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The Court composed of SACROES Mdeent; BERN OKO,
ACHOUS Suzanne MENGUE and R. CHIZUMILA, Chafika
TCHIKAYA, Stella I. ANUKAM, Du AND \$ E U B dg A T SEBE
and Robert ENO, Registrar.

In accordance with Article 22 of the Protocol
Peop' Rights Esnt at hshment of an African Court
Rights (hereinafter referred to as "the Prot
(hereinafter referred to as "the DRU IA B O"U)D,, P
Court and a nati nabi d f n T an hear the Applicat

In the Matter of:

Crospery GABRIEL and Ernest MUTAKYAWA

Represented by:

Mr Hanni ANMO, Chief Executive Africa, Luand e Sro cti h e d
Cour Pr'os ESoc h e .me

Versus

UNITED REPUBLIC OF TANZANIA

Represented by:

i . Dr Boniphace Nalija LUHENDE, Solicitor Ge
General;

i i Ms Sarah Duncan MWA E P O B O, of the Division
Affairs and , Hu Oni a f r i c R e i g h t s h e Solicitor Gen

i i Mr Baraka LUVA N A D S a d o r , H e a d O f f i C e e g a l f U r h i e t
General;

¹Rule 8(2), Rules of Court, 2 June 2010.

v Ms. Nkasori, SARAKISKYAT Director, Human Rights
 Attorney, Office of the Solicitor General
 v. Mr. Mark MURWAMBIBI Opal Sofatic Attorney Solicitor
 and
 v Ms Blandina KASAGAMA, Legal Officer, Ministry of
 African Cooperation.

After deliberation,

Renders this Judgment :

I. THE PARTIES

1. Prosperity Gabriel and her friends are the appellants in the present Application. They are a family of five who were convicted and sentenced for the offence of mutiny of the armed forces of Uganda. The appellants were detained at Butimba Central Prison, Mwanza. The appellants have been claiming their rights during the proceedings before the domestic courts.
2. The Application is filed against the United Republic of Tanzania (referred to as "the Respondent State"), the African Charter on Human Rights (referred to as "the Charter") on 21 October 1986 and to the African Commission on Human and Peoples' Rights (referred to as "the Commission") on 29 March 2019. The Respondent State does not dispute the Declaration prescribed in Article 1 of the Charter (referred to as "the Declaration"), by which the Respondent State accepted the jurisdiction of the Court to receive applications from individuals or groups of individuals. Governmental officials and human rights observers stated that the Respondent State has not accepted the jurisdiction of the African Commission and Peoples' Rights (referred to as "the Commission") on 21 November 2019, the Respondent State deposited with the Chairperson of the Commission its instrument withdrawing its Declaration.

withdara has no bearing on pending and withdrawal came in (1) of year 2020, after this is a 22 p November² 2020.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from 3 April 2019 death certificate with four (4) other persons who are, brother and the Twaha family members mached. One of the victims was a 70-year-old woman, Muktari Twaha, who was injured and died on 5 Bukoba Regional Hospital.
4. On 20 February 2010, the Appellate Court charged with murder the High Court. On 31 July 2014, the High Court found Applicants guilty of murder. The death sentences were pronounced and were acquitted.
5. Aggrieved by decision of the High Court, the Applicants appealed to the Court of Appeal. On 20 February 2015, the Court of Appeal dismissed the appeal.

B. Alleged violations

6. The Applicants allege that their rights under the Constitution were violated before the High Court. They specifically contend that:

² Andrew Ambrose Cheusi v. United Republic of Tanzania (judgment) (26 June 2020) 4 AfCLR 219, §§ 37-39.

- i. The domestic courts under Article 1 of the Convention have not given rise to a finding that the Respondent State has violated its obligations under Article 1 of the Convention.
- ii. The domestic courts have not found that the Respondent State has violated its obligations under Article 1 of the Convention.
- iii. The domestic courts have not found that the Respondent State has violated its obligations under Article 1 of the Convention.
- iv. The prosecution failed to prove its case against the Respondent State.
- v. The mandatory nature of the death penalty is not compatible with the Respondent State's obligations under Article 1 of the Convention.
- vi. The mandatory nature of the death penalty is not compatible with the Respondent State's obligations under Article 1 of the Convention.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

7. The Application was received at the Registry on 20 January 2011 and served on the Respondent State on 15 November 2011.
8. On 18 November 2011, the Court directed the Respondent State to refrain from imposing the death penalty on the Applicants until the conclusion of the proceedings.
9. The Respondent State filed a response on 24 May 2012, which was transmitted to the Applicants on the same date.
10. After several extensions of time, the Court has not yet rendered its judgment on the merits and reparations within the time limit.
11. Pleadings were closed on 23 August 2012 and the Parties were notified.

IV. PRAYERS OF THE PARTIES

12. The Applicants pray the Court as follow

- i. Declare that the Court has jurisdiction
- ii Declare this as Applicable
- iii Grant the Applicants Rule 13 of the Rules of and Article 10(2) of the Protocol of t
- iv Restore the Applicants from om prison;
- v. Order the Respondent State to pay on the account of moral damage suffered by the (Thousand United States Dollars);
- vi Order the Respondent State to pay to the Ap of income in the amount of (Thousand United States Doll;ars)
- vii Order the Respondent State to pay repara on account of moral damage suffered in (Thousand United States Dollars); and
- viii Order the Respondent State to amend its right to life under by Article 14 of the human death sentence for murder.

13. In relation to jurisdiction Respondent State i Court

- i. Declare the Court is not vested with Application before it;
- ii Find that the Appellate admissibility provided by Rule 40(5) of the Rules of the Court
- iii Find that, the Appellate admissibility provided by Rule 40(6) and the Rules of
- iv Declare Application inadmissible and di

14. On merits and here Respondent State prays that it did not violate Article 12, 13,

Application for lack of jurisdiction. The Respondent also argues that the Applicants' Application is not appropriate. The Respondent also argues that the Applicants' Application is not appropriate.

