Mugesera v Rwanda (judgment) (2020) 4 AfCLR 834

Application 012/2017, *Leon Mugesera v Republic of Rwanda*

Judgment, 27 November 2020. Done in English and French, the French text being authoritative.

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

Recused under Article 22: MUKAMULISA

The Applicant, while in pre-trial detention, brought this action alleging that proceedings before national courts and the conditions of his detention amounted to violations of some of his rights protected under the Charter and other international human rights instruments. The Court upheld part of the claim.

Procedure (default judgment, 14)

Evidence (burden of proof, 33-34)

Fair trial (right to defence, 43, 44, 46; free legal assistance, 52, 57; independent and impartial court, 69,70-72)

Cruel, inhuman and degrading treatment (degree of suffering, 81; burden of proof of, 84, 87, 88; deprivation of adequate food, 89; death threats, 89-90; conditions of detention, 93)

Physical and mental integrity (decent existence, 100; dignified life for inmates, 103)

Right to family life (restriction of, 117)

Reparations (international responsibility of state, 124; purpose of, 124, future material prejudice, 134, legal fees, 136, moral prejudice/damage, 143-144; indirect victims, 148; proof of relationship, 148, 152)

I. The Parties

1. Léon Mugesera (hereinafter referred to as "the Applicant") is a national of Rwanda who was extradited by the Government of Canada to the Republic of Rwanda (hereinafter referred to as "the Respondent State") on 24 January 2012 and who, at the date of filing of the Application, was in custody pending legal proceedings initiated against him for genocide crimes that occurred in 1994. He alleges that the Respondent State mistreated him during detention and violated his right to a fair trial.

2. The Respondent State is the Republic of Rwanda, 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 25 May 2004. The Respondent State also filed,

on 22 January 2013, the Declaration provided for in Article 34(6) of the Protocol, by which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations. However, on 29 February 2016, the Respondent State deposited with the African Union Commission an instrument of withdrawal of the said Declaration. The Court held, on 3 June 2016, that this withdrawal would come into effect on 1 March 2017.[1]

II. Subject of the Application

A. Facts of the matter

3. The Applicant claims that during the judicial proceedings between 2012 and 2016, the High Court Chamber for International Crimes and the Supreme Court of Rwanda committed several irregularities against him, both with regard to the proceedings and the conditions under which he was detained and treated by the prison authorities. The Applicant claims that he tried to remedy these procedural irregularities and obtain an improvement in his conditions of detention from the competent authorities of his country, all to no avail. He therefore decided to bring the matter before this Court.

B. Alleged violations

4. The Applicant alleges there was a:

i. Violation of his right to a fair trial, that is:

a. Right to defence;

b. Right to legal aid; and

c. Right to be heard by an independent and impartial court.

ii. Violation of his right not to be submitted to cruel, inhuman and degrading treatment;

iii. Violation of his physical and mental integrity; and

iv. Violation of his right to family and to information.

1 *Ingabire Victoire Umuhoza v United Republic of Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 562, § 67.

III. Summary of the Procedure before the Court

5. The Application was received at the Registry and registered on 28 February 2017. It was served on the Respondent State and transmitted to the other entities under the Protocol.

6. On 12 May 2017, the Registry received a letter from the Respondent State reminding the Court of its withdrawal of the Declaration made under Article 34(6) of the Protocol. The Respondent State informed the Court it will not take part in any proceedings before the Court and consequently, requested the Court to desist from transmitting any information on cases concerning Rwanda until it reviews the Declaration and communicates its position to the Court.

7. On 22 June 2017, the Court responded to the above-mentioned letter. In its response, the Court stated that:

> By virtue of the Court being a judicial institution and pursuant to the Protocol and Rules of Court, the Court is required to exchange all procedural documents with the parties concerned. Consequently, and in line with these requirements, all pleadings on matters to which Rwanda is a party before this Court shall be transmitted to you until the formal conclusion of the latter.

8. Under request of the Applicant filed on 28 February 2017, the Court issued an Order for Provisional Measures dated 28 September 2017, in which it ordered the Respondent State to allow the Applicant access to his lawyers; to be visited by his family members and to communicate with them, without any impediment; to allow the Applicant to have access to all medical care required, and to refrain from any action that may affect his physical and mental integrity as well as his health.

9. On 7 November 2017, the Registry informed the Parties that, following the decision of the Respondent State not to participate in the proceedings, the Court decided to render a judgment in default *suo motu*, taking into account the provisions of Rule 55 of the Rules[2] and in the interest of justice, if submissions were not filed within forty-five (45) days.

10. On 6 August 2018, the Applicant filed its preliminary observations and on 23 November 2018 its final observations on reparations. Both documents were served on the Respondent State to respond within thirty (30) days.

2 Rule 63 of the new Rules of 25 September 2020.

11. Following various extensions of time, pleadings were closed on 30 October 2020, and the Parties were dully notified.

IV. Applicant's Prayers

12. The Applicant prayed the Court to:

i. Declare that the Respondent State has violated the rights guaranteed by the Charter, in particular Articles 4, 5, 6, 7, 9(1), 18(1) and 26 thereof;

ii. Order for his release from detention;

iii. Appoint an independent doctor to assess his state of health and identify the necessary measures for providing him with assistance;

iv. Order the Respondent State to establish an impartial and independent procedure to closely monitor the respect of the Applicant's rights;

v. Make appropriate remedial measures;

vi. Render any other measures or grant any other reparation that the Court deems appropriate;

vii. Order the Respondent State to respect the Applicant's fundamental rights in ongoing and future proceedings and submit, within six (6) months, a report on compliance with the provisions of the Charter;

viii. Award costs to the Respondent State.

V. Non-Appearance of the Respondent State

13. Rule 63 of the Rules provides that:

1. Whenever a party does not appear before the Court, or fails to defend its case within the period prescribed by the Court, the Court may, on the Application of the other party, or on its own motion, enter judgment in default after it has satisfied itself that the defaulting party has been duly served with the Application and all other documents pertinent to the proceedings.

2. The Court may, upon an Application from the defaulting party showing good cause, and within a period not exceeding one year from the date of notification of the judgment, set aside a judgment entered in default in accordance with sub-rule 1 of this Rule.

14. The Court notes that the above-mentioned Rule 63(1) of the Rules sets out three conditions for the default judgment procedure, namely: i) the default of one of the parties; ii) the request made by the other party or on its own motion; and iii) the notification to the defaulting party of both the application and documents on file.

15. On the default of one of the parties, the Court notes that on 12 May 2017, the Respondent State had indicated its intention to suspend its participation in the proceedings and requested the cessation of any transmission of documents relating to the

proceedings in the pending cases concerning it. The Court notes that, by these requests, the Respondent State has voluntarily refrained from exercising its defence.

16. On the second condition, the Court notes that none of the parties requested for a default judgment. However, the Court, in the interest of the proper administration of justice, decides of its own motion to render judgment in default if the conditions laid down in Rule 63(1) of the Rules are fulfilled.[3]

17. With regard to the notification of the defaulting party, the Court notes that Respondent State was served with the Application on 3 April 2017 and with all pleadings filed by the Applicant until 30 October 2020, when pleadings were closed. The Court thus concludes that the defaulting party was duly notified.

18. On the basis of the foregoing, the Court will now determine whether the other requirements under Rule 63 of the Rules are fulfilled, that is: whether it has jurisdiction, whether the application is admissible and whether the Applicant's claims are founded in fact and in law.[4]

VI. Jurisdiction

19. Article 3(1) of the Protocol provides as follows:

> 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 instrument ratified by the States concerned.

20. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide. Furthermore, Rule 49(1) of the Rules[5] stipulates that "[t]he Court shall ascertain its jurisdiction … in accordance with the Charter, the Protocol and these Rules."

21. On the basis of the above-cited provisions, therefore, the Court must, in every application, preliminarily conduct an assessment of its jurisdiction and dispose of objections, if any, to its jurisdiction.

22. The Court finds that nothing on the record indicates that it does not have jurisdiction in this case. Therefore, it concludes that it has:

3 See *African Commission on Human and Peoples' Rights (Saïf Al-Islam Kadhafi) v Libya* (merits) (3 June 2016) 1 AfCLR 158, §§ 38-42. See also *Fidèle Mulindahabi v Republic of Rwanda*, ACtHPR, Application 004/2017, Judgment of 26 June 2020 (merits and reparations), § 22.

4 *Ibid*, §§ 42 and 22, respectively.

5 Formerly, Rule 39(1) of the Rules of 2 June 2010.

i. Material jurisdiction, since the alleged violations concern Articles 4, 5, 6, 7(1)(a)(c)(d), 9(1), 18(1) and 26 of the Charter, an instrument ratified by the Respondent State, which the Court has jurisdiction to interpret and apply pursuant to Article 3 of the Protocol;

ii. Personal jurisdiction, since the Respondent State is a party to the Protocol and it made the Declaration provided for in Article 34(6) of the Protocol, which enables the Applicant to submit cases directly to the Court, pursuant to Article 5(3) of the Protocol. In addition, the Application was filed on 28 February 2017, before 1 March 2017, the date when the withdrawal of the afore-mentioned Declaration would take effect, as indicated in paragraph 2 of this Judgment;

iii. Temporal jurisdiction, in as much as the alleged violations are continuous in nature since the Applicant remains in detention under conditions, he considers inadequate;[6]

iv. Territorial jurisdiction, considering that the facts of the case occurred on the territory of the Respondent State, a State Party to the Protocol.

