

AFRICAN UNION		UNION AFRICAINE
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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

CHACHA JEREMIAH MURIMI AND OTHERS

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NOS. 039/2019, 040/2019 & 041/2019
(CONSOLIDATED APPLICATIONS)

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, Judge of the Court, and a national of Tanzania, did not hear the Application.

In the matter of:

Chacha Jeremiah MURIMI, Methew Jeremiah DAUD and Paschal Ligoye MASHIKU

Represented by:

Advocate David SIGANO, Ag. Chief Executive Director, East Africa Law Society

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; and
- iii. Mr Mark MULWAMBO Ag. Director, Civil Litigation, Principal State Attorney Office of the Solicitor General.

After deliberation,

Renders this Judgment:

I. THE PARTIES

1. Chacha Jeremiah Murimi, Methew Jeremiah Daud and Paschal Ligoye Mashiku (hereinafter referred to as “the First Applicant,” “the Second Applicant,” and “the Third Applicant” respectively or “the Applicants” jointly”), are Tanzanian nationals who, at the time of filing the Application, were incarcerated at Butimba Central Prison, Mwanza, having been convicted of murder and sentenced to death. They allege violation of their rights on the basis of the proceedings before the domestic courts. On 6 February 2026, the Applicants informed the Court that their sentences were commuted to life imprisonment.
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 MATTER OF THE APPLICATION

A. Facts of the matter

3. It emerges from the record that, on 26 June 2009, at Ibanda village in Kagera Region, the Applicants jointly murdered one Aron Nongo, who was a person with albinism, by using a *machete*. On 19 July 2009, the Applicants were arrested. They were charged with murder, on 28 July 2009, before the High Court of Tanzania sitting in Mwanza. Subsequently, they were convicted and sentenced to death by hanging on 16 October 2015.
4. Dissatisfied with the conviction and sentence, the Applicants appealed to the Court of Appeal of Tanzania sitting at Mwanza, which dismissed their appeal on 4 April 2019 for lack of merit.
5. On 6 February 2026, the Applicants informed the Court that their sentences were commuted to life imprisonment.

B. Alleged violations

6. The Applicants allege the violation of the following:
 - i. The right to a fair trial;
 - ii. The right to life; and
 - iii. The right to dignity.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

7. On 7 August 2019, the Applicants filed Application No. 039/2019, Application No. 040/2019 and Application No. 041/2019 individually. On 21 August 2019, the above Applications were served on the Respondent State and it was granted 30 days to submit its list of representatives and 60 days

to file its Response. However, the Respondent State did not file a Response within the time limit prescribed.

8. On 26 September 2019, The Court, *suo motu*, ordered the joinder of the above-mentioned Applications, in the interests of the fair administration of justice. The Parties were duly notified of the joinder by a notice dated 27 September 2019.
9. On 12 October 2021, the Court *suo motu* granted the Applicants legal assistance. On 28 July 2022, the Court, through an Order, granted the Applicants' request to amend pleadings, and the Order was transmitted to the Parties on 29 July 2022.
10. On 16 December 2022, the Applicants filed their amended pleadings which were served on the Respondent State on 3 January 2023. The Respondent State was granted 45 days to file a Response but it failed to do so.
11. Pleadings were closed on 11 November 2025 and the Parties were notified thereof.
12. On 20 November 2025, the Respondent State filed a request for the Court to reopen the pleadings and grant it leave to file its Response, out of time.
13. On 2 December 2025, the Court ordered the reopening of pleadings and the Respondent State's Response was deemed to have been duly filed. The said Response was transmitted, on 4 December 2025 to the Applicants for their Reply within 45 days. The Applicants did not file a Reply at the elapsing of the time limit.
14. Pleadings were closed on 27 January 2026 and the Parties were duly informed thereof.
15. On 6 February 2026, the Applicants filed a request for the Court to reopen the pleadings and grant them leave to file their Reply, out of time. They also

informed the Court that their sentences were commuted to life imprisonment. The request was transmitted, on 11 February 2026, to the Respondent State, for its observations within seven days. However, the Respondent State did not file any observations on the request.

16. On 26 February 2026, the Court ordered the reopening of pleadings and deemed the Reply of the Applicants as duly filed. The Reply was transmitted to the Respondent State for information on 3 March 2026.

17. The pleadings were closed on 30 March 2026 and the Parties were notified.

IV. PRAYERS OF THE PARTIES

18. The Applicant prays the Court for:

- i. A Declaration that it has jurisdiction to hear the Application;
- ii. To find the Application admissible;
- iii. To find that the Respondent State has violated Articles 4, 5, 7(1), and 7(1)(c) of the Charter;
- iv. An Order for release of the Applicants;
- v. Payment of reparations in the amount of \$34,308 per Applicant for moral prejudice suffered;
- vi. Payment of reparations to the indirect victims to the tune of \$10,000;
- vii. Payment of reparations in the amount the Court considers reasonable to the Applicant for material prejudice suffered.

19. The Respondent State prays the Court to:

- i. Declare that it has not violated Articles 4 and 5 of the African Charter;
- ii. Find that no violation occurred regarding the Applicants' right to a fair trial;
- iii. Find that the Respondent did not violate the Applicants' rights to defence or legal assistance;
- iv. Find that the Applicants were tried within a reasonable time;

- v. Declare that no procedural irregularities occurred and, consequently, the trial and appellate decisions stand and the Applicants should not be released;
- vi. Declare that the Court lacks jurisdiction over the evidential allegations raised and that the Application is inadmissible;
- vii. Find that the Applicants are not entitled to any reparations;
- viii. Grant any other reliefs the Court deems appropriate.

V. JURISDICTION

20. 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.

21. 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."

22. On the basis of the above-cited provisions, the Court must, in every Application, conduct a preliminary examination to ascertain its jurisdiction and rule on objections thereto, if any.