V. JURISDICTION

15. The Court observes that Article 3 of the

1. The jurisdiction of the Court shall be to settle the interpretation of the Charter, this Protocol and any other instrument ratified by the States concerned.
2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

16. The Court further recalls that pursuant to Article 3 of the Protocol and³ these Rules. ”

17. On the basis of the provisions, the Court shall establish its jurisdiction and dispose of the case.

18. In the present Application, the Court shall first consider the objection before examining the merits of the case.

A. Objection to material jurisdiction

19. First, the Respondent asks the Court to review or evaluate the evidence submitted before the Court. The Respondent asks the Court to review or evaluate the evidence submitted before the Court.

³Rule 39(1), Rules of Court, 2 June 2010.

that it has ratified the 1966 African Charter on Human and Peoples' Rights. The Respondent submits that the High Court's decision in *Goetz v. United Republic of Tanzania* is binding on the High Court to examine alleged evidentiary domestic proceedings.

20. The Respondent submits that the High Court's decision in *Goetz v. United Republic of Tanzania* is binding on the High Court to examine alleged evidentiary domestic proceedings. The Respondent submits that the High Court's decision in *Goetz v. United Republic of Tanzania* is binding on the High Court to examine alleged evidentiary domestic proceedings. The Respondent submits that the High Court's decision in *Goetz v. United Republic of Tanzania* is binding on the High Court to examine alleged evidentiary domestic proceedings.

21. Regarding the jurisdiction of the High Court, the Respondent submits that this Court's jurisdiction is the High Court's jurisdiction. The Respondent submits that the High Court's jurisdiction is the High Court's jurisdiction. The Respondent submits that the High Court's jurisdiction is the High Court's jurisdiction.

22. The Court recalls that under Article 3(1) of the African Charter on Human and Peoples' Rights, the High Court has the duty to examine "all cases and disputes submitted to it and application of the Charter and other instruments ratified by the State".

23. The Court observes that the High Court's decision is based around two arguments being, first, that

⁴ See, *Kalebi Elisamehe v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 265, § 18; *Gozbert Henrico v. United Republic of Tanzania*, ACtHPR, Application No. 056/2016, Judgment of 10 January 2022 (merits and reparations), §§ 38-40.

and, second, that the Court is not mandated to do so. Each of these arguments will now be addressed.

24. As regards the argument that the Court is not mandated to do so at first instance, the Court has held that it is not bound by the findings of fact and law of the trial court, which retains the prerogative of domestic jurisdiction to conduct its own assessment of evidence and to apply the provisions of the Charter and other international human rights instruments. The Court, however, should be sitting as a court of appeal if it were to consider the merits of the appeal. Resultantly, the first limb of the Respondent's argument is rejected.

25. In relation to the argument that the Court is not mandated to do so as an appellate body concerning proceedings conducted in accordance with the Charter or any other human rights instruments, the Court would not be sitting as a court of appeal if it were to examine the merits of the appeal. The second limb of the Respondent's argument is also rejected.

26. Overall, the Court finds that it has material jurisdiction to hear and determine the appeal.

⁵ *Ernest Francis Mtingwi v. Malawi* (jurisdiction) (15 March 2013) 1 AfCLR 190, § 14.

⁶ *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 33; *Werema Wangoko Werema and Another v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 520, § 29 and *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 130.

⁷ *Mtingwi v. Malawi* (jurisdiction), *supra*, § 14.

⁸ *Kennedy Ivan v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 48, § 26; *Guehi v. Tanzania* (merits and reparations), *supra*, § 33; *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania* (merits) (23 March 2018) 2 AfCLR 287, § 35.

B. Other aspects of jurisdiction

27. The Court notes that the Respondent State temporal and territorial jurisdiction. The Rules must satisfy itself that all as before proceeding with the determination

28. In relation to its personal jurisdiction, as stated in paragraph 2 of the Judgment, that the Respondent State has deposited the Declaration and has deposited the Declaration. The Court further noted that in 2015, the Respondent State had withdrawn its application. In accordance with its jurisprudence, the withdrawal of an application applies retroactively and only takes effect from the date of such withdrawal has been considered. This Application, having been filed unaffected by it. Consequently, the Court has jurisdiction.

29. Regarding temporal jurisdiction, based on the facts of the case, the Court concludes that the Respondent State's application was filed on 20 February 2015. The Court's decision was rendered on 20 February 2015. The Respondent State's application was filed on 20 February 2015. The Court thus holds that it has temporal jurisdiction.

30. As regards its territorial jurisdiction, the Court has found that the Respondent State's application was filed in the territory of the Respondent State. In the circumstances, the Court has established its territorial jurisdiction.

⁹ Rule 39(1) of Rules of Court, 2 June 2010.

¹⁰ *Cheusi v. Tanzania*, *supra*, §§ 35-39.

31. In light of all the above, the Court holds that the present Application is admissible.

VI. ADMISSIBILITY

32. Pursuant to Article 6(2) of the Protocol on the Admissibility of Cases taking into account the Charter.

33. In line with Rule 40(1) of the Rules of Court, the Court finds that the Application is admissible in accordance with Article 6(2) of the Protocol.

34. The Court notes that Rule 50(2) of the Rules of Court sets out the conditions for the admissibility of Applications filed under the Charter as follows:

Applications filed under the Charter must satisfy the following conditions:

- a. Indicate their authors even if they are anonymous;
- b. Are compatible with the Charter and with the Convention;
- c. Are not written in disparaging or insulting terms against the State concerned and its Government or its institutions or the Union;
- d. Are not based exclusively on news items appearing in the mass media;
- e. Are sent after exhausting local remedies, it being obvious that this procedure is unduly prolonged;
- f. Are submitted within a reasonable time from the date on which the remedies were exhausted or from the date on which the applicant became a victim of the alleged violation of the Charter.

¹¹ Rule 40 of the Rules of Court, 2 June 2010.

g. Do not deal with cases which have been
involved in accordance with the provisions of the
United Nations, or the Constitutive
provisions of the Charter.

35. The Court reserves the right to examine the admissibility
of the Application on its merits if the Applicant
has exhausted all local remedies, and if the
Applicant has not exhausted all local remedies,
it will therefore consider the Application on its
admissibility requirements, if necessary.

A. Objection based on failure to exhaust local remedies

36. The Respondent State contends that the
admissibility requirements provided under
Article 35 of the Charter are not satisfied
because the Applicant has not exhausted all
local remedies.