23. In light of the foregoing, the Court holds that it has jurisdiction to determine the present Application.

VII. Admissibility

24. Under Article 6(2) of the Protocol, "[t]he Court shall rule on the admissibility of cases taking into account the provisions set out in Article 56 of the Charter".

25. Rule 49(1) of the Rules[7] provides that "[t]he Court shall ascertain … the admissibility of an Application in accordance with the Charter, the Protocol and these Rules."

26. Rule 50(2) of the Rules[8] which in essence restates Article 56 of the Charter provides as follows:

Applications filed before the Court shall comply with all of the following conditions:

a. Indicate their authors even if the latter request anonymity,

b. Are compatible with the Constitutive Act of the African Union and with the Charter,

c. Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union,

6 *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* (preliminary objections) (21 June 2013 (2013) 1 AfCLR 197, §§ 71-77.

7 Formerly Rule 39(1) of the Rules of 2 June 2010.

8 Formerly Rule 40 of the Rules of 2 June 2010.

d. Are not based exclusively on news disseminated through the mass media,

e. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,

f. Are submitted within a reasonable time from the date local remedies were exhausted or from the date the Commission is seized with the matter, and

g. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the Charter.

27. Pursuant to Rule 49(1) of the Rules, the Court shall examine whether the Application has met the conditions for admissibility of the Application.

28. The Court notes that the Applicant alleges that the Application complies with all the conditions of admissibility provided for in Rule 50 of the Rules.

29. The Court also notes that it appears from the record that the Applicant is well identified, that the terms used in the Application are not offensive or insulting, that the Application is not incompatible with the Constitutive Act of the African Union and the Charter, that the Applicant has submitted or referred to documents of various kinds as evidence and that do not refer to news that is disseminated through the media.

30. Regarding the exhaustion of local remedies, the Applicant claims to have exhausted all domestic remedies, since on 6 June 2016, the Supreme Court of Rwanda, on the bench, rendered a decision on the matter.[9] He submits that "[d]ecisions of the Supreme Court are not subject to Appeal pursuant to Article 144 of the Constitution of the Republic of Rwanda". He further submits that that "[i]n its judgement, the Supreme Court acknowledged that there was a serious and wilful violation of the fundamental and constitutional rights of the Applicant."

31. The Applicant alleges that "[a]lternatively, if the Court considers that the Applicant has not exhausted all the local remedies, the said remedies must be considered ineffective, inaccessible and inefficient for four reasons: lack of an independent judiciary, where there is no reasonable possibility of success, the passive nature of national authorities when faced with allegations that state employees have violated their rights, and language difficulties

9 Letter from Mr. Jean-Felix Rudakemwa to the President of National Council of Nurses, and Mid-Wives of Rwanda (28 December 2016).

faced by the Applicant." To buttress his claim, the Applicant cites the Court's decision in *Tanganyika Law Society & The Legal and Human Rights Centre and Reverend Christopher R. Mtikila v United Republic of Tanzania* and that of the European Court of Human Rights in the matter of *Van Oosterwijck v Belgium*.[10]

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32. The Court notes that Article 144 of the Constitution of the Respondent State of June 2003, provides that "[t]he Supreme Court is the highest court in the country. Its decisions are not subject to any appeal except in the matter of pardon or revision." Indeed, the issue for determination concerns the evidence of exhaustion of local remedies, since the Applicant has not produced a copy of the Supreme Court's decision. On this issue, the Court has held that

> [i]t is a fundamental rule of law that anyone who alleges a fact shall provide evidence to prove it. However, when it comes to violations of human rights, this rule cannot be rigidly applied.[11]

33. The Court has considered that, with regard to the facts under control of the State, the burden of proof can be shifted to the Respondent State, provided that the Applicant adduces any *prima facie* evidence to support his allegation.[12] In the instant case, the Court notes from the Applicant's submissions that, on 13 May 2016, the Applicant transmitted to the Supreme Court an appeal against the decision of the High Court Chamber on International and Cross-border Crimes of 15 April 2016, which was decided on 6 June 2016 on bench.

34. The Court, therefore, considers that on the basis of the information mentioned above on the appeal and the decision of the Supreme Court, the burden of proof is shifted to the Respondent State. Thus, without any contrary evidence submitted by the Respondent

10 *Van Oosterwijck v Belgium*, (1980) of 6 November 1980, A40 ECHR (vol A), paras 36-40 and *Sejdovic v Italy*, No. 56581/00, [2006] II ECHR 201, § 55.

11 *Kennedy Owino Onyachi and Charles John Mwanini Njoka v United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65, § 142.

12 *Ibidem*, §§ 143 – 145. See as well: Inter-American Court of Human Rights, Case of *Veldsquez-Rodrlguez v Honduras*, Judgment of July 29, 1988, §§ 127-136; Ahmadou Sadio Diallo (*Republic of Guinea v Democratic Republic of the Congo*), International Court of Justice, Judgment of 30 November 2010, §§ 54-56.

State, the Court concludes that it has no reason to consider that the domestic remedies were not exhausted.

35. The Court further notes that the failure by the High Court Chamber for international crimes to comply with the Supreme Court's decision demonstrates that, in the instant case, it is not reasonable to refer the Applicant back to the same court whose decision proved ineffective in addressing his claims.

36. With respect to the filing of the Application within a reasonable time, the Court notes that the domestic remedies were exhausted on 6 June 2016, the date when the Supreme Court rendered its decision, and the Application was filed at the Court on 28 February 2017, that is, eight (8) months and twenty-two (22) days after that. The Court must therefore determine whether the Application was filed within a reasonable time, for the purposes of Rule 50(2)(f) of the Rules.

37. The Court recalls its case law that "...the reasonableness of the time limit for referral depends on the specific circumstances of the case and should be determined on a case-by-case basis".[13]

38. The Court has held that it is acceptable for an applicant to await the final decision of a procedure initiated at the national level if it is reasonable to expect that such a procedure would result in a decision in his favour.[14] In the instant case, the Court notes that the Applicant had a favourable decision from the Supreme Court, therefore, it was reasonable for him to wait for its execution by the High Court Chamber for International Crimes. Thus, the Court considers that the period of eight (8) months and twenty-two (22) days that elapsed between the decision of the Supreme Court and its referral is reasonable.

39. In light of the foregoing, the Court concludes that this Application meets all the conditions for admissibility and declares it admissible.

VIII. Merits

40. The Court notes that the Applicant alleges a number of violations of the right to a fair trial, namely: i) the right to defence; ii) the right to legal aid; iii) the right to be tried before an independent and impartial court or tribunal. He also alleges the violation of his physical and mental integrity and his right to family and

13 *Zongo & ors v Burkina Faso* (preliminary objections), § 121. See also *Alex Thomas v Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 73.

14 *Alfred Agbesi Woyome v Republic of Ghana*, ACtHPR, Application 001/2017, Judgment of 28 June 2019 (merits and reparations), §§ 82-85.

information.

A. Alleged violation of the right to a fair trial

i. The right to defence

41. The Applicant submits that his right to defence provided for in Article 7(1)(a) of the Charter has been violated as a result of different acts carried out by the Rwandan authorities, namely:

i. refusal to "hear his arguments, his experts and his witnesses,[15] as well as the fact that "his motion for interlocutory judgement before the Supreme Court in Rwanda was equally denied";

ii. failure to try him in a language of his choice and "Although French is one of Rwanda's three official languages, the trial was held in Kinyarwanda",[16] a language that his Counsel do not speak;[17]

iii. The Prosecution's refusal to provide him with the information necessary for the preparation of his defence, whereas the High Court Chamber for International Crimes had ordered the Prosecutor to provide the necessary resources for the Applicant's[18] defence. The Registrar's office then handed the Applicant's file to his lawyer on a USB stick (flash drive) in January 2017, but the files were illegible;

iv. The High Court Chamber for International Crimes heard the oral arguments and submissions of the Prosecutor General of Rwanda, but refused to hear the Applicant's response, thereby denying the Applicant the right to equality of arms at trial.[19]

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42. The Court notes that the Applicant's allegations raise three issues, namely: i) the hearing of witnesses; ii) the language of the

15 Affidavit of Léon Mugesera, 14 April 2016, Nyanza Prison, §§ 8 and 9.

16 The request was all the more justified since two of its foreign lawyers, Ms. Melissa Kanas of the United States of America and Mr. Mr Gershom Otachi Bw'omanwa of Kenya, do not speak Kinyarwanda. They could therefore not fully defend their client.

17 Addendum 11 to Mugesera's observations, 2016, § 7.

18 Letter from Barrister Rudakemwa to Mr Yves Rusi, § 11.

19 Élise Grouix, The New International Justice System and the Challenges facing the Legal Profession (2010) Hors-Série, Revue québécoise de droit international, 39.

proceedings; and iii) the lack of information for proper preparation of the defence. These matters fall within the scope of Article 7(1) (c) of the Charter, which provides that "[e]very individual shall have the right to defence, including the right to be assisted by counsel of his or her choice. They also fall within the scope of Article 14(3) of the International Covenant on Civil and Political Rights (hereinafter referred to as "the ICCPR") which provides that: "everyone charged with a criminal offence shall be entitled: a) to be informed, promptly and in detail in a language which he understands, of the nature and cause of the charge against him; b) [to] have adequate time and facilities for the preparation of his defence".

