

Jonas v Tanzania (reparations) (2020) 4 AfCLR 545

Application 011/2015, *Christopher Jonas v United Republic of Tanzania*

Judgment on reparations, 25 September 2020. Done in English and French, the English text being authoritative.

Judges: ORÉ; KIOKO, BEN ACHOUR, MATUSSE, MENGUE, MUKAMULISA, CHIZUMILA, BENSAOULA, TCHIKAYA and ANUKAM

Recused under Article 22: ABOUD

In its judgment on the merits, the Court held that the Respondent State had violated the Applicant's right to a fair trial by failing to provide him with free legal assistance during the trial before the national courts. In this judgment on reparations, the Court granted the Applicant's prayers for moral damages only.

Reparations (nature of reparations, 15, 16; material prejudice, 17; moral prejudice, 23; assessment of quantum of damages, 25; guarantee of non-repetition, 29, 30; measures of satisfaction, 32)

I. Subject of the Application

1. The present request for reparations, filed on 11 October 2018, arises from the judgment on the merits dated 28 September 2017 in which the Court found that the United Republic of Tanzania (hereinafter referred to as "the Respondent State") violated Article 7(1)(c) of the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") for failing to provide the Applicant with free legal assistance during his trial.

II. Brief background of the matter

2. In the Application on merits, the Applicant alleged that his right to a fair trial had been violated by the Respondent State by reason of lack of access to information on the proceedings and to legal representation, being convicted on the basis of uncorroborated testimonies and being subjected to a sentence that was not applicable at the time of trial. In the said proceedings before domestic courts, the Applicant was sentenced to thirty (30) years imprisonment for armed robbery.
3. On 28 September 2017, the Court rendered the judgment on the merits whose operative part, at paragraphs vi, ix, and x, reads as follows:
 - vi. *Holds* that the Respondent violated Article 7(1)(c) of the Charter in terms of the Applicant's allegation that he did not have the benefit of

free legal assistance, and that, consequently, the Respondent also violated Article 1 of the Charter; ...

- ix. *Reserves* its ruling on the Applicant's prayer on other forms of reparation;
 - x. *Requests* the Applicant to submit to the Court his Brief on other forms of reparations within thirty (30) days of receipt of this Judgment; also requests the Respondent to submit to the Court its Response on reparations within thirty (30) days of receipt of the Applicant's Brief;
4. It is the above mentioned Judgment on the merits that serves as the basis for the present request for reparations.

III. Summary of the Procedure before the Court

- 5. On 3 October 2017, the Registry transmitted to the Parties a certified true copy of the Judgment on the merits.
- 6. The Parties filed their submissions on reparations within the time stipulated.
- 7. On 9 March 2020, pleadings were closed and the Parties were duly notified.
- 8. On 12 May 2020, the Applicant was informed that the Respondent State had, on 21 November 2019, deposited with the Chairperson of the African Union Commission an instrument withdrawing its Declaration deposited in accordance with Article 34(6) of the Protocol and that since the effective date of the withdrawal is, in accordance with the Court's case-law,¹ 22 November 2020, this has no effect on the consideration of his Application.²

IV. Prayers of the Parties

- 9. The Applicant prays the Court to grant him the following reparations:
 - i. The amount of one hundred and eighty-five thousand dollars (USD 185,000) to Christopher Jonas as a direct victim for moral prejudice suffered;
 - ii. The amount of eight hundred thousand dollars (USD 800,000) to Christopher Jonas for material prejudice suffered or in the alternative,

1 *Ingabire Victoire Umuhoza v Republic of Rwanda* (withdrawal, jurisdiction) (3 June 2016) 1 AfCLR 562, § 66.

