

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

IDD KITURE

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 010/2019

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"),¹ Justice Imani D. ABOUD, a member of the Court and a national of Tanzania, did not hear the Application.

In the Matter of:

IDD KITURE

Represented by:

PAN AFRICAN LAWYERS UNION (PALU)

Versus

UNITED REPUBLIC OF TANZANIA

Represented by:

- i. Dr Ally POSSI, Solicitor General, Office of the Solicitor General;
- ii. Jacqueline KINYASI, 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. Idd Kiture (hereinafter referred to as “the Applicant”), is a Tanzanian national, who at the time of filing this Application, was serving a 30-year imprisonment term at Ukonga Central Prison in Dar es salaam, Tanzania, for the offences of rape of a minor and also committing an unnatural offence. He alleges the violation of his rights in the course of the domestic proceedings.
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. On 29 March 2010, the Respondent State deposited the Declaration required under Article 34(6) of the Protocol (hereinafter referred to as “the Declaration”) by which it accepted the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organizations. 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, that is, one year after its deposit, which is on 22 November 2020.²

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the record that the Applicant was charged before the District Court of Morogoro with the offence of rape of a 12-year-old girl contrary to Sections 130 and 131(2) of the Respondent State’s Penal Code Cap16 R.E.

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

2002 (hereinafter referred to as “Penal Code”), together with the offence of committing an unnatural offence³ contrary to Section 154(b) of the Penal Code. It is alleged that he committed these offences on 6 October 2006, at Kasanga area within the Morogoro District in Tanzania.

4. On 20 July 2010, the Applicant was found guilty and sentenced to 30 years imprisonment, to be served concurrently for both offences by the District Court of Morogoro. Dissatisfied with the lower court’s decision, he appealed to the High Court of Tanzania sitting in Dar es Salaam in Criminal Appeal No. 164 of 2010, but the said appeal was dismissed for lack of merit on 14 September 2010. The Applicant further appealed to the Court of Appeal of Tanzania in Criminal Appeal No. 17 of 2012, which also upheld the decision of the High Court and dismissed the appeal for lack of merit on 14 November 2014.

B. Alleged violations

5. The Applicant alleges violation of his rights as follows:
 - i. The right to non-discrimination, and the right to equality and equal protection of the law, protected under Article 2 and 3 of the Charter;
 - ii. The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations, and customs in force, protected under Article 7(1)(a) of the Charter;
 - iii. The right to legal representation, protected under Article 7(1)(c) of the Charter;
 - iv. The right to be tried within a reasonable time, protected under Article 7(1)(d) of the Charter;
 - v. The right to a fair trial by being charged using a defective charge sheet, contrary to the provisions of Article 7(1)(c); and
 - vi. The right to dignity protected under Article 5 of the Charter.

³ Sodomy and transmission of a venereal disease – Testimony of PW4, (Medical doctor).

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

6. The Application was filed on 22 March 2019. It was served on the Respondent State on 1 December 2020, which was given 90 days to file its Response and 30 days to submit the list of its representatives.
7. In his Application, the Applicant requested for free legal aid under the Court's Legal Aid Scheme, which was granted by the Court on 16 September 2019. The Court designated the Pan African Lawyers Union (PALU) to represent him.
8. Following various correspondences between the Registry and PALU,⁴ on 29 June 2020, PALU informed the Registry that, it was experiencing challenges in accessing the Applicant as the latter had reportedly been moved from Ukonga Central Prison in Dar es salaam, Tanzania to the remote Mafia Island Prison. PALU, further reported that due to the COVID-19 pandemic, prison visits were suspended, which impeded progress. However, it managed to meet with the Applicant thereafter and to submit the decisions of the domestic level requested for by the Court as well as a medical record on 20 November 2020.
9. The Parties subsequently filed their pleadings on the merits and reparations within the time granted by the Court.
10. Pleadings were closed on 20 March 2025 and the Parties were duly notified.

⁴ On 31 January 2020, Registry letter to PALU requesting for a report on steps taken to represent the Applicant; On 24 February 2020, PALU letter to the Registry providing a report; On 7 May 2020, the Registry letter requesting the Applicant to file additional documents in order to facilitate service of the Application to the Respondent State; On 29 June 2020, A response from PALU on requested documents; On 2 October 2020, An Inquiry Letter from the Court on the progress undertaken by PALU in obtaining documents and further information; and PALU's response of 22 October 2020; PALU's report of 20 November 2020, forwarding the requested documents (judgments) including a medical report.

IV. PRAYERS OF THE PARTIES

11. The Applicant prays the Court to:

- i. Order the restoration of his rights;
- ii. Order reparations where violations are found;
- iii. Order his release from prison custody.

12. The Respondent State prays the Court to grant the following orders:

- i. That, the Court is not vested with jurisdiction to adjudicate the Application;
- ii. That, the Application has not met the admissibility requirements provided by Rule 40(2) of the Rules of the Court;
- iii. That, the Application be declared inadmissible;
- iv. That, the Respondent State has not violated the Applicant's rights provided under Articles 2, 3, 7(a), (c) and (d) of the Charter;
- v. That, the interpretation and application of the Protocol and Charter do not confer jurisdiction to the Court to set the Applicant at liberty;
- vi. That, the Applicant's claims for reparation be dismissed in its entirety with costs for being misconceived, baseless and untenable.
- vii. That, the Application be dismissed in its entirety with costs.

V. JURISDICTION

13. The Court notes that Article 3(1) 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.

14. 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.”
15. In view of the foregoing, the Court must conduct an assessment of its jurisdiction and dispose of objections thereto, if any.
16. In the present Application, the Court notes that the Respondent State raises objections to its material jurisdiction. The Court will first examine these objections before considering other aspects of its jurisdiction, if necessary.

A. Objection to material jurisdiction

17. The Respondent State raises an objection to the Court’s material jurisdiction. It avers first, that the Court is not vested with jurisdiction to entertain this Application and; second, that the interpretation and application of the of the Protocol and Charter does not confer jurisdiction on the Court to set the Applicant at liberty.

*

18. The Applicant did not respond to the Respondent State’s objection.

19. With regard to the first limb of the objection, the Court recalls that under Article 3(1) of the Protocol, it has jurisdiction to examine any application submitted to it, concerning the interpretation and application of the Charter, the Protocol, and other relevant human rights instruments ratified by the Respondent State.⁵

⁵ *Kennedy Owino Onyachi and Charles John Mwanini Njoka v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65, §§ 34-36; *Elyssa v. Republic of Tunisia*, ACtHPR, Application No. 69/2019, Judgment of 4 December 2025 (merits), § 126.

20. The Court reiterates that its material jurisdiction is predicated on the Applicant's allegation of violations of human rights protected by the Charter or any other human rights instrument ratified by the Respondent State.
21. In the instant matter the Applicant alleges violations of Articles 2, 3, 7(a), (c) and (d) of the Charter, which is an instrument that the Respondent State has ratified and which the Court has the power to interpret and apply in accordance with Article 3(1) of the Protocol.
22. Accordingly, the Court dismisses the Respondent State's objection to its material jurisdiction in this respect.
23. With regard to the second limb of the objection, that the Court lacks jurisdiction to order the Applicant's release from prison, the Court recalls Article 27(1) of the Protocol which provides that "[if the Court finds that there has been violation of a human or peoples' 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 an order for release of an applicant from prison, provided that the alleged violation has been established.⁶
24. For these reasons, the Court dismisses the Respondent State's objection regarding this aspect.
25. In view of all the above, the Court dismisses the Respondent State's objection and finds that it has material jurisdiction to hear this Application.

