinafter referred to as “the Applicant”), is a national of Tanzania who at the time of filing this Application was incarcerated on death-row at Lilungu prison following his conviction and sentencing for murder. He alleges the violation of his rights during the proceedings before the domestic courts.
2. The Application is filed against the United Republic of Tanzania (hereinafter referred to as “the Respondent State”), which became a Party to the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”) on 21 October 1986 and to the Protocol on 10 February 2006. Furthermore, the Respondent State, on 29 March 2010, deposited the Declaration prescribed under Article 34(6) of the Protocol (hereinafter referred to as “the Declaration”), through which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations. On 21 November 2019, the Respondent State deposited with the Chairperson of the African Union Commission, an instrument withdrawing its Declaration. The Court held that this withdrawal has no bearing on pending and new cases filed before the withdrawal came into effect one year after its deposit, in this case, on 22 November 2020.¹

¹ *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, §§ 37-39.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. The record states that on 15 July 2010, the Applicant killed his cousin with a *machete*. The attack followed the allegation that his cousin's family had falsely reported him to the village authorities for stealing maize from their neighbour. He was arrested and subsequently arraigned, on 18 October 2012 before the High Court of Tanzania sitting at Mtwara. On 15 May 2013 he was convicted of murder and sentenced to death by hanging.
4. The Applicant being dissatisfied with the conviction and sentence from the High Court, appealed to the Court of Appeal sitting at Mtwara, which dismissed the appeal entirely on 22 November 2014.

B. Alleged violations

5. The Applicant alleges the following violations:
 - i. Right to life as protected under Article 4 of the Charter;
 - ii. Freedom from cruel, inhuman and degrading treatment, or punishment as protected under Article 5 of the Charter;
 - iii. Right to be represented by counsel of his choice as protected under Article 7 of the Charter;
 - iv. Right to be tried within a reasonable time as protected under Article 7(1)(d) of the Charter;
 - v. Right to assistance of an interpreter as protected by Article 14(3)(a) and (f) of the International Covenant on Civil and Political Rights (hereinafter referred to as "ICCPR"); and
 - vi. Right to be heard as protected under Article 7 of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

6. The Application was filed on 19 August 2019 and served on the Respondent State on 21 October 2019 and it was requested to submit the list of its representatives within 30 days and file its Response within 60 days of the notification.
7. On 6 August 2020, the Court *suo motu* granted the Applicant legal aid under its Legal Aid Scheme and appointed Advocate Gobir as the Applicant's counsel. On 5 October 2020, the Applicant through counsel requested for provisional measures and filed amended pleadings. The pleadings were transmitted to the Respondent State on 8 October 2020 for its Response.
8. On 30 October 2020, the Respondent State filed a Response to the request for provisional measures but did not file a Response to the main Application. On 20 November 2020, the Court issued a Ruling on provisional measures ordering the Respondent State "to refrain from executing the death penalty against the Applicant pending the determination of the merits of the Application".² The Ruling was transmitted to the Parties on 23 November 2020.
9. The Respondent State's time to file its Response to the main Application was extended *suo motu* on 11 November 2020, 21 May 2021 and 28 July 2021. Furthermore, on 11 May 2022, the Respondent State was reminded to file its Response to the main Application within 30 days, failing which, the Court would proceed to deliver a judgment in default in accordance with Rule 63(1) of the Rules. The Respondent State did not file the Response to the main Application.
10. The pleadings were closed on 22 October 2024 and the Parties were notified thereof.

² *Masudi Selemani v. United Republic of Tanzania* (provisional measures) (20 November 2020) 4 AfCLR 796 § 26.

IV. PRAYERS OF THE PARTIES

11. The Applicant prays the Court to order:

- i. The Respondent State to set aside the death sentence imposed on the Applicant and remove him from death row;
- ii. The Respondent State to allow the Applicant right to his liberty by releasing him from prison;
- iii. The Respondent State to carry out a retrial of his case at the domestic courts of Tanzania in accordance with fair trial guarantees as provided in the African Charter and in the ICCPR;
- iv. In the alternative, order the Respondent State to convert his sentence from death by hanging to imprisonment and deduct the ten years in prison already spent by the Applicant;
- v. The Respondent State to pay the sum of fifty thousand United States Dollars (\$50,000) as compensation to the Applicant for moral damages;
- vi. The Respondent State to pay the sum of twenty thousand United States Dollars (\$20,000) as compensation to the Applicant as material damages for the material loss he suffered;
- vii. The Respondent State to pay the sum of ten thousand United States Dollars (\$10,000) as compensation to the Applicant's daughter Zuhura Masudi Said compensation as an indirect victim;
- viii. The Respondent State to pay the sum of ten thousand United States Dollars (\$10,000) as compensation to the Applicant's wife Subira as compensation as an indirect victim;
- ix. The Respondent State to pay the sum of ten thousand United States Dollars (\$10,000) as compensation to the Applicant's mother as compensation as an indirect victim; and
- x. The Respondent State to amend its penal laws to ensure respect for the right to life under Article 4 of the African Charter by removing the mandatory death sentence for the offence of murder.

12. The Respondent State did not file a Response to the main Application and, therefore, did not make any prayers in this respect.

V. THE DEFAULT OF THE RESPONDENT STATE

13. Rule 63(1) of the Rules stipulates that:

Whenever a party does not appear before the Court, or fails to defend its case within the period prescribed by the Court, the Court may, on the Application of the other party, or on its own motion, enter a decision in default after it has satisfied itself that the defaulting party has been duly served with the Application and all other documents pertinent to the proceedings.

14. The Court notes that Rule 63(1) of the Rules sets out three conditions for a decision in default: i) the notification to the defaulting party of all the documents on record ii) the default of a party; and iii) Application by the other party for a decision in default or the Court on its own motion decides to enter a decision in default.
15. On the first condition, the Court notes from the record that, the Registry served the Respondent State with the Application on 21 October 2019 and the amended pleadings on 8 October 2020. The Court observes from the record, the proof of delivery of those notifications. The Court therefore finds that the first condition is met.
16. With respect to the second condition on default of a party, the Court observes that the Respondent State was granted 60 days to file its Response to the main Application. However, it failed to do so. The Registry furthermore, sent reminders to the Respondent State on 11 November 2020, 21 May 2021 and 28 July 2021. On 11 May 2022, the Respondent State was reminded to file its Response within 30 days, failing which, the Court would proceed to deliver a judgment in default in accordance with Rule 63(1) of the Rules, but it failed to do so. The Court thus finds that the Respondent State has defaulted in defending the case.