2 *Andrew Ambrose Cheusi v United Republic of Tanzania*, ACtHPR, Application 004/2015, Judgment of 26 June 2020 (merits and reparations), §§ 35-39. See also, *Jebra Kambole v United Republic of Tanzania*, ACtHPR, Application 018/2018, Judgment of 15 July 2020, § 19.

the amount of thirty-six thousand six hundred and forty dollars, (USD 36,640);

- iii. The amount of thirty thousand dollars (USD 30,000) to his mother and twenty thousand dollars (USD 20,000) to his siblings identified as indirect victims;
 - iv. The amount of sixty-five thousand dollars (USD 65,000) in Counsel's legal fees.
 - v. The amount of two thousand dollars (USD 2,000) for expenses incurred.
- 10.** The Applicant further prays that:
- vi. the Court apply the principle of proportionality when considering the award for compensation to be granted to him;
 - vii. the Court order the Respondent State to guarantee the non-repetition of the violations to the Applicant;
 - viii. the Court request the Respondent State to report back to the Court every six months until they satisfy the orders the Court shall make when considering the submissions for reparations.
- 11.** The Applicant also asks the Court to order the Respondent State to publish in the Official Gazette the judgment on the merits of 28 September 2017 in both English and Swahili within three (3) months as a measure of satisfaction.
- 12.** The Respondent State prays the Court to make the following order and declaration:
- i. that, the Judgment of the Court dated 28 September 2017 is sufficient reparation to the prayers found in the Applicant's submission for reparation;
 - ii. that, the Applicant's claim for reparations be dismissed in its entirety.

V. Reparations

- 13.** Article 27(1) of the Protocol provides that:
If the Court finds that there has been violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.
- 14.** The Court recalls its earlier judgments and restates its position that:
To examine and assess applications for reparation of prejudices resulting from human rights violations, it takes into account the principle according to which the State found guilty of an internationally wrongful act is required to make full reparation for the damage caused to the victim.³

³ *Mohamed Abubakari v United Republic of Tanzania*, ACTHPR, Application 007/2013, Judgment of 4 July 2019 (reparations), § 19; *Alex Thomas v United Republic of Tanzania*, ACTHPR, Application 005/2013, Judgment of 4 July 2019 (reparations),

15. The Court further restates that reparation "... must, as far as possible, erase all the consequences of the wrongful act and restore the state which would presumably have existed if that act had not been committed."⁴
16. The Court also recalls that measures that a State would take to remedy a violation of human rights includes, notably, restitution, compensation and rehabilitation of the victim, satisfaction and measures to ensure non-repetition of the violations taking into account the circumstances of each case.⁵
17. The Court reiterates that with regard to material prejudice, the general rule is that there must be existence of a causal link between the alleged violation and the prejudice caused and the burden of proof is on the Applicant who has to provide evidence to justify his/her prayers.⁶ Exceptions to this rule include moral prejudice, which need not be proven.
18. The Court having found in its judgment on the merits of 28 September 2017 that the Respondent State violated Article 7(1)(c) of the Charter, the Applicant prays for pecuniary reparations for (i) material loss, (ii) moral prejudice for himself and indirect victims and non-pecuniary reparations in the form of (a) guarantees of non-repetition and (b) measures of satisfaction.

§ 11; *Wilfred Onyango Nganyi & 9 ors v United Republic of Tanzania*, ACTHPR, Application 006/2013, Judgment of 4 July 2019 (reparations), § 13; *Lucien Ikili Rashidi v United Republic of Tanzania*, ACTHPR, Application 009/2015, Judgment of 28 March 2019 (merits and reparations), § 116; *Ingabire Victoire Umuhoza v Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 19.