B. Other aspects of jurisdiction

26. The Court notes that the Respondent State does not contest its personal, temporal, and territorial jurisdiction. Nonetheless, in accordance with Rule

⁶ *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania* (merits) (23 March 2018) 2 AfCLR 287, § 35; *Tembo Hussein v. United Republic of Tanzania*, ACtHPR, Application No. 001/ 2018, Judgment of 26 June 2025 (merits and reparations), § 28.

49(1) of the Rules, the Court must satisfy itself that requirements regarding all aspects of its jurisdiction are met before proceeding.

27. In relation to its personal jurisdiction, the Court recalls, as stated in paragraph 2 of this judgment that the Respondent State became a party to the Charter on 21 October 1986, the Protocol on 10 February 2006, and on 29 March 2010, deposited the Declaration. However, 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 Protocol.
28. 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 took effect. Since any such withdrawal of the Declaration takes effect 12 months after the notice of withdrawal is deposited, the effective date for the Respondent State's withdrawal was 22 November 2020.⁷ 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.
29. Regarding its temporal jurisdiction, the Court observes that the alleged violations stem from the Applicant's trial and conviction, which took place after the Respondent State became a party to the Protocol. Furthermore, as the Applicant remains incarcerated based on what he considers an unfair process, the violations are deemed continuing in nature.⁸ The Court, therefore, finds that it has temporal jurisdiction to hear the matter.

⁷ *Cheusi v. Tanzania* (judgment), *supra*, §§ 37-39.

⁸ *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabè des Droits de l'Homme et des Peuples v. Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 197, §§ 71-77.

30. With regard to its territorial jurisdiction, the Court notes that the alleged violations occurred within the Respondent State's territory. As a result, the Court finds that it has territorial jurisdiction over the present Application.
31. In light of all the above, the Court holds that it has jurisdiction to determine the present Application.

VI. ADMISSIBILITY

32. Pursuant to Article 6(2) of the Protocol, "the Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter".
33. In line with Rule 50(1) of the Rules, "the Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter, Article 6(2) of the Protocol and these Rules".
34. 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:

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.

35. In the present Application, the Respondent State raises an objection to the admissibility of the Application based on the non-exhaustion of local remedies, as envisaged under Rule 50(2)(e) of the Rules. The Court will therefore, consider this objection before examining other conditions of admissibility, if necessary.

A. Objection based on non-exhaustion of local remedies

36. The Respondent State argues that the Applicant has not exhausted the remedies available within its legal system. It claims that if the Applicant was aggrieved by the judgment of the Court of Appeal, he could have instituted an application for review of the said decision. According to the Respondent State, the Court of Appeal has jurisdiction to review its own decision as per Part III B, Rule 65 and 66 of its Court of Appeal Rules.

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37. The Applicant on this part contends that he filed his Application after exhausting domestic remedies as the case was considered and dismissed by the highest court in the Respondent State.

38. The Court notes that pursuant to Rule 50(2)(e) of the Rules, any application filed before it must fulfil the requirement of exhaustion of local remedies unless the local remedies are unavailable or ineffective, or the domestic

procedure to pursue them is unduly prolonged.⁹ This is to ensure that, as the primary duty bearers, States have the opportunity to address human rights violations occurring within their jurisdiction before an international body is called upon to intervene. In its jurisprudence, the Court has affirmed that for this requirement to be met, the remedies to be exhausted must be ordinary judicial remedies.¹⁰

39. With regard to the exhaustion of local remedies, the Court notes that the Applicant's case was considered successively by the District Court at Morogoro, the High Court in Dar es Salaam, and the Court of Appeal which rendered their decisions on 20 July 2010, 7 September 2010; and 14 November 2014 respectively. Given that the Court of Appeal, within the Respondent State's legal system, is the highest judicial body, the Court finds that the Applicant exhausted domestic remedies.
40. Regarding the claim that the Applicant ought to have applied for review of the Court of Appeal's judgment, this Court reiterates its jurisprudence that the remedy referred to is an extraordinary one that the Applicant need not have exhausted.¹¹
41. In view of the foregoing, the Court holds that the Applicant exhausted local remedies as envisaged under Article 56(5) of the Charter and Rule 50(2)(e) of the Rules and therefore, dismisses the Respondent State's objection to the admissibility of the Application based on non-exhaustion of local remedies.

⁹ *Owino and Another v. Tanzania*, *supra*, § 56.

¹⁰ *Wilfred Onyango Nganyi and 9 Others v. United Republic of Tanzania* (reparations) (4 July 2019) 3 AfCLR 308, § 95; *Thomas v. Tanzania*, *supra*, § 63.

¹¹ *Elisamehe v. Tanzania*, *supra*, § 36; *Mohamed Abubakari v. United Republic of Tanzania* (merits) (3 June 2016) 1 AfCLR 599, §§ 66-70; *Christopher Jonas v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 101, § 44.

B. Other conditions of admissibility

42. The Court notes that there is no contention between the Parties, regarding the Application's compliance with the conditions set out in Rule 50(2)(a), (b), (c), (d), (f) and (g) of the Rules. It, however, must satisfy itself that the Application fulfils these requirements.
43. From the record, the Court notes that the Applicant is clearly identified by name thereby fulfilling Rule 50(2)(a) of the Rules.
44. 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 record indicates that the Application is incompatible with the Constitutive Act of the African Union. The Court, therefore, finds that the requirements of Rule 50(2)(b) of the Rules are met.
45. The Court equally notes that the language used in the Application is not disparaging or insulting toward the Respondent State, its institutions, or the African Union in compliance with Rule 50(2)(c) of the Rules.
46. The Court also observes that the Application is not exclusively based on news disseminated through mass media; rather, it is based on record of proceedings and judicial decisions from the domestic courts of the Respondent State. The Court finds, therefore, that the Application complies with Rule 50(2)(d) of the Rules.
47. In relation to the requirement under Rule 50(2)(f) of the Rules that an application should be filed within a reasonable time after exhaustion of local remedies, the Court recalls that neither the Charter nor the Rules specify the time frame within which applications must be filed. As per the Court's jurisprudence, "...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.”¹²

48. In its jurisprudence, the Court has taken into consideration, among other factors, incarceration of an applicant, limited movement of an applicant, limited access to information,¹³ limited access to legal assistance,¹⁴ and lack of knowledge about judicial avenues as relevant factors in determining reasonableness of time.¹⁵
49. In the instant Application, the Court notes that the decision of the Court of Appeal was rendered on 14 November 2014 while the Application was filed on 22 March 2019. The Court has to therefore determine whether the period of four years, four months and eight days that elapsed between these two events is reasonable within the meaning of Rule 50(2)(f) of the Rules.
50. In light of its jurisprudence recalled earlier,¹⁶ the Court notes that the Applicant in the present case was incarcerated,¹⁷ with limited access to information and knowledge about judicial avenues particularly in respect of the means for commencement of proceedings before this Court.
51. Considering these factors, the Court finds that the period of four years, four months and eight days constitutes a reasonable time within the meaning of Rule 50(2)(f) of the Rules.
52. Concerning the admissibility requirement specified under Rule 50(2)(g) of the Rules, the Court notes that there is nothing on record that shows that

¹² *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabè des Droits de l'Homme et des Peuples v. Burkina Faso* (merits) (2014) 1 AfCLR 219, § 92. See also *Thomas v. Tanzania* (merits), *supra*, § 73.