23. In the present Application, the Respondent State objects to the Court's material jurisdiction. The Court will, therefore, consider the said objection before examining other aspects of jurisdiction, if necessary.

A. Objection to material jurisdiction

24. The Respondent State submits that the violations alleged by the Applicants which relate to evidentiary issues *inter alia* on arrest, recording of cautioned statements, visual identification of witnesses, call upon the Court to act as a court of appeal, even though it does not have such jurisdiction.
25. Furthermore, citing the case of *Christopher Jonas v. Tanzania*, the Respondent State contends that the Court's jurisdiction is limited to determining the conformity of the national judicial procedures with the Charter rather than re-evaluating evidence in cases concluded by its national courts.

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26. The Applicants aver that the Court has jurisdiction to determine this Application in accordance with Article 3 of the Protocol, as they have alleged violations of human rights protected by the Charter.

27. 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 alleged violations are of rights guaranteed in the Charter, the Protocol or any other human rights instruments ratified by the Respondent State.²

² *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 (merits and reparations), § 21. *Brahim Ben Abdelhamid Ben Mabrouk Ayed v. Republic of Tunisia*, ACtHPR, Application No. 008/2019, Judgment of 5 February 2025 (merits and reparations), § 30; *Elyssa v. Republic of Tunisia*, ACtHPR, Application No. 061/2019, Judgment of 4 December 2025 (merits and reparations), §§ 41-42.

28. In the instant case, the Applicants allege the violation of the right to life, right to dignity and the right to a fair trial which are protected under the Charter, to which the Respondent State is a party. The Court thus finds that, in considering these allegations, it will be discharging its mandate to interpret and apply the Charter and other human rights instruments ratified by the Respondent State.
29. As regards the contention that the Court would be exercising appellate jurisdiction, by examining certain claims which were already determined by the Respondent State's domestic courts, the Court reiterates its position that it does not exercise appellate jurisdiction with respect to the decisions of domestic courts.³ However, it retains the power to assess the propriety of domestic proceedings against standards set out in international human rights instruments ratified by the State concerned.⁴
30. In view of the foregoing, the Court dismisses the Respondent State's objection and holds that it has material jurisdiction to hear the Application.

B. Other aspects of jurisdiction

31. The Court notes that there is no contention regarding its personal, temporal or territorial jurisdiction. Nevertheless, it must satisfy itself that these aspects have been met.
32. 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 its Declaration. The Court recalls its jurisprudence that even though the Respondent State withdrew

³ *Ernest Francis Mtingwi v. Republic of Malawi* (jurisdiction) (15 March 2013) 1 AfCLR 190, § 14; *Kenedy Ivan v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65, § 26; *Emmanuel Yusuf Noriega v. United Republic of Tanzania*, ACTHPR, Application No. 013/2018, Judgment of 26 June 2025 (merits and reparations), § 22.

⁴ *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 33; *Werema Wangoko Werema and Waisiri Wangoko Werema v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 520, § 29; *Thomas v. Tanzania* (merits) *supra*, § 130, and *Noriega v. Tanzania* (merits and reparations), *supra*, § 22.

its Declaration on 21 November 2019, this withdrawal took effect on 22 November 2020, which was after the filing of the Applications on 7 August 2019.⁵ Consequently, the Court finds that it has personal jurisdiction.

33. With regard to temporal jurisdiction, the Court notes that the alleged violations happened between 2015 and 2019. 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.
34. The Court also notes that it has territorial jurisdiction as the alleged violations occurred in the Respondent State's territory.
35. In light of the foregoing, the Court holds that it has jurisdiction to hear this Application.

VI. ADMISSIBILITY

36. 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.”
37. 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.”
38. 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:

⁵ *Cheusi v. Tanzania* (merits and reparations) *supra*, §§ 37-39. *Noriega v. Tanzania* (merits and reparations), *supra*, § 25.

- 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.

39. In this Application, the Respondent State raises an objection to the admissibility of the Application based on the Applicant's failure to exhaust local remedies. The Court will, therefore, consider the said objection before examining other conditions of admissibility, if necessary.

A. Objection based on non-exhaustion of local remedies

40. The Respondent State contends that there were remedies available to the Applicants which they should have exhausted, but they did not. In this regard, the Respondent State submits that the Applicants should have filed a constitutional petition alleging the violation of his rights, before the High Court of Tanzania, in accordance with Article 30(3) of the Constitution of the United Republic of Tanzania, 1977 and section 4 of the Basic Rights and Duties Enforcement Act (Revised 2019).

41. The Applicants aver that they exhausted all local remedies having appealed the decision of the High Court before the Court of Appeal, which delivered its decision dismissing the appeal on 4 April 2019.

42. The Court notes, pursuant to Article 56(5) of the Charter, whose provisions are restated in Rule 50(2)(e) of the Rules, that, any application filed before it has to fulfil the requirement of exhaustion of local remedies. The rule of exhaustion of local remedies aims at providing states the opportunity to resolve cases of alleged human rights violations within their jurisdiction before an international human rights body is called upon to determine the state's responsibility for the same.⁶
43. This Court has also held in a number of cases involving the Respondent State that the remedy concerning the filing of a constitutional petition before the High Court, is an extraordinary remedy that Applicants are not required to exhaust prior to seizing this Court.⁷ As such, the Respondent State's objection based on non-exhaustion of the constitutional petition procedure is dismissed.
44. In making a determination as to the exhaustion of local remedies, the Court recalls that the requirement under Rule 50(2)(e) of the Rules is satisfied if an applicant pursues his grievances before the highest judicial institution of the Respondent State. In the instant case, the Court notes, from the record, that after the Applicants were convicted of murder at the High Court of Tanzania sitting at Mwanza on 16 October 2015, they appealed to the Court of Appeal of Tanzania, the highest judicial organ of the Respondent State, which on 4 April 2019, dismissed their appeal. In the circumstances, the

⁶ *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (26 May 2017) 2 AfCLR 9, §§ 93-94.

