

**AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES**

DECLARATION BY BLAISE TCHIKAYA, JUDGE

IN THE MATTERS OF:

**CHACHA JEREMIAH MURIMI AND OTHERS v. UNITED
REPUBLIC OF TANZANIA, APPLICATION NOS. 039/2019,
040/2019 AND 041/2019 (CONSOLIDATED APPLICATIONS)**

**MASUDI SAID SELEMANI v. UNITED REPUBLIC OF
TANZANIA, APPLICATION NO. 042/2019**

**GODFREY GABINUS, ALIAS NDIRIMBA, AND OTHERS v.
UNITED REPUBLIC OF TANZANIA, APPLICATION NO.
056/2019**

5 JUNE 2026

1. On 5 June 2026, the Court delivered three landmark judgments in the matters of *Chacha Jeremiah Murimi and Others*; *Godfrey Gabinus*; and *Masudi Said Selemani and Others*¹. Although dealt with separately, these matters once again raise the issue of the application of the death penalty by the Respondent State and that of its domestic criminal law.

¹ AfCHPR, *Chacha Jeremiah Murimi and Others v. Tanzania*; *Masudi Said Selemani v. Tanzania*; *Godfrey Gabinus v. Tanzania*, Judgments, 5 June 2026.

2. The majority reasoning in these three judgments delivered by the Court reaffirms its consistent position² in the sense that it repeatedly states, without drawing any further consequences from this, that:

“the Respondent State has violated the Applicant’s right to life and to the dignity inherent in the human person, protected respectively by Articles 4 and 5 of the Charter, due to the mandatory application of the death penalty.”

3. The import of these judgments examines the protection of human rights.

Substance of the Three Judgments

4. Whilst I fully endorse the measures by which the Court rightly sanctions the violation of Articles 4 and 5 of the African Charter on Human and Peoples’ Rights in its established case law³ , this Declaration aims to express my deep dissatisfaction with the legal reductionism resulting from the Court’s decisions on this matter, as demonstrated by those handed down on 5 June 2026.
5. In these three judgments, the Court continues to fragment its criticism through piecemeal reforms where a comprehensive, definitive and immediate rejection of the death penalty is required. This stance, as has been repeatedly noted, is in line with the approach the Court has adopted since 2019⁴ .

² AfCHPR, *Masudi Said Selemeni*, see para. 50.

³ *Ally Rajabu and Others v. Tanzania*, 28 November 2019, §§ 104–114; *Amini Juma v. Tanzania*, 30 September 2021, §§ 120–131; *Gozbert Henerico v. Tanzania*, AfCHPR, Application No. 056/2016, judgment of 10 January 2022, § 160; *Romward William v. Tanzania*, AfCHPR, Application No. 030/2016, judgment of 13 February 2024, §§ 59–65; *Armand Guehi v. Tanzania*, AfCHPR Order of 18 March 2016, Point XV of the operative part.

⁴ AfCHPR, *Ally Rajabu and Others v. Tanzania*, 28 November 2019; see Separate Opinion of Judge Blaise Tchikaya, §§ 9–10

6. Admittedly, in these judgments the Court takes an alternative measure of undeniable gravity by formally ordering the Respondent State to take, « *all necessary constitutional and legislative measures to remove the mandatory imposition of the death penalty* » from its laws⁵ . The Court itself notes that the violation of the right to life caused by this automatism « goes beyond the individual case of the Applicant and it is systemic in nature »⁶ . It is precisely here that the majority's paradox lies: once the systemic nature of the problem has been established, the repeal of the *mandatory* nature of the sentence alone is an incomplete response.⁷ By focusing its decisions in this way, the Court implicitly admits that a death penalty rendered *discretionary* would be legally viable. However, such a shortcoming cannot be remedied simply by altering the procedures for its application.
7. The *Masudi Said Selemani* judgment illustrates this contradiction by highlighting the technical absurdity of the automatic sentence provided for in section 197 of the Tanzanian Penal Code, emphasising that it « *deprives the judge of his discretion to determine the sentence to be imposed* »⁸ . This absurdity is all the more striking in this case as the Applicant defends himself by asserting that he did not « cause the victim's death »⁹ . This essential point of the investigation will escape the judge's scrutiny due to the lack of a legally recognised discretion.
8. It is a kind of « dehumanisation » of the criminal trial; the judge becomes a mere 'automaton' of death. However, the fundamental problem is not the judge's lack of

⁵ AfCHPR, *Chacha Jeremiah Murimi and Others v. Tanzania*, § 180; *Godfrey Gabinus v. Tanzania*, § 140; *Masudi Selemani v. Tanzania*, § 137.

⁶ See *Henerico v. Tanzania*, § 120; *Hussein v. Tanzania*, judgment of 25 June 2025, § 88; and *Noriega v. Tanzania*, *supra*, § 152; *Chacha Jeremiah Murimi v. Tanzania*, judgment of 5 June 2026, § 166.

⁷ AfCHPR, *Ally Rajabu and Others v. Tanzania*, 28 November 2019, *Op. cit.*, see the Separate opinions of Judges Rafaâ Ben Achour, § 2 and § 5, and Blaise Tchikaya, §§ 9–10.

⁸ AfCHPR, *Masudi Said Selemani v. Tanzania*, § 64.

⁹ *Ibid.*, § 50.

discretion; granting the judge « discretionary power » to choose between life and death would not make the death penalty any less arbitrary, nor any less destructive of the rights protected by the Charter¹⁰ .