¹³ *Ramadhani v. United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 353, § 50.

¹⁴ *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 479, § 74.

¹⁵ *Amir Ramadhani v. United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 344, § 50; *Diocles William v. United Republic of Tanzania* (merits) (21 September 2018) 2 AfCLR 426, § 52; *Anaclet Paulo v. United Republic of Tanzania* (merits) (21 September 2018) 2 AfCLR 446, § 50.

¹⁶ See also, *Mussa Zanzibar v. United Republic of Tanzania* (merits and reparations) (26 February 2021) 5 AfCLR 39, § 44; *Habyalimana Augustino and Muburu Abdulkarim v. United Republic of Tanzania*, ACTHPR, Application No. 15/ 2016, Judgment of 3 September 2024 (merits and reparations), § 64.

¹⁷ *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 479, § 74.

the Application concerns a case which has already been settled 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. The Court thus finds that the Application complies with Rule 50(2)(g) of the Rules.

53. As a consequence of the foregoing, the Court finds that all the admissibility conditions under Article 56 of the Charter, as reiterated in Rule 50(2) of the Rules are met and declares the Application admissible.

VII. MERITS

54. The Applicant alleges violation of the following rights:

- i. The right to non-discrimination, and the right to equality and equal protection of the law, protected under Articles 2 and 3 of the Charter;
- ii. The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by Conventions, laws, regulations, and customs in force, protected under Article 7(1)(a).
- iii. The right to be tried within a reasonable time, protected under Article 7(1)(d) of the Charter;
- iv. The right to legal representation, protected under Article 7(1)(c) of the Charter;
- v. The right to a fair trial by being charged using a defective charge sheet, contrary to the provisions of Article 7(1)(c) of the Charter; and
- vi. The right to dignity protected under Article 5 of the Charter.

55. The Court will now examine these allegations successively.

A. Alleged violation of the right to non-discrimination, equality before the law and equal protection of the law

56. The Applicant avers that the Respondent State violated his right to non-discrimination under Article 2 and his right to equality before the law and equal protection of the law under Article 3 of the Charter, without substantiating the allegation.

57. The Respondent State, in its Response, did not specifically address this allegation. It however, submitted, generally, that it had “not violated any of the Applicant’s rights” guaranteed under the Charter.

58. Article 2 of the Charter provides as follows:

Every individual shall be entitled to the enjoyment of rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.

59. In its decision in the matter of the *African Commission on Human and Peoples’ Rights v. Republic of Kenya*, the Court stated thus:¹⁸

Article 2 of the Charter is imperative for the respect and enjoyment of all other rights and freedoms protected in the Charter. The provision strictly proscribes any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment.

¹⁸ (merits) (2017) 2 AfCLR 9, §§ 137-138.

The scope of the right to non-discrimination extends beyond the right to equal treatment by the law and also has practical dimension in that individuals should in fact be able to enjoy the rights enshrined in the Charter without distinction of any kind relating to their race, colour, sex, religion, political opinion, national extraction or social origin, or any other status.

60. Article 3 of the Charter on its part guarantees that “every individual shall be equal before the law” and “...entitled to equal protection of the law”.
61. With regard to non-discrimination, the Court has consistently held that general statements that a right has been violated are not sufficient and more substantiation is required to prove an allegation.¹⁹ The Court further recalls its jurisprudence that “it is incumbent on the party purporting to have been a victim of discriminatory treatment to provide proof thereof”.²⁰ It has also held that, when making a claim in relation to Article 3 of the Charter, the Applicant has to demonstrate how the Respondent State’s conduct infringed upon his rights of equal protection before the law to justify the violation of this provision.²¹
62. In the instant Application, the Court observes that the Applicant has neither demonstrated nor substantiated how he has been discriminated against, treated differently or unequally, resulting to discrimination or unequal treatment based on the criteria laid out under Article 2 and 3 of the Charter. Furthermore, the Court notes that there is no evidence on the record that the Applicant was not afforded equality before the law or was treated differently from other persons who were in a similar situation as him.
63. In view of the foregoing, the Court finds that the Respondent State did not violate the Applicant’s right to non-discrimination, his right to equality before

¹⁹ *George Mali Kemboge v. United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 369, § 9 and *Thomas v. Tanzania*, *supra*, § 140.

²⁰ *Abubakari v. Tanzania*, *supra*, § 153; *Thomas v. Tanzania* (merits), *supra*, § 492 and *Jeshi v. Tanzania* (merits and reparations), *supra*, § 24.

²¹ *Thomas v. Tanzania* (merits), *supra*, § 140.

the law and to equal protection of law as guaranteed under Articles 2 and 3 of the Charter. The Court, therefore, dismisses the Applicant's allegations with respect to the alleged violations of Articles 2 and 3 of the Charter.

B. Alleged violation of the right to appeal to competent national organs

64. The Applicant alleges that the Respondent State violated his right to appeal to competent national organs against acts of violation of his fundamental rights as recognized and guaranteed by Conventions, laws, regulations, and customs in force, as protected under Article 7(1)(a) of the Charter.

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65. The Respondent State, in its Response, did not specifically address this allegation. It submitted, generally, that it had not violated any of the Applicants' rights guaranteed under the Charter.

66. Article 7(1)(a) of the Charter provides that:

Every individual shall have the right to have his cause heard. This comprises: the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force.

67. The Court reiterates its jurisprudence that "general statements that a right has been violated is not sufficient, more substantiation is required."²²
68. The Court observes that although the Applicant claims that this right to an appeal to competent national organs was violated, he did not substantiate this allegation. The Court further observes, from the record, that the

²² *Kemboge v. Tanzania*, *supra*, § 9; and *Thomas v. Tanzania*, *supra*, § 140.

Applicant exercised his right to appeal the decision of the District Court of Morogoro before the High Court; and the Court of Appeal of the Respondent State. The latter Court rendered a final judgment in the case involving the Applicant. The record does not show that the Applicant was hindered in any way by the Respondent State or the courts from accessing the justice system through to the highest court.

69. In these circumstances, the Court finds that the Respondent State did not violate the Applicant's right to appeal to competent national organs guaranteed under Article 7(1)(a) of the Charter.

C. Alleged violation of the right to legal representation

70. The Applicant alleges that he was denied legal representation during his interrogation at the police station and throughout his trial protected under Article 7(1)(c) of the Charter.

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71. In response, the Respondent State avers that the Applicant never requested for legal representation. It is the Respondent State's contention that, had he done so, it would have been provided subject to availability of resources.

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

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

73. While it was not invoked by the Applicants, the Court finds it relevant to refer to Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR), which provides that:

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality [...]

- (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it ...