37. In support of its contention, the Respondent
State contends that the Applicant's failure to
exhaust local remedies is a bar to the
admission of the Application. The Respondent
State also contends that the Applicant's
failure to exhaust local remedies is a bar to
the admission of the Application under
Article 35 of the Charter.

38. The Respondent State also contends that
the Applicant's failure to exhaust local
remedies is a bar to the admission of the
Application under Article 35 of the Charter.

*

39. The Applicant contends that it has exhausted
all local remedies and that it has filed an
Application with the Court. The Applicant
also contends that it has filed an Application
with the Court of Appeal, but that no
decision has been rendered.

40. The Court understood that 56(5) thereof provides that where a party has exhausted its domestic remedies, it shall fulfil the requirement of exhaustion of local remedies, and it shall be sufficient for the party to pursue a remedy locally¹² if the exhaustion of local remedies is not a condition for the exercise of the Court's jurisdiction. The Court has consistently held that it is not necessary for a party to exhaust its local remedies before an international tribunal if the exhaustion of local remedies is not a condition for the exercise of the Court's jurisdiction. The Court has consistently held that it is not necessary for a party to exhaust its local remedies before an international tribunal if the exhaustion of local remedies is not a condition for the exercise of the Court's jurisdiction.

41. In the instant case, the Court notes that the Applicants' appeal before the Court of Appeal, the highest judicial organ of the Respondent State, was determined when a judgment was rendered on 20 February 2015. Although the Applicants claim to have lodged an application for review of this decision, the procedure by which the Court of Appeal upheld their conviction and sentence is the final ordinary judicial remedy that was available to them. As the Court has previously held, the review procedure, as well as the constitutional petition procedure, as framed in the Respondent State, constitute extraordinary remedies that the Applicants were not required to exhaust before seizing this Court.¹⁴

42. In relation to the Applicants' allegations of human rights violations, the Court reiterates its jurisprudence that where an alleged human rights violation occurs in the course of the domestic judicial proceedings, domestic courts are thereby afforded an opportunity to pronounce themselves on possible human rights breaches. This is because the alleged human rights violations form part of the bundle of rights

¹² *Peter Joseph Chacha v. United Republic of Tanzania* (admissibility) (28 March 2014) 1 AfCLR 398, §§ 142-144; *Almas Mohamed Muwinda and Others v. United Republic of Tanzania*, ACTHPR, Application No. 030/2017, Judgment of 24 March 2022 (merits and reparations), § 43.

¹³ *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (26 May 2017) 2 AfCLR 9, §§ 93-94.

¹⁴ *Thomas v. Tanzania*, *supra*, §§ 60-62; *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.

and guarantees that were related to or were the basis of the proceedings before domestic courts. In such a situation it would, therefore, be unreasonable to require the Applicants to lodge a new application before the domestic courts to seek relief for such claims.¹⁵

43. In the instant case, the Applicants' claims form part of the "bundle of rights and fair trial rights" that the Respondent was bound to refer to the High Court. The principle of "bundling" applies, among other things, to the issue of whether the issue was or is deemed to have been raised and adjudicated in the domestic judicial authorities.¹⁶

44. In the present case, the Respondent State had to address the possibility that the Applicants' claims were not raised in the domestic courts. The issue of the fairness of the trial and reliance on the domestic courts are all matters that fall within the bundle of rights and guarantees before the High Court and the Applicants' claims in the High Court and the Respondent State.

45. Consequently, the Respondent State holds that the Applicants' claims are not covered by Article 56(5) of the Charter and Rule 5

¹⁵ *Jibu Amir alias Mussa and Another v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 629, § 37; *Thomas v. Tanzania* (merits), *supra*, §§ 60-65, *Kennedy Owino Onyachi and Another v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65, § 54; *Ernest Karatta, Wafried Millinga, Ahmed Kabunga and 1744 Others v. United Republic of Tanzania*, ACtHPR, Application No. 002/2017, Judgment of 30 September 2021 (merits and reparations), § 57.

¹⁶ *Thomas v. Tanzania* (merits), *supra*, § 60.

¹⁷ *Onyachi and Njoka v. Tanzania* (merits), *supra*, § 54; *Viking and Nguza v. Tanzania* (merits), *supra*, § 53; *Thobias Mang'ara Mango and Shukurani Masegenya Mango v. United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 314, § 46.

¹⁸ *Thomas v. Tanzania* (merits), *supra*, § 60 and *Sadick Marwa Kisase v. United Republic of Tanzania*, ACtHPR, Application No. 005/2016, Judgment of 2 December 2021 (merits and reparations), §§ 38-39.

B. Other admissibility requirements

46. The Court notes that the Applicant has complied with the requirements, set out in paragraph (g) of the Rules. Nonetheless, it must meet

47. From the record, the Court notes that the identification of Rule 50(2)(a)

48. The Court notes that the Applicant's right is guaranteed under the Charter. It further notes that the Constitutive Act of the African Union provides for the promotion and protection of human rights, and nothing on file indicates that the Applicant's right under the Constitutive Act of the African Union. The requirement of Rule 50(2)(b) of the Rules is met.

49. The language used in the Application is the language of the Respondent State or its institutions in accordance with the Rules.

50. The Application is not based on a petition through mass media as it is founded on legal grounds in accordance with Rule 50(2)(d) of the Rules.

51. In relation to the requirement for filing the Application under Rule 50(2)(f), the Court recalls that the Applicant must specify the time frame within which it has exhausted local remedies. The Applicant has not specified the time frame for the exhaustion of local remedies. The Court notes that the reasonableness of the time frame depends on the facts and circumstances of the case.

circumstances of the case and by which it should be based.¹⁹”

52. Specific to the Court notes that the decision rendered on 20 February 2015 on which was filed on September 2016. The period (1) is (16,) the month (1) days. It is this period that the Court, in its jurisprudence, has taken into account the facts and death row with the result that the information being lay without the benefit relevant in determining the reasonableness.

53. In the present Application, at the time of the hearing in the case was filed the Application before the Court with the assistance of the Court for 12 months and the period of 12 months within the 50 (23) (f).

