

## Declaration by Judge Rafaâ Ben Achour

1. I agree with the entire operative part of *the Tembo Hussein v. United Republic of Tanzania* judgment (Application No. 001/2018).
2. However, I reiterate my opinions expressed in the *Ladislus Chalula v. United Republic of Tanzania* (Application No. 003/2018) judgment handed down on 5 February 2025 and *Emmanuel Yusufu alias Noriega v. United Republic of Tanzania* judgment (Application No. 013/2018) relating to the violation of the right to dignity of the human person, a right guaranteed by Article 5 of the Charter. I wish to express my opinion on the matter and emphasize that I do not agree with the reasoning. I find the grounds for the violation of this right, as enunciated by the Court,<sup>1</sup> unconvincing. The Court:

“[r]eiterates its position that in accordance with the very rationale for prohibiting methods of execution that amount to torture or cruel, inhuman and degrading treatment, the prescription should be that methods of execution must exclude suffering or involve the least suffering possible in cases where the death penalty is permissible.<sup>2</sup> Having found that the mandatory imposition of the death sentence violates the right to life due to its obligatory nature, the Court holds that, as the method of implementation of that sentence, that is, by hanging, inevitably encroaches upon dignity in respect of the prohibition of torture and cruel, inhuman and degrading treatment”.<sup>3</sup> The Court considers that these findings also apply in the instant case.

3. As I do not want to repeat what was written in the *Ladislaus* and *Noriega* judgments, I refer readers to them.

Judge Rafaâ Ben Achour



<sup>1</sup> § 80 of the judgment.

<sup>2</sup> *Rajabu and others v. Tanzania* (merits and reparations), *supra*, § 118.

<sup>3</sup> *Ibid.*, §§ 119 and 120.