- 4 *Mohamed Abubakari v Tanzania* (reparations), § 20; *Alex Thomas v Tanzania* (reparations), § 12; *Wilfred Onyango & ors v Tanzania* (reparations), § 16; *Ingabire Victoire Umuhoza v Rwanda* (reparations), § 20; *Lucien Ikili v Tanzania* (merits and reparations), § 118.
- 5 *Mohamed Abubakari v Tanzania* (reparations), § 21; *Alex Thomas v Tanzania* (reparations), § 13; *Ingabire Victoire Umuhoza v Rwanda* (reparations), § 20.
- 6 *Tanganyika Law Society, the Legal and Human Rights Centre v United Republic of Tanzania*, Application 009/2011, *Reverend Christopher R. Mtikila v United Republic of Tanzania*, 011/2011 (Consolidated Applications) (reparations) (13 June 2014) 1 AfCLR 72, § 40; *Lohé Issa Konaté v Burkina Faso* (reparations) (3 June 2016) 1 AfCLR 346, § 15; *Mohamed Abubakari v Tanzania* (reparations), § 22; *Alex Thomas v Tanzania* (reparations), § 14; *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema Alias Ablasse, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabe des Droits de l'Homme et des Peuples v Burkina Faso* (reparations) (5 June 2015) 1 AfCLR 258, § 24.

A. Pecuniary reparations

i. Material loss

19. The Applicant claims that prior to his arrest, he was a street trader at Kariakoo market in Dar es Salaam selling hand clothes from 1998 to 2002. He further claims that he started his business with a capital of Two Hundred and Fifty Thousand Tanzanian Shillings (TZS 250,000), which is equivalent to One Hundred and Ninety-Nine USD (US\$ 199) as at 2002. He avers that he was making an average of Six Thousand Tanzanian Shillings (TZS 6,000), which is equivalent to Six Dollars (US\$ 6) a day as of 2002.

20. The Court notes that the above stated claims are based on the conviction, sentencing and incarceration of the Applicant, which this Court did not find unlawful and thus do not warrant damages.⁷ The Court consequently dismisses the claim.

ii. Moral prejudice

a. Moral prejudice suffered by the Applicant

21. The Applicant claims that he suffered undue stress from the lack of provision of legal assistance by the Respondent State during his trials at the District Court, the High Court and the Court of Appeal, which led to his unfair conviction. He requests the Court to order the Respondent State to pay him the amount of One Hundred and Eighty-Five Thousand Dollars (US\$ 185,000) as a compensation for moral damages as a direct victim of his violation.
22. The Respondent State avers that the judgment on the merits is sufficient reparation and prays the Court to dismiss this claim.

⁷ See *Armand Guehi v United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 186; and *Werema Wakongo Werema & anor v United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 520.

- 23.** The Court recalls that, as established in its case-law, moral prejudice is presumed in cases of human rights violations, and quantum of damages in this respect is assessed based on equity, taking into account the circumstances of the case.⁸ The Court has adopted the practice of granting a lump sum in such instances.⁹
- 24.** The Court notes that, as established in its Judgment on the merits of the present matter, the Respondent State violated the Applicant's right to legal assistance.¹⁰ Prejudice therefore ensued and the Applicant is entitled to moral damages.
- 25.** In assessing the quantum of damages, the Court recalls that it had adopted the practice of granting applicants an average amount of Three Hundred Thousand Tanzanian Shillings (TZS 300.000) in instances where legal aid was not availed by the Respondent State without any peculiar prevailing circumstances.¹¹ The Court notes that in the present case, the Applicant's claim to be awarded One Hundred and Eighty-Five Thousand Dollars (US\$ 185,000) is exaggerated and there is also no reason that warrants awarding damages in United State Dollars.¹² Against these standards and in exercising its discretion, the Court awards the Applicant the amount of Three Hundred Thousand Tanzanian Shillings (TZS 300.000) as fair compensation.¹³

b. Moral prejudice suffered by indirect victims

- 26.** The Applicant prays the Court to award an amount of Thirty Thousand Dollars (US\$ 30,000) to his mother as an indirect victim for the emotional anguish she suffered, the social stigma of having

8 *Norbert Zongo & ors v Burkina Faso* (reparations), § 55; and *Ingabire Victoire Umuhoza v Rwanda* (reparations), § 59.