54. The Court at the Appellate does not conclude that the matter has already been settled by the Parties in the Charter of the United Nations, the provisions of the Charter or of any legal instrument of Rule 50(2)(g) of the Rules of Procedure.

55. Given all the above, the Court finds that the requirements of Rule 50(2)(g) of the Rules of Procedure are satisfied.

¹⁹ *Zongo Ouhed Burkinabe*, § 2. See *Thomas v. (Tanzania)*, § 73.

²⁰ *Igola Iguna v. United Republic of Tanzania*, Application No. 020/2019, Judgment of 20 December 2022 (merits and reparations), § 38.

²¹ *Thomas v. (Tanzania)*, § 33. See *Jonas v. (Tanzania)*, Application No. 4/2019, Judgment of 20 December 2019 (merits and reparations), § 8.

²² *Sébastien Germain Ajavon v. Republic of Benin*, ACHPR, Application No. 065/2019, Judgment of 29 March 2021 (merits and reparations), §§ 86-87.

VII. MERITS

56. The Applicants allege that the Respondent State violated their rights before the law and equal before the law under Articles 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100 of the Constitution.

A. Alleged violation of right to a fair trial

57. In relation to the alleged violation of the right to a fair trial, the Applicants contend that the Respondent State violated their rights to a fair trial. They consider that the reasons for the conviction by the domestic courts are based on faulty evidence and that the Respondent State failed to prove the guilt of the Applicants beyond reasonable doubt. They claim that each of the alleged violations of the right to a fair trial is a violation of the right to a fair trial.

i. Alleged failure to provide a fair trial

58. The Applicants claim that the High Court ignored the exculpatory evidence in their trial. They further claim that their right to a fair trial was violated as the trial court failed to furnish them with a fair trial, considering their defence.

*

59. The Respondent State's defence claims that the court, after the prosecution's evidence, ruled against the Applicants. It claims that there was evidence presented, which the Applicants themselves accepted, including the Applicants' own statements. The Respondent State submits that the High Court's appeal is a violation of the right to a fair trial.

considered all relevant evidence before the immigration officer in arriving at his conclusions.

60. The Respondent states that the High Court and the Court of Appeal decided the case in the way that the Respondent submitted that the High Court did in both the present case and in the other cases and that the Applicants were considered as a whole.

61. Article 7(1) of the Charter provides that every individual has the right to have his or her rights and freedoms realised in a fair trial.

62. The Court notes, however, that Article 7(1) provides for the right to a fair trial, however, that the Commission's findings on the Fair Trial principle are not a determination of obligations without undue delay and with for the "decisive component" of the right to a fair trial. The right to a fair trial is a component of the right to a fair trial, and the Commission's findings on the right to a fair trial are not a determination of obligations without undue delay and with for the "decisive component" of the right to a fair trial. The right to a fair trial is a component of the right to a fair trial, and the Commission's findings on the right to a fair trial are not a determination of obligations without undue delay and with for the "decisive component" of the right to a fair trial.

63. The Court also notes that in *Keneth Good*, the Commission's findings on the right to a fair trial are not a determination of obligations without undue delay and with for the "decisive component" of the right to a fair trial.

²³African Commission on Human and Peoples' Rights 'Principles of Fair Trial and Legal Assistance in Africa' (2001), Principle 17.

provided under Article 14 of the European Convention on Human Rights and Article 8 of the American Declaration of the Rights and Duties of Man, which form the foundation of the right to a reasoned decision. Corresponding provisions of their respective constitutions impose on the duty to interpret.

64. In the present Application, the Court has questioned whether the domestic courts assessed the evidence against the applicant in a manner inviting the Court to consider the manner in which the evidence was obtained. The Court has previously held that

... domestic courts enjoy a wide margin of appreciation in evaluating the probative value of a particular evidence. As an international human rights court, the Court cannot take up this role from the domestic courts and investigate the details and particularities of evidence used in domestic proceedings.²⁷

65. The above notwithstanding, the Court has held that in domestic proceedings, the assessment of the evidence must be in consonance with international human rights standards.

66. In the present Application, the Court observes that the applicant has not shown that the circumstances of the alleged violation are such as to warrant the Court's intervention. The Court's contentions that the domestic courts acted arbitrarily in their findings are not supported by the evidence.

²⁴ *Kenneth Good v. Botswana* (2010) 43 ACHPR 2010 (2010) 43 ACHPR 2010. Also see *Albert Bialufu Ngandu v. Democratic Republic of Congo* (2016) 43 ILC 16725 (February 2016), §§ 58.

²⁵ *Bauchean v. ECHR* (2007) 40 EHRR 1010 (2007) 40 EHRR 1010, Application No. 1010/2007.

²⁶ *Barbani Duarte and Others v. Portugal* (2015) 60 EHRR 1151 (2015) 60 EHRR 1151, Application No. 1151/2015.

²⁷ *Kijisjaga v. United Republic of Tanzania* (2018) 2 AfCLR 18 (2018) 2 AfCLR 18, Application No. 18/2018.

67. Equally, although the Applicants allege domestic court proceedings in their defences, the Applicants principally sought that the High Court confirm that the High Court's findings were upheld by the High Court. The Court, in its decision, found that the domestic courts demonstrated a failure to discharge the required burden for establishing that the domestic courts acted in disregard of the

68. Accordingly, the Court found that the domestic courts' reasons for disregarding the domestic courts' findings were not

69. In light of the above, the Court found that the domestic courts' failure to discharge the burden of proof constituted a violation of section 7(1) of the Charter.

ii Alleged violation of the right to a fair trial and identification

70. The Applicants submit that the visual identification evidence presented by the witnesses who testified to the identification of the respondent as the perpetrator of the crime and attack was unreliable and that the identification evidence was not

*

71. The Respondent submits that the failure of the domestic courts to identify the respondent as the perpetrator of the crime and attack was in line with the principles of the law. The Respondent submits that the domestic courts' failure to identify the respondent as the perpetrator of the crime and attack was in line with the principles of the law.

distance of the observations, observation and victims were familiar with the Applicant that the Court found the prosecution witnesses that over and above the direct witness to be evidence implicating the Applicants

72. According to the Respondent State the Applicant a thorough and apt proponent. The Respondent State informed the Court should the finding of the domestic courts in procedures tried down by the land were ad

73. The Court further underscores that domestic appreciation in evaluating the evidence before them as an international court should not take this role from the domestic courts

74. As the Court has previously observed, a sentence in a criminal offence, a sentence, should be based on evidence and in relation to visual identification, conviction on this type of evidence, all mistakes should be ruled out and the identity be established with certitude. This is Respondent Justice. The result is that evidence identification should be established and must be part of a coherent and consistent

²⁸ *Abubakar v. (M.T. v. T. P.)* § 26 and 173.