43. The Court considers that, from a joint reading of the provisions of the two articles, it follows that the right to defence includes, "… the right of the accused to be fully informed of the charges brought against him is a corollary of the right to defence …",[20] the obligation to hear the accused's witnesses[21] and to ensure the provision of interpretation if the accused does not understand the language of the proceedings.[22]

44. The Court reiterates that failure by one of the parties to appear before it does not exempt the Applicant from having to prove his case, and adduce evidence, even if *prima facie*, to render the allegations credible. In the instant case, the Applicant claims that his lawyers of foreign origin (Ms Melissa Kanas from the United States of America and Mr Gershom Otachi Bw'omanwa from Kenya) do not speak Kinyarwanda without demonstrating that he requested that interpretation be provided. Furthermore, one member of his team of Counsel is a Rwandan national. In the absence of further substantiation, this claim is dismissed.

45. The Court notes that Applicant alleges the refusal by the High Court Chamber for the International Crimes to "hear his arguments, experts and witnesses", as well as the fact that "his motion for interlocutory judgement before the Supreme Court in Rwanda was equally denied" and the Public Prosecutor's refusal to provide him with the information necessary to prepare his defence.

20 *Mohamed Abubakari v United Republic of Tanzania* (merits) (3 June 2016) 1 AfCLR 599, § 158.

21 *Diocles William v United Republic of Tanzania* (merits and reparations) (21 September 2018) 2 AfCLR 426, § 62.

22 *Armand Guéhi v United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 73.

46. The Court considers that these allegations are supported by the Applicant's Counsels' letter dated 20 April 2012, addressed to the Attorney General, in which he raises the difficulty in preparing his defence because of the obstacles created by the judicial and penitentiary authorities.

47. In light of the foregoing, the Court holds that the Applicant's allegations have been proven and concludes that the Respondent State has violated the Applicant's right to a defence under Article 7(1)(a) of the Charter.

ii. Right to legal assistance

48. Citing the Court[23] and the African Commission on Human and Peoples' Rights' (hereinafter referred to as "the Commission") jurisprudence,[24] the Applicant submits that while the Respondent State made a commitment to the Government of Canada before his extradition, to provide him with legal aid, such assistance has not been provided. The Applicant states that the Respondent State has refused to consider him indigent, whereas he did not have the resources to pay for the services of a lawyer.

49. According to the Applicant, his lawyer, Barrister Jean-Félix Rudakemwa, was fined 400,000 CFA francs (nearly €610) on the grounds that he unreasonably delayed the trial. The authorities have ordered that he no longer appear in court until he has paid the fine. According to the Applicant, this amount represents nearly thirteen (13) months of average gross salary in Rwanda.

50. The Applicant concludes that by its inaction and refusal to provide legal aid to the Applicant, the Respondent State is in breach of the guarantees it had given to the Government of Canada, and of Article 7(1)(c) of the Charter. According to the Applicant, both the provision and effectiveness of the legal aid are "a fundamental element of the right to fair trial".

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23 *Alex Thomas v Tanzania* (merits), § 123; *Wilfred Onyango Nganyi & ors v United Republic of Tanzania* (merits) (18 March 2016) 1 AfCLR 507, § 182.

24 *Doctors without borders (on behalf of Bwampamye) v Burundi*, Communication No. 231/99, Decision on the merits, (6 November 2000), (African Commission on Human and Peoples' Rights), § 30.

51. The Court notes that in terms of Article 7(1) (c) of the Charter, [e] very individual shall have the right to have his cause heard. This comprises: "… c) The right to defence, including the right to be defended by counsel of his choice."

52. The Court notes that even if Article 7(1)(c) of the Charter does not expressly provide for the right to free legal assistance, such assistance is an inherent right of the right to a fair trial, in particular the right to defence guaranteed in Article 7(1)(c) of the Charter, read in conjunction with Article 14(3)(d) of the ICCPR.[25]

53. The Court observes that the first paragraph of the Respondent State's letter of undertaking to the Government of Canada states that

> [t]he accused will receive a fair trial in accordance with the national legislation and in conformity with fair trial guarantees contained in other international instruments ratified by the Republic of Rwanda", namely the Charter, the ICCPR, Genève Conventions of 1949 and Protocols I and II of 1977.[26]

54. The Court further notes that in paragraph 1(g) of the same letter, the Respondent State specifically undertook to guarantee to the Applicant:

> The right to defend himself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right, and to have legal assistance assigned to him or her, in any case where the interest of justice so requires, and without payment by the beneficiary if they do not have sufficient means to pay for it.

55. In the instant case, the Court observes that, in its letter of undertaking, the Respondent State assumes the obligation to provide free legal assistance to the Applicant under conditions laid down under Rwandese law and international law.

56. The Court, therefore, concludes that the Respondent State's undertaking does not create an obligation for the Respondent State beyond what is already provided for in Article 7(1)(c) of the Charter with regard to legal assistance.

57. Regarding the conditions required for obtaining legal assistance, the Court has always held that everyone charged with a criminal offence is automatically entitled to free legal assistance, even without requesting it, when the interest of justice so require, in particular if the person is indigent, the offence is serious and the

25 *Alex Thomas v Tanzania* (merits), § 114. The Respondent State became a party to the International Covenant on Civil and Political Rights (ICCPR) on 11 June 1976.

26 Letter of Assurance on Human Rights requested by the Government of Canada in the case of MUGESERA Leon, dated 27 March 2009.

penalty provided for by law is severe.[27]

58. In the instant case, the Applicant was accused of an international crime, namely genocide which carries a sentence of life imprisonment under Article 115 of the Rwandan Penal Code adopted by the law No 01 of 02 May 2012. Therefore, there is no doubt that the interest of justice justifies the granting of free legal assistance, if the Applicant proves he does not have the necessary means to pay for his own counsel.

59. However, the Court notes that, on the one hand, the Applicant claims that he is indigent without providing evidence to that effect[28] and, on the other hand, it appears from the record that, in addition to one lawyer from Rwanda, the Applicant was represented by two lawyers of foreign origin, which shows that he was at least able to obtain the services of a lawyer of his choice. The Court, therefore, holds that the Applicant does not satisfy conditions justifying the granting of legal aid as provided for under Article 7(1)(c) of the Charter and the letter of undertaking to the Government of Canada.

60. With regard to the fine imposed on the Applicant's counsel, the Court notes that States may regulate the practice of law and even impose sanctions on lawyers who violate professional or ethical obligations and standards.[29] These sanctions are the result of the personal conduct of the counsel, who may use existing mechanisms to challenge this sanction. For this reason, since the link between the fine imposed on his counsel and the Applicant's right to legal assistance has not been established, the allegation is dismissed on this point.

61. In light of the foregoing, the Court dismisses the allegation that the Applicant's right to legal assistance was violated.

iii. The right to be heard by an independent and impartial court

62. The Applicant alleges that the Rwandan judiciary is neither independent nor impartial, as "[t]he *Honourable Judge Athanase*

27 *Ibid*, § 123. See also *Mohamed Abubakari v Tanzania* (merits), §§ 138 and 139.

28 *Alex Thomas v Tanzania* (merits), § 140. See also *Kennedy Owino Onyachi and Charles John Mwanini Njoka v Tanzania* (merits), §§ 150 to 153.

29 Section I(b) of the Guidelines and Principles on the Right to a Fair Trial and Legal Assistance in Africa (2003) provides that: "States shall ensure that lawyers: 3. are not subject to, or threatened with, prosecution or economic or other sanctions for all measures taken in accordance with their recognized professional obligations, standards and ethics".

Bakuzakundi was replaced on 15 September 2014 by a new judge, two years after the beginning of the trial, on 12 September 2012, when most of the prosecution witnesses and oral submissions had been heard".

63. The Applicant also alleges that the Executive branch intervened in the appointment of judges, in violation of the Rwandan Constitution,[30] and in 2015, Human Rights Watch further denounced the alleged lack of independence of judges.[31] He further alleges that the situation would be even more dramatic for people of the Hutu ethnic group who are opponents of Paul Kagame's[32] regime. The Applicant claims that the pressure exerted on the judiciary by the Executive branch is even greater when it comes to political matters.[33]

64. In support of his claims, the Applicant recalls the statements of the former Minister of Justice, Mr. Stanislas Mbonampeka,[34] according to which "Léon Mugesera will certainly not be able to benefit from a fair trial in Rwanda, given that the executive holds all institutions with an iron fist, including the judiciary". He also cites the reports of various organisations, namely the *Commonwealth Human Rights Initiative (2008)*; *Human Rights Watch*, 2015 and the Human Rights Committee, 2016.[35] The reports of these organizations make reservations and raise concerns about the

30 Human Rights Council Working Group on the Periodic Review, tenth session, A./HRC./WG6/10/RWA/3 (2010), § 11.

31 *Ibid*, § 14.

32 Ms. Susan Thomson, of the Field Operations Service, based in Rwanda for the Office of the United Nations High Commissioner for Human Rights between 1997 and 1998, made the following observations: By labelling the Hutus as genociders, the RPF has put in place a maximum protection strategy that has even more negative effects on the possibility of benefiting from a fair trial before Rwandan courts]. Statement by Mrs Susan Thomson, § 14. More generally, in 2008, judicial and police employees claimed that all Hutus were complicit in the 1994 genocide. Human Rights Watch, Law and Reality: Progress in Judicial Reform in Rwanda (July 25, 2008).