74. The Court observes that Article 7(1)(c) of the Charter does not provide explicitly for the right to free legal assistance. Nevertheless, the Court has held that Article 7(1)(c) of the Charter, read together with Article 14(3)(d) of the ICCPR,²³ establishes the right to free legal assistance as a part of the general right to fair trial.²⁴ The right to free legal assistance arises where a person cannot afford to pay for legal representation and where the interests of justice so require.²⁵ The interests of justice also require the provision of free legal assistance where, among others, the Applicant is indigent, the offence he/she is facing is serious and the penalty provided by the law is severe.²⁶

75. The Court observes, from the record of proceedings, and from the decisions of the domestic courts that the Applicant was not represented by counsel. Furthermore, he was charged with a serious offence of rape of a minor (12 years old), which carries a sentence of 30 years imprisonment upon conviction. The Court has previously held that in such circumstances, free legal assistance should be provided by the State regardless of whether the Applicant requests for it.²⁷ Therefore, the interest of justice warranted that

²³ The Respondent State became a State Party to the ICCPR on 11 June 1976.

²⁴ *Thomas v. Tanzania* (merits), *supra*, § 114; *Kijiji Isiaga v. United Republic of Tanzania* (merits) (21 March 2018) 2 AfCLR 218, § 72; *Onyachi and Another v. Tanzania* (merits), *supra*, § 104.

²⁵ *Thomas v. Tanzania* (merits), *supra*, § 114; *Habyalimana and Another v. Tanzania*, *supra*, § 95; *Elisamehe v. United Republic of Tanzania* (merits) (26 June 2020), 4 AfCLR 227, § 55.

²⁶ *Paulo v. Tanzania*, *supra*, § 92. *Thomas v. Tanzania*, *supra*, § 123. See also *Abubakari v. Tanzania* (merits), §§ 138-139; *Minani Evarist v. United Republic of Tanzania* (merits and reparations) (21 September 2018) 2 AfCLR 402, § 68; *William v. Tanzania*, *supra*, § 85.

²⁷ *Thomas v. Tanzania*, *ibid*, § 123; see also *Abubakari v. Tanzania*, *supra*, §§ 138-139.

the Applicant be provided with free legal assistance and this should not have been contingent on the availability of financial resources.

76. The Court, therefore, holds that the Respondent State violated the Applicant's right to legal representation as guaranteed under Article 7(1)(c) of the Charter as read jointly with Article 14(3)(d) of the ICCPR.

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

77. The Applicant avers that his trial was unduly prolonged and this led to the violation of his right to be tried within reasonable time as protected under Article 7(1)(d) of the Charter.

78. The Applicant further avers that he was kept in remand for a period of eight to ten days before his arraignment at the Court contrary to sections 64(1)(c) and 67(3) of the Criminal Procedure Act (hereinafter referred to as "CPA"). He submits that he was denied bail on the ground that the victim of the alleged rape was still under medical investigation and was bailed out by his brothers only after two weeks from the date of the first arraignment. He avers that his bail was revoked because he was a driver moving within different regions in Tanzania to transport crops.

79. The Applicant surmises his allegations by reporting that he forgot the proceedings before the High Court in his cell at Ukonga Prison when he was transferred to Mafia Island Prison and only had Court proceedings from the District Court of Morogoro (trial court), which he submitted to this Court.

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80. The Respondent State maintains that under section 64(1)(c) of the CPA, detention beyond 24 hours is permitted when the accused has not formally been charged for different reasons including collection of evidence. It submits that the offence of rape and sodomizing of a minor is a serious

offence therefore, the State had a legal right to keep the Applicant under custody upon the expiration of the 24 hours.

81. The Respondent State contends that the Applicant was arrested on 7 October 2006 and was brought before the court after the police had gathered sufficient evidence to charge him. Furthermore, on 9 October 2006, the Court set bail conditions which the Applicant failed to comply with as he did not meet the condition of sureties. The matter was set for another bail hearing on 23 October 2006, however, this time, the Applicant fulfilled all the bail conditions and was set free. He subsequently absconded bail which resulted in its cancellation by the court, leading to his detention. On 23 January 2007, the preliminary hearing was conducted and all procedures were followed. The Respondent State argues that by 13 August 2009, the prosecution had closed its case and on 7 December 2009, when the case was scheduled for the defence hearing, the accused prayed for the trial to start afresh, therefore all witnesses who had previously testified before another judge were re-summoned.

82. Article 7(1)(d) of the Charter guarantees that:

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

83. The Court recalls its established jurisprudence in *Wilfred Onyango Nganyi and Others v. United Republic of Tanzania*, that the right to be tried within a reasonable time is an important aspect of fair trial. There is no standard period that is considered as reasonable time for a court to dispose of the matter.²⁸ The Court further held that the right to a fair trial also includes the principle that judicial proceedings should be finalised within a reasonable

²⁸ *Wilfred Onyango Nganyi and Others v. United Republic of Tanzania* (merits) (18 March 2016) 1 AfCLR 507, § 127; and *Benedicto Daniel Mallya v. United Republic of Tanzania* (merits and reparations) (26 September 2019) 3 AfCLR 482, § 48.

time.²⁹ In determining the right to be tried within a reasonable time, the Court has adopted a case-by-case approach whereby it considered, among others, factors such as: the complexity of the case, the conduct of the Parties, and that judicial authorities must exercise due diligence especially where the applicant faces severe penalties.³⁰

84. With regard to complexity of the case, the Court has considered factors such as the number of witnesses who testified, availability of evidence, the level and extent of the investigations, and whether specialised evidence such as DNA samples was required.³¹
85. In relation to due diligence, the Court notes from the pleadings³² that the Applicant was arrested on 6 October 2006 and on 9 October 2006, appeared before the District Court of Morogoro, where he was informed about the conditions for bail. As he was unable to meet the condition of bail on provision of sureties, he was remanded in custody. On 23 October 2006, another bail hearing was held and this time he fulfilled all the conditions and was therefore set free on bail. On 5 December 2006, the police authorities informed the court that they had completed the investigations.
86. Preliminary hearings were held on 23 January 2007 and the Applicant made his plea and also informed the District Court that he was not ready to proceed with the case, as he was suffering from malaria. His bail was thus extended. The prosecution commenced its case on 25 April 2007; closed its case on 13 July 2009 and the hearing for the Applicant was set for 2 September 2009. The Court observes that during this period, the Applicant absconded bail and was re-arrested and detained in custody. The Applicant's hearing commenced on 2 September 2009 but the prosecution

²⁹ *Cheusi v. Tanzania* (judgment), *supra*, § 116.

³⁰ *Msuguri v. Tanzania* (merits and reparations), *supra*, § 83; *Cheusi v. Tanzania* (judgment), *supra*, § 117; *Amini Juma v. United Republic of Tanzania* (merits and reparations) (30 September 2021) 5 AfCLR 431, § 104 and *Guehi v. Tanzania* (merits and reparations), *supra*, §§ 122-124.

³¹ *Dominick Damian v. United Republic of Tanzania*, ACTHPR, Application No. 048/2016, Judgment of 4 June 2024 (merits and reparations), § 58.

³² Record of proceedings before the District Court of Morogoro, Criminal Case No. 647 of 2006 and the Judgment in the District Court of Morogoro, Criminal Case No. 647 of 2006.

prayed for an adjournment to enable it to review the evidence, which adjournment was granted and hearing set for 16 September 2009. On 16 September 2009 and 30 September 2009, the Respondent State prayed for other adjournments, because the judge was on leave and on 15 October 2009 because a stand in judge was not conversant with the case. Furthermore, on 28 October 2009, the hearing was adjourned because the trial judge had an emergency, the file had been assigned to a new judge, and the prosecution had not acquainted itself with the case.