²⁹ *Abubakar v. b. i. T. n. 1. A. i. a.*

³⁰ *Matter of Waziri (M. A. 980) v. T. L. R. e 2 5 R. e. p. u. b. l. i. c*

³¹ *Isiaga v. (M. T. v. T. P.)* § 68.

75. In the instant case, the High Court considered with
Applicant the basis of evidence of the
testimonies of the witnesses who were victims
of the crime. The court considered the evidence of the
witnesses and the commission of the crime by the
witnesses who were victims of the crime.

76. The record demonstrates that the court analysed the
evidence under which the prosecution was based and
Applicant's evidence. The court found that the
witnesses had observed the Applicant's conduct
and assessed that the High Court decided
the prosecution witnesses while admitting
judgment of the court that the trial
was aware of the importance of the evidence
and the court could not find the same findings
fully endorsed by the Court of Appeal.

77. In the circumstances, the court found that the procedures
of domestic courts in assessing the evidence
under Article 7(1) of the Convention are
generally standard.

78. The court finds that the evidence of the
witnesses was erroneously used by the
Applicant.

ii Failure to prosecute the Applicant

79. The Applicant's rights were not violated by
the failure to prosecute the Applicant.

*

80. The Respondent State avers that the standard beyond reasonable doubt lies on the applicant to prove its case beyond a reasonable doubt. If a court finds it further satisfied the standard, the conviction is upheld by the Court of Appeal of Tanzania.

81. The Applicants make a general submission that the prosecution failed to prove beyond a reasonable doubt, demonstrate that the prosecution failed to prove beyond a reasonable doubt. To the contrary, the record demonstrates that the Applicants bore no burden to prove that the High Court applied the correct legal principles in convicting them.

82. Consequently, the Applicants' allegations that the Respondent State violated the Charter of Fundamental Rights and Freedoms are well founded.

iv Allegations relating to the right to a fair trial

83. The Applicants allege that the report which was relied on to convict them into violation of section 240(3) of the CPA is unreliable.

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84. The Respondent State submits that the Applicants' submission is misconceived and could be attributed to the fact that during the trial, the Applicants failed to introduce into evidence the sketch plan of the site where the alleged crime took place.

Respondent State's report was admitted to confirm the death of the deceased was and premised on a duly verified report. Accordingly, pray Court to admit the allegations.

* * *

85. The Court takes judicial notice of section 17(1) of the Charter which lays down the procedure for criminal trials. The Court notes from the record that the evidence was represented by counsel, never required to examine the authenticity of the report. The Applicants elaborate how the admission of the report led to a violation of their rights under the Charter, again referring to the cases cited as a basis for their contention that the Charter is applicable to the respondents.

86. The Court thus finds that the Applicants' reliance on the report to be without basis in the allegations against the Respondent State has not violated the Charter.

87. Overall, therefore, the Applicants' claims relating to the alleged violation of their rights under the Charter are not established.

B. Alleged violation of the right to life

88. The Applicants contend that the Respondent State's regime violated their right to life and health.

³²Section 17(1) provides: "The Commission shall, if so requested by the accused person, make available to him a copy of the report referred to in this section and shall, if so requested by the accused person, make available to him a copy of the report referred to in this section.".

Human Rights. They also aver that the R
13(6)(d) and 14 of titles dCapisttAlt upi uins hdnæ
They submit that the Respondent State vici
as enshrined under Article 4 of the Cha

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89. The Respondent State avers that the Hig
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of Appeal is the final authority in dis
Article 107A (1) of the Constitution. It
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PenadeCand that the Court of Appeal, has
the death penaflotry tays Comstii d ed i on.

90. The Court notes that Article 4 of the C
are inviolable. Every duman r b e p a g t s h a l l
the integrity of his person. No one may

91. The Court r e e s a t l a s l i t s h e d w e i l d t e r n a t i o n a l h o w a l h
on the criteria to apply idre ad s e s e s i t r e g n e t e
that is, whether the death sentence is
sentence was passed by a competent cour
followed in the proceedings leading to

³³ See *International Pen and Others (on behalf of Saro-Wiwa) v. Nigeria*, Communications 137/94, 139/94, 154/96, 161/97 (2000) AHRLR 212 (ACHPR 1998), §§ 1-10 and § 103; *Forum of Conscience v. Siena Leone*, Communication 223/98 (2000) 293 (ACHPR 2000), § 20.; See Article 6(2), ICCPR; and *Eversley Thompson v. St. Vincent & the Grenadines*, Comm. No. 806/1998, U.N. Doc. CCPR/C70IO/806/1998 (2000) (U.N.H.C.R.), 8.2; See also, *Ally Rajabu and Others v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 539, § 104.

92. In relation to the Court's interpretation of the death sentence provided for in *Respectable* 1976, the criterion is thus met in the present case.

93. Regarding the Court's observations that the contention is not that the State is to conduct the processes that led to the death sentence. The Court further notes that the High Court could only impose the death sentence in the law as the mandatory sentence for murder. The Court observes that the High Court is the competent State to deal with offences such as murder and original jurisdiction is not provided for under Section 3(2)(a) of the Criminal Code. The death sentence was imposed by a court of law and the requirement is equally met.

94. In relation to the Court's observations in *Rajabu and Others v. Attorney General* that the death sentence can only be imposed in accordance with the requirements of fairness³⁵ in this regard, the Court held that by a tribunal that is independent in the determination of the facts and law, the discretionary power of a judicial officer on the basis of the facts and circumstances of the case, the mandatory sentence is not imposed in a process in criminal proceedings.