⁷ See *Thomas v. Tanzania* (merits), *supra*, § 65; *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.

Applicants exhausted all the available domestic remedies and the Application, therefore, complies with Rule 50(2)(e) of the Rules.

45. For the foregoing reasons, the Court dismisses the Respondent State's objection based on non-exhaustion of local remedies, and holds that the present Application meets the requirement set out under Rule 50(2)(e) of the Rules.

B. Other conditions of admissibility

46. From the record, the Court notes that, the Applicants have been identified by name in fulfilment of Rule 50(2)(a) of the Rules.
47. The Court also notes that the Applicants' claims seek to protect their 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 Consolidated Applications are incompatible with the Constitutive Act of the African Union. It therefore holds that the requirement of Rule 50(2)(b) of the Rules is met.
48. The Court further finds that the language used in the Consolidated Applications 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.
49. The Court observes that the Consolidated Applications are not based exclusively on news disseminated through mass media as it is founded on record of the proceedings of the national courts in fulfilment of Rule 50(2)(d) of the Rules.
50. Regarding, the requirement that an Application be filed within a reasonable time, 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.”

51. As per its established jurisprudence, the reasonableness of the period for seizure of the Court depends on the particular circumstances of each case and must be determined on a case-by-case basis.⁸ The Court has also previously considered relatively short periods of time as manifestly reasonable.⁹
52. In the instance case, the Applications making up this consolidated Application were all filed on 7 August 2019, that is, four months and three days after the Court of Appeal rendered its decision on 4 April 2019. The Court considers that the above stated period is manifestly reasonable. The Application, therefore, meets the requirement prescribed under Rule 50(2)(f) of the Rules.
53. Furthermore, the Court finds that the Consolidated Application does not concern cases which had 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.
54. The Court, therefore, finds that all the admissibility conditions have been fulfilled and, holds that the Application is admissible.

VII. MERITS

55. The Applicants allege the following violations:

⁸ *Anudo Ochieng Anudo v. United Republic of Tanzania* (merits) (22 March 2018) 2 AfCLR 248, § 57; *Tembo Hussein v. United Republic of Tanzania*, ACtHPR, Application No. 001/2018, Judgment of 26 June 2025 (merits and reparations), § 51.

⁹ *Niyonzima Augustine v. United Republic of Tanzania*, ACtHPR, Application No. 058/2016, Judgment of 13 June 2023 (merits and reparations), § 58; *Bonifance Alistedes v. United Republic of Tanzania*, ACtHPR, Application No. 025/2018, Judgment of 5 February 2025 (merits and reparations), § 49.

- i. Right to life protected under Article 4 of the Charter;
- ii. Right to inherent dignity protected under Article 5 of the Charter; and
- iii. Right to a fair trial protected under Article 7 of the Charter.

56. The Court will address each of the allegations successively.

A. Alleged violation of the right to life

57. The Applicants submit that even though they were sentenced to death, their sentences have since been commuted to life imprisonment. However, the Applicants aver that their allegations on the basis of the death sentence are still valid. In this regard, the Applicants argue that the right to life is of fundamental importance as it anchors all other rights. They further aver that the arbitrary deprivation of a person's life amounts to irreparable harm as there is no means of resurrecting a deceased.

58. The Applicants submit that the mandatory imposition of the death penalty negates the discretionary power of the judicial officer to consider the circumstances of the accused and the offence. Therefore, they submit that the mandatory imposition of the death penalty on them violates the right to life under Article 4 of the Charter.

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59. The Respondent State contends that the Applicants were lawfully convicted of killing a person with albinism and that the sentence of death by hanging forms part of its measures to protect persons with albinism, including their right to life.

60. The Respondent State argues that the sentence imposed meets the required standards of fairness, reflects the gravity of taking an innocent life, and serves as a deterrent against further attacks on persons with albinism.

61. In their Reply, the Applicants argue that the imposition of the mandatory death penalty by itself is a violation of the Charter, irrespective of whether the sentence is subsequently commuted to life imprisonment.

62. The Court notes 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.”
63. On the alleged violation of the right to life as protected under Article 4 of the Charter, 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 is arbitrary and therefore a violation of the right to life.¹⁰ This is because even though it is stipulated by law and meted out by a competent court, it does not meet the due process requirement, because it denies the judicial officer the discretion to decide on the sentence to be meted out upon a conviction of murder.¹¹ The Court notes the Respondent State’s contention that the imposition of the death penalty by hanging serves to protect persons with albinism. However, it emphasises that such measures must be pursued in strict compliance with fair trial guarantees.
64. The Court acknowledges that the Applicants’ death sentences were commuted to life imprisonment, however, this commutation does not affect the finding with regards to the alleged violation on the right to life, as the

¹⁰ *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.

¹¹ 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.

allegation dates back to the time that the mandatory death sentence was imposed. In this regard, the Applicants had been kept on death-row for some time before the commutation of their sentence.

65. In the circumstances, the Court holds that the Respondent State violated the Applicants' right to life under Article 4 of the Charter due to the mandatory imposition of the death penalty as it does denies the judicial officer discretion to determine the sentence.

B. Violation of the right to dignity

66. The Applicants aver that the police subjected them to torture during their interrogation by battering them and causing them severe injuries in order to coerce a confession. To support this claim, the Applicants have filed affidavits indicating that they suffered injuries as a result of the battery by the police. Furthermore, according to the Applicants, the High Court ignored their submissions on the police brutality by failing to pronounce itself on it.
67. The Applicants aver that the Respondent State also violated their freedom from torture and right to dignity under Article 5 of the Charter by sentencing them to death by hanging.

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68. The Respondent State contends that the Applicants' alleged violation on the right to dignity is an "afterthought", as no evidence was presented at trial or on appeal to show that they were subjected to torture or degrading treatment during the interrogation.

