DISSENTING OPINION OF JUDGE RAFAÂ BEN ACHOUR

1. In *Hamisi Mashihanga v. United Republic of Tanzania* (Application No.24/2017), I am unable to agree with the majority opinion that the application is inadmissible for failure to comply with the reasonable time requirement under Article 56(6) of the Charter and Rule 50(2) (f) of the Rules of Court.

2. Unlike the majority of my fellow judges, I consider that the Application should have been declared admissible and that the time taken by the Applicant (7 years and 4 months) to bring it before this Court is reasonable taking into account the situation and conditions of the Applicant.

3. On the face of it, 7 years and 4 months is too long and therefore unreasonable. An ordinary, legally well-advised Applicant cannot waste so much time, after exhaustion of local remedies, to come before the Arusha Court.

4. However, the African Court has always been flexible in its jurisprudence as regards the time-limits for referrals after the exhaustion of local remedies. It has always considered that the issue of time-limits for referral to the Court is determined depending on the circumstances of each case. It has always rightly considered that it should be dealt with on a "case-by-case" basis. This is all the more so since Article 56(6) of the African Charter and Article 50(2)(f) of the Rules of Court give the Court considerable

leeway on this issue. Article 56(6) of the Charter and Rule 50(2)(f) of the Rules merely state that applications must be submitted "[w]ithin a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter"[1] .

5. The last sentence of Article 56(6) of the Charter, restated in Article 50(2)(f) of the Rules of Court, therefore gives the Court discretion to determine the date on which the reasonable time period begins to run.

6. In its jurisprudence, the Court has consistently held that "[t]he reasonableness of a time limit of seizure will depend on the particular circumstances of each case and should be determined on a case-by-case basis"[2]. Circumstances that the Court has taken into account include the facts of being incarcerated, being uneducated, not having legal aid, being indigent, illiterate and not being aware of the Court's existence.

7. The Court has held in its previous judgments that the fact that an applicant argues, for example, that he or she is incarcerated, legally illiterate and indigent is not a sufficient reason for not having filed an application within a reasonable time[3] . As the Court has pointed out, even litigants who are legally illiterate, incarcerated or indigent are required to show how their personal situation prevented them from filing their application in time.

[1] Author's emphasis.
[2] *Beneficiaries of the late Norbert Zongo, Abdoulaye Nikiema dit Ablasse, Ernest Zongo and Blaise Ilboudo v. Burkina Faso* (Merits) (24 June 2014), 1 AfCLR 219, § 92. See also *Alex Thomas v. United Republic of Tanzania* (Merits) (20 November 2015), 1 AfCLR 465, § 73.
[3] *Layford Makene v. United Republic of Tanzania*, ACtHPR, Application No. 028/2017, Judgment of 2 December 2021 (Merits), § 48 and *Rajabu Yusuph v. United Republic of Tanzania*, ACtHPR, Application No. 036/2017, Judgment of 24 March 2022 (Admissibility), § 65.

8. In the instant case, the Appeal Court rendered its decision on 1 June 2010. The Applicant filed his Application with this Court on 31 August 2017, that is, after a period of 7 years and 3 months had elapsed.

9. In the instant case, it should be noted that the Applicant was not represented before the domestic courts and defended himself before this Court. As a result, he did not benefit from the specialised legal support **which** would have enabled **him** to file his application within a shorter period of time.

10. Moreover, the Applicant was incarcerated, restricted in his movements and had only limited access to information. It should also be noted that the Appeal Court upheld the lower court's decision on 1 June 2010, shortly after the Respondent State deposited the Declaration on 29 March 2010, which confirms the Applicant's claim that he was unaware of the Court's existence. The Court further observes that the Respondent State does not dispute the fact that the Applicant is legally illiterate, indigent, incarcerated and did not receive adequate legal assistance.

11. The Applicant further alleges, quite plausibly, that he was not aware of the existence of the Court because it was only recently established and that he was informed of its existence only after an inmate in the same prison as him filed the first application from the said prison with the Court.

12. This allegation is corroborated by a review of his docket which indicates that the Applicant filed his Application two (2) months and eighteen (18) days after another prisoner at the same prison facility where the Applicant is incarcerated filed an application with this Court on 13 June 2017.

13. Moreover, the facts of the matter occurred between 2004 and 2010, whereas the Respondent State only deposited its Declaration on 29 March 2010. It is undeniable that the period from 2007 to 2013 was the early years of the Court's practice, during which the general public, let *alone* detainees in the Applicant's situation in the instant case, could not necessarily have had sufficient knowledge of the requirements governing proceedings before this Court.[4]

14. The Applicant could therefore not know about the existence of the Court and the requirements for initiating cases before it. The Court's jurisprudence[5] has established that the special circumstances of the Applicant justify that the reasonableness of the time-limit be interpreted within the meaning of Article 56(6) of the Charter.

15. In conclusion, the Court should have dismissed the objection to the inadmissibility of the Application for being filed out of reasonable time, declared it admissible and examined the merits of

[4] *Sadick Marwa Kisase v. United Republic of Tanzania*, ACtHPR, Application No. 005/2016, Judgment of 2 December 2021 (merits and remedies), §§ 51-52.
[5] *Sadick Marwa Kisase v. United Republic of Tanzania*, ACtHPR, Application No. 005/2016, Judgment of 2 December 2021 (Merits and reparations), §§ 51-52; *Amiri Ramadhani v. United Republic of Tanzania* (Merits) (11 May 2018), 2 AfCLR 344, § 50; *Kijiji Isiaga v. United Republic of Tanzania* (Merits) (21 March 2018), 2 AfCLR 218, § 55; *Christopher Jonas v. United Republic of Tanzania* (Merits) (28 September 2017), 2 AfCLR 101, §§ 53 to 54.

the case which, it seems, reveal a litany of violations of the Applicant's rights.