87. On 7 December 2009, the Applicant prayed for another date to be set for hearing of the case *de novo*, on the grounds that he could not recall all the evidence adduced by the prosecution and its witnesses, since 2006, when the case was first heard by the District Court. He averred that this would be in the interest of justice, since a new judge was now presiding over his case. The prosecution did not object to the Applicant's request but prayed that the Applicant be given the statements of the witnesses examined to enable him to prepare his defence. The Applicant objected to the prosecution's prayer insisting that the case be heard afresh because he was illiterate, and because, the case had been heard by another judge since 2006.
88. On 21 December 2009, the new presiding judge made a ruling in favour of the Applicant to enable him refresh his memory. In accordance with section 214(2) of the CPA Cap 20/ RE/2002 and the Respondent State's case law,³³ the judge granted the Applicant's request to re-summon all the witnesses for the prosecution who had previously testified before the previous judge. The judge set the re-hearing for 28 January 2010.
89. The case was heard *de novo* on 28 January 2010, starting with the examination of the prosecution witness until 9 June 2010. The Applicant's case (defence hearing), in turn commenced on 18 June 2010, and was finalised on 21 June 2010. The District Court then rendered its judgment on 20 July 2010. The Applicant later appealed to the High Court in 2010 and

³³ *Stephan Ngonyani v. R* of (1989) TLR 53.

judgment was rendered on 7 September 2010. Subsequently, he appealed to the Court of Appeal in 2012, and judgment was rendered on 14 November 2014.

90. In the present case, the Applicant argues that his right to be tried within a reasonable time arose before he was tried and for the duration of time it took to finalise his trial. The Court will accordingly consider the claims in that order.

i. Regarding the duration of the pre-trial detention

91. Article 6 of the Charter, provides that:

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

92. Although not raised by the Applicant, the Court finds it relevant to refer to Article 9(3) of the ICCPR which provides that:

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

93. According to the jurisprudence of the United Nations Human Rights Committee (the Committee), the term “promptly” must, “be determined on a case-by-case-basis”, the delay between the arrest of an accused and the time before he is brought before a judicial authority “should not exceed a

few days”.³⁴ The Committee also held that “In the absence of a justification for a delay of four days before bringing the author to a judicial authority”, this delay violated the notion of promptness in article 9(3).³⁵

94. In relation to the Applicant’s pre-trial detention at the police station, the record indicates that he was arrested on 6 October 2006 at about 21:00 hrs and brought before the Morogoro District Court for plea taking on 9 October 2006. The Applicant was also informed of the bail conditions but he did not satisfy the condition for sureties, therefore, he was remanded. The matter was set for another bail hearing on 23 October 2006, and this time, the Applicant fulfilled all the bail conditions and was set free.
95. In the instant case, the Court observes that whereas an estimated time was provided when the Applicant was arrested on 6 October 2006, the time at which he was brought before the District Court on 9 October 2006 is not stated. Nevertheless, the Court observes that this period does not exceed 48 hours, from 6 October 2006 at about 21:00 hrs to 9 October 2006. The Court considers this to be reasonable in this specific case, in light of the gravity of the offence of rape and the resultant investigations and medical examinations that had to be conducted by the police authorities.
96. In light of the above, the Court finds that the Respondent State did not violate the Applicant’s right to be tried within a reasonable time as guaranteed under Article 6 of the Charter as read jointly with Article 9(3) of the ICCPR with regard to his pre-trial detention.

ii. Regarding the entire duration of the trial before the national courts

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

³⁴ Communication No. 373/1989, *L. Stephens v. Jamaica* (Views adopted on 18 October 1995), in UN doc. GAOR, A/51/40 (vol. II), p. 9, § 9.6.

³⁵ Communication No. 625/1995, *M. Freemantle v. Jamaica* (Views adopted on 24 March 2000), in UN doc. GAOR, A/55/40 (vol. II), p. 19, § 7.4; See also violation of art. 9(3) where the delay exceeded eight days, Communication No. 373/1989, *L. Stephens v. Jamaica* (Views adopted on 18 October 1995), in UN doc. GAOR, A/51/40 (vol. II), p. 9, § 9.6.

Every individual shall have the right to have his cause heard. This comprises ... the right to be tried within a reasonable time by an impartial court or tribunal.

98. The Court recalls its jurisprudence that while some delays can be attributed to procedural requests by the Applicant, the responsibility to ensure that justice is delivered without undue delay ultimately rests with the State.³⁶ A period of six years, five months and one day to finalise the case, can be attributed to delays orchestrated both by the Respondent State's and Applicant's conduct.
99. Regarding complexity of the case, the Court further reiterates its jurisprudence on the factors considered such as the number of witnesses who testified, availability of evidence, the level and extent of the investigations, and whether specialised evidence such as DNA samples was required.³⁷
100. Regarding the Applicant's detention at the police station, the record shows that the Applicant first appeared before the, the District Court of Morogoro on 9 October 2006 and judgment was rendered on 20 July 2010. He later appealed to the High Court in 2010,³⁸ which also rendered its judgment on 7 September 2010. Subsequently, the Applicant appealed to the Court of Appeal in 2012,³⁹ and judgment was rendered on 14 November 2014.
101. The Court notes that domestic proceedings involving the Applicant lasted three years, nine months and 11 days at the District Court; seven months and seven days at the High Court and two years and 14 days at the Court of Appeal. The cumulative total of the duration of the trial at the national courts, was six years, five months and one day.

³⁶ *Cheusi v. Tanzania* (judgment), *supra*, § 116

³⁷ *Damian v. Tanzania*, *supra*, § 58.

³⁸ Dates not indicated in the pleadings filed by all parties.

³⁹ Dates not indicated in the pleadings filed by all parties.

102. It should also to be noted in the instant case that although the matter was adjourned on multiple occasions during the proceedings before the District Court, upon the request of the Respondent State,⁴⁰ the trial was commenced *de novo*⁴¹ when a new judge took over the case based on the motion of the Applicant, because he could not recall the prosecution witnesses' testimonials and did not know how to read English. The Applicant's prayer to start the case *de novo*, resulted in the fresh testimony of all the prosecution witnesses who had previously testified contributing to the delay of six months and 30 days in finalising the case due to the fact that on 21 December 2009, the new presiding judge ruled in favour of the Applicant to start the case *de novo*.

103. Concerning the complexity of the case, the Court observes that the prosecution had a total number of 4 witnesses while the Applicant had 1 witness who testified, the P.3 form (medical report) was ready and available at the trial. Additionally, the Applicant was arrested on 6 October 2006, taken for plea taking on 9 October 2006, before the Morogoro District Court and investigations had been completed by 5 December 2006, which is a duration of 1 month and 27 days. Moreover, no specialised evidence such as DNA samples were required.

104. As a consequence of the above, the Court finds that the Respondent State did not violate the Applicant's right to be tried within a reasonable time on the duration of the period of the trial as provided under Article 7(1)(d) of the Charter.

E. Alleged violation of the right to a fair trial by use of a defective charge sheet

105. The Applicant avers that he was charged with rape based on a defective charge sheet. This is because it left out the specific subsection of the Penal Code relating to the rape charge.

⁴⁰ Sick, on official duty, on leave and facing an emergency.

⁴¹ 21 December 2009.