17. With respect to the last condition, the Applicant having not requested for a default judgment, the Court renders the decision *suo motu* for the proper administration of justice.
18. The required conditions having been fulfilled; the Court renders this decision in default.³

VI. JURISDICTION

19. The Court notes 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.
20. The Court further notes that pursuant to Rule 49(1) of the Rules it “...shall conduct preliminary examination of its jurisdiction...in accordance with the Charter, the Protocol and these Rules.”
21. The Court notes that there is no contention on its jurisdiction. Nevertheless, it must satisfy itself that it has jurisdiction to hear the Application.
22. In this regard, the Court recalls, as it has consistently held in accordance with Article 3(1) of the Protocol, that it has jurisdiction to consider any Application filed before it provided that the rights of which a violation is

³ *African Commission on Human and Peoples’ Rights v. Libya* (merits) (3 June 2016) 1 AfCLR 153, §§ 38-42; *Robert Richard v. United Republic of Tanzania*, ACtHPR (merits and reparations) (2 December 2021) 5 AfCLR 822, § 16; *Ajaye Jogoo v. United Republic of Tanzania*, ACtHPR, Application No. 014/2018, Judgment of 26 June 2025, §§ 24-27.

alleged are guaranteed in the Charter, the Protocol or any other human rights instruments ratified by the Respondent State.⁴

23. In the instant case, the Applicant alleges the violation of the right to a fair trial which is protected under Articles 4, 5 and 7 of the Charter, to which the Respondent State is a party. The Court thus finds that it has material jurisdiction.
24. The Court notes, with respect to its personal jurisdiction that, as earlier stated in paragraph 2 of this Judgment, the Respondent State is a party to the Protocol and on 29 March 2010, it deposited with the African Union Commission, the Declaration made under Article 34(6) of the Protocol. Subsequently, on 21 November 2019, it deposited an instrument withdrawing its Declaration.
25. The Court recalls its jurisprudence that, the withdrawal of a Declaration does not apply retroactively and only takes effect one year after the date of deposit of the notice of such withdrawal, in this case, on 22 November 2020.⁵ This Application having been filed on 19 August 2019, that is, before the Respondent State's withdrawal came into effect, is thus not affected by it. Consequently, the Court finds that it has personal jurisdiction.
26. With regard to temporal jurisdiction, the Court notes that the alleged violations happened between 2013 and 2014. Therefore, the alleged violations occurred after the Respondent State had ratified the Protocol on 10 February 2006. Accordingly, the Court finds that it has temporal jurisdiction.

⁴ *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 45; *Kennedy Owino Onyachi and Charles John Mwanini Njoka v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65, §§ 34-36; *Jibu Amir alias Mussa and Said Ally Mangaya v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 629, § 18; *Abdallah Sospeter Mabomba v. United Republic of Tanzania*, ACtHPR, Application No. 017/2017, Judgment of 22 September 2022, § 21; *Jogoo v. Tanzania* (jurisdiction and admissibility), *supra*, § 32.

⁵ *Cheusi v. Tanzania* (merits and reparations), *supra*, §§ 37-39.

27. The Court also notes that it has territorial jurisdiction as the alleged violations occurred in the Respondent State's territory.

28. In light of the foregoing, the Court holds that it has jurisdiction to hear this Application.

VII. ADMISSIBILITY

29. Article 6(2) of the Protocol provides that "the Court shall rule on the admissibility of cases taking into account the provisions of article 56 of the Charter."

30. Pursuant to Rule 50(1) of the Rules, "[t]he 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."

31. Rule 50(2) of the Rules, which in substance restates the provisions of Article 56 of the Charter, provides as follows:

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

- a. Indicate their authors even if the latter request anonymity;
- b. Are compatible with the Constitutive Act of the African Union and with the Charter;
- c. Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union;
- d. Are not based exclusively on news disseminated through the mass media;
- e. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
- f. Are submitted within a reasonable time from the date local remedies were exhausted or from the date set by the Court as

being the commencement of the time limit within which it shall be seized with the matter; and

- g. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of the African Union, or the provisions of the Charter.

- 32. The Court notes that the conditions of admissibility set out in Rule 50(2) of the Rules are not in contention between the Parties, as the Respondent State did not take part in the proceedings. However, pursuant to Rule 50(1) of the Rules, the Court is required to determine if the Application fulfils all the admissibility requirements as set out in Rule 50(2).
- 33. From the record, the Court notes that, the Applicant has been identified by name in fulfilment of Rule 50(2)(a) of the Rules.
- 34. The Court also notes that the Applicant's claims seek to protect his rights guaranteed under the Charter. It further notes that one of the objectives of the Constitutive Act of the African Union, as stated in Article 3(h) thereof, is the promotion and protection of human and peoples' rights. Furthermore, nothing on file indicates that the Application is incompatible with the Constitutive Act of the African Union. Consequently, the Court considers that the Application is compatible with the Constitutive Act. It therefore holds that the requirement of Rule 50(2)(b) of the Rules is met.
- 35. The Court further finds that the language used in the Application is not disparaging or insulting to the Respondent State and its institutions or to the African Union, in fulfilment of Rule 50(2)(c) of the Rules.
- 36. The Court also observes that the Application is not based exclusively on news disseminated through mass media as it is founded on record of the proceedings of the national courts in fulfilment with Rule 50(2)(d) of the Rules.

37. With regard to Rule 50(2)(e) of the Rules on the exhaustion of local remedies, the Court reiterates what it has established in its case law that “the local remedies that must be exhausted by Applicants are ordinary judicial remedies”,⁶ unless they are manifestly unavailable, ineffective and insufficient or the proceedings are unduly prolonged.⁷ The requirement under Rule 50(2)(e) of the Rules is satisfied where an applicant pursues his grievances before the highest judicial institution of the Respondent State.
38. In the instant case, the Court notes from the record that the Applicant having been convicted of murder at the High Court of Tanzania sitting at Mtwara on 15 May 2013, appealed to the Court of Appeal of Tanzania, the highest judicial organ of the Respondent State, which on 22 November 2014, dismissed his appeal. Consequently, the Applicant has exhausted all the available domestic remedies and the Application complies with Rule 50(2)(e) of the Rules.
39. Regarding, the requirement that an application should be filed within a reasonable time after exhaustion of local remedies, Rule 50(2)(f) of the Rules, which in substance restates Article 56(6) of the Charter, stipulates that, an application should be filed within: “a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter.”
40. 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.”⁸ Some of the

⁶ *Mohamed Abubakari v. United Republic of Tanzania* (merits) (3 June 2016) 1 AfCLR 599, § 64. See also *Alex Thomas v. Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 64; and *Wilfred Onyango Nganyi and 9 others v. United Republic of Tanzania* (merits) (18 March 2016) 1 AfCLR 507, § 95.

⁷ *Lohé Issa Konaté v. Burkina Faso* (merits) (5 December 2014) 1 AfCLR 314, § 77. See also *Peter Joseph Chacha v. United Republic of Tanzania* (admissibility) (28 March 2014) 1 AfCLR 398, § 40.