³⁴ "A person convicted of murder shall be sentenced to death." b.e

³⁵ *Rajabu and Others v. Attorney General*, 98 Tanzania, *ibid*

³⁶ *ibid*, 107.

³⁷ *ibid* § 110.

95. In the instant case, the Court finds that the death penalty provided for in Sections 197 of the Penal Code, as automatically applied by the Applicants, does not constitute an arbitrary deprivation of the right to

96. As previously stated, the mandatory death penalty is a violation of the right to life and is unconstitutional under the Respondent State.

97. In relation to the mandatory death penalty in the Respondent State, the Court finds it apposite to note that the Respondent State was aware of the international instruments that prohibit the Respondent State. The Respondent State expressed himself thus:

... the only punishment for murder is death sentence. This kind of sentence has been subject of criticism by many people including lawyers, human rights groups etc. I do not need to say much about it but as the country is in the process of having a new constitution, I think it is the right time to think of an alternative punishment for those who commit offences which attract the sentence of death.

98. The Court notes that the sentiments expressed by the Respondent State are the same fundamental problems with the mandatory death penalty in the Respondent State.

99. For the reasons stated above, the Court finds that the Respondent State violated Article 8 of the African Charter on Human and Peoples' Rights on the Applicants.

³⁸ *Ibid*, §§ 104-114. See also, *Amini Juma v. United Republic of Tanzania*, ACtHPR, Application No. 024/2016, Judgment of 30 September 2021, §§ 120-131; *Henerico v. Tanzania*, *supra*, § 160.

³⁹ *Ghati Mwita v. United Republic of Tanzania*, ACtHPR, Application No. 012/2019, Judgment of 6 December 2022, ¶ 65.

C. Alleged violation of the right to dignity

100 The Applicants allege that they have been denied their dignity by the mandatory imposition of the prescribed mode of execution in the Respondent's language,

101 The Respondent State submits that these arguments should be dismissed. It also submits that the Applicants allege that their dignity was violated during investigation, restraint or in the

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102 The Court notes that Article 5 of the Constitution states:

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

103 The Court has previously addressed the question of execution by the Respondent's State. It has held that there is no information to suggest that the legal system has changed, and that the Respondent's State must simply reiterate on this point what it has previously stated, the implementation of hanging is "inherently degrading" and a violation of the right to the respect of the individual and his dignity.⁴¹

⁴⁰ *Rajabu and Othman v. Tanzania*, 1999 (1) L.R. 109, paras 13-15.

⁴¹ *Rajabu v. (Tanzania and others)*, 2000 (1) L.R. 109, paras 13-15.

104. The Court held that hanging as a method of execution is a violation of the right to dignity under Article 5 of the Charter.

105. In the circumstances, the Respondent violated Article 5 of the Charter.

D. Alleged violation of the right to a fair trial

106. The Applicants allege that the manner in which the courts conducted their trial was a serious violation of the right to a fair trial under Article 8 of the Charter.

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107. The Respondent State argues that both the Trial Chamber and the Appeals Chamber fairly evaluated all the evidence and found that the Applicants failed to establish their guilt. The Applicants contend that the Appeals Chamber erred in its finding on the fact that the prosecution witnesses were not credible. The Applicants argue that the Appeals Chamber's findings lack credibility and are not supported by the evidence.

108. Article 8 of the Charter reads as follows:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

109. The African Commission on Human and Peoples' Rights, in its decision in *Human Rights in the Democratic Republic of Congo*, stated thus:

⁴² African Commission on Human and Peoples' Rights, *Human Rights in the Democratic Republic of Congo*, 37 Afr. L.J. 318 (1998).

Article 2 of the Charter is imperative and other rights and freedoms protected strictly proscribes any distinction, on a basis of race, colour, sex, religion, or social origin, which might impair the enjoyment of opportunity or treatment.

...The scope of discrimination extends beyond to equal treatment by the law and also individuals should in fact be able to enjoy the Charter without discrimination on the basis of race, religion, political opinion, national origin or other status.

110. In so far as proving a violation of Article 2, the Court observes that in *George A. Mubiloigé v. United Republic of Tanzania* that “[g]eneral statements to the effect that rights have been violated are not enough. More specific evidence of a violation of Articles 2 of the Charter is required. It is the duty of the applicant to substantiate the allegation.”⁴³

111. In the present Application, the applicant has made a general averment without offering any proof. Resultantly, the Court dismisses the applicant’s claim for a violation of Article 2 of the Charter.

E. Alleged violation of the right to equality

112. In their Reply to the Respondent State, the applicant states that the Respondent State “did not respect the rights provided under Article 3 of the African Charter on Human and Peoples’ Rights.” Apart from this general allegation,

⁴³ (Merits) May 2018) 2 AfCLR 369, § 51.

⁴⁴ *Miner v. United Republic of Tanzania* (2018) 2 AfCLR 369, § 51.

substantiation as to how and whether Respondent's rights under Article 3 of the Charter.

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113. The Respondent's conduct does not substantiate the allegations under Article 3 of the Charter.

114. Article 3 of the Charter provides that: "Every individual shall be entitled to the protection of the law."

115. In its jurisprudence, the Court has consistently held that an Applicant alleging a violation of Article 3 of the Charter must demonstrate that the Respondent's conduct infringed the guaranteed protection of the law such as the just and reasonable provision⁴⁵

116. In the present case, the Applicant has established that the Respondent's conduct violated Article 3 of the Charter. The Court has made a general averment. As the Court has found the Respondent's allegations to the effect that a right was violated, the Court has found a violation.⁴⁶

117. In the circumstances, it is found that the Respondent violated Article 3 of the Charter.

⁴⁵ *Thomas v. Arncliffe* (1985), 140 F.T.R. 291, 292.

⁴⁶ *Cheusi v. (The Queen)* (1985), 140 F.T.R. 291, 292.

VIII. REPARATIONS

118 The Court notes that Article 27(1) of the Court finds that a violation of human rights shall make appropriate reparation, payment of fair compensation or

119 As per the Court's jurisprudence, for reparations to be granted, the Respondent State should first be found responsible for the wrongful act. Second, causation should be established between the wrongful act and the alleged prejudice. Finally, where granted, reparations should cover the full damage suffered.