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106. The Respondent State submits that, the allegation that the charge sheet was defective touches on evidential matters and that the Applicant is attempting to move this Court to sit as an appellate court on evidentiary matters which were already decided by the Court of Appeal of Tanzania. Citing the case of *Lohe Issa Konate v. Burkina Faso*, the Respondent State asserts that this Court is not vested with such jurisdiction. It also avers that the omission of the offence was minor and in no way caused a miscarriage of justice, since the Applicant clearly understood the charge against him. Furthermore, it is the Respondent State's contention that the record of proceedings shows that the charge was explained to the Applicant and a plea of not guilty was recorded.

107. In reference to the Court of Appeal's decision in Criminal Appeal No. 164 of 2010, the Respondent State argues that the failure to specify the subsection of the law in the charge sheet was not prejudicial. It contends that this was a minor omission, as the Applicant was aware he was charged with the rape of a 12-year-old girl and therefore understood the nature of the offence.

108. Article 7(1) of the Charter provides:

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

- a. The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
- b. The right to be presumed innocent until proved guilty by a competent court or tribunal;
- c. The right to defence, including the right to be defended by counsel of his choice;

- d. The right to be tried within a reasonable time by an impartial court or tribunal.

109. The Court observes that Article 7(1) of the Charter guarantees the protection of fair trial rights, which extend beyond those expressly stated in the four abovementioned sub-provisions. Although not raised by the Applicant, the Court finds it relevant to evoke Article 14 of the ICCPR which deals with the said rights in a greater detail.⁴² The relevant excerpts of Article 14 of the ICCPR reads:

“[...] In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law [...]”

It flows from a joint reading of the provisions of the two instruments that an accused person has the right to a fair hearing.

110. The Court considers that, as it has consistently held, upholding the right to have one's cause heard requires that, in criminal matters, conviction and sentencing should be based on a case proven beyond reasonable doubt.⁴³ The Court is of the opinion that such a standard applies with greater relevance, generally where a severe penalty is being imposed,⁴⁴ and particularly in instances involving a lengthy sentence of 30 years imprisonment as is the case in the present Application.

111. The Court further observes that, while it does not substitute national courts when it comes to assessing the particularities of evidence used in domestic

⁴² See *Guehi v. Tanzania*, *supra*, § 73. See also *Nganyi and others v. Tanzania* (merits), §§ 33-36; and *Anudo Ochieng Anudo v. United Republic of Tanzania* (merits) (22 March 2018) 2 AfCLR 248, §§ 100 and 106.

⁴³ *Guehi v. Tanzania*, *supra*, §§ 105-111. See also *Werema and Another v. Tanzania*, *supra*, § 59-64; and *Abubakari v. Tanzania*, *supra*, §§ 174, 193 and 194.

⁴⁴ *Oscar Josiah v. United Republic of Tanzania* (merits) (28 March 2019) 3 AfCLR 83, § 51. See also *Kijiji Isiaga v. United Republic of Tanzania* (merits) (21 March 2018) 2 AfCLR 218, §§ 78 and 79.; *Elisamehe v. Tanzania*, *supra*, § 55; *James Wanjara & Others v. United Republic of Tanzania* (judgment) (25 September 2020) 4 AfCLR 673, § 68.; *Mugesera v. Republic of Rwanda* (judgment) (27 November 2020) 4 AfCLR 834, § 57.

proceedings, it retains the power to examine whether the manner in which such evidence was considered is compatible with international human rights norms.⁴⁵ One critical concern in that respect is to ensure that the evaluation of facts and evidence by domestic courts was not manifestly arbitrary or did not result in a miscarriage of justice to the detriment of the Applicant.⁴⁶

112. In the instant case, the Court notes that the issue for determination is whether the consideration of evidence before the domestic courts was in accordance with the requirements of a fair trial with regard to the alleged violation of using a defective charge sheet to convict the Applicant. 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.” 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”.⁴⁷ The Court only intervenes when there is a manifest error in the assessment of the national courts that would result in miscarriage of justice.⁴⁸

113. With regard to the defective charge sheet, the Court notes from the record of proceedings that during the preliminary hearing, the charge was explained to the Applicant and a plea of not guilty was recorded. This implies that the Applicant understood the nature of offence with which he was charged, that of raping a 12-year-old girl.

114. In the light of the foregoing, the Court finds that the failure of the Respondent State to record the offence on the Applicant’s charge sheet, was a procedural irregularity, which however did not result into a miscarriage of justice, as the Applicant was able to understand the offence with which he was charged and also took a plea of not guilty.

⁴⁵ *Abubakari v. Tanzania*, *supra*, §§ 26 and 173. See also *Isiaga v. Tanzania*, *supra*, § 61; *Josiah v. Tanzania*, *supra*, §§ 52-63; *Guehi v. Tanzania*, *supra*, §§ 105-111; *Werema and Another v. Tanzania*, *supra*, §§ 59-64.

⁴⁶ *Abubakari v. Tanzania*, *ibid*; and *Owino and Another v. Tanzania*, *supra*, § 38.

⁴⁷ *Ibid*; *Isiaga v. Tanzania*, *supra*, § 65; *Wanjara & Others v. Tanzania*, *supra*, § 79; *Mohamed Selemani Marwa v. United Republic of Tanzania* (judgment) (2 December 2021) 5 AfCLR §, 87.

⁴⁸ *Ibid*.

115. Consequently, the Court finds that the Respondent State did not violate the Applicant's right to a fair trial guaranteed under Article 7(1) of the Charter as read together with Article 14 of the ICCPR with regard to being charged by using a defective charge sheet.

F. Alleged violation of the right to dignity protected under Article 5 of the Charter

116. The Applicant avers that during his interrogation, he was beaten and the prosecution relied on his statement to prefer charges against him taken during the interrogation when he was being brutalised. Furthermore, that his statement was made in Kiswahili but recorded in English.

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117. The Respondent State did not make any submission on this allegation.

118. 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 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.

119. Although not raised by the Applicant, the Court finds it relevant to evoke Articles 1 and 12 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("UNCAT"), which deals with the said rights in a greater detail.

120. The Court recalls its jurisprudence in the Matter of *Alex Thomas v. United Republic of Tanzania*,⁴⁹ which adopted the definition of torture by the African Commission as set out in Article 1 of the UNCAT, which provides that:

“... For 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...”

121. Furthermore, Article 12 of the UNCAT, provides that:

“Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction”.

122. The Court finds it relevant to refer to the *Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa* adopted by the African Commission on Human and Peoples’ Rights,⁵⁰ which states that torture can take various forms and determining whether a right was breached will depend on the circumstances of each cause.⁵¹

⁴⁹ *Thomas v. Tanzania*, *supra*, § 144.

⁵⁰ The African Commission adopted these guidelines in 2008; the Guidelines are commonly known as the *Robben Island Guidelines*. See also Application 288/04 *Gabriel Shumba v. Zimbabwe*, Decision of 2 May 2012, §§ 142 to 166.

⁵¹ *Guehi v. Tanzania*, *supra*, § 131.

123. Furthermore, the Court recalls its jurisprudence that the prohibition of cruel, inhuman and degrading treatment under Article 5 of the Charter is absolute.⁵² It notes that the allegations being examined relate to the alleged beatings by the police after the arrest to coerce a confession.