69. The Court notes that the Applicants have made two allegations on the violation of Article 5 of the Charter: first, that they were subjected to torture

by the police; and second, that the method of executing the death penalty by hanging constitutes a violation, the Court will consider them sequentially.

70. 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.

i. Alleged violation of freedom from torture, cruel, inhuman and degrading treatment

71. The Court observes that the concept of human dignity is of profound significance in the realm of individual rights. It serves as an essential foundation upon which the edifice of human rights is constructed. The right to dignity captures the very essence of the inherent worth and value that resides within every individual, irrespective of their circumstances, background, or choices. At its core, it embodies and upholds the principle of respect for the intrinsic humanity of each person and forms the bedrock of what it means to be truly human. It is in this sense that Article 5 absolutely prohibits *all* forms of treatment that undermines the inherent dignity of an individual.¹²

72. The Court notes that while Article 5 of the Charter does not define torture, in the case of *Alex Thomas v. United Republic of Tanzania* it held that the definition from Article 1 of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment (hereinafter referred to as “CAT”) is authoritative.¹³

¹² *Misalaba v. Tanzania* (merits and reparations) *supra*, § 165.

¹³ Adopted by the General Assembly of the United Nations on 10 December 1984 (resolution 39/46); *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 144.

73. Article 1(1) of CAT defines torture as:

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.

74. The Applicants' argument is that they were physically tortured by the police in order to coerce confessions from them. The Court, however, notes that the Applicants have provided no medical evidence to substantiate their claim of physical torture.

75. Furthermore, 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".¹⁴

76. 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".¹⁵ The Court only intervenes when there is a manifest error in the assessment of the national courts that would result in miscarriage of justice.

77. From the record, the Court notes that none of the Applicants argued before the High Court that their confessions were elicited through coercion. However, the Applicants' objection to the confessions was based on procedural irregularities, namely that the Justices of the Peace did not

¹⁴ *Abubakari v. Tanzania* (merits), *supra*, § 174; *Diocles Williams v. United Republic of Tanzania* (merits and reparations) (21 September 2018) 2 AfCLR 426, § 72 and *Majid Goa v. United Republic of Tanzania* (merits and reparations) (2019) 3 AfCLR 498, § 72.

¹⁵ *Ibid.*

comply with the mandatory four-hour time limit for recording the confessions. The procedural challenges were considered by the High Court Judge and dismissed with the exception to the Second Applicant's confession. The Second Applicant's confession was deemed inadmissible because he had not been requested to confirm its contents by writing his initials.

78. The Court, therefore, does not see any manifest error or anomaly in the domestic courts' assessment of the confessions, in order to warrant its intervention.

79. In light of the foregoing, the Court finds that the Respondent State did not violate the Applicants' freedom from torture, cruel, inhuman and degrading treatment under Article 5 of the Charter.

ii. Alleged violation of the right to inherent dignity

80. Citing the Court's judgment in *Ally Rajabu v. the United Republic of Tanzania*, the Applicants aver that the execution of the death penalty by hanging is a violation of their right to dignity.

81. The Respondent State did not respond to this allegation.

82. The Court, reiterates its established jurisprudence that the execution of the death penalty by hanging constitutes torture, as well as cruel, inhuman and degrading treatment given the physical and mental suffering inherent thereto.¹⁶ The Court further recalls that "the stress associated with detention on the death row stems from the natural fear of death that a condemned

¹⁶ See *Chalula v. Tanzania* (merits and reparations), *supra*, § 88; *Rajabu and Others v. Tanzania*, *ibid*, §§ 119-120; *Henerico v. Tanzania* (merits and reparations), *ibid*, §§ 169-170; *Juma v. Tanzania* (merits and reparations), *ibid*, §§ 135-136.

prisoner has to live with”.¹⁷ This anxiety is exacerbated with the knowledge that the method of execution of the death penalty is by hanging.

83. Furthermore, having found that the mandatory imposition of the death sentence violates the right to life due to its arbitrary nature, this Court finds that, the imposition of the method of implementation of the sentence, that is, by hanging, inevitably encroached upon dignity of the Applicants, in respect of the prohibition of torture and cruel, inhuman and degrading treatment.
84. The Court also notes that the Applicants had been kept on death-row for some time before the commutation of their sentence. Consequently, the Court holds that the Respondent State violated the Applicants’ right to inherent dignity protected under Article 5 of the Charter in relation to the method of execution of the death penalty, as meted out against the Applicants, that is, by hanging.

C. Violation of the right to a fair trial

85. The Applicants allege the following violations with regard to the right to a fair trial:
 - i. The right to defence with assistance from a lawyer;
 - ii. The right to be tried within a reasonable time; and
 - iii. Procedural irregularities committed by the Trial Court.
86. The Court will therefore determine the three alleged violations successively.

¹⁷ *Ghati Mwita v. United Republic of Tanzania*, ACtHPR, Application No. 012/2019, Judgment of 1 December 2022 (merits and reparations), § 87.

i. Alleged violation of the right to defence

87. The Applicants allege that at the time of arrest, they were not afforded the right to call lawyers or close relatives to assist them. They aver that they were instead tortured and forced to sign confession statements.
88. Furthermore, the Applicants aver that their counsel provided by the government only came when the case was scheduled for trial before the High Court of Tanzania on 4 November 2014. Citing the decision of the African Commission on Human and Peoples' Rights in *Abdel Hadi, Ali Radi and Others v. Sudan*, they argue that since they did not have access to their lawyers until the trial date, their right to be heard was violated and it resulted in miscarriage of justice.
89. The Respondent State contends that the Applicants were afforded their right to defend themselves under Article 7(1)(c) of the Charter. It argues further, that the Applicants were informed of their right to call a lawyer or relative at all the trial stages, including before identification parades and before the recording of their caution statements. The Respondent State also submits that it provided legal aid to the Applicants in accordance with its law.