120 Furthermore, it is on the Applicant to prove his/her ⁴⁷Wietghatir regard to moral damages consistently held that the ⁴⁸irreparable and ⁴⁹strict.

121 The Court also restates that the measures a violation of human rights include rehabilitation of the victim, ⁴⁹reparation for the violations, considering the circumstances

122 In the present case, the Applicant has shown that the Respondent State violated their ⁴⁹rights. The Court, therefore, the Respondent's ⁴⁹liability. The Applicant

⁴⁷ *Kennedy Gihana and Others v. Rwanda* (merits and reparations) (28 November 2019) 3 AfCLR 655, § 139; See also *Reverend Christopher R. Mtikila v. Tanzania* (reparations) (13 June 2014) 1 AfCLR 72, § 40; *Lohé Issa Konaté v. Burkina Faso* (reparations) (3 June 2016) 1 AfCLR 346, § 15(d); and *Elisamehe v. Tanzania* (merits and reparations), *supra*, § 97.

⁴⁸ *Rajabu and Others v. Tanzania* (merits and reparations), *supra*, § 136; *Guehi v. Tanzania* (merits and reparations), § 55; *Lucien Ikili Rashidi v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 13, § 119; *Zongo and Others v. Burkina Faso* (reparations), *supra*, § 55

⁴⁹ *Ingabire Victoire Umuhoza v. Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 20. See also, *Elisamehe v. Tanzania*, (merits and reparations), *supra*, § 96.

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e s t a b l i s h e d v i o l a t i o n s

A. Pecuniary reparations

123 The Applicants claim pecuniary reparations for the harm they suffered as a result of the violations of their rights.

i. Material prejudice

124 The Applicants submit that they and other persons who were affected by their conduct specifically were engaged in work for the benefit of the State. The Respondent has offered to pay them a sum of \$50,000 as compensation for their imprisonment.

125 Separately, the Applicants claim that they have suffered a loss of income of at least ten thousand United States Dollars.

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126 The Respondent has not admitted any of the claims.

* * *

127 The Court recalls that in respect of material prejudice the Applicants failed to prove that they suffered a loss and that the alleged violations were the cause of that loss. They also failed to demonstrate a causal link between the violations and the loss.

⁵⁰ *Kijiji Isiaga v. United Republic of Tanzania*, 2021 (reparations), § 20.

established Monday of the following earnings lodged with the Court to support their

128 The Court, therefore, could miss for the purpose of material prejudice.

i i Moral prejudice

129 In respect of moral prejudice, the Applicant pain and suffering, including mental anguish which they seek compensation. Since they have suffered imprisonment as well as disruption of their lives. Appeal is for the sum of Thirty Thousand United States Dollars (\$30,000) themselves and their families as indirect victims as reparations for the

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130 With specific allegations of moral prejudice, the Applicant's application for reparations is dismissed. Appeal is dismissed.

* * *

131 The Court reiterates that it has held that presumed in cases of human rights violations in this respect is assessed based on circumstances.⁵¹ One of the principles applied in connection to the amount of compensation.

⁵¹ *Zongo and Others (v. Burkina Faso)*, 2008, 15, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

⁵² *Rashidi v. (Mauritania and Sudan)*, v. (Mauritania) a-§ 84 85; *Chi v. (Tanzania and Sudan)*, a-§ 177 (n.s),

132 The Court in *Thomas v. Arn*, 434 U.S. 171, 180 (1977), held that the State's failure to provide the Appellant with a fair trial and a fair hearing, which resulted in his conviction and death sentence, constituted a violation of the Eighth Amendment's prohibition against cruel and unusual punishment. Accordingly, the Appellant is entitled to a writ of habeas corpus and to be released from prison.

133 The Court also notes that the Appellant's conviction and death sentence were based on evidence that was unreliable and that the Appellant's conviction and death sentence were based on evidence that was unreliable and that the Appellant's conviction and death sentence were based on evidence that was unreliable.

134 Equally, the Court notes that the Appellant's conviction and death sentence were based on evidence that was unreliable and that the Appellant's conviction and death sentence were based on evidence that was unreliable and that the Appellant's conviction and death sentence were based on evidence that was unreliable.

135 In view of the foregoing, the Court concludes that the Appellant's conviction and death sentence were based on evidence that was unreliable and that the Appellant's conviction and death sentence were based on evidence that was unreliable and that the Appellant's conviction and death sentence were based on evidence that was unreliable.

B. Non pecuniary reparations

136 The Appellant's conviction and death sentence were based on evidence that was unreliable and that the Appellant's conviction and death sentence were based on evidence that was unreliable and that the Appellant's conviction and death sentence were based on evidence that was unreliable.

i. Amendment of laws

137 The Applicants pray that the Respondent take the necessary steps to ensure respect for the right to life by repealing the mandatory death sentence.

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138 The Respondent not file any submissions

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139 The Court where it has previously ordered States to amend their legislation in order to bring it into compliance with the Charter, for example, the Court has previously ordered States to bring their constitutional, legislative and all other laws into compliance with the Charter within a reasonable time to remedy the violation. In *Kambole v. United States of Tanzania*,⁵³ the Court found that the Burkinabe legislation on defamation was not compliant with Article 9 of the Charter, and in *APDF and IHRDA v. Republic of Kenya*,⁵⁴ the Court found that the Kenyan law was not compliant with Article 10 of the Charter. In *Kambole v. United States of Tanzania*,⁵⁵ the Court found that the Kenyan law was not compliant with Article 10 of the Charter. In *Kambole v. United States of Tanzania*,⁵⁶ the Court found that the Kenyan law was not compliant with Article 10 of the Charter.

140 In the present, having found that the respondent's actions are in violation of the Charter, orders that the respondent must provide a remedy to the applicant, including a public apology, and that the respondent must take steps to ensure that its laws are aligned with the provisions of the Charter. The Court orders that the respondent must provide a remedy to the applicant, including a public apology, and that the respondent must take steps to ensure that its laws are aligned with the provisions of the Charter.

ii Restitution

141 The Applicant has submitted that it was not able to return to its home before their incarceration but, as a state of emergency has been declared in the respondent's country, the Applicant is unable to return to its home.