124. In the instant case, the Court, notes that the Applicant received medical treatment on five occasions in 2020⁵³ as illustrated by the medical notes on record. The medical notes also indicate that he was receiving treatment for a swelling at the left inguinal area.⁵⁴ The Court observes that the Applicant has not attached any other evidence to substantiate the claim that he was beaten other than the medical notes. The Court further observes that the Applicant claims that he was beaten at the police station when he was arrested in 2006, during the interrogation, however, the medical treatment notes attached as evidence of proof of beatings received are dated on five different dates in 2020 and furthermore, do not indicate that he was receiving treatment for injuries sustained through beatings or through brutalisation. Moreover, from the record of proceedings, the Court notes that the Applicant did not raise before the domestic courts, the complaint of being brutalized by the police authorities, which he could have raised to seek redress.

125. It follows that the Applicant has not sufficiently proved the alleged violation of his right to dignity. The Court has consistently held that general statements that a right has been violated are not sufficient and more substantiation is required to prove an allegation.⁵⁵

126. In light of the above, this Court holds that the Respondent State did not violate the Applicant's right not to be subjected to cruel, inhuman and degrading treatment as provided under Article 5 of the Charter as read

⁵² See *Huri-Laws v. Nigeria* Communication 225/98 (2000) AHRLR 273 (ACHPR 2000), § 41; *Guehi v. Tanzania*, *ibid*.

⁵³ 25/4/2020, 2/5/2020, 7/5/2020, 12/5/2020 and 13/5/2020.

⁵⁴ The inguinal region of the body also known as the groin, is located on the lower portion of the anterior abdominal wall.

⁵⁵ *Kemboge v. Tanzania*, *ibid*, § 9; and *Thomas v. Tanzania*, *supra*, § 140.

jointly with Articles 1 and 12 of the UNCAT, in relation to the Applicant's allegation that he was brutalised and beaten.

VIII. REPARATIONS

127. In his Application, the Applicant prays the Court to order the restoration of his rights, order reparations where violations are found, and to release him from prison custody.

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128. On its part, the Respondent State prays the Court to dismiss the Applicant's prayers for reparation.

129. 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.”

130. The Court recalls its established jurisprudence that in order, “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”.⁵⁶

⁵⁶ *Ingabire Victoire Umuhoza v. Republic of Rwanda* (reparations) (2018) 2 AfCLR 202, § 19. See also *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabè des Droits de l'Homme et des Peuples v. Burkina Faso* (reparations) (2015) 1 AfCLR 258, § 20; *Lohé Issa Konaté v. Burkina Faso* (reparations) (2016) 1 AfCLR 346, § 15(b); and *Mohamed Abubakari v. United Republic of Tanzania* (reparations) (4 July 2019) 3 AfCLR 334, § 19.

131. The Court restates its jurisprudence that, the purpose of reparation is to “...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.”⁵⁷ Measures that a State could take to remedy a violation of human rights include: restitution, compensation and rehabilitation of the victim, as well as measures to ensure non-repetition of the violations taking into account the circumstances of each case.⁵⁸ The Court has also previously held that a judgment finding violation of rights protected in the Charter forms part of reparations.⁵⁹
132. 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 and the onus is on the Applicant to provide evidence to justify his prayers.⁶⁰ With regard to moral damages the requirement of proof is not as rigid,⁶¹ and prejudice is presumed when violations are established.⁶²
133. In the instant case, the Court has found that the Respondent State violated the Applicant’s right to a fair trial by failing to provide him with free legal representation as guaranteed under Article 7(1)(c) of the Charter read together with Article 14(3)(d) of ICCPR.

⁵⁷ *Abubakari v. Tanzania* (reparations), *supra*, § 20; *Alex Thomas v. United Republic of Tanzania*, (reparations) (4 July 2019) 3 AfCLR 287, § 12; and *Nganyi and Others v. Tanzania* (reparations), § 16.

⁵⁸ *Umuhoza v. Rwanda*, *supra*, § 20.

⁵⁹ *Cheusi v. Tanzania*, *supra*, § 173; *Guehi v. Tanzania*, *supra*, § 194; *Reverend Christopher Mtikila v. United Republic of Tanzania* (reparations) (13 June 2014) 1 AfCLR 72, § 45.

⁶⁰ *Kennedy Gihana and Others v. Republic of Rwanda* (merits and reparations) (28 November 2019) 3 AfCLR 655, § 139; See also *Mtikila v. Tanzania*, *supra*, § 40; *Konate v. Burkina Faso*, *supra*, § 15(d).

⁶¹ *Zongo and Others v. Burkina Faso* (reparations), *supra*, § 55.

⁶² *Ally Rajabu and Others v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 539, § 136; *Guehi v. Tanzania*, *supra*, § 55; *Lucien Ikili Rashidi v. United Republic of Tanzania*, (merits and reparations) (28 March 2019) 3 AfCLR 13, § 58.

A. Pecuniary reparations

i. Material prejudice

134. In the instant case, the Applicant merely prays the Court to grant him reparations. He does not indicate the nature of the material prejudice suffered nor has he linked it to the alleged violations. He also does not support his prayers with proof of loss incurred.

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135. The Respondent State prays that the prayer for reparations be dismissed.

136. The Court recalls that for a claim for material prejudice to be granted, an Applicant must show a causal link between the established violation, the loss suffered, and further prove the loss suffered.⁶³ Furthermore, the Applicant must provide justification for the amounts claimed.⁶⁴ The Applicant must also provide acceptable evidence to prove expenses allegedly incurred, such as receipts for the payments.⁶⁵

137. In the instant case, the Court notes that the Applicant did not pray for a specific amount of pecuniary reparation for adequate compensation, and furthermore, did not establish a causal link between the established violations and the loss suffered. The Court finds that the claim is unjustified and therefore rejects it.

⁶³ See *Guehi v. Tanzania*, *supra*, § 181; *Zongo and Others v. Burkina Faso* (reparations), *supra*, § 62; *Henerico v. Tanzania*, *supra*, § 180.

⁶⁴ *Zongo and Others v. Burkina Faso*, *supra*, § 81; and *Mtikila v. Tanzania* (reparations), *supra*, § 40.

⁶⁵ *Jonas v. Tanzania*, *supra*, § 20, *Guehi v. Tanzania*, *supra*, § 18.

ii. Moral prejudice

138. The Applicant does not expressly request the Court to grant reparations for moral prejudice. The Applicant only prays the Court to grant him reparations.

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139. The Respondent State contends that the Applicant is not entitled to any form of reparations.

140. In line with established case-law that moral prejudice is presumed in cases of human rights violations, the Court notes that the quantum of damages in this respect is assessed based on equity, considering the circumstances of the case.⁶⁶

141. The Court holds that a presumption of moral prejudice arises from the violation established regarding the right to a fair trial by not providing the Applicant with legal representation as guaranteed under Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR.

142. The Court notes that the violation of the right to legal representation caused moral prejudice to the Applicant in the circumstances of this case. In exercising its discretion, the Court therefore awards the Applicant a symbolic sum of Tanzanian Shillings Five Hundred (TZS 500) as adequate reparation of the moral prejudice he sustained on the violation of his right to legal representation.

⁶⁶ *Zongo and Others v. Burkina Faso* (reparations), *supra*, § 55; *Umuhoza v. Rwanda*, *supra*, § 59; *Jonas v. Tanzania*, *supra*, § 23.

