Mallya v Tanzania (merits and reparations) (2019) 3 AfCLR 482

Application, 018/2015, *Benedicto Daniel Mallya v United Republic of Tanzania*

Judgment, 26 September 2019. Done in English and French, the English text being authoritative.

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

Recused under Article 22: ABOUD

The Applicant was convicted of rape of a minor and sentenced to life imprisonment. He alleged that he was not provided with the trial records to prepare his appeal. His conviction was overturned fifteen (15) years and nine (9) months later, after he filed his Application before this Court. The Court found that the Respondent State had violated the Applicant's right to fair trial and the right to liberty and reserved its judgment on reparations.

Admissibility (consideration when not challenged, 24)

Fair trial: (appeal, 45; trial within reasonable time, 53, 54)

Personal liberty and security (procedural guarantees against arbitrary detention, 65)

Reparations (moral damages, 73, 74)

I. The Parties

1. Mr Benedicto Daniel Mallya (hereinafter referred to as "the Applicant"), is a national of the United Republic of Tanzania. He was convicted on 16 May 2000 of the rape of a seven (7) year old girl and sentenced to life imprisonment in Criminal Case No 1142 of 1999 before the District Court of Moshi. He was fifteen (15) years old at the time he was sentenced.

2. The Application is filed against the United Republic of Tanzania (hereinafter referred to as "the Respondent State"), which became a Party to the African Charter on Human and Peoples 'Rights (hereinafter referred to as "the Charter") on 21 October 1986 and to the Protocol on 10 February 2006. Furthermore, the Respondent State, on 29 March 2010, deposited the Declaration prescribed under Article 34(6) of the Protocol, by which it accepted the jurisdiction of the Court to receive applications from individuals

and Non-Governmental Organisations (NGOs).

II. Subject of the Application

A. Facts of the matter

3. The Applicant was convicted by the District Court of Moshi, Tanzania on 16 May 2000, of the rape of a seven (7) year old girl and sentenced to life imprisonment. On 19 May 2000, he filed a Notice of Appeal to the High Court of Tanzania at Moshi challenging his conviction and sentence.

4. He further states that since filing the Notice of Appeal, he was not provided with certified true copies of the record of proceedings and judgment to enable him to file his appeal at the High Court. He asserts that he sent several letters to the District Registrar of the High Court of Tanzania at Moshi, to follow up on the provision of these documents, to no avail.

5. The Applicant submits that he filed a constitutional petition at the High Court of Tanzania seeking to enforce his constitutional rights under Article 13(6)(a) of the Constitution of the United Republic of Tanzania, but that the process was hindered by difficulties. It emerges from the record**,** that the Applicant did not indicate the date he filed the constitutional petition to the High Court.

6. The Applicant avers that on 1 September 2015, he filed this Application before this Court and it is only after filing, that in February 2016, the Respondent State provided him the certified true copies of the record of proceedings and the judgment of Criminal Case 1142 of 1999 before the District Court of Moshi.

7. On 9 February 2016, the High Court at Moshi, of its own motion, in Criminal Appeal 74 of 2015, called for the Applicant's records. Subsequently, on 15 February 2016, the court ordered a hearing of the appeal and ordered that the memorandum of appeal be served on the Applicant. According to the Respondent State, on 22 February 2016, the appeal was considered in the Applicant's presence and the Prosecution did not object to the appeal. The High Court then allowed the appeal, quashed the conviction, set aside the sentence, cast doubt on the evidence relied upon by the District Court of Moshi and ordered release of the Applicant. The Applicant alleges that after serving fifteen (15) years and nine (9) months in prison, he was released sometime in May 2016.

B. Alleged violations

8. The Applicant alleges the following:
That the Respondent State violated his rights to have his cause heard, specifically his right to appeal as provided under Article 7(1)(a) of the Charter and that his right to a fair and expeditious trial was denied.