33 Human Rights Council Working Group on the Periodic Review, tenth session, A./HRC. /WG6/10/RWA/3 (2010), § 11.

34 Sworn statement by Stanislas Mbonampeka, former Minister of Justice in Rwanda (3 January 2012): "Léon Mugesera will certainly not be able to benefit from a fair trial in Rwanda, given that the executive holds all institutions in an iron grip, including the judiciary."

35 Human Rights Committee: Closing remarks on the fourth periodic report of Rwanda, document No. CCPR/C/RWA/4, para. 33: "The Committee is concerned at reports of unlawful interference by public officials in the judicial system and notes that the procedure for appointing Supreme Court judges and presidents of the main courts may expose them to political pressure".

independence and impartiality of the Rwandan judiciary system.

65. The Applicant further cites the *Brown* case, in which "the High Court of England refused to expel a Rwandan citizen at the request of his government:[36] The Court held that expulsion could lead to a denial of justice, due to the lack of independence and impartiality of the Rwandan courts".

66. According to the Applicant, "due to government interference and political pressure on the judiciary, serious doubts may arise as to the bias of the High Court of Rwanda" and that this amounts to a violation of Articles 7(1)(d) and 26 of the Charter.

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67. The Court observes that Article 7(**1**)(d) of the Charter provides that "[e]veryone shall have the right to have his case heard. This comprises: … d) the right to be tried within a reasonable time by an impartial court or tribunal."

68. The Court further notes that, Article 26 of the Charter provides that "States Parties to this Charter shall have the duty to guarantee the independence of the Courts..."

69. The notion of judicial independence essentially implies the ability of courts to discharge their functions free from external interference and without depending on any other government authority[37] or Parties.

70. The Court considers that a combined reading of the above provisions does not mean that the replacement or substitution of judges is prohibited in the course of judicial proceedings and that, in the event of modification or substitution of a judge, this does not in itself constitute a violation of the independence or impartiality of a court.[38]

71. The Court is of the opinion that the change of a judge may be a form of interference if it has been determined or made to satisfy the wishes of another entity or one of the Parties, in violation of

36 *Vincent Brown, alias Vincent Bajinya & ors v the Government of Rwanda and the Secretary of State for the Interior* [2009] EWHC 770 (Admin), § 121.

37 *Action pour la protection des droits de l'homme v Côte d'Ivoire* (merits) (18 November 2016) 1 AfCLR 697, § 117. See also Dictionary of international public Law, Jean Salmon, Brulyant, Bruxelles, 2001, pages 562 and 570.

38 *Thobias Mang'ara Mango and Shukurani Masegenya Mango v United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 314, § 104.

the principles of the proper administration of justice.

72. In the instant case, the Applicant simply refers to a change of a judge, without indicating to what extent this constitutes bias or how the independence of the High Court Chamber for International Crimes would be affected. The Court also considers that the allegations about the lack of independence of the Respondent State's judiciary, including international reports, the decision of the High Court of England to refuse the extradition of a Rwandan to his country of origin and the declaration of the former Rwandan Minister of Justice, are general allegations that do not establish how are they connected to his case. This court has held that "[g[eneral assertions that a right has been violated are not sufficient. More concrete evidence is required.[39]

73. In light of the foregoing, the Court considers the Applicant's allegations as unsubstantiated and therefore concludes that the Respondent State has not violated the right to be tried by an independent and impartial tribunal as provided for in Articles 7(1) (d) and 26 of the Charter.

B. Alleged cruel, inhuman and degrading treatment

74. The Applicant claims to be "a victim of cruel, inhuman and degrading treatment and constant threats, in violation of Article 5 of the Charter". This is on the basis that "Just before his extradition from Canada in 2012, the Rwandan government created an atmosphere of fear and intimidation by broadcasting in a loop the speech delivered by Mr. Mugesera in 1992".[40]

75. He also claims that he "lived in a state of terror, given that he was on the list of persons to be executed drawn up by the Rwandan government on 14 January 1994".[41] Since his arrival in Rwanda, the Applicant claims to have been subjected to constant threats and humiliation.[42] He states that he has consistently received death threats from Rwandan officials (secret service agents,

39 *Alex Thomas v Tanzania* (merits), § 140.

40 Canada's submissions on the admissibility and merits of Mr. Léon Mugesera's submissions, 26 July 2012, § 36, citing the opinion of the Minister's delegate (R. Grenier) dated 24 November 2011, p. 29. Human Rights Watch: "World Report 2015: Rwanda Events of 2014" (January 2015), available on the website. https://www.hrw.org/fr/world-report/2015/country-chapters/268129.

41 Affidavit of Mr. Alexanda Marcil, Defence Council (ICTR), 3 January 2012.

42 Letter from Mr. Jean-Félix Rudakemwa to Ms. Gemma Uwamariya (20 October 2012), § 29.

[43]police officers and prison wardens).[44]

76. The Applicant further alleges that "on 24 March 2016, he was transferred to Nyanza prison outside Kigali and his family was not informed about this for several days".

77. He also alleges that his "diet is poor. Indeed, his meals are often forgotten and his fruit-based diet[45] is not respected, nor is his cholesterol-free diet".[46] He states that he "does not receive the whole wheat bread required by his diet which is considered a real medication given his illness.[47] That is why he has been deprived of breakfast since 24 March 2016".[48]

78. In support of his claims, he cites the reports of Human Rights Watch and the High Commissioner for Human Rights, as well as those of the Commission, the jurisprudence of the Commission and the Inter-American Court of Human Rights, which "gives a broad interpretation of this prohibition, as creating a threatening situation can constitute inhuman treatment".

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79. Article 5 of the Charter reads as follows:

> 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.

80. The Court observes that respect for human rights as a whole is intended to protect the dignity of the human person. However, under Article 5 of the Charter, the protection of human dignity takes a specific form, namely the prohibition of treatment likely

43 Letter from Mr. Jean-Félix Rudakemwa to Ms. Gemma Uwamariya (20 October 2012). § 15.

44 Letter from Mr. Jean-Félix Rudakemwa to Ms. Gemma Uwamariya (20 October 2012). § 28.

45 Letter from Mr. Jean-Félix Rudakemwa to Ms. Gemma Uwamariya (20 October 2012). § 15.

46 Board and Nurse Report, 28 December 2016, §§ 58 and 64; Special Diet Prescription, 2 July 2015; Observations on the Health of the Applicant, § 60. Letter from the Applicant's counsel, February 2017, § 30.

47 Board and Nurse Report, § 43 and 44.

48 *Ibid*, § 45.

to restrict it, such as slavery, slave trade, torture and any other form of cruel, inhuman or degrading treatment. Thus, the Court shares the Commission's view that Article 5 of the Charter "can be interpreted as extending to the broadest possible protection against abuse, whether physical or mental".[49]

81. The Court considers that the cruelty or inhumanity of the treatment must involve a certain degree of physical or mental suffering on the part of the person, which depends on the duration of the treatment, the physical or psychological effects of the treatment, the sex, age and state of health of the person. All this must be analysed on a case-by-case basis.[50]

82. The Court notes that questions relating to slavery, slave trade and torture do not arise in the instant case and the Applicant does not claim that these practices have taken place. Consequently, what remains is to examine the Applicant's allegations in the context of the prohibition of cruel, inhuman or degrading treatment as enshrined in Article 5 of the Charter.

83. The Court recalls that the Applicant alleges: i) the repeated broadcasting of his speech in 1992; ii) the inclusion of his name on the list of persons to be executed; iii) death threats by agents of the Respondent State; and iv) the refusal to provide adequate food to him and deprivation of communication with his family and lawyers.

84. The Court notes that the issue at stake is the burden of proof as regards these allegations, which is primarily incumbent on the Applicant, but may be shifted, if the Applicant provides *prima facie* evidence in support of his allegations.[51]

85. The Court observes that the Applicant has not provided proof of the allegation relating to the repeated re-run of his speech made in 1992, as the references presented as evidence do not contain any information to that effect. This allegation is therefore dismissed.

49 *Lucien Ikili Rashidi v United Republic of Tanzania*, ACtHPR, Application 009/2015, Judgment of 28 March 2019 (merits and reparations), § 88. See also *Egyptian Initiative for Personal Rights and Interights v Egypt II* (2011) AHRLR 90 (ACHPR 2011) § 196.

50 ECHR, *Ireland v The United Kingdom* (Application 5310/71) (19 January 1978), § 162; *Velasquez Rodriguez v Honduras* (1988) IACtHR, § 173; See also *Egyptian Initiative for Personal Rights and Interights v Egypt II* (2011) AHRLR 90 (ACHPR 2011), §§ 186-209.

51 *Kennedy Owino Onyachi and Charles John Mwanini Njoka v Tanzania* (merits), §§ 142-146; *Armand Guéhi v United Republic of Tanzania* (merits and reparations), §§ 132-136.

86. With regard to the allegation of the inclusion of his name on the list of persons to be executed, the Court notes that the Applicant did not submit *prima facie* evidence to shift the burden of proof. The statement of Alexandra Marcel of 3 January 2012, cited by the Applicant, contains no reference to a list of persons to be executed with his name.