⁸ *Norbert Zongo and Others v. Burkina Faso* (merits) (24 June 2014), § 92. See also *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 73; *Anudo Ochieng Anudo v. United Republic of Tanzania* (merits) (22 March 2018) 2 AfCLR 248, § 57.

circumstances that the Court has taken into consideration include:⁹ imprisonment, being lay without the benefit of legal assistance, indigence, illiteracy, lack of awareness of the existence of the Court, incarceration at the death-row and the use of extraordinary remedies.¹⁰

41. In the instance case, the Application was filed on 19 August 2019, that is, four years, eight months and eight days after the Court of Appeal rendered its decision on 22 November 2014. The Court notes that the Applicant was incarcerated prior to the filing of this Application and therefore restricted in movement and had limited flow of information which this Court has held in previous similar instances could cause delays in filing Applications. The latter factor is compounded by the Applicant's incarceration on death row.¹¹ The Court notes that these extenuating factors mitigate in favour of the Applicant.¹²
42. In view of these circumstances, the Court finds that the period of four years, eight months and eight days that it took the Applicant to file his Application is considered as reasonable within the meaning of Article 56(6) of the Charter. The Court therefore finds that the time of filing of the Application complies with Rule 50(2)(f) of the Rules.
43. Furthermore, the Court finds that 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 accordance with Rule 50(2)(g) of the Rules.

⁹ *Bahati Mtega and Flowin Mtweve v. United Republic of Tanzania*, ACtHPR, Application No. 009/2019, Judgment of 26 June 2025 (merits and reparations), § 45.

¹⁰ *Tembo Hussein v. United Republic of Tanzania*, ACtHPR, Application No. 001/2018, Judgment of 26 June 2025 (merits and reparations), §§ 53-54.

¹¹ *Emmanuel Yusufu Noriega v. United Republic of Tanzania*, ACtHPR, Application No. 013/2018, Judgment of 26 June 2025 (merits and reparations), § 42; *Hussein v. Tanzania* (merits and reparations), *supra*, § 54.

¹² *Thomas v. Tanzania* (merits), *supra*, § 73; *Thomas Mgira v. United Republic of Tanzania*, ACtHPR, Application No. 003/2019, Judgment of 13 June 2023 (merits and reparations), § 46; *Noriega v. Tanzania* (merits and reparations), *ibid*.

44. The Court, therefore, finds that all the admissibility conditions have been fulfilled and that the Application is admissible.

VIII. MERITS

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

- i. Right to life as protected under Article 4 of the Charter;
- ii. Freedom from cruel, inhuman and degrading treatment, or punishment as protected under Article 5 of the Charter;
- iii. Right to be represented by counsel of his choice as protected under Article 7 of the Charter;
- iv. Right to be tried within a reasonable time as protected under Article 7(1)(d) of the Charter; and
- v. Right to be heard as protected under Article 7 of the Charter.

46. The Court will consider the allegations successively.

A. Alleged violation of the right to life

47. The Applicant avers that the imposition of the death sentence on him constitutes a violation of his right to life. He also alleges that the imposition of the death sentence violates his right to life because “he did not kill the deceased.” According to the Applicant, his conviction was based on inconsistent testimony of three prosecution witnesses.
48. The Applicant also submits that he did not have the intention to kill the deceased and therefore he was convicted of murder without fulfilling the *mens rea* required for the offence.
49. The Respondent State did not file a response to this allegation.

50. The Court observes that Article 4 of the Charter provides that “[h]uman beings are inviolable. Every human being shall be entitled to respect for [their] life and the integrity of [their] person. No one may be arbitrarily deprived of this right.”
51. In determining arbitrariness in the meaning of Article 4 of the Charter, the Court has previously held that the following criteria apply,¹³ which are: Whether the death sentence is provided for by law; whether the sentence was passed by a competent court and whether due process was followed in the proceedings leading to pronouncement of the death sentence. The Court will therefore make its assessment based on these criteria.
52. With regard to the first criterion, the Court finds that the death penalty is provided by section 197 of the Respondent State’s Penal Code (2002), as the mandatory punishment for the offence of murder.¹⁴ The criterion is thus met.
53. On the second criterion, the Court recalls that the Applicant was convicted of murder before the High Court of Tanzania sitting at Mtwara on 15 May 2013 and sentenced to death. The instant case also therefore meets this second requirement.
54. The Court notes that the allegations of the Applicant touch on the third criterion that is, whether the death sentence was meted out following due process.
55. The Court thus observes that there are two issues for determination. The first is related to whether the Applicant’s conviction was based on the

¹³ *Rajabu and Others v. Tanzania*, *supra*, § 104. See also, *International Pen and Others (on behalf of Saro-Wiwa) v. Nigeria*, Communications 137/94 139/94, 154/96, 161/97 (2000) AHRLR 212 (ACHPR 1998), §§ 1-10 and 103; *Forum of Conscience v. Sierra Leone*, Communication 223/98 (2000) 293 (ACHPR 2000), § 20; See Article 6(2), ICCPR; and *Eversley Thompson v. St. Vincent & The Grenadines*, Comm. No. 806/1998, U.N. Doc. CCPR/C70IO/806/1998 (2000) (U.N.H.C.R.), § 8.2.

¹⁴ “A person convicted of murder shall be sentenced to death.”

inconsistent testimony of three prosecution witnesses and secondly, whether he was convicted without having fulfilled the *mens rea*¹⁵ of the offence.

56. With regard to the first allegation, that is, whether the consideration of evidence before the domestic courts was in accordance with the requirements of due process, the Court recalls its jurisprudence, that “it is not an appellate court and as a matter of principle, it is up to national courts to decide on the probative value of a particular piece of evidence”.¹⁶
57. Accordingly, the Court “cannot assume the role of the domestic courts and investigate the details and particulars of evidence used in domestic proceedings to establish the criminal culpability of individuals”.¹⁷ The Court only intervenes when there is a manifest error in the assessment of evidence by the national courts that would result in miscarriage of justice.
58. In the present case, the Court notes from the record that the Court of Appeal considered and upheld the findings of the High Court that the evidence adduced by the three prosecution witnesses was conclusive. In this regard, the Court of Appeal noted, that the prosecution witnesses were direct eyewitnesses to the homicide and had attempted to disarm the Applicant of the *machete* during the altercation that culminated in the victim’s death. Their active participation in the events preceding the fatality, coupled with their clear and consistent testimony regarding the sequence of events, provided a sufficient evidentiary basis for the national courts to be satisfied of the Applicant’s guilt beyond a reasonable doubt. In this regard, the Court does not find any manifest error in the conviction of the Applicant to warrant its intervention.

¹⁵ *Mens rea* is the Latin word for ‘guilty mind’, that is, the state of mind, intent, or recklessness required to establish criminal liability for an act, distinct from the physical act itself.

¹⁶ *Abubakari v. Tanzania* (merits), *supra*, § 174; *Diocles Williams v. United Republic of Tanzania* (merits and reparations) (21 September 2018) 2 AfCLR 426, § 72. *Majid Goa v. United Republic of Tanzania* (merits and reparations) (2019) 3 AfCLR 498, § 72.