90. Article 7(1)(c) of the Charter stipulates 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."
91. The Court recalls that it has previously considered the issue of effective legal representation in a similar case and held that the right to free legal assistance comprises the right to be defended by counsel.¹⁸ However, this right to choose one's own counsel is not absolute when exercised within the framework of a free legal assistance programme. The Court also

¹⁸ *Rutechura v. Tanzania* (merits), *supra*, § 73.

emphasised that the key concern is the provision of effective legal representation, rather than the ability to select a lawyer of personal preference.¹⁹

92. Nonetheless, the Court underscores that in the context of ensuring effective legal representation through a free legal assistance scheme, it is insufficient for a State solely to appoint legal counsel. The State must also guarantee that those rendering legal aid within the framework of such a scheme are granted ample time and resources to prepare and offer a proper defence at all phases of the legal proceedings.²⁰
93. In this regard, the Court notes that it is the duty of the Respondent State to provide adequate legal representation to an accused person and intervene only when the legal representation is not adequate.²¹ If, however, there are allegations of ineffective legal representation, it is important, that all such allegations are backed by evidence.²²
94. In the instant Application, the question that arises is whether the Respondent State discharged its obligation to provide the Applicants with effective free legal assistance, and ensured that counsel had adequate time and facilities to enable the preparation of the Applicants' defence.
95. The Court observes, from the record, that the Respondent State provided the Applicants with counsel at its own expense throughout the proceedings before both the High Court and the Court of Appeal. It is noteworthy that during the preliminary hearing and the subsequent trial at the High Court, the Applicants were represented by Advocates Mutalemwa, Kabonde, and Makwega respectively. Additionally, at the Court of Appeal, the Applicants were represented by Advocates Nasimire, Tuthuru and Kisigiro, who were also assigned by the Respondent State.

¹⁹ *Misalaba v. Tanzania* (merits and reparations) *supra*, § 105.

²⁰ *Ibid*, § 108.

²¹ *Mwita v. Tanzania* (merits), *supra*, § 122.

²² *Ibid*.

96. The Court also observes that there is no evidence on record indicating that the Respondent State obstructed counsel's access to the Applicants for consultation and defence preparation, nor is there any record of the Respondent State denying the Applicants' counsel the necessary time and resources required for a comprehensive defence preparation.
97. Furthermore, the Court ascertains that there is no information to suggest that the Applicants notified the High Court or the Court of Appeal about any deficiencies in their counsel's handling of their defence. The Applicants had the opportunity to raise any concerns regarding his legal representation with the domestic courts but there is nothing on record showing that they did.
98. In view of all the above, the Court finds that the Respondent State did not violate the Applicants' right to effective legal representation protected under Article 7(1)(c) of the Charter.

ii. Alleged violation on the right to be tried within a reasonable time

99. The Applicants argue that after their arrest they were kept in custody for more than 24 hours before their arraignment, contrary to section 32 of the Criminal Procedure Act (2002). They aver that, the First and Second Applicants were arrested on 19 July 2009, and the Third Applicant on 20 July 2009. They further aver that the Applicants were only arraigned before the Resident Magistrate's Court on 28 July 2009.
100. According to the Applicants, it took five years for the trial to commence before the High Court of Tanzania sitting in Mwanza. They aver that the delay in commencing the trial itself is a "weighty punishment" which caused great anxiety to the Applicants. The Applicants argue that the Respondent State did not provide a justification for the delay.
101. Citing the case of *R v. Jordan* of the Supreme Court of Canada, the Applicants aver that a hearing and determination of court proceedings

should be conducted within 18 months for lower courts and 30 months for superior courts. The Applicants therefore allege the violation of Article 7(1)(d) of the Charter.

102. The Respondent State contends that the Applicants were tried within a reasonable time given the complexity of the case. In this regard, the Respondent State argues that the Applicants were arrested at different times, and investigations were still on-going as authorities traced co-defendants and recovered the deceased's remains from multiple locations. According to the Respondent State, these circumstances made it impossible to record caution statements within four hours and arraign the Applicants within 24 hours.

103. Furthermore, according to the Respondent State, the case required extensive forensic work, including retrieving bones, conducting a post-mortem, and performing DNA tests.

104. In their Reply, the Applicants aver that they were kept in pre-trial custody for "more than five years". The Applicants further argue that delays attributable solely to investigative or prosecutorial authorities cannot be justified.

105. 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".

106. The Court observes that a timely trial is crucial for a variety of reasons, including protecting the accused from enduring protracted periods of uncertainty and pre-trial detention, which can inflict physical, emotional, and psychological distress. Additionally, expeditious proceedings play a pivotal role in maintaining the integrity of evidence and the recollection of

witnesses, thereby facilitating a more precise depiction of events and augmenting the overall credibility of the judicial proceedings.

107. 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.²³
108. In the instant case, the Court notes from the record that the First and Second Applicants were arrested on 19 July 2009, while the Third Applicant was arrested on 20 July 2009. The Court observes that the committal proceedings commenced, on 18 June 2012 while the trial of the Applicants before the High Court began on 4 November 2014. The Court finds e that the period to reckon against the three-part criteria is five years, three months and 15 days.
109. On the 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 were required.²⁴ In the present case, the Court notes the Respondent State's submission that the pre-trial period took about five years because the investigation involved gathering evidence and handling of complicated DNA evidence.

²³ *Guehi v. Tanzania* (Merits and Reparations), *supra*, §§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), *supra*, § 82.

²⁴ *Noriega v. Tanzania* (merits and reparations), *supra*, § 96.