"i. With respect to the notice of appeal he filed three days after the judgment in order to be supplied with copies of proceedings and judgment for him to file an appeal was never done in order to hear his appeal.

ii. This was a deliberate intention of frustrating the Applicant, disenabling him from preparing a proper defence and denying him the right to liberty and to a fair trial.

iii. The Applicant was denied the right to be tried within a reasonable time.

iv. The Applicant's efforts to seek redress before the municipal courts of the Respondent were fraught and hindered by complexities and unnecessary technicalities."

v. That the Respondent State violated his right to equality before the law, provided under Article 13(6) (a) of the Constitution of the United Republic of Tanzania 1977."

III. Summary of the procedure before the Court

9. The Application was filed on 1 September 2015 and on 28 September 2015, served on the Respondent State and transmitted, through the Chairperson of the African Union Commission to all the entities provided under the Rules.

10. The Parties filed their submissions on the merits within the time stipulated by the Court and thereafter, on 20 April 2018 they were notified of the close of pleadings. On 2 October 2018, pleadings were re-opened to enable the Parties file submissions on reparations, pursuant to the decision of the Court during its 49th Session (16 April to 11 May 2018) to determine the merits and reparations in the same judgment.

11. On 4 June 2019, the Applicant's representative informed the Court about his inability to locate the Applicant and his family and requested for extension of time to locate the Applicant. Thereafter, on 12 June 2019, the Court granted the Applicant a forty-five (45) day extension of time to file his submission on reparations.

12. On 15 July 2019, the Applicant's representative informed the Court that they were still unable to reach the Applicant, as he and his family had relocated from Moshi and they were unable to file the Applicant's submissions on reparations. The Applicant's

representative prayed the Court to take a decision on the way forward.

13. On 1 August 2019, the Parties were notified of the close of pleadings.

IV. Prayers of the Parties

14. The Applicant, prays for the following reliefs:

"a. A Declaration that the Respondent State was in violation of Article 7(1)(a) of the African Charter on Human and Peoples´ Rights

b. An Order for reparations and compensation; and

c. Any other Order that the Court may deem fit and just to grant."

15. The Respondent State prays that the Court should grant the following orders:

"1. That, the Application be struck out of the record of the Court for being overtaken by events;

2. That, the Court declares that the Respondent have (sic) acted in good faith;

3. That, the Court refrains from ordering reparations since the act of the Respondent is sufficient reparation;

4. Any other order the Court may deem right and just to grant."

V. Jurisdiction

16. Pursuant to Article 3 of the Protocol "the jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant human rights instruments ratified by the States concerned" in accordance with Rule 39(1) of its Rules, "the Court shall conduct preliminary examination of its jurisdiction and the admissibility of the application in accordance with Articles 50 and 56 of the Charter and Rule 40 of these Rules".

17. The Court notes that its jurisdiction is not contested by the Parties.

18. With regard to material jurisdiction, the Court notes that the Applicant has sought some reliefs based on allegations relating to the violation of his rights under Articles 7(1)(a) of the Charter and 13(6)(a) of the Constitution of the Respondent State.

19. The Court having examined the Application, finds that it has jurisdiction to hear the Application.

20. With regard to other aspects of jurisdiction the Court thus holds that:

i. It has personal jurisdiction over the Parties because the Respondent State deposited the Declaration under Article 34(6) of the Protocol on 29 March 2010, which enabled the Applicant to file the present

Application pursuant to Article 5(3) of the Protocol.

ii. It has temporal jurisdiction because the alleged violations are continuous in nature and took place after the ratification of the Protocol by the Respondent State.

iii. It has territorial jurisdiction given that the facts of the matter occurred within the territory of a State Party to the Protocol, that is, the Respondent State.

21. Based on the foregoing, the Court declares that it has jurisdiction to hear the instant case.

VI. Admissibility

22. Pursuant to Rule 39(1) of the Rules, "The Court shall conduct a preliminary examination of its jurisdiction and the admissibility of the Application in accordance with articles 50 and 56 of the Charter, and Rule 40 of these Rules."