¹⁷ *Ibid.*

59. Regarding whether the Applicant was convicted without having the necessary *mens rea* for murder, the Court reiterates that “it is not an appellate court and as a matter of principle, it is up to national courts to decide on the probative value of a particular piece of evidence”.¹⁸ The Court will however determine whether the Respondent State’s procedures were consistent with the requirements of due process.
60. From the record, the Court notes that the Court of Appeal was satisfied that the Applicant killed the deceased with the necessary *mens rea* of *malice aforethought* having chased after her with a *machete* and then inflicted fatal wounds on her. The Court thus does not find any manifest error in the conviction of the Applicant to warrant its intervention.
61. In light of the foregoing, the Court finds that the Respondent State followed due process in relation to the assessment of evidence leading to the Applicant’s conviction and that the conviction was based on evidence that the Applicant committed the act of murder with the requisite *mens rea* of malice aforethought.
62. Even so, the Court observes that in the present Application, the High Court applied the mandatory death sentence, as provided for in Section 197 of the Penal Code of the Respondent State, when sentencing the Applicant. In this regard, the Court recalls its established jurisprudence as held in *Ally Rajabu and Others v. United Republic of Tanzania*. In the said judgment and subsequent judgments, the Court held that the mandatory imposition of the death sentence as applied under Section 197 of the Penal Code of the Respondent State is arbitrary and therefore a violation of the right to life.¹⁹ This is because it does not meet the due process requirement, because it

¹⁸ *Abubakari v. Tanzania* (merits), *supra*, § 174; *Diocles Williams v. United Republic of Tanzania* (merits and reparations) (21 September 2018) 2 AfCLR 426, § 72; *Majid Goa v. United Republic of Tanzania* (merits and reparations) (2019) 3 AfCLR 498, § 72.

¹⁹ *Ally Rajabu and Others v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 539, §§ 104-114; *Amini Juma v. United Republic of Tanzania* (merits and reparations) (30 September 2021) 5 AfCLR 431, §§ 120-131; *Gozbert Henerico v. United Republic of Tanzania*, ACTHPR, Application No. 056/2016, Judgment of 10 January 2022 (merits and reparations), § 160; *Romward William v. United Republic of Tanzania*, ACTHPR, Application No. 030/2016, Judgment of 13 February 2024 (merits and reparations), §§ 59-65.

denies the judicial officer the discretion to decide on the type of sentence to be meted out upon a conviction of murder.²⁰

63. In the circumstances, the Court holds, in line with its jurisprudence, that the Respondent State violated Article 4 of the Charter owing to the mandatory imposition of the death penalty on the Applicant.

B. Alleged violation of the freedom from cruel, inhuman and degrading treatment, or punishment

64. The Applicant alleges that the sentence to death by hanging is a violation of Article 5 of the Charter which prohibits cruel, inhuman and degrading treatment and punishment.
65. The Applicant also avers that he suffers from the “death-row phenomenon” which is “the dehumanising feeling of near hopelessness that a person faces” when awaiting execution.
66. The Respondent State did not file a response to this allegation.

67. The Court notes that Article 5 of the Charter provides as follows:

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

²⁰ See *Rajabu and Others v. Tanzania*, *ibid*, §§ 99-100; *Makungu Misalaba v. United Republic of Tanzania*, ACtHPR, Application No. 033/2016, Judgment of 7 November 2023 (merits and reparations), § 152; *Ibrahim Yusufu Caliste Bonge v. United Republic of Tanzania*, ACtHPR, Application No. 036/2016, Judgment of 4 December 2023 (merits and reparations), § 80.

68. The Court notes that the Applicant makes two allegations herein. First, that, hanging as a method of executing the death penalty is a violation of dignity and secondly that the Applicant suffers from the death-row phenomenon which is dehumanising. The Court will consider each allegation successively.
69. With regard to the allegation that the execution of the death penalty by hanging, the Court recalls that:

Many methods used to implement the death penalty may amount to torture, as well as cruel, inhuman and degrading treatment given the suffering inherent thereto.²¹ In line with the very rationale for prohibiting methods of execution that amount to torture or cruel, inhuman and degrading treatment, the prescription should therefore be that, in cases where the death penalty is permissible, methods of execution must exclude suffering or involve the least suffering possible.²²

70. The Court observes that hanging a person is one of such methods and it is therefore inherently degrading. In this regard, the Court finds that hanging as a method of execution, inevitably encroaches upon the dignity of a person in respect of the prohibition of torture and cruel, inhuman and degrading treatment.²³
71. With regard to the death-row phenomenon alleged by the Applicant, the Court recalls its jurisprudence that the time spent awaiting execution can cause distress to persons sentenced to death particularly when the duration is long.²⁴ The Court emphasises that, detention on death row is inherently inhuman and encroaches upon human dignity.²⁵

²¹ See *Rajabu v. Tanzania* (merits and reparations), *supra*, § 118; *Juma v. Tanzania*, *supra*, §§ 135-136.

²² *Rajabu v. Tanzania* (merits and reparations), *ibid*.

²³ *Rajabu v. Tanzania* (merits and reparations), *supra*, § 119; *Jeshi v Tanzania*, *supra*, § 111.

²⁴ *Ghati Mwita v. United Republic of Tanzania*, ACtHPR, Application No. 012/2019, Judgment of 1 December 2022, § 87.

²⁵ *Ibid*.

72. The Court notes, in the present case that the situation is exacerbated by the fact that the Applicant was sentenced to death without consideration of mitigating circumstances including an alternative sentence, as the domestic court's discretion was removed by law, in contravention of the Charter. Given these circumstances, the Applicant has invariably been affected by the death-row phenomenon and this constitutes a violation of his right to dignity.
73. Consequently, the Court finds that the Applicant's right to dignity protected under Article 5 of the Charter is violated as a result of the death sentence by hanging, and the death-row phenomenon suffered by the Applicant.

C. Alleged violation of the right to be represented by counsel of his choice

74. The Applicant alleges that although he was represented by counsel, the said counsel was not of his own choosing. He avers that this counsel was absent during his interrogation and only visited him in prison.
75. The Applicant argues further that this counsel neither called eye witnesses nor adduced evidence in his defence.
76. The Respondent State did not file a response to this allegation.

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

“Every individual shall have the right to have his cause heard. This comprises: ...

- (c) The right to defence, including the right to be defended by counsel of his choice.”

78. The Court has held that Article 7(1)(c) of the Charter, as read together with Article 14(3)(d) of the ICCPR, guarantees anyone charged with a criminal offence, the right to be automatically assigned a counsel free of charge where he cannot afford to hire a lawyer, whenever the interests of justice so require.
79. In *African Commission on Human and Peoples' Rights v. Libya*, the Court held that “every accused person has a right to be effectively defended by a lawyer, which is at the heart of the notion of a fair trial”.²⁶ The Court has previously considered the issue of effective representation where it held that, the right to free legal assistance comprises of the right to be defended by counsel. However, the Court emphasizes that the right to be defended by counsel of one’s choice is not absolute when counsel is provided through a free legal assistance scheme. In such a case, the important consideration is whether the accused is provided with effective legal representation rather than whether he or she is allowed to be represented by a lawyer of their own choosing.²⁷
80. The Court considers that, “effective assistance of counsel” comprises two aspects.²⁸ First, the defence counsel should not be restricted in the exercise of representing his client. Second, counsel should provide competent representation that is adequate to ensure a fair trial or, more broadly, a just outcome.²⁹
81. In the instant case, the Court notes that the Applicant was represented by a counsel during his trial and appeal provided by the Respondent State. The Court observes that there is nothing on the record to demonstrate that the Respondent State impeded counsel from accessing the Applicant and consulting the Applicant on the preparation of his defence, or denied the

²⁶ *African Commission on Human and Peoples' Rights v. Libya* (merits) (2016) 1 AfCLR 153, § 95.