9. In this sense, these judgments serve as a reminder of the need for the complete, universal and immediate abolition of capital punishment. The African Charter on Human and Peoples' Rights expresses this through its rejection of the death penalty whilst upholding the right to life.

Rejection of the Death Penalty

10. The Applicant, *Masudi Said*, has put into striking and meaningful words a terrible reality: the « death row phenomenon »¹¹ . This is the dehumanising « feeling of near hopelessness that a person faces » whilst awaiting execution. Similarly, in the *Chacha* matter, the Applicants suffered intense « psychological suffering »¹² , exacerbated by their prolonged confinement on death row prior to the commutation of their sentences.

11. The Court must face this reality head-on: the institutionalisation of the wait for death is psychological torture that cannot be spared or legitimised.

¹⁰ [...] provided for in section 197 of the Tanzanian Penal Code, emphasising that it “deprives the judge of his discretion in determining the sentence to be imposed”, *Masudi Said v. United Republic of Tanzania*, AfCHPR, Judgment of 5 June 2026; see also, for an identical formulation, *Gozbert Henerico v. Tanzania*, AfCHPR, 10 January 2022, § 134. This is a lucid observation of dehumanisation...

¹¹ *Masudi Said*, supra, para. 65.

¹² *Chacha*, supra, § 154.

12. Regarding the method of execution, we must welcome the progress made by the Court in explicitly instructing the Respondent State to « remove execution of the death sentence by hanging from its laws »¹³ , thereby recognising that it is cruel, inhuman and degrading¹⁴ .

13. I express my disapproval of what amounts to moral grandstanding. To think that there could be a method of execution that is ‘clean’, ‘humane’ or ‘free from suffering’¹⁵ is a legal illusion. By urging the State to ban hanging whilst suggesting that it seek out a painless technology of death, the majority is adopting an impossible and illusory stance. The gallows, lethal injection or any act by which an individual’s life is taken constitutes an absolute negation of human dignity. There is no ‘good’ way to execute a person.

14. Finally, the Respondent State’s conduct in response to the Court’s decisions must be strongly condemned. In the *Chacha* matter, the Court notes with disaffection that, despite its previous judgments setting specific deadlines for amending its laws, it « has no information indicating that the Respondent State has implemented the measures it ordered »¹⁶ . In the face of this proven legislative resistance, reiterating injunctions to implement measures “without delay”¹⁷ and demanding a report within six months regarding the repeal of mandatory sentencing and hanging risks remaining a pipe dream.

¹³ *Ibid*, para. 170.

¹⁴ *Gozbert Henerico v. Tanzania*, 10 January 2022, § 162.

¹⁵ This bold wording falls apart when the *Gozbert Henerico* judgment states that, in cases where the death penalty is permitted, it must be “carried out in a manner that causes the least possible physical and mental suffering”, *Gozbert Henerico v. Tanzania*, AfCHPR, 10 January 2022, para. 134

¹⁶ *Chacha Jeremiah Murimi*, *supra*, 2026; see also, regarding the initial orders for legislative amendment that have not been implemented: *Ally Rajabu and Others v. Tanzania*, Judgment of 28 November 2019, para. 166; and *Gozbert Henerico v. Tanzania*, Judgment of 10 January 2022, para. 160.

¹⁷ *Chacha v. Tanzania*, *supra*, § 170; *Godfrey Gabinus v. Tanzania*, § 143; *Masudi Selemani v. Tanzania*, § 137.

15. Having itself noted the incompatibility of hanging and mandatory sentencing with the Charter, the Court had all the substantive grounds to take the final step. It had a duty to assert, in a bold and authoritative manner, that there is no longer any legal validity to the death penalty, in whatever form, on the African continent¹⁸.

16. In supporting the reparations awarded to the Applicants, I reiterate that the protection of life (Article 4) and dignity (Article 5) admits of no derogation or technical adjustment. In this regard, 16 African countries¹⁹ have ratified the Second Optional Protocol to the *International Covenant on Civil and Political Rights (ICCPR)*²⁰, which aims to abolish the death penalty. This constitutes a significant step forward. The Respondent State in these cases, Tanzania, is not among them. There are many States around the world that observe this type of official or *de facto* moratorium, including numerous African countries. This is a trend that Tanzania could follow, as it has not carried out any executions for well over a decade, without having abolished the death penalty.

17. With all due respect to the honourable majority of the panel of judges, I felt compelled to point out that the complete, universal and immediate abolition of

¹⁸ [...] in any form whatsoever, on the African continent (In this regard, referring to the objectives of the African Union set out in the Draft Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa, as well as the case law of the African Commission urging States to move towards a total and definitive ban).

¹⁹ The African states party to this binding United Nations treaty are: Angola, Benin, Cape Verde, Congo-Brazzaville, Côte d'Ivoire, Djibouti, Gabon, Gambia, Guinea-Bissau, Madagascar, Mozambique, Namibia, Rwanda, Seychelles, Senegal and South Africa. In total, more than twenty African countries have now abolished the death penalty for all crimes, the most recent examples being Ghana (2023) and Zimbabwe (2024).

²⁰ Article 1 of the Protocol states that « No one within the jurisdiction of a State Party to the present Protocol shall be executed »; paragraph 2 specifies that « Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction ».

capital punishment is the only outcome consistent with the humanist spirit of the African Charter and developments in international human rights law.



Blaise Tchikaya, *Judge and President of the Court*

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