23. Rule 40 of the Rules which, in substance, restates the provisions of Article 56 of the Charter sets outs the requirements for the admissibility of applications as follows:

"Pursuant to the provisions of Article 56 of the Charter to which Article 6(2) of the Protocol refers, applications to the Court shall comply with the following conditions:

1. Disclose the identity of the Applicant notwithstanding the latter's request for anonymity;
2. Comply with the Constitutive Act of the Union and the Charter;
3. Not contain any disparaging or insulting language;
4. Not be based exclusively on news disseminated through the mass media;
5. Be filed after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
6. Be filed within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter; and
7. Not raise any mater or issues previously settled by the parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union."

24. The Court notes that the Respondent State does not challenge the admissibility of the Application. However, the Court will, in conformity with the provisions of Rule 39(1) of the Rules above, examine the Application to ensure that it meets the requirements of admissibility under Rule 40 of the Rules, which restates the

provisions of Article 56 of the Charter.

25. The Court further notes that nothing on record indicates that the admissibility requirements of Rules 40(1), (2), (3), (4) and 7 of the Rules have not been met.

26. The Court notes that the requirement of exhaustion of local remedies under Article 56(5) of the Charter, as restated in Rule 40(5) of the Rules must also be complied with before an Application is considered by this Court. However, this condition may be dispensed with if local remedies are not available, they are ineffective, insufficient or the domestic procedures to pursue them are unduly prolonged. Furthermore, the remedies to be exhausted must be ordinary judicial remedies.[1]

27. The Court notes that, in the instant case, the Applicant attempted to make use of the available remedies, by filing a Notice of Appeal on 19 May 2000 in respect of Criminal Case No. 1142 of 1999. Thereafter, he requested that certified true copies of the records of proceedings and judgment in respect of the case be provided to him to enable him file his appeal at the High Court. The Applicant also submits that he made concerted efforts through correspondences to the District Registrar of the High Court of Moshi to obtain the certified true copy of the record of proceedings and judgment, but his requests went unanswered.

28. Despite having filed the Notice of Appeal indicating his intention to appeal, the Applicant could not pursue his appeal for lack of the certified true copies of the record of proceedings and judgment. As a result, although the remedy was available in theory, the Applicant was prevented from pursuing it.

29. In this regard, the Court recalls its position that, for remedies to be considered available, it is not enough that they should be established in the domestic system, but also available for use to individuals without hindrance.[2] In the instant case, the Court notes that although local remedies were established in the domestic system, due to the Respondent State's failure to provide the Applicant with the relevant documents, he was unable to utilise them. The Court therefore finds that this admissibility requirement

1 Application 003/2015. Judgment of 28 September 2017 (Merits), *Kennedy Owino Onyachi & Another v United Republic of Tanzania,* (hereinafter referred to as "*Kennedy Onyachi v Tanzania* (Merits)"), para 56; Application 032/2015. Judgment of 21 March 2018 (Merits), *Kijiji Isiaga v United Republic of Tanzania*, para 45.

2 Application 013/2011. Judgment of 28 March 2014 (Merits), *Beneficiaries of Late Norbert Zongo & others v Burkina Faso*, para 68 (hereinafter referred to as "*Norbert Zongo & others v Burkina Faso* (Merits)"); Application 001/2014. Judgment of 18 November 2016 (Merits) *Action Pour La Protection Des Droits De L'Homme (APDH) v Republic of Cote d'Ivoire*, paras 94-106.

has been fulfilled.[3]

30. Article 56(6) of the Charter, as restated in Rule 40(6) of the Rules, requires that cases should be submitted to the Court within a reasonable time after local remedies are exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter. The Court notes that since the Applicant was unable to access domestic remedies, the issue of reasonableness does not arise.

31. In light of the foregoing, the Court finds that the Application meets all admissibility requirements under Article 56 of the Charter and Rule 40 of the Rules and accordingly declares the Application admissible.