87. With regard to the allegations of death threats, deprivation of food and deprivation of communication with his family and lawyers, the Applicant has taken multiple steps with regard to the treatment to which he has been subjected by the authorities, namely: the letter to the Prosecutor General of the Republic of Rwanda dated 20 April 2012 concerning the difficulty of communicating with his family and lawyers, and his deprivation of food; the letter of 21 February 2017, addressed to the Director of Nyanza Prison, requesting permission to communicate with his lawyers, the letter of 14 February 2017, addressed to Mr. Yves Rusi (his son) concerning the death threats made by Rwandan officials.

88. The Court notes that the letters referred to above justify shifting the burden of proof to the Respondent State, given that the Applicant is in prison and that it is difficult for him to produce additional evidence beyond the steps he claims to have taken.[52] The Court also considers it relevant, for the reversal of the burden of proof, that the Applicant expressly mentioned the date from which he was deprived of breakfast, namely 24 March 2016.

89. The Court recalls that it is incumbent on the Respondent State to take all appropriate measures to protect detainees and to put in place mechanisms to monitor the conduct of prison wardens.[53] In the absence of contrary information concerning the allegations of death threats and deprivation of adequate food, the Court considers that these allegations are well-founded.

90. The Court considers that the right to dignity of the human being is incompatible with issuance of death threats against prisoners by prison officials. In addition to these threats, the Applicant's deprivation of adequate food, limited access to a doctor and medication, non-provision of an orthopaedic pillow, difficulties in establishing contact with his family and his counsel would lead

52 *Kennedy Owino Onyachi and Charles John Mwanini Njoka v Tanzania* (merits), § 142.

53 Section M(1)(d) of the Guidelines and Principles on the Right to a Fair Trial and Legal Assistance in Africa (2003) provides that: Each State shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorized by law to use force and firearms.

to demoralisation and deterioration of the physical and mental condition of the detainee. The Court notes that the Applicant is already ill and is elderly and has been in detention since January 2012.

91. In view of the foregoing, the Court finds that this situation amounts to cruel, inhuman and degrading treatment of the Applicant, in violation of Article 5 of the Charter.[54]

92. The Court further notes that in accordance with Article 11 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[55] read together with Article 16 of the same text, the Respondent State:

> Shall keep under systematic review interrogation rules instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest detention or imprisonment in any territory under its jurisdiction…

93. The Court notes that even after the Applicant informed the Respondent State, through the Prosecutor General and the Director of the prison, about the conditions of his detention and the ill treatment to which he was exposed, it did not take appropriate measures to correct the abuse that the Applicant claimed to be a victim of. Consequently, the Court holds that the Respondent State has violated the Applicant's rights not to be submitted to cruel, inhuman and degrading treatment.

C. Alleged violation of the right to physical and mental integrity

94. The Applicant submits that since his return to Rwanda and his imprisonment in 2012, the Respondent State has been violating his right to physical and mental integrity guaranteed under Article 4 of the Charter. The Applicant states that, the Respondent does so "by isolating him from any contact with his close relatives and his Defence team, by refusing to administer him appropriate medication and to provide him with the necessary medical care, the Applicant finds himself exposed to inhumane treatment likely to have serious and irreparable repercussions on his physical and mental health".

95. The Applicant claims to have "suffered inhuman and degrading treatment affecting his physical health such as lack of access

54 *Civil Liberties Organisation v Nigeria* (2000) AHRLR 243 (ACHPR 1999), §§ 25 to 27.

55 The Respondent State ratified this Convention by accession on 15 December 2008.

to a doctor, cancellation of medical appointments, refusal to provide him with light adapted to his sight in his cell or access to an orthopaedic pillow". He alleges that "[t]hese conditions are, indirectly, an infringement on [his] mental integrity … [and] isolating the Applicant from his family and his Defence exacerbates his psychological distress. He alleges further that "… he was supposed to have access to a psychiatrist to treat the mental repercussions caused, such as sleep disorders and the trauma of a gradually failing eyesight without receiving any assistance".

96. He further states that he sometimes "... is cared for by a person who presents himself as a nurse but who, in fact, is a supervisor who has been converted into a nurse and has no certificate".

97. The Applicant alleges that "Since his arrival in Rwanda, [his] diet has been deficient. Indeed, his meals are often forgotten, and his fruit-based[56] diet is not respected, likewise his cholesterol-free[57] diet. More precisely, the Applicant does not receive the whole-wheat bread needed for his diet and considered as real medication in view of his illness.[58] Hence he has been deprived of breakfast since 24 March 2016".[59]

98. Citing the Commission's jurisprudence,[60] the Applicant alleges that "… Article 4 of the Charter, is violated when the State exposes an individual to "personal suffering and… deprive him of his dignity. "

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99. Article 4 of the Charter provides as follows: "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."

56 Letter from Mr. Donah Mutunzi to the Public Prosecutor, 20 April 2012, §§ 18 and 19.

57 Report of the Council/Nurse, 28 December 2016, §§ 58 and 64; Prescription of a special diet, 2 July 2015; Comments on the Applicant's health, § 60; Letter from the Council, February 2017, § 30.

58 Report of the Council/Nurse, 28 December 2016, §§ 43 and 44.

59 *Ibid*, § 45.

60 *John K. Modise v Botswana*, Communication No. 97/93, Decision on the merits: Amicable settlement, (6 novembre 2000) (African Commission on Human and Peoples' Rights), para. 91.

100. The Court recalls that it has held that "[c]ontrary to other human rights instruments, the Charter establishes the link between the right to life and the inviolable nature and integrity of the human being",[61] and the right to life within the meaning of Article 4 must be understood in its physical sense,[62] not in its existential sense, that is, "a decent existence…".[63]

101. The Court notes that the issue here is whether the facts presented by the Applicant relate to the right to physical life or the right to a decent existence. It notes that the facts presented by the Applicant, in theory, are likely to involve physical life. Accordingly, it will consider this allegation in the light of this aspect of the right to life.

102. The Court reaffirms that the right to life is the cornerstone on which the realisation of all other rights and freedoms depend, and the deprivation of someone`s life amounts to eliminating the very holder of these rights and freedoms, and that depriving someone of life renders his rights and freedoms irrelevant. This is why Article 4 of the Charter strictly prohibits the arbitrary deprivation of life.[64]

103. With regard to the lives of prisoners, the Court agrees with the Commission that State Parties to the Charter have an obligation "to provide the necessary conditions of a dignified life, including food, water, adequate ventilation, an environment free from disease, and the provision of adequate healthcare."[65]

104. The Court notes the applicant's situation of deprivation of food, poor sleeping conditions, detention in solitary confinement and lack of adequate medical care and psychiatric examination. It also notes that the poor illumination of his cell affects his vision. This situation of the Applicant is sufficiently serious and likely to cause his death, given his already poor state of health, as evidenced by the medical reports available in the file before this Court and his advanced age.

61 *African Commission on Human and Peoples' Rights v Kenya* (merits) (26 May 2017) 2 AfCLR 9, § 152.

62 *Ibid*, § 154.

63 *Ibid*, § 154

64 *African Commission on Human and Peoples' Rights v Kenya* (merits), § 152; Communication 223/98 (2000), *Forum of Conscience v Sierra Leone*, § 19; See also ECHR, *Streletz, Kessler and Krenz v Germany* (Applications Nos 34044/96, 35532/97 and 44801/98) (2001), § 72, 87 and 94.

65 General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4), adopted during the 57th Ordinary Session of the African Commission on Human and Peoples' Rights held from 4 to 18 November 2015 in Banjul, The Gambia, § 36.

105. The Court notes that the Applicant buttresses his allegations with the correspondences he sent to report about the treatment meted out on him by the authorities. These correspondences are, first, the letter dated 4 April 2016, from his Counsel to the Prosecutor General of Rwanda denouncing the cancellations of the medical appointments of 10 March 2016 (ophthalmology Doctor), 25 April 2016 (internist Doctor), the exhaustion of the drugs stored, the refusal of the doctor to access the Applicant in prison to provide him with medical care, and deprivation of breakfast of whole wheat bread for forty-two (42) days as prescribed by the Doctor. The second is a letter from the Applicant's Counsel dated 28 December 2016, in which he denounced the same situations by mentioning a nurse in charge of the Nyanza Prison Dispensary (Mpanga) whom he accuses of violating medical ethics and seriously endangering the life and health of the Applicant.

106. The Court notes that, on 20 April 2012, the Applicant's Counsel had already sent a letter to the Prosecutor General of Rwanda raising the same concerns, in particular the isolation of the Applicant who could not easily contact his family, in particular his wife, and his lawyers, as well as the problem of inadequate food. Further it takes note of the Applicant's letter addressed to the Director of Nyanza Prison on 21 February 2017, in which he requested permission to contact his lawyers before the Court and complained of the lack of contact with family members; and Addendum 11 to the Observations sent to his son Ives Rusi, regarding the Applicant's conditions of detention, wherein he reports the lack of access to the doctor, cancellation of medical appointments, poor lighting in the cell and the lack of an orthopaedic pillow.

107. The Court considers that the evidence adduced by the Applicant is sufficient and concludes that the treatment meted out on the Applicant constitutes a violation of his right to life as provided for in Article 4 of the Charter.

D. Alleged violation of the Applicant's right to family and to information

108. The Applicant alleges that he did not hear from his family for several days following his transfer to Nyanza prison, and that this constitutes a deprivation of the right to information provided for in Article 9(1) of the Charter. He further contends "... that the lack of information on the Applicant's fate and the obvious difficulties encountered until recently in contacting him constitute violations of Articles 6 and 7 of the African Charter".

