


AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
<p style="text-align: center;">AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES</p>		

APPLICATION NO. 039/2020

**LEGAL AND HUMAN RIGHTS CENTRE AND HUMAN RIGHTS
AND
TANZANIA HUMAN RIGHTS DEFENDERS COALITION
V.**

THE UNITED REPUBLIC OF TANZANIA

Case Summary

I. THE PARTIES

1. The Applicants, Legal and Human Rights Centre and human rights and Tanzania Human Rights Defenders Coalition, are two human rights Non-Governmental Organisations registered and operating in the United Republic of Tanzania (hereinafter, the Respondent State). The Applicants challenge the revised Criminal Procedure Act (Cap. 20 RE 2019) of 1st November 1985 as being incompatible with international human rights standards. The Application is filed against the United Republic Tanzania.

II. SUBJECT OF THE APPLICATION

A. FACTS OF THE MATTER

2. The Applicants allege that Section 148 (5) of the Criminal Procedure Act (Cap. 20 RE 2019) (hereinafter, “the Act”) of the Respondent State violates various provisions of the Charter, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the Constitution of Tanzania.
3. The Applicants argue that these human rights instruments and the Constitution proscribe discriminatory laws and require the Respondent State to ensure to all citizens the right to equal protection of the law, the right to liberty and security and prohibition of arbitrary arrest or detention, the right to presumption of innocence, right to equality before courts and during detention, the right to be promptly brought before a court of law and tried in a reasonable time or released without delay.
4. The Applicants assert that Section 148(5) of the Act, however, violates these rights by unreasonably restricting bail to individuals charged with some offences. In this regard, the Applicants submit that by prescribing non-bailable offences, the said Section 148(5) affects two categories of entities: individuals and the judiciary, the former are deprived of their basic rights enshrined in the Constitution and relevant

international human rights while the latter, as a result of the mandatory nature of the provision, are rendered functionless in bail applications.

5. The Applicants contend that, in spite of several legal challenges filed against the impugned Section of the Act in the national courts, the provision providing for the list of non-bailable offences is still upheld as being constitutional and in accordance with international human rights instruments.

B. ALLEGED VIOLATIONS

6. The Applicants allege that the Respondent State has violated the following provisions of the Charter: Article 1 (the duty to recognise the rights and freedoms and adopt legislative or other measures); Article 2 (right to non-discrimination); Article 3 (the right to equality before the law and equal protection of the law); Article 6 (right to liberty and security) and Article 7 (1) (a) (b) (c) (d) and 7(2) (the right to a fair trial).
7. Furthermore, the Applicants allege violations of Articles 2,3, 9(1), (3), (4), 14(1), (2), 3(c) and 26 of ICCPR; Articles 1,2,3,6, 7, 10, and 11(1) of UDHR; and Articles 13(1), (2), (3), (4), 13(6)(a), (b), 15(1), (2) (a) and (b), Article 29(1) and (2) of the Constitution of the Respondent State.

III. PRAYERS

8. The Applicants pray the Court to find/order that :
 - i. The Respondent state by enacting sections 148 (5) of the Criminal Procedure Act (Cap 20 R.E 2019) is in violation of Art 1,2,3,6 and 7 of The African Charter on Human and People's Rights.
 - ii. The Respondent state, through enactment of sections 148 (5) has violated Art 2,3, 9(1), (3), (4), 14(1), (2), 3(c) and 26 of International Covenant on Civil and Political Rights, and ,1,2,3,6,7,9,10 and 11(1) of Universal Declaration of Human Rights.

- iii. the Respondent puts in place Constitutional and Legislative measures to guarantee the rights provided for under Article 1, 2,3,6 and 7 of The African Charter on Human and People's Rights and other international human rights instruments.
- iv. All suspects and accused person charged with unbailable offence be released on bail within one month from the date of the decision under the bail conditions to be set by Respondents Courts, based on circumstances of each case.
- v. the Respondent reports to the Honourable Court, within a period of twelve (12) months from the date of the judgment issued by the Honourable Court, on the implementation of this judgment and consequential orders;
- vi. Any other remedy and/or relief that the Honourable Court will deem to grant;
and
- vii. The Respondent to pay the Applicants costs.