110. From the record, the Court observes that the case involved 31 witnesses, these statements were presented during the committal hearings, and there is no doubt, it took a substantial time to locate the witnesses and take the statements. With regards to other evidence presented, the Court notes that this case involved complicated DNA evidence of severed body parts of a person with albinism, which required extensive investigation. Furthermore, 19 exhibits were presented during trial. The Court thus finds that the case involving the Applicants was complex.
111. In its assessment, this Court has also held that the conduct of the parties can be attributed to prolonging the procedures at the domestic level.²⁵ However, in this case, there is nothing on record to suggest that the Applicant did not fully collaborate with the State, or that he requested for any adjournments.
112. With regard to due diligence, the Court notes that the applicable law of the Respondent State does not set out a specific time for committal proceedings. In the present case the committal proceedings was undertaken on 18 June 2012. As is the general practice in domestic systems, and provided under section 245(4)(6)(7) of the Respondent State's CPA, judicial authorities must perform certain acts towards committal proceedings, namely: compiling statements of witnesses, submitting same to the directorate of public prosecution which shall assess whether the case warrants putting the accused on trial and draw up a report which shall then be submitted to the High Court.²⁶
113. The performance of the acts in preparation for the committal proceedings requires some time, the length of which may be contingent on the calendar of activities of the judicial authorities involved. It is also ascertained that matters, which had been awaiting trial prior to the Applicants' committal were still ongoing. In making a determination on the issue at hand, it is also

²⁵ *Ibid.*

²⁶ *Dominick Damian v. United Republic of Tanzania*, ACtHPR, Application No. 048/2016, Judgment of 4 June 2024, § 65.

relevant to take into account the fact that, after the Applicants' trial commenced on 4 November 2014, it was finalised within eleven months.

114. In light of the above, and considering the circumstances of the case, this Court is of the view that the time of five years, three months and 15 days that elapsed between the Applicants' arrest and the commencement of their trial cannot be considered unreasonable within the meaning of Article 7(1)(d) of the Charter.

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

iii. Alleged violation due to procedural irregularities committed by the High Court

116. According to the Applicants the national courts erred in law by convicting the Applicants unlawfully. The Applicants aver that the High Court of Tanzania sitting in Mwanza relied on cautioned statements which had not complied with the law. The Applicants aver that the Court of Appeal also erred in law by agreeing with the High Court's admission of the cautioned statements.

117. The Applicants allege that the procedures for conducting the DNA test were not complied with. They argue that the police officer authorised to request for a DNA test should be of the rank of inspector, the Applicants argue that, however, it was an officer of the rank of assistant inspector who requested for the DNA test.

118. The Applicants also aver that the national courts grossly erred in basing their conviction on a certificate of seizure that had been expunged from the records. The Applicants argue that the Court should not have given consideration to the seized objects when assessing the facts and evidence.

119. The Applicants aver that there were conflicting witness statements with regard to the Third Applicant and his involvement in the commission of the crime. According to the Applicants, none of the 15 witnesses and 19 exhibits tendered established the Third Applicant's criminal culpability.

120. The Applicants allege that the evidence of identification of the Second Applicant was improperly admitted because the purported crime took place at midnight. The Applicants argue that the intensity of the light was not adequate to afford a clear vision. Therefore, according to the Applicants, they were convicted without proof beyond a reasonable doubt and thereby violating their right to a fair trial.

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121. The Respondent State submits that the cautioned statements of the First and Third Applicants were properly admitted in accordance with section 169 of the Criminal Procedure Act (CPA). Furthermore, that although the cautioned statements were recorded outside the four-hour requirement under section 50(1)(a) of the CPA, the trial judge justified their admission, owing to the complexity of the investigation, the need to apprehend co-accused, and the Applicants' own participation in revealing the location of the deceased's body parts.

122. In relation to the DNA evidence, the Respondent State contends that the procedures for handling exhibits and conducting DNA tests were carried out in accordance with the law. Furthermore, the Respondent State argues that the Applicants did not raise objections regarding the chain of custody during their trial.

123. With regards to the identification evidence, the Respondent State contends that the evidence was properly admitted in line with established safeguards. The Respondent State submits that Prosecution Witness 1, the eyewitness, correctly identified the Second Applicant under favourable conditions, and

the Court of Appeal confirmed the reliability of the visual identification evidence.

124. In their Reply, the Applicants argue that the forensic and scientific evidence relied upon to convict the Applicants did not meet the standards of “reliability, transparency and procedural integrity”.

125. Article 7(1) of the Charter provides: “[e]very individual shall have the right to have his cause heard...”

126. This Court notes “... that a fair trial requires that the imposition of a sentence in a criminal offence, and in particular a heavy prison sentence, should be based on strong and credible evidence. That is the purport of the right to the presumption of innocence also enshrined in Article 7 of the Charter”.²⁷

127. 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. The Court recalls 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”.²⁸

128. 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”.²⁹ The Court only intervenes when there is a manifest error in the assessment of the national courts that would result in miscarriage of justice.

²⁷ *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.

²⁸ *Ibid.*

²⁹ *Ibid.*

129. With regard to the cautioned statements, the Court notes from the record that the High Court made a ruling on the objections to the admission of all the cautioned statements and regarded the cautioned statements of the First and Third Applicants admissible. The judge also found that the failure to comply with the four-hour time limit did not go to the root of the matter. With regards to the Second Applicant's cautioned statement, the judge found that it was not recorded according to the procedure of the law, and was therefore expunged. The Court observes that, the High Court's ruling was confirmed by the Court of Appeal.
130. In relation to the DNA test, the Court notes from the record that the Applicants did not raise this issue on appeal at the Court of Appeal. The High Court Judge however, considered the DNA analysis in detail and found that the Applicants had failed to raise an argument regarding the collection and analysis of the DNA that would occasion miscarriage of justice. The Judge was thus convinced that the DNA evidence had linked the Applicants to the commission of the crime.
131. As regards the alleged conflicting witness statements, the Court notes that the Applicants did not raise this issue in the domestic courts. Even so, the Court observes, from the record, that the First Applicant confessed that he committed the crime together with the Second applicant, and the Third Applicant who was found at a witch doctor's house wherein he was subsequently arrested. The Court further notes that this evidence was uncontroverted before the national courts. In the circumstance, the Applicants have not presented any compelling evidence demonstrating that there were conflicting statements from the witnesses which led to miscarriage of justice.
132. With regard to the identification of evidence, the Court notes from the record that the issue was considered substantially by the High Court and Court of Appeal. The Court of Appeal observed that the Prosecution Witness 1 was able to describe the Second Applicant at an early point, and also subsequently identify him in an identification parade. Finally, her testimony

withstood the cross-examination by counsel for the accused. The Court of Appeal therefore found that the identification of the Second Applicant was undertaken accurately.