109. The Applicant contends that his right under Article 18(1) of the Charter was violated, in that "as of 27 April 2012, he was granted the right to call his family on Wednesdays and to receive calls from his wife on Sundays, for a period of ten minutes each week. His right to communicate with his family was limited by the fact that prison wardens repeatedly denied him access to a telephone, forcing his wife to call several times before she could speak to her husband."

110. The Applicant further claims that he was transferred to another prison without the knowledge of his family members and that his telephone conversations with his lawyer and family were tapped.

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111. The Court notes that the allegation relating to the Applicants' communication with his family and his lawyer, including during the period when he was transferred to another prison, has already been examined in the light of the provisions of Articles 5 and 7(1)(c) of the Charter, relating to his physical and mental integrity and his right to a defence, respectively.

112. With regard to the allegation of a violation of Article 6 of the Charter, the Court is of the opinion that it is an allegation which is not the subject of the instant case, as the Applicant does not contest the lawfulness of his detention, rather the conditions of its detention.

113. In relation to the allegation of violation of the right to information, Article 9(1) of the Charter states that "1. Every individual shall have the right to receive information. 2. Every individual shall have the right to express and disseminate his opinion within the law."

114. The Court notes that the Applicant does not provide any evidence to support this allegation of violation. This court has held that "[g]eneral assertions that a right has been violated are not sufficient. More concrete evidence is required."[66]

115. As regards the alleged violation of the right to family, the Article 18(1) of the Charter provides that "the family shall be the natural unit and basis of society. It shall be protected by the State, which

66 *Alex Thomas v Tanzania* (merits), § 140.

shall take care of its physical and moral health."

116. The Court is of the opinion that the right to family implies, among other things, being able to live together or at least the family members can contact each other. Indeed, the issue here is whether the restrictions imposed on the Applicant constitute a violation of his family right.

117. The Court notes that the right to family allows for restrictions. However, such restrictions must comply with the conditions of Article 27(2) of the Charter, including respect for the rights of others, collective security, morality and the common interest.[67]

118. The Court considers that the exercise of this right is limited by the mere fact that a family member is in detention, as is the case for the Applicant's. However, the detainee "shall be given reasonable facilities to receive visits from family and friends, subject to restrictions that are necessary for proper administration of justice, the security of the institution and of the detainees."[68]

119. In the instant case, the Court notes that the Applicant admits that his family is allowed to visit him in prison and he was granted the right to call his family on Wednesdays and to receive calls from his wife on Sundays for ten (10) minutes. However, the Applicant alleges that his communication with the family was limited by the fact that on several occasions prison guards denied him access to the telephone, which required his wife to call several times before she could speak to him.

120. The Court notes that this allegation is buttressed by the letter dated 20 April 2012, from his Counsel to the Prosecutor General of Rwanda in which he raised the issue of his isolation due to difficulties in contacting his family, in particular his wife.

121. The Court notes that the reason why the duration of communication between the Applicant and his family was set at ten (10) minutes is not apparent from the record. Accordingly, the Court is not in a position to examine the compatibility of the restrictions imposed on the Applicant with the conditions set out in the Article 27(2) of the Charter. Furthermore, the Applicant does not challenge the time allocated to him to call his family. Nevertheless, the Court

67 *Tanganyika Law Society, Legal and Human Rights Centre and Reverend Christopher R Mtikila v United Republic of Tanzania* (merits) (2013) 1 AfCLR 34, § 100. See also *African Commission on Human and Peoples' Rights v Kenya* (merits), § 188.

68 Section M(2)(g) of the Principles and Guidelines on the right to a fair trial and legal assistance in Africa provides that: "Anyone who is arrested or detained shall be given reasonable facilities to receive visits from family and friends, subject to restriction and supervision only as are necessary in the interests of the administration of justice and of security of the institution."

considers that the failure by the prison authorities to comply with the facilities offered to the Applicant to communicate with his family constitutes a violation of his right to family provided under Article 18(1) of the Charter.

IX. Reparations

122. The Applicant prays the Court to order measures to remedy the violations of his rights, including the annulment of his conviction and his release from detention, and to appoint an independent doctor to assess his state of health.

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

124. The Court considers that for reparations to be granted, the Respondent State should first be internationally responsible for the wrongful act. Second, causation should be established between the wrongful act and the alleged prejudice. Furthermore, and where granted, reparation should cover the full damage suffered. It is also clear that it is always the Applicant that bears the onus of justifying the claims made.[69] As the Court has stated previously, the purpose of reparations is to place the victim in the situation he/she would have been in but for the violation.[70]

125. In relation to material loss, the Court recalls that it is the duty of an applicant to provide evidence to support his or her claims for all alleged material loss. In relation to moral loss, however, the Court restates its position that prejudice is assumed in cases of human rights violations and the assessment of the quantum must

69 *Armand Guéhi v United Republic of Tanzania* (merits and reparations) § 157. See also *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, §§ 20-31; *Lohé Issa Konaté v Burkina Faso* (reparations) (3 June 2016) 1 AfCLR 346 §§ 52-59 and *Reverend Christopher R. Mtikila v United Republic of Tanzania* (reparations) (13 June 2014) 1 AfCLR 72, §§ 27-29.

70 *Lucien Ikili Rashidi v Tanzania* (merits and reparations), § 118 and *Norbert Zongo & ors v Burkina Faso* (reparations), § 60.

be undertaken in fairness looking at the circumstances of the case.[71] The practice of the Court, in such instances, is to award lump sums for moral loss.[72]

126. The Court recalls that it has already found that the Respondent State has violated the Applicant's rights under Articles 7(1) (c), 4, 5 and 18(1) of the Charter. It is in the light of these findings that the Court will examine the Applicant's prayers for reparations.

A. Pecuniary reparations

127. The Applicant seeks pecuniary compensation for the material damage and moral damage suffered by himself and the indirect victims of the violations.

i. Material prejudice

128. The Applicant prays the Court to order the Respondent State to pay him for material damage relating to his health care, legal fees and other costs incurred.

a. Material prejudice related to health care

129. The Applicant alleges that "the damage to his moral and physical health... is such that he will require numerous treatments over a long period of time, or even for the rest of his life".

130. The Applicant alleges that [w]ithout knowing the extent of the damage to [his] moral and physical health..., the exercise of determining the financial costs of comprehensive medical care in the event of [his] release can only be approximate". He asks the Court to order the Respondent State to pay damages estimated at a total of United States dollars Two Hundred and Eighty Thousand (US$280,000), calculated "on the basis of an estimated life expectancy of 80 years and health care needs estimated at 20,000 USD per year...".

71 *Armand Guehi v Tanzania* (merits and reparations) § 55; and *Lucien Ikili Rashidi v Tanzania* (merits and reparations), § 58; *Norbert Zongo & ors v Burkina Faso* (reparations), § 61; and *Reverend Christopher R. Mtikila v Tanzania* (reparations), § 34.

72 *Lohé Issa Konaté v Burkina Faso* (reparations), § 59; *Norbert Zongo & ors v Burkina Faso* (reparations), § 62.

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131. The Court notes that it is apparent from the file that the Applicant does not pay for any health care expenses while in detention, which are borne by the Respondent State.

132. The Court notes that the Applicant seeks reparations valued at United States dollars Two Hundred and Eighty Thousand (US$280,000). According to the Applicant, this amount is calculated "on the basis of an estimated life expectancy of 80 years and health care needs estimated at 20,000 USD per year."

133. The Court notes that the Applicant is requesting reparations for future material prejudice, without demonstrating in which circumstances they are going to occur. Therefore, the Court rejects the Applicant's prayer.

b. Legal fees for proceedings before national courts

134. The Applicant claims the United States Dollars Ninety-four Thousand Two Hundred and Seventy-one and Seventy-six Cents (US$ 94,261.76) for the legal fees and expenses paid to Barrister Jean-Félix Rudakemwa, "for his six years of commitment to the case before the Rwandan courts".

135. The Applicant alleges that "this amount is established in accordance with the Model A of the fees for the Defence Counsel of persons tried in Rwanda following the referral of a foreign jurisdiction and pursuant to the commitments of the Rwandan Government to devote financial resources to legal assistance of such persons…"

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136. The Court recalls that, according to its case-law, reparations may include the reimbursement of legal fees and other costs incurred during domestic proceedings.[73] It is up to the Applicant to provide

73 *Ingabire Victoire Umuhoza v Rwanda* (reparations), § 39; *Norbert Zongo & ors v Burkina Faso* (reparations), §§ 79 to 93; *Révérend Christopher R. Mtikila v Tanzania* (reparations), § 39.

the justification for the amounts claimed.[74]

137. The Court notes that the Applicant has not produced any retainer agreements with his counsel, Barrister Jean-Félix Rudakemwa, who represented him in proceedings before the national courts, but only receipts for the Counsel's transport costs. The Court notes, however, that according to the record, Barrister Jean-Félix Rudakemwa, a Rwandan lawyer, represented the Applicant before the national courts.

138. The Court notes that the Applicant claims United States Dollars Ninety-four Thousand Two Hundred and Seventy-one and Seventy-six Cents (US$ 94,261.76) for expenses and legal fees due to Counsel Me Jean-Félix Rudakemwa "for his six years of commitment to the case before the Rwandan courts".