VII. Merits

32. The Applicant alleges violation of the right to appeal, the right to be heard within a reasonable time and the right to liberty as provided for under Articles 7(1)(a) and (d) and Article 6 of the Charter, respectively.

33. The Court notes that the instant Application raises three (3) issues namely:

i. whether the right to appeal has been violated;

ii. whether the right to be tried within a reasonable time has been violated and;

iii. whether the right to liberty has been violated

A. Alleged violation of the right to appeal

34. The Applicant avers that the Respondent State violated his right to appeal under Article 7(1)(a) of the Charter by not giving him an opportunity to appeal against the judgment of the District Court of Moshi in Criminal Case No. 1142 of 1999, by which he was convicted of rape and sentenced to life imprisonment.

35. The Applicant submits that his right to a fair and expeditious trial was violated due to the fact that though he filed his Notice of Appeal three (3) days after the judgment of the District Court, he was never supplied with the certified true copies of the record of proceedings and of the judgment. He alleges that he also made attempts to get these documents, by sending several letters to the District Registrar of the High Court of Moshi yet they were

3 Application 006/2016. Judgment of 7 December 2018 (Merits) *Mgosi Mwita Makungu v United Republic of Tanzania*, para 49.

not provided to him. He states that he remained incarcerated in prison for fifteen (15) years and nine (9) months while waiting to be provided the necessary documents to pursue his appeal.

36. The Applicant further asserts that he was also deprived of the opportunity to file a petition to the High Court of Tanzania at Moshi under Sections 4 and 5 of the Basic Rights and Duties Enforcement Act in order to enforce his constitutional rights under Article 13(6) (a) of the Constitution of Tanzania.

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37. The Respondent State submits that on 9 February 2016, the High Court of Tanzania at Moshi, of its own motion, called for the Applicant's records in Criminal Appeal No. 74 of 2015 and the Applicant's appeal was mentioned. Subsequently, on 15 February 2016, the Court ordered a hearing of the appeal and ordered that he should be served.

38. The Respondent State further avers that on 22 February 2016, the appeal was considered in the Applicant's presence and the Prosecution did not object to the appeal. The High Court then allowed the appeal, quashed the conviction and set aside the sentence. Additionally, it ordered the release of the Applicant on the basis that the "Respondent did not support the conviction and sentence during appeal and cast doubts on the evidence" that was relied upon by the District Court.

39. The Respondent State submits that the matter has been finalised by the High Court when it allowed the appeal, quashed the Applicant's conviction, set aside his sentence and ordered his release and that the Prosecution has chosen not to appeal against the High Court´s decision. The Respondent State alleges that by doing so, it has acted in good faith and provided sufficient remedy to the Applicant.

40. The Respondent State denies that it prevented the Applicant from pursuing a constitutional petition and puts the Applicant to strict proof of this allegation, which it maintains is not supported with evidence and should be dismissed for lack of merit.

41. The Respondent State made no submissions in response to the Applicant's assertion that he was in prison for over fifteen (15) years before his appeal was heard, even after his Notice of

Appeal was filed three (3) days after his conviction.

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42. Article 7(1) (a) of the Charter provides that:

"1. Every individual shall have the right to have his cause heard. This comprises:

a. The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; and (…)"

43. With respect to the right to appeal, the Court notes that, it requires that individuals are provided with an opportunity to access competent organs, to appeal against decisions or acts violating their rights. It entails that States should establish mechanisms for such appeal and take necessary action that facilitate the exercise of this right by individuals, including providing them with the judgments or decisions that they wish to appeal against within a reasonable time. [4]

44. The Court notes that a State, such as Tanzania, which has courts of this kind, is under an obligation to ensure that individuals enjoy the fundamental guarantees offered by those courts. It must provide litigants with an effective right of access to the courts to verify the merits of all charges, including criminal cases.[5]

45. The Court, therefore, finds that the Respondent State violated the Applicant's right to appeal under Article 7(1) (a) of the Charter.