²⁷ *Habiyalimana Augustino and another v. United Republic of Tanzania*, ACtHPR, Application No. 030/2016, Judgment of 3 September 2024, § 96.

²⁸ *Habiyalimana and Another v. Tanzania* (merits and reparations), *supra*, § 97; *Noriega v. Tanzania*, *supra*, § 81.

²⁹ *Habiyalimana and Another v. Tanzania* (merits and reparations), *ibid*.

designated Counsel adequate time and facilities to enable the Applicant to prepare his defence.

82. The Court has previously held in its jurisprudence that allegations relating to counsel not raising or objecting to certain evidentiary issues in relation to his/her client's defence, should not, in these circumstances, be imputed to the Respondent State.³⁰ More importantly, there is nothing on the record to demonstrate that the Applicant informed the domestic courts of the alleged shortcomings in his Counsel's defence strategy. The Applicant was free to raise his discontent with the respective courts about the manner in which he was represented, but did not do so.
83. In view of the above, the Court finds that the Respondent State discharged its obligation to provide the Applicant with effective free legal assistance and also finds that the Respondent State has not violated Article 7(1)(c) of the Charter.

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

84. The Applicant avers that he was arrested on 15 July 2010 but he was not charged until 4 February 2013, that is, "two years and three months" after the arrest. The Applicant therefore concludes that he was not tried within a reasonable time.
85. Citing the Court's decision in *Onyango Ng'anyi and Others v. Tanzania*, the Applicant argues that delayed justice is denied justice. Furthermore, the Applicant avers that his case was not complex, and he was arrested shortly after the murder, therefore, he should have been arraigned within the time as prescribed by law.
86. The Respondent State did not respond to this allegation.

³⁰ *Henerico v. Tanzania, supra*, § 113.

87. The Court notes that Article 7(1)(d) of the Charter guarantees “the right to be tried within a reasonable time by an impartial court or tribunal.” This provision embodies one of the fundamental tenets of a fair trial the essence of which is perfectly encapsulated in the old legal adage “justice delayed is justice denied”.³¹
88. Nevertheless, the Court acknowledges that the determination of a reasonable timeframe for conducting a trial does not have a specific template, as it hinges on the unique characteristics of each individual case. In accordance with its jurisprudence, the Court reiterates that the evaluation of whether justice has been administered within a reasonable time under the purview of Article 7(1)(d) of the Charter takes into account a range of factors. Among these considerations are the complexity of the case, the conduct exhibited by the involved parties, and the actions of the judicial authorities, who bear a responsibility of unwavering diligence, especially when significant penalties are at stake.³²
89. With regard to the complexity of the case, the Court notes from the record that the police did not need to conduct extensive investigation as the Applicant was arrested within 24 hours of the murder and the witnesses were not difficult to locate, since they were siblings who also lived in the same village where the Applicant was arrested. There is also nothing on record to suggest that the Applicant did not fully collaborate with the State, or that he requested for any adjournments.
90. Regarding due diligence, the record indicates that the Applicant was arrested on 15 July 2010 and was not arraigned before the High Court until

³¹ *Noriega v. Tanzania*, *supra*, § 95.

³² *Armand Guehi v. Tanzania* (merits and reparations) 2 AfCLR 247, §§ 122-124; See also *Thomas v. Tanzania* (merits), *supra*, § 104; *Wilfred Onyango Nganyi and Others v. United Republic of Tanzania* (merits) (2016) 1 AfCLR 507, § 155; and *Zongo and Others v. Burkina Faso* (merits), *supra*, §§ 92-97 and 152; *Henerico v. Tanzania* (merits and reparations), *supra*, § 82.

4 February 2013, a period of approximately two years and seven months. Judgment was subsequently delivered on 15 May 2013.

91. The Court notes that the relevant domestic legal framework, specifically sections 244 and 245 of the Criminal Procedure Act (CPA) mandate that committal proceedings be conducted “as soon as practicable”.³³ In this regard, the Court recalls its previous decision that the period between arrest and the commencement of trial is largely consumed by investigation and pre-trial committal proceedings.³⁴ While the Respondent State’s CPA does not prescribe a fixed statutory timeframe for the completion of these proceedings, it establishes a procedural sequence. As is typical in the Respondent State’s system, and as codified in Section 245(4), (6), and (7) of the CPA, this phase requires judicial authorities to undertake specific steps: conducting thorough investigations, compiling witness statements, and submitting the dossier to the Directorate of Public Prosecutions.³⁵ The Court recognizes that the execution of these necessary procedural steps is inherently time-consuming, and the duration may vary depending on the workload and schedule of the judicial officers involved. In making a determination on the issue at hand, it is also relevant to take into account the fact that, after the Applicant’s trial commenced on 4 February 2013, it was finalised within three months.
92. In light of the above, and considering the circumstances of the case, this Court is of the view that the time of two years and seven months that elapsed from the Applicant’s arrest to the commencement of his trial cannot be

³³ Section 244 – Whenever any charge has been brought against any person of an offence not triable by a subordinate court or as to which the court is advised by the Director of Public Prosecutions in writing or otherwise that it is not suitable to be disposed of upon summary trial, committal proceedings shall be held according to the provisions hereinafter contained by a subordinate court of competent jurisdiction. Section 245(1) – After a person is arrested or upon the completion of investigations and the arrest of any person in respect of the commission of an offence triable by the High Court, the person arrested shall be brought within the period prescribed under section 32 of this Act before a subordinate court of competent jurisdiction within whose local limits the arrest was made, together with the charge upon which it is proposed to prosecute him, for him to be dealt with according to law, subject to this Act.

³⁴ *Dominick Damian v. United Republic of Tanzania*, ACTHPR, Application No. 048/2016, Judgment of 4 June 2024, § 65.

³⁵ *Ibid.*

considered unreasonable within the meaning of Article 7(1)(d) of the Charter.

93. Consequently, the Court finds that the Respondent State did not violate the Applicant's right to be tried within a reasonable time as guaranteed by Article 7(1)(d) of the Charter.