133. In the light of the foregoing, the Court finds that the assessment of the evidence by the national courts did not result in the miscarriage of justice necessitating its intervention.

134. Consequently, the Court finds that the Respondent State did not violate the Applicants' right to a fair trial guaranteed under Article 7(1) of the Charter.

VIII. REPARATIONS

135. The Applicants pray the Court for the following:

- i. An Order for release of the Applicants;
- ii. Payment of reparations in the amount of \$34,308 per Applicant for moral prejudice suffered;
- iii. Payment of reparations to the indirect victims to the tune of \$10,000;
- iv. Payment of reparations in the amount the Court considers reasonable to the Applicant for material prejudice suffered; and
- v. Publication of the judgment.

136. The Respondent State prays the Court to dismiss the Applicants' prayer for reparations.

137. 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.

138. 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”.³⁰
139. 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.”³¹
140. 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 measures to ensure non-repetition of the violations taking into account the circumstances of each case.³²
141. 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.³³ With regard to moral prejudice, the Court exercises judicial discretion in equity.
142. In the instant case, the Court has established that the Respondent State violated the rights of the Applicants under Articles 4 and 5 of the Charter through the imposition of the mandatory death sentence. It is against these findings that the Court will consider the Applicants’ prayers for reparations.

³⁰ *Abubakari v. Tanzania* (merits), *supra*, § 242(ix), *Ingabire Victoire Umuhoza v. Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 19.

³¹ *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.

³² *Umuhoza v. Rwanda* (reparations), *supra*, § 20.

³³ *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.

A. Pecuniary reparations

i. Material prejudice

143. The Applicants argue that they suffered substantial monetary loss from the time of their arrest, throughout their trials and even during incarceration. They aver that they have lost “voluminous amounts” in legal fees and lost their businesses during their incarceration. The Applicants further aver that the proceedings in the national courts ‘drained them financially’.

144. The Applicants submit that the Court should rely on the principle of equity in quantifying the amount of pecuniary damages to be awarded to them.

145. The Respondent State contends that the Applicants have neither submitted any evidence of financial loss, such as receipts nor proof of trauma during their arrest, trial, or imprisonment. Furthermore, the Respondent State contends that claims of disrupted life plans, long-term trauma, or other damages are unsubstantiated.

146. 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.

147. In the instant case, the Applicants have not demonstrated the link between the material prejudice suffered and the violation of their rights to life, dignity and to a fair trial protected under Articles 4 and 5 of the Charter. The Court also notes that the Applicants have not provided any proof of material loss.

148. In the circumstances, the Court dismisses the Applicants’ prayers for reparations for material prejudice.

ii. Moral prejudice

149. The Applicants submit that their life plans have been disrupted for the time that they have been in prison. They also aver that they can never recover from the effects of the unfair trials and the incarceration.

150. The Applicants aver that they have suffered long term physiological trauma due to the death sentence and pray the Court to award them reparations for moral prejudice on the basis of equity.

151. The Respondent State contends that the application of equitable principles, as articulated in *Al Jedda v. United Kingdom*, requires that an Applicant should only receive what is 'just', 'fair' and 'reasonable'. Furthermore, the Respondent State submits that, an applicant seeking equitable relief must do so with "clean hands". This principle, it submits, operates as a bar to claims tainted by the claimant's own misconduct. In the present matter, the Respondent State argues that the Applicants' status as convicted persons inherently violates this doctrine. According to the Respondent State, irrespective of the merits of the underlying claim, their conviction renders them morally unworthy of an award for non-pecuniary or moral prejudice. Thus, equity itself precludes the compensation they seek.

152. In their Reply, the Applicants argue that the request for moral reparations is not a punitive request against the Respondent State but rather a restorative measure.

153. 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. The Court reiterates its jurisprudence that when an individual is detained in conditions constituting a violation of fundamental rights, the

existence of moral prejudice is presumed.³⁴ Therefore, their conviction is immaterial when determining reparations, rather, the violation itself is the source of the moral damage.³⁵

154. In the instant case, the Applicants were subjected to a mandatory death sentence by hanging, which inflicted upon them psychological suffering. This suffering was compounded by their confinement for a period on death row prior to the commutation of their sentence to life imprisonment.

155. The Court has held that the assessment of quantum in cases of moral prejudice must be done in fairness and taking into account the circumstances of the case.³⁶ The practice of the Court, in such instances, is to award a lump sum for moral prejudice.

156. In view of the above, the Court decides to grant each of the Applicants the sum of Tanzanian Shillings sum of Tanzanian Shillings One Hundred Thousand (TZS 100,000) as moral damages.

B. Non-pecuniary reparations

157. The Applicants aver that the Court has the power to order for the release of the Applicants. In this regard, the Applicants submit that the Court should consider the following factors:

- i. The years the Applicants have spent in incarceration;
- ii. The momentous delays in the Applicants' cases;
- iii. The unfair trials they went through; and
- iv. The difficulties that would arise in the event the Court opts for retrial of the cases.

³⁴ *Umuhoza v. Rwanda* (reparations), *supra*, § 59.

³⁵ *Supra* note 31.

³⁶ *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.

158. According to the Applicants, restoration of liberty is the most feasible way in which adequate reparations could be said to have been granted, given the “harrowing circumstances of imprisonment identified and the moral prejudice suffered.”