⁵³ *Tanganyika Airways Ltd v. Tanzania*, (1988) 13 AFR 100 (ACJ).

⁵⁴ *Konate v. Burundi*, (1998) 13 AFR 100 (ACJ).

⁵⁵ *APDF and IHRDA v. Republic of Kenya*, (2002) 13 AFR 100 (ACJ).

⁵⁶ *Kambole v. United States of Tanzania*, (2002) 13 AFR 100 (ACJ).

as the second best measure taking into alleged offence was committed."

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142 The Respondent did not file any submissions

* * *

143 Regarding the Applicant's application, the Court can only make such order in compelling circumstances. In the Applicant's Application, the Court is not satisfied that the Applicant's interests are affected, therefore, the Court does not order the Applicant's release. The Applicant's application is dismissed with costs.

144 However, the Court is satisfied that, while the Applicant's application is not warranted, they were sentenced to a term of imprisonment. The Court has found that the mandatory sentencing regime in the Charter, which makes necessary order dealing with sentencing regime.

145 Consequently, the Court orders the Respondent to take measures for the rehearing of this case through a process that does not allow a penalty, while upholding the full discretion of the Court.

ii Publication

146 None of the parties made any submissions on this judgment

14 The Court considers, however, that for practical purposes, and in the peculiar circumstances of this case, a period of three (3) months is necessary. Given the current state of the State, the Respondent has amended and aligned with the Respondent's obligations. The Court thus finds this judgment a period of three (3) months notification.

Implementation and reporting

14 Both Parties, apart from making other reliefs as it deems fit, did not implement and reporting.

14 The justification provided by the Respondent in its report is not applicable in respect of reporting. Specifically in relation to its previous judgment on the provision of a mandatory death penalty, the Respondent State has not implemented the decisions within one (57) year of its

15 The Court observes that, in the present case, the provision imposing a mandatory death penalty beyond the individual and the same applies to the violation of the Charter, that is, the right to life

⁵⁷ *Raja v. State of Bihar*, 1973 AIR 1013, 1973 SCR (2) 1013.

151 In view of this, therefore, the Court Respondent State to periodically report judgment in accordance with Article 30 in detail the steps taken by the Responder provision from its Penal Code.

152 The Court notes that the Respondent State in its information submitted to the Court in its judgment that any of the cases where it was ordered to repeal the mandatory deadlines that the Court set have since still considers that the orders are warranted as a measure to ensure compliance with its obligation to behave in accordance with the Respondent State to scrutinize and provide all the information requested, therefore the Respondent State is under an obligation to implement its judgment (Article 30) from the date of notification of this judgment.

IX. COSTS

153 In their submissions, both Parties pray that the Party pays. The Applicant has requested the Respondent to reimburse the Applicant of United States \$50,000 to cover expenses related to transport.

* * *

154 Pursuant to Rule 32(2) of the Rules, "unless otherwise stated, each party bear its own costs".

155 In relation to the Applicant, the Applicant has represented that the East African Community is a beneficiary under the IGAD aid scheme. The Court

scheme covers the costs and expenses in the Applicants.

156 Resultant Court does not find any reasonable established practice and Patrys would be a

X. OPERATIVE PART

157 For these reasons:

THE COURT

Unanimously:

On jurisdiction

i. *Dismisses* the objection to jurisdiction;
ii. *Declares* it has jurisdiction.

On admissibility

i. *Dismisses* the objection to the admissibility
ii. *Declares* Application admissible

On merits

v. *Holds* that the Respondent State did not
to discrimination under Article 2 of
vi. *Holds* that the Respondent State did not
to equality and equal protection of
Charter;

vii. *Holds* that the Respondent State did not
to fair Article 10 of Charter;

By a majority of eight (8) Judges for; and two (2) Judges against,

v i ~~H~~ o l d s t h a t t h e R e s p o n d e n t S t a t e s h a s a r e s p o n s i b i l i t y t o p r o t e c t A d t u r e f e r t h e C h e a s e i m p o s i t i o n o n t h e m a n d a t o r y ; d e a t h p e n a l t y
i x ~~H~~ o l d s t h a t t h e R e s p o n d e n t S t a t e s h a s a r e s p o n s i b i l i t y t o p r o t e c t t h e d i g n i t y p r o t e c t i o n u n d e r C h a r t e r r i b y n g h a n g i n g a s a m e t h o d d e a t h i m p h e m e n t i n g

Unanimously,

O n r e p a r a t i o n s

P e c u n i a r y r e p a r a t i o n s

x . ~~D~~ i s m i s s e s A p p l i c a n t s r e p a r a t i o n s f o r p r e j u d i c e
x i ~~D~~ i s m i s s e s p r a y e r f o r r e p a r a t i o n s o n b a s e o f
x i ~~O~~ r d e r t h e R e s p o n d e n t S t a t e t o p a y t h e A p p l i c a n t s
o f T a n z a n i a t h r e e h u n d r e d t w o t y e e n (T S S 0 0 0 0 0) a s
d a m a g e s f o r t h e s u f f e r e d p r e j u d i c e
x i ~~O~~ r d e r t h e R e s p o n d e n t S t a t e t o p a y t h e A p p l i c a n t s
s u b p a r a g r a p h (i x) f r e e f r o m t a x e s w i t h i n s i x m o n t h s
f r o m t h e n o t i f i c a t i o n o f t h i s j u d g m e n t .
o n a r r e a r s c a l c u l a t e d a p p l i c a b l e b a s e o f
o f T a n z a n i a t h r o u g h o u t t h e p e r i o d o f t h e
a c c r u e d a m o u n t i s f u l l y p a i d .

N o p e c u n i a r y r e p a r a t i o n s

x i ~~D~~ i s m i s s e s A p p l i c a n t s r e p a r a t i o n s f o r r e l e a s e f r o m p r i s o n
x v ~~O~~ r d e r t h e R e s p o n d e n t S t a t e t o t a k e a l l n e c e s s a r y s t e p s
a n d l e g i s l a t i v e m e a s u r e s t o n o t w i t h s t a n d i n g