9 *Lucien Ikili Rashidi v Tanzania* (merits and reparations), § 119; *Minani Evarist v United Republic of Tanzania* (merits) (21 September 2018) 2 AfCLR 402, § 18; and *Armand Guehi v Tanzania* (merits and reparations), § 177.

10 See *Christopher Jonas v United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 101, § 100(vi).

11 See *Minani Evarist v Tanzania* (merits), § 90; and *Anaclet Paulo v United Republic of Tanzania* (merits) (21 September 2018) 2 AfCLR 446, § 111.

12 See *Mohamed Abubakari v Tanzania* (reparations), § 23; *Alex Thomas v Tanzania* (reparations), § 15.

13 *Minani Evarist v Tanzania* (merits), § 85.

an incarcerated son, the death of her husband due to his blood pressure as a result of the Applicant's imprisonment, the financial implications of the Applicant's arrest on self-sustenance, and the financial implications of the occasional visits to the prison to see her son. The Applicant further requests the payment of Twenty Thousand Dollars (US\$ 20,000) to his siblings: Juliana Kusena, Jenifer Kusena, Veronika Kusena, and Kalekwa Kusena for the loss of financial support and the financial and mental implications of their visits to the Applicant while he was in detention.

27. The Court notes that the claims related to loss incurred by the indirect victims are based on the conviction, sentencing and incarceration of the Applicant, which as earlier established did not cause prejudice. As such, damages are not called for. The Court consequently dismisses the claims.

B. Non-pecuniary reparations

i. Guarantees of non-repetition of the violations and report on implementation

28. The Applicant prays the Court to order that the Respondent State guarantees non-repetition of the violations against them and reports back every six (6) months until the orders made by this Court on reparation are implemented.

29. The Court considers that, as it has held in the case of *Lucien Ikili Rashidi v United Republic of Tanzania*, guarantees of non-repetition are generally aimed at addressing violations that are systemic and structural in nature rather than to remedy individual

harm.¹⁴ The Court has however also held that guarantees of non-repetition could apply in individual cases where there is a likelihood of continued or repeated violations.¹⁵

30. The Court notes that, as earlier recalled, the violations found in the Judgment on the merits did not fundamentally affect the outcome of the proceedings before the courts. Furthermore, the said violations are not repetitive in nature and this Court has earlier, in this Judgment, awarded compensation in their respect. In light of the fact that the proceedings at the domestic courts have already been completed, this Court does not deem it necessary to issue an order regarding non-repetition.¹⁶ The prayer is therefore dismissed.

ii. Measures of satisfaction

31. The Applicant prays the Court that the Respondent State should be ordered to publish in the national Gazette, the Judgment of 28 September 2017 on the merits of this matter in both English and Swahili within three (3) months of the present Judgment as a measure of satisfaction.

32. The Court considers that, as established in its jurisprudence, a judgment *per se* may constitute a sufficient reparation for an established violation. However, other measures such as the publication of the decision can be ordered as the circumstances warrant.¹⁷
33. The Court finds that, in the instant matter, there is no peculiar circumstance that warrants an order for publication. Furthermore,

14 *Lucien Ikili Rashidi v Tanzania* (merits and reparations), §§ 146-149; *Armand Guehi v Tanzania* (merits and reparations), § 191; and *Norbert Zongo & ors v Burkina Faso* (reparations), §§ 103-106.

15 *Lucien Ikili Rashidi v Tanzania* (merits and reparations), § 146; *Armand Guehi v Tanzania* (merits and reparations), § 191; and *Reverend Christopher R. Mtikila v Tanzania* (reparations), § 43.

16 *Armand Guehi v Tanzania* (merits and reparations), §§ 191 and 192.

17 *Alex Thomas v Tanzania* (reparations), § 74; *Wilfred Onyango Nganyi & 9 ors v Tanzania* (reparations), § 86; and *Reverend Christopher R. Mtikila v Tanzania* (reparations), § 45.

the Respondent State had, on 31 January 2017, which is prior to the Judgment on the merits of the present case, passed its Legal Aid Act. In light of these considerations, the Court does not deem it necessary to grant the prayer for publication of any of its judgments in the present matter. The prayer is therefore dismissed.