159. The Respondent State contends that all the prayers by the Applicants, including the restoration of liberty and restitution, should be dismissed as baseless and untenable. It further argues that the Applicants, being convicts serving lawful sentences, have failed to provide any evidence to substantiate their claims, and thus do not meet the basic requirement for awarding reparations.

i. On the prayer for release

160. 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.”³⁷

161. In the instant case, the Court recalls that it has found that the Respondent State violated the Applicants’ 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 Applicants’ conviction amounts to a miscarriage of justice or an arbitrary decision. The Applicants also failed to elaborate on specific and compelling circumstances to justify the order for their release.³⁸

³⁷ *Evarist v. Tanzania* (merits), *ibid*, § 82.

³⁸ *Mussa and Mangaya v. Tanzania* (merits and reparations), *supra*, § 97; *Elisamehe v. Tanzania* (judgment), *supra*, § 112; and *Evarist v. Tanzania* (merits), *ibid*, § 82.

162. In view of the foregoing, the Court dismisses the Applicants' prayer for release.

ii. Publication of the judgment

163. The Applicants pray for publication of the judgment. They aver that "publication of the judgment constitutes an important measure of symbolic and moral reparation, proportionate to the gravity of the violations established."

164. The Respondent State contends that publication is unnecessary as the judgments of the Court are available online and can therefore be accessed by any interested party.

165. The Court recalls that Article 27(1) of the Protocol gives it power to "make appropriate orders to remedy" violations. In the circumstances, the Court reaffirms that it can, by way of reparations, order publication of its decisions *suo motu* where the circumstances of the case so require.³⁹

166. 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.⁴⁰

167. The Court also notes that the fact that its judgments are posted on its website does not absolve the Respondent State from posting the same on its own websites and in the language that the Applicants understand better. Indeed, the purpose of publication is to formally acknowledge the violation,

³⁹ *Guehi v. Tanzania*, *supra*, § 194; *Mtikila v. Tanzania* (reparations), *supra*, § 45 and 46(5); and *Zongo and Others v. Burkina Faso* (reparations), § 98.

⁴⁰ See *Rajabu and Others v. Tanzania*, *supra*, § 166; *Henerico v. Tanzania*, *supra*, § 210; *Hussein v. Tanzania*, *supra*, § 88, *Noriega v. Tanzania*, *supra*, § 152.

inform the public restore the dignity of the victim, thereby constituting an act of moral reparation.⁴¹

168. 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 and ensure that the text of the judgment is accessible for at least one year after the date of publication.

iii. Guarantees of non-repetition

169. 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 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.
170. 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.
171. 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 5 of the Charter within a specific time stated in the judgments concerned. However, there has so far been no information as at the date of the present judgment that the Respondent State has implemented the orders. Accordingly, the Court finds it appropriate to order that the measures be implemented without delay.

⁴¹ AfCHPR, Comparative Study on the Law and Practice of Reparations for Human Rights Violations, September 2019, at pages 62 - 63.

iv. Implementation and reporting

172. In view of the foregoing, the Court 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.
173. 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.
174. 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.
175. 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.

IX. COSTS

176. The Applicants pray the Court for costs of the Application.

177. The Respondent State pray the Court to reject the Applicants' request on costs.

178. 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."

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

X. OPERATIVE PART

180. For these reasons:

THE COURT,

On jurisdiction

Unanimously

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

On admissibility

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

On merits

Unanimously,

- v. *Holds* that the Respondent State did not violate the Applicants' right to defence, protected under Article 7(1)(c) of the Charter;

By a majority of Nine Judges for, and One Judge against, Justice Rafaâ BEN ACHOUR dissenting,

- vi. *Holds* that the Respondent State did not violate the Applicants' right to be tried within a reasonable time under Article 7(1)(d) of the Charter;

By a majority of Eight Judges for, and Two Judges against, Justices Blaise TCHIKAYA and Dumisa NTSEBEZA dissenting,

- vii. *Holds* that the Respondent State violated the Applicants' right to life protected under Article 4 of the Charter in relation to the mandatory imposition of the death penalty;
- viii. *Holds* that the Respondent State violated the Applicants' right to inherent dignity protected under Article 5 of the Charter in relation to the method of execution of the death penalty.

Unanimously,

On reparations

On pecuniary reparations

- ix. *Dismisses* the Applicants' prayers for reparations for material prejudice suffered; and
- x. *Grants* the Applicants' prayers for reparations for moral prejudice suffered and awards each of them, the sum of Tanzanian Shillings One Hundred Thousand (TZS 100,000) 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

- xi. *Dismisses*, the Applicants' prayer for an order for release from prison;
- 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; and
- xiv. *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

- xv. *Orders* the Respondent State to submit to the Court, within six months from the date of notification of this judgment, a report on the status of implementation of orders in this operative part and thereafter, every six months until the Court considers that there has been full implementation thereof.

On costs

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

Signed:

Blaise TCHIKAYA, President; 

Chafika BENSAOULA, Vice President; 

Rafaâ BEN ACHOUR, Judge; 

Suzanne MENGUE, Judge; 

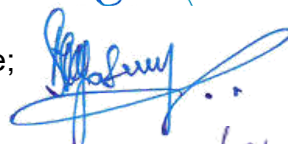
Tujilane R. CHIZUMILA, Judge; 

Stella I. ANUKAM, Judge; 

Dumisa B. NTSEBEZA, Judge; 

Modibo SACKO, Judge; 

Dennis D. ADJEI, Judge; 

Duncan GASWAGA, Judge; 

and Grace W. KAKAI, Deputy Registrar. 

In accordance with Article 28(7) of the Protocol, and Rules 70 of the Rules, the Dissenting opinion of Justice Rafaâ BEN ACHOUR, the Partially dissenting opinion of Justice Modibo SACKO, the Separate opinion of Justice Dennis D. ADJEI and the

Declarations of Justice Blaise TCHIKAYA, 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.