E. Alleged violation of the right to be heard

94. The Applicant alleges that he was denied the right to be heard as he was not provided with an interpreter during his trial before the High Court of Tanzania. According to the Applicant, he does not understand the English language. The Applicant avers that the Respondent State violated Article 14(3)(f) of the ICCPR which provides that everyone has the right to "to have free assistance of an interpreter if he cannot understand or speak the language used in Court".
95. The Applicant also alleges that the Respondent State violated Article 14(3)(e) of the ICCPR which provides that an accused has the right to "examine or have examined, the witnesses on his behalf under the same conditions as witnesses against him." In this regard, the Applicant avers that he was not given an opportunity to call witnesses to testify in his defence before the High Court.
96. The Respondent State did not file a response to this allegation.

97. On the issue of interpretation, the Court has previously considered this and held that "even though Article 7(1)(c) of the Charter does not expressly provide for the right to be assisted by an interpreter, it may be interpreted in the light of Article 14(3)(a) and (f) of the ICCPR, which provides:

“... everyone shall be entitled to ... (a) be promptly informed and in detail in a language which he understands of the nature and cause of the charge against him; and (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.”³⁶

98. It is, therefore, evident from a joint reading of the two provisions that every accused person has the right to an interpreter if they are unable to understand the language in which the proceedings are being conducted. Furthermore, this Court has also held that “it is practically necessary that where an accused person is represented by Counsel, that the need for interpretation is communicated to the Court”.³⁷ If an Applicant does not object to the continuance of proceedings in a language other than his own, he will be deemed to understand the processes and to have agreed to the manner in which they were being conducted.³⁸
99. From the record, the Court notes that the trial was conducted in both English and Swahili. The Court also notes that there is no record of an interpreter being provided, however, even though, the Applicant was represented by an advocate, he did not request for an interpreter during the trial or on appeal. The Court further notes that the Applicant in his defence contradicted some of the testimony of the witnesses regarding the murder he was accused of. It is therefore evident that he was able to follow the proceedings. Consequently, the Court finds that the Applicant has failed to prove this allegation.
100. With regard to the allegation that the Applicant was not allowed to call witnesses in his defence, the Court notes that this allegation has not been substantiated. Furthermore, on the record, the Court notes that, at the end of the prosecution’s case, the Applicant was allowed to submit his defence through calling of witnesses. Even so, he was the only one to testify on his

³⁶ *Guehi v. Tanzania*, *ibid*; *Henerico v. Tanzania* (merits and reparations), *supra*, §§ 126-127; *Habiyalimana and Another v. Tanzania* (merits and reparations), *supra*, § 83.

³⁷ *Makame v. Tanzania*, *ibid*.

³⁸ *Guehi v. Tanzania*, *supra*, § 77.

behalf. As a result, the Court finds that the Applicant has failed to prove this allegation.

101. In light of the foregoing, the Court finds that the Respondent State did not violate the Applicant's right to be heard as guaranteed by Article 7(1)(c) of the Charter as read jointly with Article 14(3)(a) and (f) of the ICCPR.

IX. REPARATIONS

102. The Applicant prays the Court to grant him the following orders on reparations:

- i. The Respondent State to set aside the death sentence imposed on the Applicant and remove him from death row;
- ii. The Respondent State to allow the Applicant right to his liberty by releasing him from prison;
- iii. The Respondent State to carry out a retrial of his case at the domestic courts of Tanzania in accordance with fair trial guarantees as provided in the African Charter and in the ICCPR;
- iv. In the alternative, order the Respondent State to convert his sentence from death by hanging to imprisonment and deduct the ten years in prison already spent by the Applicant;
- v. The Respondent State to pay the sum of fifty thousand United States Dollars (\$50,000) as compensation to the Applicant for moral damages;
- vi. The Respondent State to pay the sum of twenty thousand United States Dollars (\$20,000) as compensation to the Applicant as material damages for the material loss he suffered;
- vii. The Respondent State to pay the sum of ten thousand United States Dollars (\$10,000) as compensation to the Applicant's daughter Zuhura Masudi Said compensation as an indirect victim;
- viii. The Respondent State to pay the sum of ten thousand United States Dollars (\$10,000) as compensation to the Applicant's wife Subira as compensation as an indirect victim;

- ix. The Respondent State to pay the sum of ten thousand United States Dollars (\$10,000) as compensation to the Applicant's mother as compensation as an indirect victim; and
- x. The Respondent State to amend its penal laws to ensure respect for the right to life under Article 4 of the African Charter by removing the mandatory death sentence for the offence of murder.

103. The Respondent State did not respond to the Application.

104. Article 27(1) of the Protocol provides that:

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

105. The Court recalls its earlier judgments and restates its position that, "to examine and assess Applications for reparation of prejudices resulting from human rights violations, it takes into account the principle according to which the State found guilty of an internationally wrongful act is required to make full reparation for the damage caused to the victim."³⁹

106. The Court also restates that reparations "... must, as far as possible, erase all the consequences of the wrongful act and restore the state which would presumably have existed if that act had not been committed."⁴⁰

107. The measures that a State may take to remedy a violation of human rights include: restitution, compensation and rehabilitation of the victim, as well as

³⁹ *Abubakari v. Tanzania* (merits), *supra*, § 242(ix) and *Ingabire Victoire Umuhiza v. Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 19.

⁴⁰ *Mohamed Abubakari v. United Republic of Tanzania* (reparations) (4 July 2019) 3 AfCLR 334, § 21; *Alex Thomas v. United Republic of Tanzania*, (reparations) (4 July 2019) 3 AfCLR 287, § 12; *Wilfred Onyango Nganyi and 9 Others v. United Republic of Tanzania*, (reparations) (4 July 2019) 3 AfCLR 308, § 16.

measures to ensure non-repetition of the violations taking into account the circumstances of each case.⁴¹

108. The Court reiterates that the general rule with regard to material prejudice is that there must be a causal link between the established violation and the prejudice suffered by the Applicant and the onus is on the Applicant to provide evidence to justify his prayers.⁴² With regard to moral prejudice, the Court exercises judicial discretion in equity.

109. In the instant case, the Court has established that the Respondent State violated the Applicant's rights to life, and dignity protected under Articles 4 and 5 of the Charter respectively, through the application of Sections 148(5) of the CPA.

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

A. Pecuniary reparations

i. Material prejudice

111. The Applicant avers that it is trite law that when a state violates an obligation such as guaranteed rights of individuals, the State is mandated to remedy the situation. In this regard, the Applicant cites the Court's decisions in *Christopher Mtikila v. United Republic of Tanzania*, *Beneficiaries of the Late Zongo v. Burkina Faso* and *Lohe Issa Konaté v. Burkina Faso*.

112. With regard to causal link, the Applicant avers that he is a direct victim of the alleged violations and that, as a result he and his dependants have suffered harm.

⁴¹ *Umuhoza v. Rwanda* (reparations), *supra*, § 20.

⁴² *Christopher Mtikila v. Republic of Tanzania* (reparations) (13 June 2014) 1 AfCLR 72, § 40; *Lohé Issa Konaté v. Burkina Faso* (reparations) (3 June 2016) 1 AfCLR, § 15.

113. The Applicant avers that he is an artisanal miner who used to make an average of Tanzanian Shillings One Hundred and Twenty Thousand (TZS 120,000) per day. The Applicant therefore prays the Court for United States Dollars Twenty Thousand (\$20,000) as reparations for material prejudice.