139. The Court further notes that it is included in this amount: i) the fine paid by the lawyer of One Million Six Hundred and Forty-seven Thousand (RWF 1,647,000) Rwandan francs equivalent to United States Dollars One Thousand Six Hundred and Forty-seven and Five cents (US$ 1,647.05); ii) transport from Kigali prison to Nyanza and back,40 times – Rwandan francs Three Million Six Hundred Thousand (RWF 3,600,000.00) equivalent to United States Dollars Four Thousand Seven Hundred and Five and Eighty-eight Cents (US$4,705.88)); iii) transport from Kigali to Nairobi and back for United States Dollars Three Hundred and Fifty (US$ 350); iv) Four-day accommodation costs in Nairobi for United States Dollars four hundred (US$ 400); v) other costs (disbursements) for United States Dollars Seven Thousand Two Hundred and Two and Ninety-four cents (US$ 7,202.94).

140. With regard to the fine imposed on the Rwandan lawyer, the Court recalls that it found in paragraph 60 above of this judgment that this was an issue which concerned the conduct of the lawyer himself and not that of the Applicant and which is therefore not relevant to the case. This claim is therefore dismissed.

141. As regards the transport costs of the Rwandan lawyer for the forty (40) times he went to visit the Applicant and for his trip to Nairobi, the Court considers that these costs are related to the preparation of the defence. The Court notes that the Applicant did not submit proof of payment of the amounts claimed. However, in view of the fact that he has hired a counsel, which has certainly led to expenses for him, and taking into account that he has been partially successful in its allegations of violation, the Court

74 *Norbert Zongo & ors v Burkina Faso* (reparations), § 81; *Révérend Christopher R. Mtikila v Tanzania* (reparations), § 40.

decides to award the Applicant the sum of Rwandan Francs Ten Million (RWF 10,000,000) as for expenses and Counsel's fees for representing the Applicant in proceedings before the national courts.[75]

ii. Moral prejudice

a. Moral prejudice suffered by the Applicant

142. The Applicant claims that the alleged violations caused him "acute suffering, despair, stress, permanent anxiety", "anxiety and distress", "the gradual loss of the unavoidable of his life", "family alienation, the feeling of helplessness... a slow death programmed by the Respondent State", which "increases his worries, exasperation, troubles, suffering, agony, and stress". Accordingly, he prays the Court to order the Respondent State to pay him "USD 500 per day, for a total of USD 1,095,000 for six (6) years (365 days x 6) spent in the criminal justice system of the Respondent State".

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143. The Court recalls that moral prejudice involves the suffering, anguish and changes in the living conditions of an Applicant and his family.[76] The Court recalls further that there is a presumption of moral prejudice suffered by the Applicant once it has established that his rights have been violated and that he no longer needs to prove the existence of a link between the harm caused and the prejudice.[77]

144. In addition, the Court has also held that the assessment of the amounts to be awarded for moral damage must be made in all

75 *Ingabire Victoire Umuhoza v Rwanda* (reparations), §§ 44 and 46.

76 *Reverend Christopher R. Mtikila v Tanzania* (reparations), § 34.

77 *Ingabire Victoire v Rwanda* (reparations), § 59; *Norbert Zongo v Burkina Faso* (reparations), § 61; *Ingabire Victoire v Rwanda* (reparations), § 59; Lohé Issa *Konaté v Burkina Faso* (reparations), § 58.

fairness and taking into account the circumstances of the case.[78] In such cases, the general principle is to allocate lump sums.[79]

145. The Court notes in this case that the claim for compensation for the Applicant's moral prejudice results from the Court's finding that the Respondent State has violated the Applicant's rights under Articles 4, 5 and 18(1) of the Charter. However, the Court considers that the amount requested by the Applicant as compensation for the moral prejudice suffered, namely United States one million and ninety-five thousand (US $1,095,000) dollars, is excessive.

146. In the light of these considerations and on the basis of equity, the Court considers that the Applicant is entitled to compensation for the moral prejudice suffered and grants him Rwandan Francs ten million (RWF 10,000,000 Fr).[80]

b. Moral prejudice suffered by indirect victims

147. The Applicant seeks reparations for his close relatives as indirect victims, as follows:

i. Sixty-five thousand (65,000) United States dollars for his wife (Ms. Gemma Uwamariya); and

ii. Forty-five thousand (45,000) United States dollars for each of her two children (Carmen Nono and Yves Rusi).

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148. With regard to the moral prejudice suffered by indirect victims, the Court recalls that, as a general rule, for indirect victims to be entitled to reparation, they must prove their marital status or filiation to the Applicant.[81] Consequently, spouses should produce marriage certificates or any equivalent proof, birth certificates or any other equivalent evidence should be produced for children

78 Voir *Norbert Zongo & ors v Burkina Faso* (reparations), §§ 61; and *Reverend Christopher R. Mtikila v Tanzanie* (reparations), § 34.

79 *Norbert Zongo & ors v Burkina Faso* (reparations), § 62; *Lohé Issa Konaté v Burkina Faso* (reparations), § 59.

80 *Ingabire Victoire Umuhoza v Rwanda* (reparations), § 46.

81 *Norbert Zongo & ors v Burkina Faso* (reparations), § 54; and *Lucien Ikili Rashidi v Tanzania* (merits and reparations), § 135.

and parents must produce attestation of paternity or any other equivalent proof.[82] It is not sufficient to simply list the alleged indirect victims.[83]

149. In the instant case, the Applicant attached the statement of his alleged wife, Ms. Gemma Uwamariya, in which she claims to have married him on 7 October 1978 in Butare, Rwanda, an act celebrated by Father Félicien Muvara, and maintains that this relationship exists to this day. The alleged wife claims to have lost the marriage certificate when she fled Rwanda in March 1993.

150. The Court considers the events that occurred in Rwanda in 1993 to which the alleged wife refers are in the public domain and that their gravity and circumstances make it plausible that the marriage certificate proving the Applicant's marriage to Ms Gemma Uwamariya was lost as a result of her flight. In the absence of evidence to the contrary, the Court considers that the matrimonial relationship in question has been established by the affidavit sworn by Ms. Gemma Uwamariya.

151. With regard to Yves Rusi, the Court notes that two documents are relevant for the determination of his paternal relationship with the Applicant: the Power of Attorney issued by the Applicant to Yves Musi in his capacity as the Applicant's son; and the Power of Attorney delivered by Yves Rusi to the Applicant's lawyers invoking the same capacity.

152. Regarding Carmen Nono, the Court notes that the inquisitorial nature of the international human rights litigation and Rule 55 of the Rules[84] allow it to obtain, on its own initiative, all the evidence it considers appropriate to enlighten itself the facts of the case.[85] In the instant case, it is in the public domain that Carmen Nono is a member of the Applicant's family, her name appearing in particular in the various cases before the Canadian jurisdictions as such.[86]

153. As regards the determination of the amounts of pecuniary compensation for non-material damage, it appears from the

82 *Alex Thomas v United Republic of Tanzania*, ACtHPR, Application 005/2013, Judgment of 4 July 2019 (reparations), § 51; and *Armand Guehi v Tanzania* (merits and reparations) §§ 182 and 186.

83 *Andrew Ambrose Cheusi v United Republic of Tanzania* (merits and reparations), ACtHPR, Application 004/2015, Judgment of 26 March 2020, §§ 158-159.

84 Formerly, Rule 45 of the Rules of 2 June 2010.

85 ECHR, *Rahimi v Grèce*, Arrêt du 05 avril 2011, § 65.

86 Suprême Cour, *Mugesera c. Canada* (Ministre de la Citoyenneté et de l'Immigration), [2005] 2 R.C.S. 100, 2005 CSC 40 ; Federal Court Reports, *Mugesera v Canada* (Minister of Citizenship and Immigration) (T.D.) [2001] 4 F.C. 421.

Court's case-law that it has adopted the practice of granting lump sums,[87] calculated in equity, taking into account the particular circumstances of each case.[88]

154. The Court notes that, in the instant case, the Applicant calculated the amount of compensation on the basis of the number of days spent in detention. In paragraph 112 of this judgment, the Court concluded that the Application is not based on the lawfulness of the Applicant's detention rather on the conditions of detention. Therefore, the amount of compensation takes into account the duration of the violation and not the legality of the detention.

155. The Court also notes that the violations found are sufficiently relevant to cause suffering not only to the Applicant, but also to the members of his family, in this case his wife, in particular, in view of the difficulties she faced in having access to the Applicant, the deterioration of his health as proved by the medical reports submitted and the fact that he reported the treatment he had been undergoing in detention.

156. In view of the above and on the basis of equity, the Court awards Rwandan five million (RWF 5,000,000) to each of the indirect victims, that is, his wife Ms Gemma Uwamariya, son Yves Rusi and daughter Carmen Nono.

B. Non-pecuniary reparations

i. On quashing of the Applicant's conviction and sentence and his release

157. The Applicant prays the Court to quash his conviction and order his release.

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87 *Norbert Zongo & ors v Burkina Faso* (reparations), § 62; *Lohé Issa Konaté v Burkina Faso* (reparations), § 59.

88 *Armand Guehi v Tanzania* (merits and reparations), § 55 ; *Lucien Ikili Rashidi v Tanzania* (merits and reparations), § 58 ; *Norbert Zongo & ors v Burkina Faso* (reparations), § 61; and *Reverend Christopher R. Mtikila v Tanzania* (reparations), § 34.