B. Alleged violation of the right to be tried within a reasonable time

46. The Applicant submits that he was denied the right to be tried within a reasonable time. Furthermore, he reiterates the submission that the Respondent State's failure to provide him with the copies of proceedings and judgment hindered his progress to file an appeal. He further alleges without substantiating, that other efforts to seek

4 *Kennedy Onyachi v Tanzania* Judgment (Merits), para 117-118.

5 ECHR, Series A no 11, Judgment of 17 January 1970, *Delcourt v Belgium,* para 25; and ECHR Application 71658/10 Judgment of 9 January 2014*, Viard v France,* para 30.

redress before the domestic courts were hindered by difficulties.

47. The Respondent State submits that the Applicant's violations have been overtaken by events and it has acted in good faith in releasing him from custody and quashing his conviction and setting aside his sentence.

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48. The Court recalls that the right to be tried within a reasonable time is one of the cardinal principles of the right to a fair trial and unduly prolonging a case at the appellate level is contrary to the letter and spirit of Article 7(1) (d) of the Charter.[6] In *Wilfred Onyango Nganyi & 9 others v United Republic of Tanzania* the Court held that:

"… the deterrence of criminal law will only be effective if society sees that perpetrators are tried, and if found guilty, sentenced within a reasonable time, while innocent suspects, undeniably have a huge interest in a speedy determination of their innocence."[7]

49. The Court lays emphasis that the right to be tried within a reasonable time covers all stages of judicial proceedings, from the initial trial to the appellate courts.

50. In determining the reasonableness of time within which a trial must be concluded, the Court follows a similar approach as the Inter-American Court of Human Rights and the European Court of Human Rights.[8] Under this approach, three elements should be taken into account to assess reasonableness of time to conclude judicial proceedings. These elements are: (a) the complexity of the matter, (b) the procedural activities carried out by the interested

6 Application 005/2013. Judgment of 20 December 2015 (Merits), *Alex Thomas v United Republic of Tanzania,* (hereinafter referred to as *"Alex Thomas v Tanzania* (Merits)") para 103.

7 Application 006/2013. Judgment of 1 March 2016 (Merits), *Wilfred Onyango Nganyi & 9 others v United Republic of Tanzania*, para 127; *Kennedy Onyachi v Tanzania* (Merits), paras 118-121.

8 ECHR, Application 17140/05, Judgment of 24 April 2008, *Kempf and others v Luxembourg,* para 48; and ECHR Application 21444/11, Judgment of 5 November 2015, *Henrioud v France,* para 58.

party and (c) the conduct of judicial authorities.[9]

51. In the instant case, the Court notes that for a case that is not complex, there was an inordinate and unexplained delay of over fifteen (15) years before the Applicant's appeal was heard. The Applicant filed a Notice of Appeal three (3) days after the judgment of the District Court. He alleges that while in prison, he persistently requested for certified true copies of the record of proceedings and judgment to enable him to file his appeal. The Court also notes that the Applicant was unable to exercise his right to appeal for over fifteen (15) years because the Respondent State failed to furnish him with the necessary documents to pursue his appeal.

52. The Court further notes that sometime in February 2016, the High Court, of its own motion, decided to call for his records and consider his appeal. This led to the High Court quashing his conviction, setting aside his sentence and ordering his release.

53. The Court notes that, the Respondent State's failure to provide the Applicant with certified true copies of the record of proceedings and judgment, within a reasonable time, prevented him from exercising his right to appeal and this consequently also led to a violation of his right to be tried within a reasonable time.

54. The Court, therefore, finds that the Respondent State violated the Applicant's right to be tried within a reasonable time under Article 7(1)(d) of the Charter.

A. Alleged violation of the right to liberty

55. The Applicant states that the Respondent State violated his right to liberty, due to his inability to appeal against his conviction and sentence because of the Respondent State's failure to provide him with the required documents to do so, which led to his continued arbitrary imprisonment.