114. The Court recalls that it can only grant reparations for material prejudice, where there is 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.

115. In the instant case, the Applicant has not demonstrated the causal link between the material prejudice suffered and the violation of his rights to life, and dignity under Articles 4, and 5 of the Charter respectively.⁴³ The Court also notes that the Applicant has not provided any proof of the material loss suffered.

116. In the circumstances, the Court dismisses the Applicant's prayers for reparations for material prejudice.

ii. Moral prejudice

a. Moral prejudice for the Applicant

117. The Applicant submits that his life plans has been disrupted due to his imprisonment. He also avers that he can never recover from the effects of the unfair trials and the incarceration. Citing the Inter-American Court's decision in *Loyza Tamayo v. Peru*, the Applicant submits that his imprisonment denied him his personal fulfilment and options he would have had to achieving his goals.

⁴³ *Kijiji Isiaga v. United Republic of Tanzania*, (merits) (21 March 2018) 2 AfCLR 218, § 20; *Bonge v. Tanzania*, *supra*, § 128.

118. The Applicant avers that he has suffered long term physiological harm due to the death sentence and prays the Court to award him reparations for moral prejudice to the tune of United States Dollars Fifty Thousand (\$50,000).

119. The Court recalls that in human rights cases, moral prejudice is presumed once violations are established. The assessment of quantum in cases of moral prejudice must be done in fairness and taking into account the circumstances of the case.⁴⁴ The practice of the Court, in such instances, is to award lump sums for moral loss.⁴⁵

120. Furthermore, the Court observes that reparations for moral prejudice is that which results from the suffering, anguish and changes in the living conditions of the victim and his family.

121. The Court recalls its finding in this judgment that the Applicant's rights to life and dignity were violated by the imposition of the mandatory death sentence and the subsequent detention on death-row, and notes that this has resulted in psychological and emotional distress. The Applicant is therefore entitled to reparations for moral prejudice.

122. In view of the above and in exercising its discretion in equity, the Court awards the Applicant, the amount of Tanzanian Shillings Three Hundred Thousand (TZS 300,000) as moral damages.

⁴⁴ *Juma v. Tanzania* (judgment), *supra*, § 144; *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania* (reparations) (8 May 2020) 4 AfCLR 3, § 41 and *Umuhoza v. Rwanda* (reparations), *supra*, § 59.

⁴⁵ *Beneficiaries of the late Norbert Zongo and Others v. Burkina Faso* (reparations) (5 June 2015) 1 AfCLR 258, §§ 61-62 and *Guehi v. Tanzania* (merits and reparations), *supra*, § 177.

b. Moral prejudice for the Applicant's beneficiaries

123. The Applicant avers that dependants are entitled to reparations on the basis that violations committed against the direct victims result in serious harm to them.

124. The Applicant submits that his daughter was only two years old, when he was arrested and imprisoned and was therefore deprived the love and care of a father. Furthermore, that his arrest resulted in his wife Subira Hassan becoming the bread winner. He also alleges that the wife "suffers the emotional pain of not having conjugal relations with her husband." Lastly, the Applicant avers that his mother has suffered emotional distress because of his arrest and therefore prays the Court to award his dependants United States Dollars Ten Thousand each as reparations for moral prejudice.

125. Regarding the prayer for reparations for his indirect victims, the Court notes that the Applicant has failed to adduce documentary proof to show filiation such as marriage or birth certificates for his dependants or any equivalent proof.⁴⁶

126. The Court thus dismisses the prayer of the Applicant in this regard.

B. Non-pecuniary reparations

127. The Applicant prays the Court to order his release or an order for the Respondent State to retry his case or convert his sentence to imprisonment and deduct ten years in prison that has already been served.

128. The Applicant avers that the following compelling and specific circumstances support his prayer for release: that he was not afforded a fair

⁴⁶ *Noriega v. Tanzania* (merits and reparations), § 137.

trial; he has a child, an aged mother and a wife who are suffering due to his absence.

129. The Applicant also prays the Court to order the Respondent State to amend its laws in order to conform to Article 4 of the Charter.

i. On the prayer for release

130. Regarding the prayer for release, the Court has held that this measure can be ordered only in specific and compelling circumstances. This would be the case “if an Applicant sufficiently demonstrates or the Court by itself establishes from its findings that the Applicant’s arrest or conviction is based entirely on arbitrary considerations and his continued imprisonment would occasion a miscarriage of justice.”⁴⁷

131. In the instant case, the Court recalls that it has found that the Respondent State violated the Applicant’s right to life and right to dignity through the imposition of the mandatory death sentence. Without minimising the gravity of the violation, the Court observes that the nature of the violation in the instant case does not reveal any circumstance that signifies that the Applicant’s conviction amounts to a miscarriage of justice or an arbitrary decision. The Applicant also failed to elaborate on specific and compelling circumstances to justify the order for his release.⁴⁸

132. In view of the foregoing, the Court dismisses the Applicant’s prayer for release.

ii. On the prayer for an order for retrial of the Applicant

133. The Court reiterates its earlier position that the violations of the rights to life and dignity in the case of the Applicant did not impact on his conviction, and

⁴⁷ *Minani Evarist v. United Republic of Tanzania* (merits) (21 September 2018) 2 AfCLR 402, § 82.

⁴⁸ *Mussa and Mangaya v. Tanzania* (merits and reparations), *supra*, § 97; *Elisamehe v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 265, § 112; and *Evarist v. Tanzania* (merits), *ibid*, § 82.

that the sentencing is affected only to the extent of the mandatory nature of the penalty. The Court thus rejects the prayer for an order for retrial of the Applicant in respect of his conviction.

134. Having dismissed the prayer on retrial in respect of the Applicant's conviction, and in light of its findings and orders relating to the mandatory imposition of the death sentence, this Court considers that an alternative measure is warranted to give effect to the said findings. The Court therefore orders the Respondent State to take all necessary measures to vacate the sentence and remove the Applicant from death-row.

135. Furthermore, the Applicant's sentence, having been imposed automatically under the law mandating the death penalty upon conviction, requires a remedy. Consequently, the Court orders the rehearing of the sentencing of the Applicant through a process that does not allow a mandatory imposition of the death penalty, while upholding the full discretion of the judicial officer.

iii. On the prayer for the conversion of the sentence to life imprisonment

136. The Court reiterates that it is not a Court of Appeal and therefore, it does not rehear cases determined by national courts.⁴⁹ The Court also notes that, it has ordered the rehearing of the sentence and thus the judicial officer who rehears the sentencing of the Applicant, will determine the proper sentence to mete out on the Applicant. The Court therefore rejects this prayer of the Applicant.

iv. Guarantees of non-repetition

137. With regard to the prayer on the amendment of the Respondent State's laws, the Court having found that the imposition of the mandatory death penalty by the Responded State provided for by its Penal Code contravenes the Charter, orders the Respondent State to take all necessary

⁴⁹ *Noriega v. Tanzania* (merits and reparations), *supra*, § 22; *Henerico v. Tanzania* (merits and reparations), *supra*, § 38.

constitutional and legislative measures, without delay, to ensure that this provision of its Penal Code is amended and aligned with the provisions of the Charter so as to eliminate the violations identified herein.

