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(000135-000133) CCJ

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IN THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS AT ARUSHA

APPLICATION NO OF 2019

BETWEEN

JEAN DE DIEU NDAGIJIMANA _____ APPLICANT

AND

THE UNITED REPUBLIC OF TANZANIA _____ RESPONDENT

EXECUTIVE SUMMARY OF THE APPLICATION

(MADE UNDER RULE 19 OF THE COURT RULES FROM PROVISION NO. 17 OF THE COURT PRACTICE DIRECTIONS).

I, the above named Applicant, request this Honourable Court to allow the lodging of an Application for violations of human rights by Tanzania under the following grounds:

1. That the Applicant, charged with non-violent offences against the administration of justice at the International Residual Mechanism for Criminal Tribunals ("IRMCT"), has spent 10 months in pre-trial detention in the United Nations Detention Facility in Arusha, Tanzania ("UNDF").
2. That Tanzania represents the only obstacle to the Applicant's provisional release, given that an IRMCT Judge has already found in a previous decision granting the Applicant provisional release that the Applicant meets the requisite legal requirements and that the Judge is inclined to release him; but that Tanzania has expressly stated accused persons in the IRMCT's custody should remain within the UNDF and should not be released on its territory; and that, as a result, the IRMCT Judge has held that he cannot release the Applicant, even to an IRMCT safe house on Tanzanian territory, absent Tanzania's consent.
3. That Tanzania's position opposing the Applicant's provisional release is in contravention of its obligations *vis à vis* the IRMCT, its own constitution, and the

human rights instruments it has ratified, and creates a situation of arbitrary detention and a manifest violation of the Applicant's right to liberty.

4. That this Court has jurisdiction to hear the case as the violations have occurred within the territory of Tanzania, which is a party to the African Charter and the Protocol, and which has deposited the declaration under Article 34(6) of the Protocol. That the violations alleged – of the Charter and other human rights instruments – took, and are continuing to take, place after the date of entry into force of these instruments in respect of the State of Tanzania.
5. That an exception to the exhaustion of local remedies requirement should apply as there are no effective remedies available to the Applicant, given that he lacks both standing in the domestic Tanzanian courts as well as a reasonable chance of success, since the violation of his rights stems from a political decision for which there is no domestic judicial remedy and in respect of which the Applicant is precluded from seising the national courts.
6. That Tanzania's decision is extrajudicial, rendering obsolete any local judicial recourses or remedies as domestic judges do not have jurisdiction to force a change in state policy, which remains with the Tanzanian executive branch.
7. That Tanzania has, and continues to, violate Articles 1, 6, 7(1)(b) and 12(1) of the African Charter; Articles 9(1), 9(3), 12(1) and 14(2) of the International Covenant on Civil and Political Rights; Articles 3, 9, 11(1) and 13(1) of the Universal Declaration of Human Rights; Article 38(2) of the Agreement between the United Nations and the United Republic of Tanzania concerning the Headquarters of the IRMCT; Articles 2 and 104 of the Treaty for the Establishment of the East African Community; and Articles 7(1), (2)(a)-(c) and (9) of the Protocol on the Establishment of the East African Community Common Market.
8. That the Applicant respectfully prays the Court to declare that Tanzania has violated and continues to violate the above mentioned Articles and to make an

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order that Tanzania implement the necessary measures to guarantee the Applicant's rights under these human rights instruments.

9. That the Applicant respectfully requests provisional measures pursuant to Article 27(2) of the Protocol and Rule 51(1) of its Rules ordering his liberty.
10. That the Applicant wishes to be granted reparations pursuant to Article 27(1) of the Protocol of the Court.
11. That the Application is duly accompanied and supported by a submission of a complaint of violations of these human rights, the Application form, and copies of the IRMCT's record of proceedings, official correspondence and other relevant documents for adjudication of the referred matter.

CERTIFICATION: This executive summary of the Application has been prepared by the Applicant's Legal Representative, Mr Philippe Larochelle, and signed by him this 12th day of July 2019.



Mr Philippe Larochelle
Counsel for Mr Jean de Dieu Ndagijimana

Lodged at the Registry office of the African Court on Human and People's Rights at ARUSHA – Tanzania, this 12th day of July 2019.