56. The Applicant avers that after filing this Application before this Court, and by which time he had spent fifteen (15) years and nine (9) months in prison, he was released in May 2016, on the order of the High Court of Tanzania at Moshi following the quashing of his conviction and sentence on 22 February 2016.

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9 *Alex Thomas v Tanzania* (Merits) para 104.

57. The Respondent State submits that the matter has been determined by the High Court of Tanzania, which quashed the Applicant's conviction, set aside his sentence and ordered his release. The Respondent State further submits that it has chosen not to appeal against the Applicant's release and having been satisfied with this decision, the Applicant has not pursued this matter further. The Respondent State avers that it acted in good faith and the matter has been finalised.

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58. Article 6 of the Charter provides that:
"Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained."

59. The Court recalls that there are "three criteria to determine whether or not a particular deprivation of liberty is arbitrary, namely, the lawfulness of the deprivation, the existence of clear and reasonable grounds and the availability of procedural safeguards against arbitrariness. These are cumulative conditions and non-compliance with one of them makes the deprivation of liberty arbitrary."[10]

60. In the instant case, the Court notes that the Respondent State did not take the necessary measures to avail the Applicant with documents and certified true copies of the record of proceedings and the judgment, which would have enabled him to appeal his conviction.

61. In comparative jurisprudence, notably that of the European Court, life imprisonment is considered to be inconsistent with the spirit of the European Convention of Human Rights.[11] The Court is of the view that a State is at liberty to choose its form of criminal justice system, including the review of sentences and the terms of release, provided that the chosen system does not violate the Charter. The Respondent State therefore had, in this case, a

10 *Kennedy Onyachi v Tanzania* Judgment *(*Merits), para 131.

11 ECtHR Judgment, *Vinter & others v United Kingdom* [GC], 66069/09, 130/10, and 3896/10 Judgment of 9 July 2013; ECtHR Judgment, *Kafkaris v Cyprus*, 21906/04, Judgment of 12 February 2008 [GC].

margin of appreciation to determine the appropriate length of the prison sentence.

62. The Court also notes that the Applicant could have been released earlier by an order of the High Court if his appeal had been heard on time, in particular because, when the appeal was eventually heard, his conviction was quashed on the ground that the evidence relied upon by the District Court was flawed. It turned out that the requested documents were only provided after he filed this Application before this Court.

63. The Court, however, notes that the Respondent State did not object to the appeal on 22 February 2016 at the High Court, which quashed the Applicant's conviction, set aside his sentence and ordered his release. The Court also notes that the Applicant has not buttressed his claims for reparations.

64. There is jurisprudence that "measures to release or to repeal laws do not in any way change the violations which have been committed and do not absolve governments of their responsibilities vis-à-vis such violations."[12] It therefore follows that the mere fact of having subsequently quashed the Applicant's conviction and sentence and restoring his freedom after fifteen (15) years and nine (9) months in prison does not negate the culpability from the Respondent State for failing to ensure procedural guarantees because the Applicant was not heard on appeal.

65. The Court therefore finds that the Respondent State violated the Applicants right to liberty guaranteed by Article 6 of the Charter by failing to place at his disposal, procedural guarantees which would have made it possible to avoid his continued arbitrary imprisonment.

VIII. Reparations

66. The Applicant in his submissions on the merits, prays the Court to order reparations and just compensation.

67. The Respondent State prays that the Court should declare that it has acted in good faith by releasing the Applicant and refrain from ordering reparations since this act by the Respondent State

12 Inter-American Court of Human Rights, Judgment of 2 July 2004 on (Preliminary Objections, Merits, Reparations and Costs), *Case of Herrera-Ulloa v Costa Rica*.

is sufficient reparation.

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68. Article 27(1) of the Protocol provides that "if the Court finds that there has been a violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation".