B. Non-pecuniary reparations

i. Quashing the conviction and sentence

143. The Applicant prays the Court to quash his conviction and sentence.

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144. The Respondent State argues that the Applicant's prayer for release should be dismissed as he is serving a lawful sentence imposed on him in accordance with its laws. It also reiterates that ordering the release of the Applicant is not within the mandate of the Court.

145. Regarding the Applicants prayer that the sentence be set aside, the Court has held that such prayers are to be determined on a case-by-case basis having due consideration mainly to proportionality between the measure sought and the extent of the violation established.⁶⁷ The Court wishes to emphasise that it does not, ordinarily, examine details of matters of fact and law that national courts are entitled to address.⁶⁸ Nevertheless, the quashing of the sentence and the release of an applicant may be ordered in special and compelling circumstances.⁶⁹

146. The Court has held that this would be warranted only in cases where the violation found was such that it had necessarily vitiated the conviction and sentence. This would be the case "if an Applicant sufficiently demonstrates or the Court itself establishes from its findings that the Applicant's arrest or

⁶⁷ *Rajabu and Others v. Tanzania* (merits and reparations), *supra*, § 156.

⁶⁸ *Abubakari v. Tanzania* (merits), *supra*, § 28 and *Evarist v. Tanzania* (merits and reparations), *supra*, § 81.

⁶⁹ *Thomas v. Tanzania*, *supra*, § 234; *Guehi v. Tanzania*, *supra*, § 160; *Isiaga v. Tanzania*, *supra*, § 96 and *Thomas Mang'ara Mango & Anor. v. United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 314, § 156.

conviction is based entirely on arbitrary considerations and that his continued imprisonment would occasion a miscarriage of justice.”⁷⁰

147. In the instant case, the Court notes that it has only found a violation of the Applicant’s right to free legal assistance. However, it has not found fault with the proceedings leading to the Applicants’ conviction, sentence and incarceration.

148. In the circumstances, the Court holds that the Applicant has not proven the existence of any compelling circumstances to warrant the vitiation of the conviction and sentence, and neither has the Court, *proprio motu*, established the existence of such circumstances. The Court, therefore, dismisses the Applicant’s prayer to quash the conviction and to set aside the sentence.

ii. Restoration of liberty

149. The Applicant prays the Court to restore his liberty by making an order to release him from prison

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150. The Respondent State argues that ordering the release of the Applicant is not within the mandate of the Court, in any case, the prayer should be dismissed since the Applicant is serving a lawful sentence imposed on him in accordance with its laws.

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

⁷⁰ *Mgosi Mwita Makungu v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 550, § 84 and *William v. Tanzania*, *supra*, § 101.

The Court can only order a release if an Applicant sufficiently demonstrates or if the Court by itself establishes from its findings that the Applicant's arrest or conviction is based entirely on arbitrary considerations and that his continued detention would occasion a miscarriage of justice.⁷¹

152. In the instant case, the Applicant has not set out specific or compelling circumstances that would warrant the Court to grant such an order, nor does the Court find any compelling justification to set the Applicants free. Furthermore, his conviction was not based on arbitrary considerations and that his continued detention would therefore, not occasion a miscarriage of justice. Consequently, the prayer for release is dismissed.⁷²

iii. Implementation and reporting

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

154. The absence of a prayer notwithstanding, the Court deems it necessary to order the Respondent State to report within six months from the date of notification of this judgment on the implementation of this judgment in accordance with Article 30 of the Protocol.

IX. COSTS

155. The Court notes that the Applicant does not make a prayer for costs, however the Respondent State, prays for the Applicant's claims for

⁷¹ *Henerico v. Tanzania* (merits and reparations), *supra*, § 202; *Makungu v. Tanzania*, *supra*, § 84; *Evarist v. Tanzania*, *supra*, 82 and *Juma v. Tanzania* (judgment), *supra*, § 165. See also, *Damian v. Tanzania*, *supra*, §§ 163-166.

⁷² *Stephen John Rutakikirwa v. United Republic of Tanzania*, ACTHPR, Application No. 013/2016, Judgment of 24 March 2022 (merits and reparations), § 88.

reparation to be dismissed in entirety with costs for being misconceived, baseless and untenable.

156. Pursuant to Rule 32(2) of the Rules of Court, “unless otherwise decided by the Court, each party shall bear its own costs, if any.”

157. Considering that proceedings before the Court are free of charge and that the Respondent State does not provide any justification for its prayer, the Court finds no reason to depart from the above cited Rule.

158. Accordingly, the Court orders that each Party shall bear its own costs.

X. OPERATIVE PART

159. For these reasons:

THE COURT,

Unanimously;

On jurisdiction

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

On admissibility

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

On merits

- v. *Holds* that the Respondent State did not violate the Applicant's rights to non-discrimination and right to equality and equal protection of the law, as guaranteed under Article 3(1) and (2) of the Charter;
- vi. *Holds* that the Respondent State did not violate the Applicant's right to appeal to competent national organs as guaranteed under Article 7(1)(a) of the Charter;
- vii. *Holds* that the Respondent State did not violate the Applicant's right to a fair trial guaranteed under Article 7(1) of the Charter as read together with Article 14 of the ICCPR, with regard to being charged by using a defective charge sheet;
- viii. *Holds* that the Respondent State did not violate the Applicant's right to be tried within a reasonable time as guaranteed under 6 of the Charter as read jointly with Article 9(3) of the ICCPR with regard to pretrial detention;
- ix. *Holds* that the Respondent State did not violate the Applicant's right to be tried within a reasonable time as guaranteed under Article 7(1)(d) of the Charter with regard to the duration of the entire trial;
- x. *Holds* that the Respondent State did not violate the Applicant's right not to be subjected to cruel inhuman and degrading treatment as provided under Article 5 of the Charter as read jointly with Article 1 and 12 of the UNCAT, regarding the alleged brutalisation and beating by police authorities;
- xi. *Holds* that the Respondent State violated the Applicant's right to defence by failing to provide effective free legal assistance, as guaranteed under Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR.

On reparations

Pecuniary reparations

- xii. *Awards* the Applicant a symbolic sum of Tanzanian Shillings Five Hundred (TZS 500) for moral damages;
- xiii. *Orders* the Respondent State to pay the amount set out under (xii) above.

Non-pecuniary reparations

- xiv. *Dismisses* the Applicant's prayer for quashing his sentence and conviction;
- xv. *Dismisses* the Applicant's prayer for release from prison.

On implementation and reporting

- xvi. *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 implementation of the decision set forth herein and thereafter, every six months until the Court considers that there has been full implementation thereof.

On costs

- xvii. *Orders* each Party to bear its own costs.

Signed:

Blaise TCHIKAYA, President;



Chafika BENSAOULA, Vice-President;



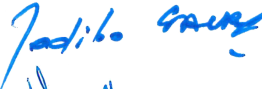
Rafaâ BEN ACHOUR, Judge; 

Suzanne MENGUE, Judge; 

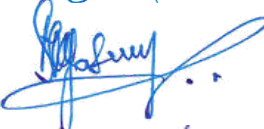
Tujilane R. CHIZUMILA, Judge; 

Stella I. ANUKAM, Judge; 

Dumisa B. NTSEBEZA, Judge; 

Modibo SACKO, Judge; 

Dennis D. ADJEI, Judge; 

Duncan, GASWAGA, Judge; 

and Grace W. KAKAI, Deputy Registrar. 

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.