138. With regard to the method of execution of the death sentence, that is, by hanging, the Court having found that it amounts to cruel, inhuman and degrading treatment, orders the Respondent State to remove execution of the death sentence by hanging from its laws, without delay.

v. Publication of the judgment

139. Though the Applicant did not seek orders for publication of this judgment, pursuant to Article 27 of the Protocol and the inherent powers of the Court, the Court will consider this measure.

140. The Court recalls that it has *suo motu* ordered the publication of its judgments in its previous decisions, where the circumstances have so required.⁵⁰

141. The Court observes that, in the present case, the violation of the right to life by the provision on the mandatory imposition of the death penalty goes beyond the individual case of the Applicant and it is systemic in nature.

142. In light of the above, the Court orders the publication of this Judgment on the websites of the Judiciary, and the Ministry for Constitutional and Legal Affairs.

vi. Implementation and reporting

143. Regarding the timeframe for implementation of these measures, the Court notes that it has on several occasions in its previous judgments ordered that the said laws be amended to align them with the provisions of Articles 4 and

⁵⁰ *Guehi v. Tanzania*, *supra*, § 194; *Mtikila v. Tanzania* (reparations), *supra*, § 45 and 46(5); and *Zongo and Others v. Burkina Faso* (reparations), § 98.

5 of the Charter within a specific time stated in the judgments concerned.⁵¹ However, there has so far been no information as at the date of the present judgment that the Respondent State has implemented the orders.

144. In view of the above, the Court still considers that implementation orders are warranted both as an individual protective measure and as a general restatement of the obligation and urgency behoving on the Respondent State to remove the mandatory death penalty and provide alternatives thereto. Accordingly, the Court finds it appropriate to order that the measures be implemented without delay.

145. Furthermore, on reporting, the Court holds that the Respondent State is under an obligation to report on the steps taken to implement this judgment within six months from the date of notification of this judgment. The report should detail the steps taken by the Respondent State to comply with the terms of this Judgment.

146. Given the state of compliance with the Court's judgments by the Respondent State as alluded to above, the Court finds it appropriate to remind the Respondent State of its obligations under Article 1 of the Charter to "recognise the rights, duties and freedoms in the Charter" and to "undertake to adopt legislative or other measures to give effect" to the rights and obligations in the Charter.

147. The Court further draws the Respondent State's attention to Article 30 of the Protocol by which the Respondent State undertook to "comply with the judgment in any case" to which it is a party "within the time stipulated by the Court" and to guarantee execution of the Court's decisions. In the circumstances, it is clear that the Respondent State is under an obligation to comply with the Court's decisions and see to their full execution.

⁵¹ *Rajabu and Others v. Tanzania* (merits and reparations), *supra*, §§ 119-120; *Juma v. Tanzania* (merits and reparations), *supra*, §§ 135-136; *Henerico v. Tanzania* (merits and reparations), *supra*, §§ 169-170.

X. COSTS

148. None of the Parties prays for costs.

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

150. The Court sees no reason to depart from the above provision and decides that each Party shall bear its own costs.

XI. OPERATIVE PART

151. For these reasons,

THE COURT,

By default,

Unanimously,

On jurisdiction

i. *Declares* that it has jurisdiction.

On admissibility

ii. *Declares* the Application admissible.

On merits

- iii. *Holds* that the Respondent State did not violate the Applicant's right to be represented by counsel protected under Article 7(1)(c) of the Charter;
- iv. *Holds* that the Respondent State did not violate the Applicant's right to be heard protected under Article 7(1) of the Charter;
- v. *Holds* that the Respondent State did not violate the Applicant's right to be tried within a reasonable time protected under Article 7(1)(d) of the Charter;

By a majority of seven Judges for and three Judges against, Justices Blaise TCHIKAYA, Rafaâ BEN ACHOUR and Dumisa B. NTSEBEZA dissenting,

- vi. *Holds* that the Respondent State violated the Applicant's right to life and respect of inherent dignity protected under Articles 4 and 5 of the Charter respectively, in relation to the mandatory imposition of the death penalty.

Unanimously,

On pecuniary reparations

- vii. *Dismisses* the Applicant's prayer for reparations for moral prejudice for his dependants;
- viii. *Grants* the Applicant's prayer for reparations for moral prejudice, for himself and awards him, the amount of Tanzanian Shillings Three Hundred Thousand (TZS 300,000), free from tax as fair compensation to be made within six (6) months from the date of notification of this Judgment, failing which the Respondent State will be required to pay interest on arrears calculated on the basis

of the applicable rate of the Central Bank of Tanzania throughout the period of delayed payment until the amount is fully paid.

On non-pecuniary reparations

- ix. *Dismisses* the Applicant's prayer for his release;
- x. *Dismisses* the Applicant's prayer for retrial of his case;
- xi. *Dismisses* the Applicant's prayer for conversion of his death sentence to a sentence of imprisonment;
- xii. *Orders* the Respondent State to take all necessary constitutional and legislative measures to remove the mandatory imposition of the death penalty from its laws, without delay, upon notification of this Judgment;
- xiii. *Orders* the Respondent State to take all necessary measures without delay, upon notification of this Judgment to remove "hanging" from its laws as the method of execution of the death sentence;
- xiv. *Orders* the Respondent State to take all necessary constitutional and legislative measures, upon removing the mandatory imposition of the death penalty, to vacate the death sentence imposed in the present Application and remove the Applicant from death-row;
- xv. *Orders* the Respondent State to rehear the sentencing of the Applicant within six months after the amendment of the law, through a procedure that allows judicial discretion;
- xvi. *Orders* the Respondent State to publish this judgment, within a period of three months from the date of notification, on the websites of the Judiciary, and the Ministry for Constitutional and Legal Affairs, and ensure that the text of the judgment is accessible for at least one year after the date of publication.

On implementation and reporting

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

On costs

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

Signed:

Blaise TCHIKAYA, President;



Chafika BENSAOULA, Vice President;



Rafaâ BEN ACHOUR, Judge;



Suzanne MENGUE, Judge;



Tujilane R. CHIZUMILA, Judge;



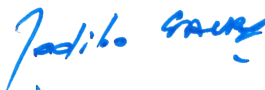
Stella I. ANUKAM, Judge;



Dumisa B. NTSEBEZA, Judge;



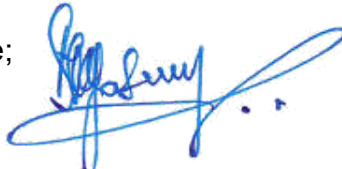
Modibo SACKO, Judge;



Dennis D. ADJEL, Judge;



Duncan GASWAGA, Judge;



and Grace W. KAKAI, Deputy Registrar.



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

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