69. In respect, Rule 63 of the Rules provides that: "The Court shall rule on the request for the reparation, submitted in accordance with Rule 34(5) of these Rules by the same decision establishing the violation of a human and peoples' rights or, if the circumstances so require by a separate decision".

70. The Court recalls its position on State responsibility as stated in *Reverend Christopher R Mtikila v United Republic of Tanzania*, that "any violation of an international obligation that has caused harm entails the obligation to provide adequate reparation".[13]

71. Concerning the Applicant's prayer on other forms of reparations, the Court notes that although the Applicant made a prayer for reparations in his submissions on the merits, neither of the Parties have made detailed submissions.

72. The Court notes that, although the Applicant has not made detailed submissions on reparations, the seriousness of the violations established entitle him to an award of reparations for the harm he suffered.

73. The Court recalls that there is a presumption of moral prejudice to an Applicant where his rights have been found to be violated, without the need for him to show a link between the violation and the prejudice.[14] The Court further recalls that in assessing the amounts to be awarded for moral prejudice, the Court must show fairness and deal with each matter on a case by case basis.

13 Application 011/2011. Judgment of 13 June 2014 (Reparations), *Reverend Christopher R Mtikila v United Republic of Tanzania,* para 27.

14 Application 013/2011. Judgment of 5 June 2015 (Reparations), *Beneficiaries of the Late Norbert Zongo and others v Burkina Faso* (hereinafter referred to as *"Norbert Zongo and others v Burkina Faso* (Reparations)"), para 61; Application 003/2014. Judgment of 7 December 2018 (Reparations), *Ingabire Victoire Umuhoza v Republic of Rwanda* (hereinafter referred to as *"Ingabire Victoire v Rwanda* (Reparations)"), para 20-22. para 59; Application 007/2019. Judgment of 4 July 2019 (Reparations), *Mohamed Abubakari v United Republic of Tanzania* (hereinafter referred to as *Mohamed Abubakari v Tanzania* (Reparations)) para 43.

The Court in awarding compensation in such cases, would, as a general standard, award lump sums to victims.[15]

74. The Court notes from the records that at the time of his conviction, the Applicant was a boy of fifteen (15) years of age. The Court is of the considered opinion that given the unjust incarceration of the Applicant in prison for almost sixteen years, the better part of his youth is already lost and he has also been prevented from enjoying other rights in the Charter, including the right to education, the right to family, right to work, right to privacy and the right to participate freely in the government of his country. In addition, the Applicant suffered moral prejudice as a result of his conviction, sentence and imprisonment, including emotional and psychological trauma.

75. In the instant case, pursuant to the provisions of Rule 63 cited above, the Court decides that it will make a ruling on reparations at a later stage of the proceedings.

IX. Costs

76. Rule 30 of the Rules provides that "unless otherwise decided by the Court, each Party shall bear its own costs".

77. The Court notes that neither Party made submissions in respect of costs.

78. In the instant case, the Court decides that it will rule on costs at a later stage.

X. Operative part

79. For the above reasons,

The Court**,**

Unanimously:

On jurisdiction

i. *Declares* that the Court has jurisdiction.

On *admissibility*

ii. *Declares* that the Application is admissible.

On merits

iii. *Finds* that the Respondent State violated the Applicant's rights to appeal and to be heard within a reasonable time contrary to Article 7(1)(a) and (d) of the Charter, respectively, as regards the

15 *Mohamed Abubakari v Tanzania* (Reparations) para 44.

failure to provide the Applicant with certified true copies of the record of proceedings and of the judgment in Criminal Case No 1142/99 heard at the District Court of Moshi;

iv. *Finds* that the Respondent State violated the Applicant's right to liberty under Article 6 of the Charter, for not making available, adequate procedural safeguards to prevent the continued detention of the Applicant.

On reparations

v. *Declares* that it will rule on reparations at a later stage.

On costs

vi. *Reserves* its decision on costs.