VI. Costs

34. Rule 30 of the Rules provides that, “[u]nless otherwise decided by the Court, each Party shall bear its own costs.”

35. The Court notes that, in line with its earlier judgments, reparation may include payment of legal fees and other expenses incurred in the course of both domestic and international proceedings.¹⁸ The Applicant must provide justification for the amounts claimed.¹⁹

A. Legal fees related to proceedings before this Court

36. The Applicant prays the Court to order the payment of the following being the legal fees incurred in the proceedings before the African Court. He requests for the payment of a total of US Dollars Sixty-Five Thousand (US\$ 65,000) in Counsel’s legal fees, including:
- i. 100 hours for the lead counsel at US Dollars Two Hundred (US\$ 200) per hour, which amounts to US Dollars Twenty Thousand (US\$ 20,000); and
 - ii. 300 hours for the two legal assistants at US Dollars 150 (US\$ 150) per hour, which amounts to US Dollars Forty-Five Thousand (US\$ 45,000).

18 *Norbert Zongo & ors v Burkina Faso* (reparations), § 79-93 and *Reverend Christopher R. Mtikila v Tanzania* (reparations), § 39; *Alex Thomas v Tanzania* (reparations), § 77; and *Mohamed Abubakari v Tanzania* (reparations), § 81.

19 *Norbert Zongo & ors v Burkina Faso* (reparations), § 81 and *Reverend Christopher R. Mtikila v Tanzania* (reparations), § 40; *Alex Thomas v Tanzania* (reparations), § 77; and *Mohamed Abubakari v Tanzania* (reparations), § 81.

37. The Court notes that the Applicant was duly represented by Pan African Lawyers Union (PALU) throughout the proceedings under the Court's legal aid scheme. Noting further that the Court's legal aid scheme is *pro bono* in nature, the claim is not justified and the prayer is therefore denied.

B. Other costs related to proceedings before this Court

38. The Applicant's request for the Court to grant reparations for transport, fees and stationery costs, including:
- i. US Dollars Five Hundred (US\$ 500) for postage;
 - ii. US Dollars Three Hundred (US\$ 300) for printing and photocopying;
 - iii. US Dollars One Thousand (US\$ 1,000) for communication costs; and
 - iv. US Dollars Two Hundred (US \$ 200) for transportation to and from Ukonga Prison.

39. The Court dismisses this prayer for lack of supporting documents.

VII. Operative part

40. For these reasons:

The Court,

Unanimously:

On pecuniary reparations

- i. *Does not grant* the Applicant's prayer for material damages due to his conviction and sentencing;
- ii. *Does not grant* the Applicant's prayer for damages for moral prejudice suffered by the indirect victims;
- iii. *Grants* the Applicant's prayer for damages for the moral prejudice he suffered and awards him the sum of Tanzanian Shillings Three Hundred Thousand (TZS 300,000);
- iv. *Orders* the Respondent State to pay the amount indicated under (iii) above free from taxes effective six (6) months from the date

of notification of this Judgment, failing which it will pay interest on arrears calculated on the basis of the applicable rate of the Central Bank of Tanzania throughout the period of delayed payment until the amount is fully paid.

On non-pecuniary reparations

- v. *Does not* grant the Applicant's prayer regarding non-repetition of the violations;
- vi. *Does not* grant the Applicant's prayer regarding publication of the Judgment.

On implementation and reporting

- vii. *Orders* the Respondent State to submit to this Court, within six (6) months from the date of notification of the present Judgment, a report on the measures taken to implement the orders set forth herein and thereafter, every six (6) months until the Court considers that there has been full implementation thereof.

On costs

- viii. *Does not grant* the prayer related to payment of the legal fees, costs and other expenses incurred in proceedings before this Court;
- ix. *Decides* that each party shall bear its own costs.