158. As regards the Applicant's request for an order to have the sentence imposed on him annulled and for his release, the Court recalls that it has held that such measures can only be ordered in exceptional and compelling circumstances[89].

159. With respect specifically to his release, the Court determined that it would order such a measure only:

> If an Applicant sufficiently demonstrates or if the Court by itself establishes from its findings that the Applicant's arrest or conviction is based entirely on arbitrary considerations and that his continued detention would occasion a miscarriage of justice.[90]

160. In this case, the Court notes that the Applicant did not provide evidence of such circumstances. Moreover, in the alleged allegations, the Applicant only challenges the conditions of his incarceration, and not the legality of his detention. The Court therefore rejects the Applicant's request.

ii. On rehabilitation measures

161. The Applicant prays the Court to order the appointment of an independent doctor to assess his state of health and determine the measures necessary for his assistance.

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162. The Court observes that the Applicant has been subjected to cruel, inhuman and degrading treatment and that his life, physical and mental health were endangered, in violation of Articles 4 and 5 of the Charter, respectively.

163. In light of the foregoing, the Court considers that an independent assessment of the Applicant's physical and mental health by an expert is necessary for the purposes of determining appropriate

89 See *Jibu Amir & anor v Tanzania*, § 96; *Alex Thomas v Tanzania* (merits), § 157; *Diocles William v Tanzania* (merits), § 101; *Minani Evarist v Tanzania* (merits), § 82; *Mgosi Mwita Makungu v United Republic of Tanzania* (merits) (2018) 2 RJCA 570, § 84; *Kijiji Isiaga v United Republic of Tanzania* (merits) (2018) 2 RJCA 226, § 96; et *Armand Guéhi v Tanzania* (merits and reparations), § 164.

90 *Jibu Amir Mussa & anor v Tanzania*, §§ 96 and 97; *Minani Evarist v Tanzania* (merits), § 82; and *Mgosi Mwita Makungu v Tanzania* (merits), § 84. See also *Del Rio Prada v Spain*, European Court of Human Rights, Judgment of 10/07/2012, § 139; *Assanidze v Georgia* (GC) - 71503/01, Judgment of 8/04/2004, § 204; *Loayza-Tamayo v Peru*, Inter-American Court of Human Rights, Judgment of 17/09/1987, § 84.

treatment and, consequently, grants the Applicant's prayer.

iii. On serving the remainder of the Applicant's sentence in Canada

164. The Applicant prays the Court "to direct the Respondent State to enter into discussions with Canada in order to allow him … to serve the remaining sentence in that country."

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165. The Court notes that, in principle, a person convicted by a court of a State shall serve the sentence in the territory of the same, unless there is an agreement with another State where the sentenced person will serve his sentence. In the instant case, the Court finds that the Applicant's request falls within the sovereign domain of the Respondent State and Canada.

166. The Court therefore rejects the Applicant's request.

iv On adoption of sanctions against the Respondent State

167. The Applicant requests the Court to refer the matter to "[t] he African Union Commission and the Assembly of Heads of State and Government of the African Union in the event of non-performance by the Respondent State of the judgment rendered in the present case, to recommend the adoption of sanctions against the Respondent State, including, if necessary, a suspension of its membership in the African Union until the full implementation of the judgment is foreseen."

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168. Article 31 of the Protocol provides that "[t]he Court shall submit to each regular session of the Assembly, a report on its work during the previous year. The report shall specify, in particular, the cases

in which a State has not complied with the Court's judgment."

169. The Court notes that the provisions of this Article give it the power to monitor the implementation of its decisions. In the event of a finding of non-compliance, it shall report that fact to the Executive Council of the African Union.

170. The Court notes that, in the present case, the Applicant's request tends to anticipate both phases. Furthermore, if the Court's competence to monitor the implementation of its decisions is covered by the provisions of the Article 31 of the Protocol, the proposal to the Commission for the initiative to apply sanctions to the Respondent State falls within the mandate of the Executive Council of the African Union, in accordance with the Article 31 of the Protocol.

171. In view of the foregoing, the Applicant's request is dismissed.

X. Costs

172. The Applicant is claiming United States Dollars seventy-five thousand (US$ 75,000) for Counsel Geneviève Dufour and David Pavot, United States Dollars fifteen thousand (US$ 15,000) for the International Legal Assistance Office of the University of Sherbrooke and United States thirty thousand (US$ 30,000) for Barrister Philippe Larochelle.

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173. The Court notes that Rule 32(2) of the Rules[91] provides that "unless otherwise decided by the Court, each party shall bear its own costs".

174. The Court recalls, as in its previous judgments, that reparation may include the payment of legal fees and other costs incurred in international proceedings.[92] However, the Applicant must justify the amounts claimed.[93]

91 Formerly, Rule 30(2) of the Rules of 2 June 2010.

92 *Norbert Zongo & ors v Burkina Faso* (reparations), §§ 79-93; and *Reverend Christopher R. Mtikila v Tanzania* (reparations), § 39.

93 *Norbert Zongo & ors v Burkina Faso* (reparations), § 81; and *Reverend Christopher R. Mtikila v Tanzania* (reparations), § 40.

175. The Court notes that the Applicant did not present any retainer agreements concluded with the lawyers, nor any receipts for the payments they received. The Applicant simply lists the amount for legal fees by the various lawyers. However, the Court notes that the three (3) lawyers (Geneviève Dufour, David Pavot and Philippe Larochelle) represented the Applicant in these proceedings and that, consequently, it presumes that the Applicant have to pay their legal fees.

176. The Court considers that, since the Applicant has partially won his case, it deems it more appropriate to award him in equity, the lump sum of Rwandan Francs ten million (RWF 10,000,000), as reimbursement for the fees paid to his lawyers.[94]

XI. Operative part

177. For these reasons,
The Court,
In default
Unanimously:
On jurisdiction
i. *Declares* it has jurisdiction.

On admissibility
ii. *Declares* the Application is admissible.

On merits
Unanimously:
iii. *Holds* that the Respondent State has not violated Article 7(1)(c) of the Charter with respect to the Applicant's allegation that his witnesses did not appear;
iv. *Holds* that the Respondent State has not violated Article 7(1)(c) and (d) of the Charter, as read together with Article 14(3) of the ICCPR, and the letter of undertaking to the Government of Canada, with regard to the Applicant's right to free legal assistance;
By a majority of Nine (9) for and One (1) against, Judge Rafaâ BEN ACHOUR dissenting:
v. Holds that Respondent State has not violated the Applicant's right to be heard by an independent and impartial court, provided for under Articles 7(1)(d) and 26 of the Charter;

94 *Ingabire Victoire Umuhoza v Rwanda* (reparations), § 46.

Unanimously:

vi. *Finds* that the Respondent State has violated Article 5 of the Charter for having subjected the Applicant to cruel, inhuman and degrading treatment;

vii. *Finds* that the Respondent State has violated the Applicant's right to life under Article 4 of the Charter, for an attempt on his life.

viii. *Finds* that the Respondent State has violated the Applicant's right to family under article 18(1) of the Charter, with respect to his contact with family members.

Unanimously:

On reparations

On pecuniary reparations

ix. *Does not grant* the Applicant's prayer for material damages for his imprisonment.

x. *Dismisses* the Applicant's prayer for reimbursement of the amount of the fine imposed on his Rwandan lawyer, Barrister Jean-Félix Rudakemwa, as it does not fall within this case;

xi. *Grants* the Applicant's prayer as fees with legal representation before the domestic proceedings and awards him Rwandan Francs ten million (RWF 10, 000,000);

xii. *Grants* the Applicant's prayer for compensation for the moral prejudice suffered by him and by the indirect victims, and awards them compensation as follows*:*

   a. Rwandan Francs ten million (RWF 10,000,000) to the Applicant;

   b. Rwandan Francs five million (RWF 5,000,000) each to Ms. Gemma Uwamariya, the Applicant's wife, his son, Yves Musi and daughter, Carmen Nono;

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On non-pecuniary reparations

xiii. *Dismisses* the Applicant's prayer to quash his conviction and the sentence imposed on him.

xiv. *Dismisses* the Applicant's prayer for the Court to order his release from prison.

xv. *Dismisses* the Applicant's prayer to order the Respondent State to enter into negotiations with the Government of Canada with a view to the Applicant serving the remainder of his sentence in Canada.

xvi. *Dismisses* the Applicant's request regarding the imposition of the sanctions against the Respondent State in case of non-execution of this judgment.

xvii. *Orders* the Respondent State to appoint an independent medical doctor to assess the Applicant's state of health and to determine the measures required to assist him.

On costs

xviii. *Grants* the Applicant's prayers for legal fees of his lawyers before this Court and awards him the sum of Rwandan Francs Ten Million (RWF 10,000,000).

On implementation and reporting

xix. *Orders* the Respondent State to pay the amounts indicated in paragraphs xi, xii and xviii above, free of tax, within six (6) months from the date of notification of this judgment, failing which it shall also pay default interest calculated on the basis of the applicable rate set by the Central Bank of the Republic of Rwanda, throughout the period of late payment and until the sums due have been paid in full.

xx. *Orders* the Respondent State to report within six (6) months of the date of notification of this judgment on the measures taken to implement it and thereafter every six (6) months until the Court considers that it has been fully complied with.